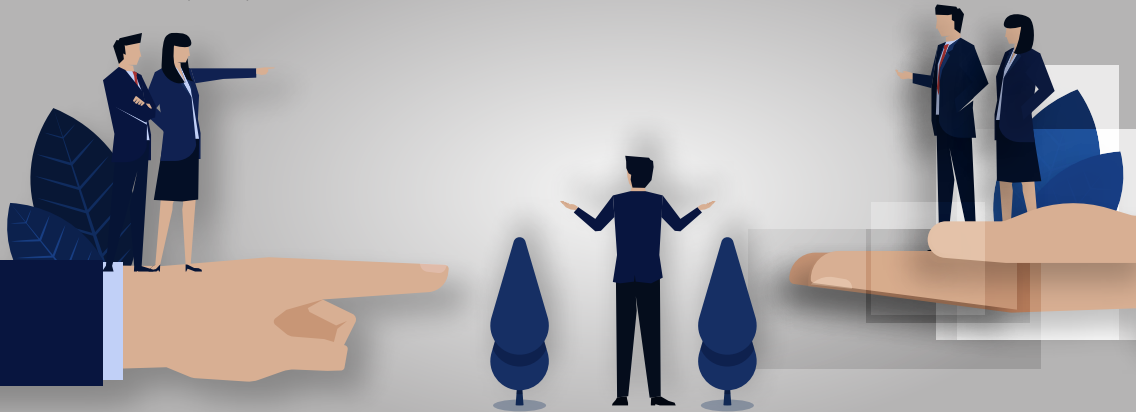


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High Court at Calcutta clarifies that claim of an award-holder which is not part of a Resolution Plan shall stand extinguished¹

Brief Facts

In October 2008, Sirpur Paper Mills (“**Petitioner**”) filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Act**”) before a Single Judge of High Court at Calcutta (“**Court**”) against an arbitral award dated 7 July 2008 (“**Award**”) passed in an arbitration between I.K. Merchants Private Limited (“**Award-holder**”) and the Petitioner.

During pendency of proceedings under Section 34 of the Act, the management of Petitioner company had been taken over by a new entity, JK Paper Limited, subsequent to approval of a Resolution Plan by National Company Law Tribunal (“**NCLT**”) under Insolvency and Bankruptcy Code, 2016 (“**IBC**”). The Award-holder failed to submit its claim before the Resolution Plan and the approved Resolution Plan of Petitioner did not make any provision for any payment to the Award-holder.

By an interim order dated 10 January 2020, the Court held that corporate insolvency resolution proceedings (“**CIRP**”) cannot be used to defeat a dispute which existed prior to initiation of CIRP. Thereafter, the Petitioner filed an application for recalling order dated 10 January 2020. The recalling application was rejected by the Court on 3 February 2020.

The Respondent contended that: (i) the principle of *res judicata* applies to different stages of the same proceeding and the issues have been finally decided by the Court in its earlier orders dated 10 January 2020 and 3 February 2020; (ii) upon filing of an application under Section 34 of the Act, the Award was automatically stayed and the Respondent could not have approached NCLT for lodging its claim; (iii) once a Section 34 application is filed, the dispute raised by the party amounts to a pre-existing dispute which takes Respondent outside the purview of IBC; and (iv) Petitioner company continues to exist and hence it is under an obligation to pay dues to the Award-holder.

Issues

Issue (i): Whether earlier orders dated 10 January 2020 and 3 February 2020 passed by the Court would stand in the way in considering maintainability of Section 34 application?

Issue (ii): Whether Award-holder could have lodged its claim before NCLT during pendency of Section 34 proceedings?

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Issue (iii): Whether a court, in an application under Section 34 of the Act, can recognize and accept futility of the Section 34 proceedings on the claim of an Award-holder being extinguished upon approval of the Resolution Plan and a successful Resolution Applicant taking over management of an award-debtor?

Judgment

Issue (i): The Court rejected the ground of *res judicata* raised by Respondent and held that earlier orders would not stand in the way of considering the question of maintainability of application under Section 34 of the Act and it can be considered at any point of time on the legal aspect because: (i) the Court had refrained from expressing any views on maintainability of Section 34 application in its earlier orders; and (ii) the Court held that a decision making process must be attuned to a dynamic legal landscape shaped by legislative intervention and judicial pronouncements. There was sufficient reason for Court to revisit its earlier order dated 10 January 2020 in view of judgments passed by Supreme Court in **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta**² and **Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited**.³

Issue (ii): The Court placed reliance on judgment passed by Supreme Court in **Board of Control for Cricket in India v. Kochi Cricket Private Limited**⁴ which held that applications under Section 34 of the the Act, which were pending at the time of the judgment would be governed by amended Section 36 of the Act. Therefore, according to the Court, the Award-holder in this case was free to enforce the Award in absence of stay of Award. The Award-holder was not immobile from pursuing its claim in respect of the Award under the Act or before a forum contemplated under IBC or otherwise. The Court held that Award-holder was under obligation to take steps under IBC instead of waiting for adjudication of application under Section 34 of the Act.

Issue (iii): The Court placed reliance on Supreme Court's findings in **Essar** (*supra*) that an approved Resolution Plan is binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders. Court further relied on **Edelweiss** (*supra*) to hold that a successful resolution applicant who takes over business of corporate debtor starts running business of corporate debtor on a "fresh slate". It further relied on the findings that claims which are not part of Resolution Plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding with respect to a claim not forming part of a Resolution Plan. The Court held that "In essence an operational creditor who fails to lodge a claim in the CIRP literally missed boarding the claims-bus for chasing the fruits of an award even where a challenge to the Award is pending in a Civil Court." The Court concluded that it would be waste of judicial time to decide the application under Section 34 of the Act on merits since claim of the Award-holder has extinguished upon approval of Resolution Plan. Accordingly, it disposed of the Section 34 application as infructuous.

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Analysis

The decision reiterates that a successful Resolution Applicant cannot be faced with undecided claims after a Resolution Plan has been accepted. Adjudication on legality of such arbitral award (whether award should be set aside or sustained) would not reach its logical conclusion or be of any consequential relief to either parties. The judgment reemphasized that pre-existing and undecided claims which have not featured in collation of claims and consequent consideration by a Resolution Professional shall be treated as extinguished upon approval of Resolution Plan under Section 31 of IBC.

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Endnotes

- 1 Authored by Siddhartha Datta, Partner and Trisha Mukherjee, Associate, *Sirpur Paper Mills Limited v. I.K. Merchants Private Limited*, A.P. No. 550/2008, High Court at Calcutta, judgment dated 7 May 2021.
Coram: Moushumi Bhattacharya, J.
- 2 (2020) 8 SCC 531.
- 3 2021 SCC OnLine SC 313.
- 4 (2018) 6 SCC 287.

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