

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference)Virtual Hearing

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDHULA – HON’BLE MEMBER (J)
CORAM: SATHYA RANJAN PRASAD - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.10.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/248/2023 in CP (IB) No.384/7/HDB/2018
NAME OF THE COMPANY	Galada Power and Telecommunication Ltd
NAME OF THE PETITIONER(S)	Stressed Assets Stabilization Fund
NAME OF THE RESPONDENT(S)	Galada Power and Telecommunication Ltd
UNDER SECTION	7 of IBC

ORDER

IA(IBC)/248/2023

Ld Counsel Mr.Srikanth Rathi, Advocate for Mr.VVSN.Raju, Counsel for the Respondent present.

Ld Counsel Mr.Suman, Advocate for the Applicant present.

This is an application filed against the communication of the Resolution Professional dated 23.09.2021 whereby the RP rejected the claim of the Applicant on the grounds mentioned in the communication.

This application, which was filed on 05.12.2022 has been returned by the Registry for certain compliances, has **re-presented only on 06.02.2023**. Thereafter, the same has been registered as IA 248/2023 and listed on 13.02.2023. On that day, since the Learned Counsel for RP was present, RP was directed to file counter, if any, within three days and accordingly counter has been filed by the RP.

While it was so, the RP filed IA No.583/2021 for approval of the Resolution Plan voted by the COC on 07.09.2021 with 100% voting, has been heard and allowed by this AA on 25.05.2023.

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Subsequently, on 04.09.2023, the Petitioner in IA 243/2023 got filed a letter with the Registry stating that *“the matter was listed lastly on 25.05.2023 and thereafter, the said matter was not listed till date no update in the online/website till date. Is there any orders are passed in IA 248/2023, if so, please provide the copy of the order, since Galada Power is selling all his properties, I will be put to irreparable loss & hardship”*.

In the above factual backdrop, it is to be stated that the IA 583/2021 filed by the RP praying for approval of the Resolution Plan has been posted for orders on 25.05.2023 and the same was allowed on 25.05.2023. The petitioner’s IA 248/2023 also stood posted to that date, but the petitioner did not pursue the matter.

The Hon’ble Supreme Court of India in re., **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors. in CA No.3395 of 2020** had held that -

“135. In the scheme of the process for corporate insolvency resolution, it is preliminarily provided in Section 13 of the Code that, after admission of an application for corporate insolvency resolution process, the Adjudicating Authority, apart from declaring moratorium and appointing an interim resolution professional, is also required to cause a public announcement of the initiation of CIRP and *‘call for submission of claims under Section 15’*. As per Section 15, the material information in the public announcement is to contain, *inter alia*, *‘the last date for submission of claims, as may be specified’*. The IRP is enjoined with several duties under Section 18 and as per clause (b) thereof, he is to *‘receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15’*. CIRP Regulations make the position clearer still, where, by virtue of Regulation 12, a creditor is required to submit his claim with proof *‘on or before the last date mentioned in the public announcement’*; and a creditor who fails to submit the claim within the stipulated time, may yet submit the claim with proof *‘on or before the ninetieth day of the insolvency commencement date’*. As per Regulation 13, the resolution professional concerned is to verify the claims within seven days of the last date of receipt of claims.

135.1 Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the

resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12. In **Essar Steel** (supra), while dealing with the topic '*Extinguishment of Personal Guarantees and Undecided Claims*', this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a freshplate. This Court, *inter alia*, held as under:

“107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

135.2 It has not been the case of anyone that in the process in question, any of the requirements of Sections 13, 15 and 18 had not been complied with. It has also not been anybody's case that any claim made by any fixed deposit holder within the stipulated time was not taken into account by IRP.

The Hon'ble Supreme Court of India in re., **Essar Steel** had held as below:

1. *It was further submitted that the timeline provided under Section 12 of the IBC for completion of CIRP was only directory as per the judgment in **Essar Steel**⁵. Since the Adjudicating Authority was yet to approve the resolution plan, respondent No.1 should have included the same as a contingent liability. This was also the view taken by the adjudicating agency. It was thus submitted that there was no cause for NCLAT to interfere with the same. The appellant also sought to contend their lack of awareness about the CIRP. It was urged that the Corporate Debtor did not disclose that the CIRP had been initiated, either during the pendency of the proceedings under Section 34 of the Arbitration Act or in appeal under Section 37 of the Arbitration Act. Had the appellant known of the CIRP, it may not have filed an application for restoration of the execution petition on 16.11.2019.*
2. *It was urged that the appellant urged that respondent No.1 could have easily found this information from the Corporate Debtor's books of accounts.*

"The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.

Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

*The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in *Essar Steel*,⁸ the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.*

We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

Therefore, in the light of the above ruling the present application is not maintainable even by the date of its filing as the CoC has already voted the Resolution Plan with 100% voting. That apart, except merely filing the application, the petitioner was never diligent in pursuing the same as this application which was filed on 05.12.2022 has been represented only on 06.02.2023. Thereafter also, when the RP filed a counter opposing the application, no effort was made to argue the matter at any stage much less before the disposal of IA 583/2021 or immediately thereafter.

That apart, since the legal position as regards entertaining the claims post approval of the Resolution Plan by the COC, in the light of the rulings above being no longer res integra, this application is liable to be dismissed. Accordingly, this application **IA 248/2023 is hereby dismissed.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Syamala