NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1676 of 2025

(Arising against the impugned order dated 03.09.2025 passed by the National Company Law Tribunal, Mumbai Bench in I.A. No. 1393 of 2022 in Company Petition No. IB No. 2285(MB)/C-II/2018.

IN THE MATTER OF:

M/s Manjeet Cotton Pvt. Ltd., (SRA)
Add:- 318, N-3, Cidco, Jalna Road, Near Punjab National Bank, Aurangabad,
Maharashtra – 431009.

...Appellant

Versus

Phoenix ARC Pvt. Ltd.,
Trustee of Phoenix Trust FY 16-4
Add:- 5th Floor, Dani Corporate Park 158, CST Road, Kalina, Santacruz (East), Mumbai 400098.

...Respondent

Present:

For Appellant: **Mr. Gaurav Mitra, Ms. Pranati Bhatnagar, Ms. Dhairya B. Verenkar, Advocates.**

For Respondent: **Mr. Vardhman Kaushik, Mr. Dhruv Joshi, Mr. Arundam Sarin, Advocates**

J U D G M E N T

(27th April, 2026)

INDEVAR PANDEY, MEMBER (T)

The present Appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after the **'Code'**) by the Appellant, **M/s Manjeet Cotton Pvt. Ltd.**, being the **Successful**

Cont'd..../

Resolution Applicant of the **Deegee Cotsyn Pvt. Ltd. (Corporate Debtor**), assailing the legality and correctness of the impugned order dated 03.09.2025 passed by the Ld. National Company Law Tribunal, Mumbai Bench (Adjudicating Authority) in I.A. No. 1393 of 2022 in Company Petition No. IB No. 2285/MB/2018. By the said impugned order, the Adjudicating Authority has allowed the application filed by the Respondent, **Phoenix ARC Pvt. Ltd.**, (**Financial Creditor)**, and directed that the surplus amount of Rs. 1 crore generated during the Corporate Insolvency Resolution Process (CIRP) period from 01.11.2019 to 11.03.2022 be distributed among the financial creditors in accordance with the waterfall mechanism prescribed under Section 53 of the Code. The Adjudicating Authority has further held that the Appellant, **M/s Manjeet Cotton Pvt. Ltd.**, in its capacity as Successful Resolution Applicant, is not entitled to claim the said surplus amount on the ground that it was generated during the CIRP period, prior to the approval and implementation of the Resolution Plan.

2. Aggrieved by the said findings, particularly on the ground that the impugned order effectively alters and overrides the terms of the duly approved Resolution Plan, which had attained finality under Section 31 of the Code and was binding on all stakeholders including the Respondent, Phoenix ARC Pvt. Ltd.; the Appellant has preferred the present Appeal raising substantial questions of law concerning the entitlement over CIRP-generated surplus and the sanctity and binding nature of an approved Resolution Plan.

Brief facts of the case

3. The brief facts of the case are as given below:

(i) The Corporate Debtor, Deegee Cotsyn Private Limited, was incorporated with its registered office at Amravati, Maharashtra, and had availed various financial facilities from a consortium of banks led by UCO Bank, including Term Loan I (Spinning), Term Loan II (Power), and Cash Credit facilities, aggregating to substantial amounts, out of which an amount of Rs. 28,05,66,577/- remained outstanding as on 31.03.2018. The account of the Corporate Debtor had already been classified as Non-Performing Asset on 31.12.2014 due to persistent defaults in repayment.

(ii) The said debt, along with underlying security interests, was assigned by UCO Bank in favour of Phoenix ARC Pvt. Ltd., acting as trustee of Phoenix Trust FY 16-4, pursuant to an Assignment Agreement executed on 29.06.2015, thereby vesting the Respondent with all rights as Financial Creditor under the Code, including the right to initiate insolvency proceedings.

(iii) In exercise of such rights, the Respondent filed an application under Section 7 of the Code before the Adjudicating Authority being Company Petition No. IB 2285/MB/2018, and upon satisfaction of existence of financial debt and default, the Adjudicating Authority admitted the petition vide order dated 26.02.2019, thereby initiating the Corporate Insolvency Resolution Process against the Corporate Debtor and appointing an Interim Resolution Professional.

(iv) Following admission of the petition, a public announcement was issued under the CIRP Regulations inviting claims from all creditors, and pursuant thereto, claims aggregating to Rs.164,27,31,562/- were admitted by the Resolution Professional, reflecting the financial position and liabilities of the Corporate Debtor.

(v) The Information Memorandum was prepared in May 2019 detailing the assets and liabilities of the Corporate Debtor as on 26.02.2019, wherein inter alia, the cash balance of the Corporate Debtor was recorded at Rs. 43,87,046/-, and such financial disclosures formed the basis for prospective resolution applicants to evaluate the viability of submitting a Resolution Plan.

(vi) Thereafter, Expression of Interest was invited by issuance of Form-G on 17.07.2019, pursuant to which seven prospective resolution applicants expressed interest, however, ultimately only three Resolution Plans were submitted for consideration by the Committee of Creditors.

(vii) The Committee of Creditors, after detailed deliberations, in its 9th meeting held on 16.11.2019, approved the Resolution Plan submitted by the Appellant, M/s Manjeet Cotton Pvt. Ltd., with a voting share of 67.54%, wherein notably the Respondent/Financial Creditor holding 22.23% voting share also voted in favour of the said Resolution Plan, thereby accepting the terms and treatment proposed therein.

(viii) The Resolution Plan, as approved by the CoC, specifically provided for payment to financial creditors to the extent of 31.5% of their admitted claims, crystallized at Rs.3100 lakhs, and further

incorporated a clear stipulation under Clause 4.1(i) that all claims of creditors beyond the treatment provided in the Resolution Plan would stand extinguished upon approval, thereby bringing finality to all past liabilities.

(ix) The Resolution Plan was thereafter placed before the Adjudicating Authority by way of I.A. No. 3760 of 2019 under Section 30(6) of the Code, and the same was approved vide order dated 11.03.2022, thereby making the Resolution Plan binding on all stakeholders including the Corporate Debtor, its employees, creditors, guarantors, and all other concerned parties in terms of Section 31 of the Code.

(x) During the CIRP period, particularly between 01.11.2019 and 11.03.2022, the Corporate Debtor was run as a going concern under the supervision of the Resolution Professional, and through its operations, generated surplus cash flows amounting to approximately Rs.1 crore, without affecting its working capital requirements.

(xi) Upon approval of the Resolution Plan, the Appellant, as Successful Resolution Applicant, took over the management and control of the Corporate Debtor and proceeded to implement the Resolution Plan, including making upfront payments towards settlement of creditor claims and additionally infusing a sum of Rs.16 crores as working capital to revive and run the business of the Corporate Debtor as a going concern.

(xii) The implementation process was duly overseen by the Monitoring Committee, and upon successful transfer of control to the Appellant, the Monitoring Committee was dissolved in its 4th meeting held on

01.06.2022, thereby marking completion of CIRP and transition to the new management.

(xiii) The Respondent/Financial Creditor, filed I.A. No. 1393 of 2022 on 17.05.2022 before the Adjudicating Authority seeking directions for distribution of the surplus amount of Rs.1 crore generated during CIRP amongst financial creditors under Section 53 of the Code, contending that the said amount constituted excess funds generated prior to implementation of the Resolution Plan.

(xiv) The Appellant contested the said application and also filed an intervention application being I.A. No. 2544 of 2022 asserting that upon approval of the Resolution Plan, all assets of the Corporate Debtor, including cash flows generated during CIRP, stood vested in the Appellant, and no further claims or redistribution could be permitted beyond the terms of the approved Resolution Plan.

(xv) The Adjudicating Authority, vide order dated 03.09.2025, allowed the application filed by the Respondent and held that since the surplus amount of Rs.1 crore was generated during the CIRP period and prior to the approval and implementation of the Resolution Plan, the Successful Resolution Applicant could not claim entitlement over the same, and accordingly directed that the said amount be distributed amongst the financial creditors in accordance with Section 53 of the Code.

(xvi) The Adjudicating Authority observed that the surplus amount constituted part of the CIRP estate and not part of the assets vesting in

the Successful Resolution Applicant, thereby rejecting the claim of the Appellant and allowing redistribution to creditors.

(xvii) Being aggrieved by the said impugned order, the Appellant has preferred the present Appeal raising substantial questions of law regarding entitlement to CIRP-generated surplus and limits of judicial interference post approval of a Resolution Plan.

Submissions of the Appellant

4. Shri Gaurav Mitra, Ld. Counsel for the Appellant submitted that the present Appeal has been preferred by the Appellant, *Manjeet Cotton Pvt. Ltd.*, assailing the Impugned Order dated 03.09.2025 passed by the Adjudicating Authority, whereby, it has been directed that the surplus amount of Rs.1,42,72,094.93/- generated during the Corporate Insolvency Resolution Process (CIRP) period, i.e., from 26.02.2019 to 11.03.2022, be distributed in accordance with the waterfall mechanism prescribed under Section 53 of the Insolvency and Bankruptcy Code, 2016. The counsel for the Appellant submits that the said direction is contrary to the terms of the approved Resolution Plan and is legally unsustainable.

5. He submitted that a proper interpretation of Clause 3.9.5 of the approved Resolution Plan clearly demonstrates that all assets of the Corporate Debtor (CD), including all rights, interests, benefits, and accretions thereto, stand vested in favour of the Resolution Applicant without any reservation or exception, unless expressly provided otherwise. The counsel submits that the clause is unequivocal in its intent and leaves no ambiguity regarding the comprehensive transfer of ownership.

6. Ld. Counsel submits that a bare reading of Clause 3.9.5 makes it abundantly clear that the Resolution Plan envisages a transfer of the Corporate Debtor as a going concern in its entirety, and not merely a limited or asset-specific transfer. It is submitted that the Resolution Applicant is intended to acquire the Corporate Debtor along with its entire economic value, inclusive of all tangible and intangible benefits attached thereto.

7. It is submitted that the surplus amount generated during the CIRP period is in the nature of an accretion to the assets of the Corporate Debtor, arising from its business operations, while it was being run as a going concern. The counsel submits that such accretions cannot be segregated or treated independently from the assets of the Corporate Debtor and necessarily fall within the scope of Clause 3.9.5 of the Resolution Plan.

8. He further submitted that there exists no exclusionary clause within the approved Resolution Plan, which provides that such surplus generated during CIRP is to be appropriated towards liabilities of the Corporate Debtor. On the contrary, Clause 3.9.5 expressly provides that “margin money and fixed deposits, if any, shall continue to be part of the company’s assets and shall not be adjusted by the lender against any outstanding dues”. The counsel submits that since the surplus generated during CIRP was admittedly parked in a fixed deposit, the same could not have been subjected to distribution under Section 53 of the Code.

9. It is further submitted that the amount of Rs. 44 lakhs reflected under the head “Cash & Cash Equivalents” forms an integral part of the assets of the Corporate Debtor and is liable to be transferred to the Appellant in terms of the Resolution Plan.

10. Ld. Counsel places reliance upon the judgment of the Hon’ble Supreme Court in Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd., (2022) 2 SCC 1 (para 204), to submit that a resolution plan, once approved, is binding and irrevocable as between the Committee of Creditors (CoC) and the Successful Resolution Applicant (SRA). It is submitted that the sanctity and binding nature of the approved Resolution Plan cannot be diluted by subsequent directions of the Adjudicating Authority.

11. It is submitted that the Hon’ble Supreme Court in Committee of Creditors of Essar Steel India Pvt. Ltd. vs. Satish Kumar Gupta &Ors., (2019) 16 SCC 479, has categorically held that profits generated during the CIRP period are not to be distributed towards payment of debts of creditors where the Resolution Plan or RFP provides otherwise. The counsel submits that the ratio of the said judgment squarely applies to the facts of the present case and supports the Appellant’s contention that such surplus cannot be subjected to distribution under Section 53.

12. It is further submitted that Clause 4.1(ii) of the approved Resolution Plan governs the implementation of the Resolution Plan and provides for transfer of control and management of the Corporate Debtor to the Appellant as a going concern, together with all its assets, properties, cash

balances, receivables, and business operations. The counsel submits that the surplus amount, having arisen from operations of the Corporate Debtor during CIRP, is intrinsically linked to its business and cannot be artificially detached. By virtue of Clause 4.1(ii), the Appellant steps into the shoes of the Corporate Debtor and becomes entitled to all benefits arising from its operations, including any cash surplus available at the time of takeover.

13. Ld. Counsel submitted that Clause 4.1(ii) expressly provides for extinguishment of all claims beyond what is provided in the Resolution Plan. Therefore, any attempt to distribute the surplus to creditors dehors the Resolution Plan would amount to reopening settled claims, which is impermissible in law.

14. He submits that the commercial wisdom of the Committee of Creditors is paramount and non-justiciable, as held by the Hon'ble Supreme Court in Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 (para 55). It is submitted that the approval of the Resolution Plan by the CoC—including the Respondent, who held 22.23% voting share—reflects conscious commercial decision-making. The impugned order, by directing distribution contrary to the Resolution Plan, undermines such commercial wisdom and is therefore liable to be set aside.

15. It is further submitted that this Hon'ble Tribunal, in its order dated 19.03.2026 passed in SPS Steels Rolling Mills Ltd. vs. Central Bank of India, Comp. App. (AT)(INS) No. 352 of 2024, has held that assets of the Corporate Debtor not included in the Information Memorandum (IM),

including those discovered post-approval of the Resolution Plan, remain with the Corporate Debtor under new management and do not revert to creditors or the CoC. The counsel submits that the said principle reinforces that all assets and accretions, whether disclosed or undisclosed, vest with the Resolution Applicant upon approval of the Resolution Plan.

16. In view of the above submissions, Ld. Counsel submitted that the impugned order defeats the very object and purpose of the Insolvency and Bankruptcy Code, 2016, which is to ensure revival of the Corporate Debtor as a going concern and to safeguard it from further financial uncertainty. The direction to distribute the surplus amount is contrary to the approved Resolution Plan and settled principles of law, and therefore deserves to be set aside.

Submissions of the Respondent- Pheonix ARC

17. Ld. Counsel for the Respondent submits that the present Appeal is confined to a narrow and limited controversy, namely, the treatment of surplus cash flow generated during the Corporate Insolvency Resolution Process (CIRP) period between 01.11.2019 and 11.03.2022. It is an admitted and undisputed factual position that the said surplus was generated when the Corporate Debtor was being run as a going concern under the supervision and control of the Resolution Professional. During this entire period, the Appellant neither had control over the operations of the Corporate Debtor, nor made any financial or operational contribution towards the generation of such surplus. The surplus, therefore, is

intrinsically linked to the CIRP operations and not to any effort or investment by the Appellant.

18. He submits that the Resolution Plan dated 02.11.2019, which came to be approved on 11.03.2022, is completely silent on the issue of treatment, ownership, or appropriation of any surplus generated during the CIRP period. The Plan strictly deals with assets and liabilities as reflected in the Information Memorandum and is premised on fixed financial assumptions. The surplus in question was neither anticipated nor factored into the financial matrix of the Plan. It was not subjected to valuation, nor was it allocated or distributed under any clause of the Plan. Thus, any claim by the Appellant over such surplus is dehors the terms of the Resolution Plan itself.

19. He further submits that the surplus amount in question constitutes an accrual arising during the CIRP period and forms part of the insolvency estate. The said surplus was generated entirely under the management and supervision of the Resolution Professional. The Appellant had no role in the operations of the Corporate Debtor during this period, did not assume operational control, and did not infuse any capital. In such circumstances, the Appellant cannot lay any claim over the surplus, as the same is not attributable to its efforts or investment.

20. It is specifically submitted that the only provision in the Resolution Plan, which makes a reference to surplus cash flow is Clause 3.9.8. A plain reading of this clause reveals that it merely enables the Resolution Professional to utilise surplus cash flow, if any, for the purpose of

foreclosure of outstanding amounts, without attracting foreclosure or prepayment charges. Importantly, the clause does not provide that such surplus would vest in the Resolution Applicant, nor does it create any proprietary or beneficial interest in favour of the Appellant. Therefore, the reliance placed by the Appellant on this clause to claim entitlement over the surplus is wholly misplaced and contrary to the plain language of the Plan.

21. He further submitted that in the absence of any contractual stipulation in the Resolution Plan governing the treatment of such surplus, the statutory framework under Section 53 of the Insolvency and Bankruptcy Code, 2016 would necessarily come into operation. The learned Adjudicating Authority has rightly directed that the surplus be distributed in accordance with the waterfall mechanism prescribed under Section 53, which governs the distribution of assets forming part of the insolvency estate. Such direction is in complete consonance with the scheme of the Code and ensures equitable distribution among stakeholders.

22. Ld. Counsel submits that the contention of the Appellant that the surplus amount, by virtue of being placed in a fixed deposit, acquires a different legal character or vests in the Resolution Applicant is wholly misconceived and untenable. The mere act of parking funds in a fixed deposit does not alter the source, nature, or character of the funds. The surplus remains a CIRP-period accrual forming part of the insolvency estate. The Appellant cannot derive any legal entitlement over such funds merely on account of the manner in which they are held or invested.

23. He further submitted that the reliance placed by the Appellant on the judgments in Essar Steel and Ghanshyam Mishra is entirely misplaced. These judgments deal with the extinguishment of pre-CIRP claims upon approval of a Resolution Plan and do not address the issue of treatment of surplus generated during the CIRP period. The ratio of these decisions does not support the proposition that such surplus automatically vests in the Resolution Applicant. Therefore, the Appellant's reliance on these judgments is legally unsustainable.

24. Ld. Counsel submits that in the decision of Kalyan Janata Sahakari Bank Ltd. v. Arun Kapoor, the learned NCLT, Mumbai Bench has categorically held that where the Resolution Plan is silent regarding the treatment of profits generated during the CIRP period, such profits ought to be distributed in accordance with the scheme of the Code and the commercial framework of the Plan. It has been held that since financial creditors bear substantial haircuts and continue to fund the assets of the Corporate Debtor during CIRP without any assured return, it is just, equitable, and in consonance with commercial fairness that such CIRP-period profits ensue to the benefit of financial creditors and not the Resolution Applicant, particularly when the Resolution Applicant acquires the assets only after approval of the Plan.

25. He further submitted that the contention of the Appellant that the Committee of Creditors has already been fully satisfied under the Resolution Plan is erroneous and misconceived. The Resolution Plan settles claims only to the extent of assets that were considered and included in the

Plan. It does not extinguish statutory rights in respect of assets or accruals which were not part of the Plan. Financial creditors have already suffered significant haircuts in the resolution process, and permitting the Appellant to appropriate CIRP-generated surplus would result in unjust enrichment at the cost of such creditors.

26. It is submitted that the attempt of the Appellant to treat CIRP-generated surplus as part of the assets of the Corporate Debtor vesting in it is legally untenable. During the CIRP period, all assets and accruals form part of the insolvency estate and remain under the control and custody of the Resolution Professional. Only those assets which are expressly transferred under the Resolution Plan vest in the Resolution Applicant. In the present case, since the surplus was neither identified nor transferred under the Plan, it cannot be claimed by the Appellant.

27. He further submitted that the Appellant's reliance on alleged infusion of funds post-approval of the Resolution Plan is irrelevant for the purpose of determining entitlement to CIRP-generated surplus. Such infusion is merely in discharge of obligations undertaken under the Resolution Plan and has no nexus whatsoever with the surplus generated prior to the takeover of the Corporate Debtor by the Appellant.

28. Ld. Counsel submits that the impugned order passed by the learned Adjudicating Authority is well within its jurisdiction under Section 60(5) of the Code. The order ensures adherence to the statutory framework, promotes equitable distribution among stakeholders, and upholds the fundamental objective of value maximisation under the Code. There is no

illegality or infirmity in the said order warranting interference by this Hon'ble Tribunal.

29. In light of the aforesaid facts and submissions, Ld. Counsel for the Respondent submits that the present Appeal is devoid of merit. The Appeal is founded on a clear misinterpretation of the Resolution Plan, the statutory provisions of the Code, and settled legal principles governing CIRP. Accordingly, the present Appeal deserves to be dismissed.

Analysis and findings

30. We have heard both the parties in detail, gone through the records of the case and written submissions filed by the parties.

31. The present Appeal raises a limited question, viz. whether the surplus cash flow generated during the Corporate Insolvency Resolution Process (CIRP), before the approval and implementation of the Resolution Plan, belongs to the Successful Resolution Applicant (Appellant), or whether it must be distributed amongst the stakeholders in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016, as directed by the Adjudicating Authority in its Impugned Order dated 03.09.2025.

32. At the outset, we note that certain foundational facts are not in dispute. The Corporate Debtor was admitted into CIRP in February 2019 and continued to operate as a going concern till the approval of the Resolution Plan on 11.03.2022. During this entire period, the affairs of the Corporate Debtor were managed by the Resolution Professional, and not by the Appellant. It is also an admitted position that during this CIRP period,

the Corporate Debtor generated surplus operational cash flows, approximately to the tune of Rs.1 crore to Rs.1.42 crore. These surplus funds were generated prior to the Appellant taking over the management and without any financial or operational contribution from the Appellant.

33. The Appellant's case is primarily based on the terms of the approved Resolution Plan. It is contended that Clause 3.9.5 provides for vesting of all assets of the Corporate Debtor in favour of the Resolution Applicant, including all rights, interests, and accretions. According to the Appellant, the surplus generated during CIRP is nothing but an "accretion" to the assets of the Corporate Debtor and, therefore, must automatically pass to the Appellant. It is further argued that Clause 4.1(ii) provides that upon approval of the Resolution Plan, the Appellant takes over the Corporate Debtor as a going concern along with all assets, including cash balances and business operations. The Appellant has also emphasized that the surplus amount was placed in fixed deposits and forms part of the cash and cash equivalents of the Corporate Debtor, and therefore retains the character of an asset. It is further contended that once a Resolution Plan is approved under Section 31 of the Code, it becomes binding on all stakeholders, and any direction to distribute surplus amounts would amount to modifying the Resolution Plan, which is impermissible in law.

34. On the other hand, the Respondent has argued that the Resolution Plan does not contain any provision dealing with the treatment or ownership of surplus cash flow generated during CIRP. It is submitted that such surplus was generated entirely during the CIRP period under the

supervision of the Resolution Professional, and not by the Appellant. Therefore, such surplus forms part of the insolvency estate. The Respondent has pointed out that Clause 3.9.8 of the Resolution Plan merely allows the Resolution Professional to utilize surplus cash flow for foreclosure of outstanding dues and does not confer any ownership rights on the Appellant. It is further argued that in the absence of any specific provision in the Resolution Plan, the statutory mechanism under Section 53 must apply. The Respondent has also emphasized that financial creditors have taken substantial haircuts under the Resolution Plan, and allowing the Appellant to appropriate the surplus would result in unjust enrichment.

35. A Resolution Plan is essentially a commercial arrangement based on the assets, liabilities, and financial position of the Corporate Debtor as known and evaluated at the time of its approval. Only those assets and values which are identified and accounted for in the Plan can be said to vest in the Resolution Applicant. Any value or asset which is not contemplated, quantified, or provided for in the Plan cannot be later claimed by way of implication.

36. We take note of the relevant clauses of the Resolution Plan which have been relied upon by the appellant and respondent in support of their contentions. The relevant clauses 3.9.5, 3.9.8 and 4.1 (ii) are extracted below:

*"**3.9.5. Release of Charge and Withdrawals***

On approval of the Resolution Plan, the Financial Creditors to inform various registries maintaining credit scores of the Corporate Debtor about change in Management through CIRP and accordingly a fresh score be allotted to the Corporate Debtor.

Margin money and fixed deposit if any shall be continued to be part of the company's asset and shall not be adjusted by the lender against any outstanding dues.

4.1 Other Covenants in the Resolution Plan

***(ii)** Other than the claims and settlements pertaining to the Corporate Debtor that have been envisaged and set out under this Resolution Plan, no other payment or settlement, of any kind, shall be made to any other person or entity in respect of any other claims (whether or not admitted or filed or verified with the Resolution Professional) and/or any sub-judice claims and all such claims against the Corporate Debtor along with any related legal proceedings, in relation to any period prior to the Transfer Date or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicants pursuant to this Resolution Plan, shall stand irrevocably and unconditionally abated, settled and extinguished. Such extinguishment of claims shall be deemed to form an integral part of the order by the Adjudicating Authority approving the Resolution Plan and shall accordingly be binding on all the stakeholders including the Corporate Debtor, its employees, workmen, financial and operational creditors, guarantors, security providers, and other stakeholders. The treatment accorded to the persons receiving settlement under this Resolution Plan shall constitute an absolute discharge and settlement of the dues to which they pertain and shall be the full and final performance, discharge and satisfaction of all obligations relating thereto.*

3.9.8. Foreclosure of Financial Creditors

Resolution Professional propose to foreclose the outstanding amount at any point of time in case of any surplus cash flow generated from the business of the Corporate Debtor without any payment of foreclosure fees/prepayment charges."

[Emphasis supplied]

37. The reference to Margin Money and fixed deposit in Clause 3.9.5 relate to margin money refers to the amount contributed by CD as its share for taking loan from bank for working capital or term loan and fixed

deposits are equivalent to cash in balance sheet. This reference cannot and does not relate to any surplus cash flow generated during the CIRP period. It is also clear from the records that the margin money or existing fixed deposits were not utilised for adjustment of any lenders claim and the same has not been argued also.

38. Similarly, Clause 4.1 (ii), which governs the transfer of control and management of the Corporate Debtor, also has to be read in the context of implementation of the Resolution Plan and the assets forming part thereof. The reference to takeover of the Corporate Debtor "as a going concern" along with its assets, cash balances, and business operations cannot be interpreted to include surplus generated during CIRP prior to such takeover, particularly when such surplus was not part of the Resolution Plan. Further, the submission that Clause 4.1(ii) results in extinguishment of all claims beyond the Resolution Plan does not address the present issue, as the question here is not of any pre-existing claim, but of treatment of a surplus amount which was not contemplated under the Plan at all, and therefore cannot be said to have been extinguished or transferred by virtue of the said clause.

39. It is clear from the above that the Resolution Plan is completely silent on the treatment of surplus cash flow generated during the CIRP period. There is no clause which states that such surplus will vest in the Resolution Applicant. The surplus generated during CIRP was neither contemplated nor allocated under the Plan, and therefore cannot be

brought within the scope of "accretions" merely by a broad interpretative exercise.

40. Clause 3.9.8, on the other hand, is the only provision in the Resolution Plan which makes any reference to surplus cash flow, and it merely enables the Resolution Professional to utilize such surplus for foreclosure of outstanding dues. The clause does not contain any stipulation regarding vesting or appropriation of such surplus in favour of the Resolution Applicant, thereby indicating that no proprietary right over CIRP-generated surplus was intended to be created.

41. We also do not find any merit the Appellant's argument that the surplus is an "accretion" to the assets of the Corporate Debtor convincing. The crucial factor here is that this surplus was generated during the CIRP period, when the Corporate Debtor was under the control of the Resolution Professional and was being run under the oversight of CoC. The Appellant had no role in generating this surplus, nor had it taken any operational or financial risk during that period. Therefore, such surplus cannot be treated as a benefit arising from the Appellant's efforts or investment. Instead, it remains part of the value generated during CIRP for the benefit of the insolvency process.

42. Further, the fact that the surplus amount was kept in fixed deposits does not change its nature. The legal character of the funds depends on how and when they were generated, not on the form in which they are held. Since the surplus was generated during CIRP, it continues to retain its character as part of the insolvency estate.

43. We also find that the Appellant's argument that the financial creditors have already been satisfied under the Resolution Plan is not correct. The Resolution Plan only deals with the assets and values considered at the time of its approval. Any additional surplus generated during CIRP, which was not part of the Plan, cannot be said to have been settled or extinguished.

44. Once we reach this conclusion, the next step is straightforward. The IBC provides a clear mechanism under Section 53 for distribution of assets forming part of the insolvency estate. In the absence of any provision in the Resolution Plan governing the distribution of such surplus, the Adjudicating Authority was correct in directing that it be distributed in accordance with Section 53.

45. The appellant has relied upon several judgments of Hon'ble Supreme Court in support of his contention. These have been examined in the context of present factual matrix.

46. Insofar as the reliance placed on '*Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Ltd. [(2022) 2 SCC 1]'* is concerned, the principle laid down therein is that a Resolution Plan, once approved, becomes binding and irrevocable between the Committee of Creditors and the Successful Resolution Applicant. The emphasis of the Hon'ble Supreme Court was on ensuring certainty and finality of the resolution process by preventing either party from resiling from the agreed terms of the Plan. It is to be noted that the present case does not involve any attempt to modify, revisit, or withdraw from the approved Resolution Plan. The present issue has

arisen because the Resolution Plan is silent on the treatment of surplus cash flow generated during the CIRP period. The said surplus was neither identified, valued, nor allocated under the Plan. Therefore, determining its treatment does not amount to altering the Plan, but rather addressing a situation not contemplated within it. If the Appellant's argument is accepted, it would effectively amount to enlarging the scope of the Plan by implication, which is contrary to the ratio in Ebix Singapore that mandates strict adherence, only to what has been expressly agreed. Hence, the said judgment does not assist the Appellant in claiming rights over a value that was never part of the Resolution Plan.

47. With regard to the reliance on Committee of Creditors of '*Essar Steel India Pvt. Ltd. vs. Satish Kumar Gupta & Ors.'* [(2019) 16 SCC 479], Hon'ble Supreme Court has categorically held in paragraph 68 that:

> *"“68. The RFP issued in terms of Section 25 of the Code and consented to by ArcelorMittal and the Committee of Creditors had provided that distribution of profits made during the corporate insolvency process will not go towards payments of debts of any creditors — see Clause 7 of the first addendum to the RFP dated 08.02.2018. On this short ground, this part of the Judgment of the NCLAT is also incorrect.”*

48. It is important to note that the observations therein were made in the context of a specific contractual framework governing that resolution process. The Hon'ble Supreme Court referred to a clause in the Request for Proposal (RFP), which expressly stipulated that profits generated during the CIRP would not be used towards payment of creditors. The conclusion reached by the Court was thus based on an express contractual stipulation

agreed between the parties. In the present case, no such clause exists in the Resolution Plan or any related document. The Plan is completely silent on the treatment of CIRP-generated surplus. Therefore, the ratio of Essar Steel cannot be applied in isolation or in the absence of a similar contractual provision. In fact, the absence of such a clause in the present case strengthens the position that the surplus was not contemplated as part of the Resolution Plan and must, therefore, be dealt with in accordance with the statutory framework of the Code.

49. As regards the reliance on Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd. [(2021) 9 SCC 657], the principle laid down therein is that once a Resolution Plan is approved, all claims not forming part of the Plan stand extinguished, and the commercial wisdom of the Committee of Creditors in approving the Plan is paramount and not subject to judicial review. However, the present case does not involve any question of extinguishment of claims or interference with the commercial wisdom of the CoC. The surplus in question was never part of the Resolution Plan and was not placed before the CoC for consideration at the time of approval of the Plan. This judgment deals with extinguishment of pre-CIRP claims and do not address the treatment of CIRP-generated surplus. Thus, the reliance on Ghanshyam Mishra is misplaced in the context of the present controversy.

50. Insofar as the reliance on the decision of this Tribunal in SPS Steels Rolling Mills Ltd. vs. Central Bank of India (Comp. App. (AT)(INS) No. 352 of 2024, order dated 19.03.2026) is concerned, the said judgment deals with

a different factual situation. In that case, the issue pertained to assets of the Corporate Debtor, which were in existence at the time of CIRP, but were not included in the Information Memorandum and were discovered subsequently. The Tribunal held that such omitted or undisclosed assets would remain with the Corporate Debtor under the new management, as they were inherently part of the Corporate Debtor's asset base. In contrast, the present case does not involve any pre-existing or undisclosed asset. The surplus in question was generated during the CIRP period through the operations of the Corporate Debtor under the control of the Resolution Professional. It is, therefore, not an asset that existed independently and was merely omitted from the Information Memorandum, but a value that arose as part of the insolvency process itself. Such CIRP-generated surplus stands on a different legal footing and forms part of the insolvency estate, and therefore cannot be equated with omitted or subsequently discovered assets as contemplated in SPS Steels.

51. In light of the above analysis, we find that the authorities relied upon by the Appellant are distinguishable on facts and law and do not support the proposition that CIRP-generated surplus, not contemplated in the Resolution Plan, automatically vests in the Resolution Applicant. None of the aforementioned judgments deal with a situation like the present one, where a surplus has been generated during CIRP and the Resolution Plan is silent on its treatment. Therefore, these judgments are distinguishable.

52. From the perspective of fairness also, we find that the Respondent's case has merit. The financial creditors have taken significant haircuts

under the Resolution Plan, and the CIRP process was sustained by them. If the Appellant is allowed to take the entire surplus, despite not contributing to its generation and despite it not being part of the Resolution Plan, it would result in an unintended and unjust benefit to the Appellant at the cost of the creditors. The objective of the Code is also to maximize value from the resolution of the CD in the CIRP process and the decision of the Adjudicating Authority is intended to achieve the objective of the Code.

53. We also note that the Adjudicating Authority is well within its jurisdiction in passing the Impugned Order, as the direction to distribute the surplus does not tantamount to modifying the Resolution Plan. The impugned order rather addresses a situation, which was not contemplated in the Plan, and the same has been addressed by applying the statutory provisions of the Code.

54. In view of the above, we are of the view that the surplus cash flow generated during the CIRP period does not belong to the Appellant and must be treated as part of the insolvency estate. The Adjudicating Authority has rightly directed its distribution in accordance with Section 53 of the IBC. We find no error or infirmity in the Impugned Order dated 03.09.2025. Accordingly, the Appeal is dismissed. Pending IA's, if any, are closed. No order as to costs.

[Justice Ashok Bhushan)
Chairperson

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)