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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DIPANKAR DATTA; J., AUGUSTINE GEORGE MASIH; J.
SLP (CIVIL) NO. 29651 OF 2024; March 20, 2026
UJAAS ENERGY LTD. *versus* **WEST BENGAL POWER DEVELOPMENT CORPORATION LTD.**

Insolvency and Bankruptcy Code, 2016; Section 31(1) — Arbitral Proceedings — Counterclaim vs. Set-off — 'Clean Slate' Principle — Whether a respondent can raise a plea of set-off in arbitration proceedings after the approval of a Resolution Plan, even if its counterclaim was not part of the plan and stands extinguished - Held, that once a Resolution Plan is approved under Section 31(1) of the IBC, all claims not included in the plan stand extinguished - a respondent cannot seek any affirmative relief through a counterclaim that was not part of the approved plan - if the specific terms of the Resolution Plan only bar payments or settlements and do not expressly or impliedly exclude the plea of set-off as a defense, such a plea can be raised to defend against the appellant's claim - The plea of set-off is permitted only as a defensive tool to prevent the appellant from succeeding entirely or in part - If the amount due to the respondent exceeds the amount awarded to the appellant, the surplus is not recoverable. If the appellant's proceedings are withdrawn, the counterclaim/set-off defense fails. *[Relied on Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657; Bharti Airtel Ltd. v. Aircel Ltd. & Dishnet Wireless Ltd. (Resolution Professional) (2024) 4 SCC 668; Paras 21-27]*

For Petitioner(s): Mr. Abhijeet Sinha, Sr. Adv. Mr. Himanshu Satija, Adv. Ms. Neha Mehta Satija, AOR Mr. Harshit Khanduja, Adv. Mr. Harsh Saxena, Adv. Mr. Anshul Rao, Adv.

For Respondent(s): Mr. Jishnu Chowdhury, Sr. Adv. Mr. Kartikey Bhatt, Adv. Mr. Aviroop Mitra, Adv. Mr. Abhinav Rana, Adv. Mr. Kunal Mimani, AOR Mr. Chavan Gupta, Adv. Mr. Mandeep Singh, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

2. The challenge in this civil appeal, at the instance of a corporate debtor[1], is to a judgment and order dated 2nd September, 2024[2] of the High Court at Calcutta[3] on an intra-court appeal[4], whereby the judgment and order dated 21st August, 2024 of a Single Judge (spurning a challenge to an interim award of an Arbitral Tribunal[5] laid by a public sector undertaking[6]) was set aside and consequential directions were made.

3. Facts, relevant for the disposal of the present appeal, are as follows:

a. Respondent floated an e-tender on 15th February, 2017, for manufacture, procurement, installation, etc. of grid connected rooftop solar PV power plant etc. at various locations of West Bengal.

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[1] appellant
[2] impugned order
[3] High Court
[4] APOT No. 312/2024
[5] Tribunal
[6] respondent

b. Appellant, which is an MSME engaged in the business of supply, installation and commissioning of solar PV power plants, successfully participated in the bid process, whereupon a Letter of Award (LOA) dated 12th May, 2017 was issued in its favour.

c. More than three years later, on 17th September, 2020 to be precise, the appellant was admitted into Corporate Insolvency Resolution Process[7] under the Insolvency and Bankruptcy Code, 2016[8].

d. Due to certain disputes relating to performance of the contract, the appellant, through the resolution professional, invoked the arbitration clause *vide* a notice dated 31st December, 2021. A statement of claim was filed on 17th January, 2023 and the respondent filed its statement of defence as well as a counterclaim on 18th April and 12th May, 2023, respectively.

e. It is apposite to mention here that the claim raised in the counterclaim was never pursued/filed before the Resolution Professional during the CIRP but was priorly raised in course of the proceedings before the Tribunal. As will unfold, the *lis* in the present case revolves majorly around this fact.

f. National Company Law Tribunal[9], Indore accepted the resolution plan on 13th October, 2023, thereby concluding the CIRP.

g. Prior to the approval of the resolution plan, the appellant had filed an application under Section 16 of the Arbitration and Conciliation Act, 1996[10] contending that the Tribunal did not have jurisdiction to take up the counterclaim in view of the moratorium under Section 14 of the IBC. The Tribunal turned down the said application on 22nd December, 2023 and decided to proceed with the statement of claim as well as the counterclaim.

h. On 10th January, 2024, the appellant filed an application under Section 31(6) of the A&C Act seeking dismissal of the counterclaim on the ground that all claims against the appellant had been extinguished by virtue of approval of the resolution plan. Much emphasis was laid on the fact that once a resolution plan is approved, all claims which did not form part of the resolution plan stood extinguished.

i. On 30th April, 2024, the Tribunal allowed the appellant's application under Section 31(6) of the A&C Act and thus rejected the counterclaim *vide* an interim arbitral award.

j. Aggrieved, the respondent challenged the interim award under Section 34 of the A&C Act, 1996. A Single Judge of the High Court dismissed the same *vide* its judgment and order dated 21st August, 2024.

k. Respondent thereafter challenged the judgment and order of the Single Judge before the Division Bench of the High Court which, upon perusing the interim award, noted that the same read like a fullfledged judgment and decree with elaborate discussion on facts and evidence. This, in the opinion of the Division Bench, could have been done only upon a full trial, after considering both the claim and the counterclaim. Accordingly, the Division Bench directed the Tribunal to continue the arbitral proceedings. It was clarified that it was open to the Tribunal to decide upon the status of the counterclaim while passing the award.

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[7] CIRP
[8] IBC
[9] NCLT
[10] A&C Act

I. Crestfallen on account of the challenge of the respondent having succeeded, the appellant is now in appeal before us.

4. Taking exception to the impugned order, Mr. Abhijit Sinha, learned senior counsel for the appellant argued that since the respondent failed to raise its claim before the Resolution Professional within the prescribed time, it could not subsequently assert the same by way of counterclaim in the arbitration proceedings, as the claim stands barred upon approval of the resolution plan. He further contended that the Tribunal and the Single Judge rightly ruled that, after such approval, the respondent cannot maintain any counterclaim in respect of a claim that was not submitted to the Resolution Professional prior thereto. Allowing such a course, it was submitted, would defeat the 'clean slate' principle. According to him, the resolution plan represents the culmination of the CIRP; once it is approved by the Committee of Creditors (CoC) and the adjudicating authority, it completes the CIRP and extinguishes all claims against the corporate debtor as of that date.

5. On the other hand, Mr. Jishnu Choudhury, learned senior counsel for the respondent while supporting the reasoning set out in the impugned order also submitted that the 'clean slate' principle should not be applied so rigidly as to defeat the rights of genuine litigants.

6. Having sensed that the reasons assigned by the Division Bench are unlikely to impress us for the respondent to sail through, Mr. Choudhury deviated from what was argued before the Division Bench and initially before us. He submitted that the respondent's counterclaim, if not allowed to be prosecuted independently and/or found to be barred, the respondent would not seek enforcement of its dues against the appellant, having not lodged its claim before the resolution plan was approved; nonetheless, referring to the concept of set-off, he contended that, at least, the plea of set-off ought to be permitted to be raised for adjustment against the appellant's claim, should the appellant ultimately succeed before the Tribunal.

7. We have heard learned senior counsel for the parties and perused the materials on record including the terms of the resolution plan and the governing statutory laws.

8. The sole issue which we are called upon to decide is, whether the respondent ought to be allowed to raise the plea of set-off before the Tribunal, having regard to extinguishment of the respondent's counterclaim for its failure to raise such claim before the Resolution Professional during the CIRP and prior to approval of the resolution plan?

9. The CIRP is a time-bound, creditor-driven statutory mechanism incorporated under the IBC to resolve the corporate distress of a corporate debtor as a going concern.

10. Section 31(1) of the IBC provides the effect of approval of a resolution plan. It reads as follows:

31. Approval of resolution plan.—

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation…

(emphasis ours)

11. The terms of Section 31(1) are clear. The effect of the said provision is that the plan's terms are binding, as they stand, and it attaches finality to the resolution plan. Terms of the plan are to be read strictly, given the binding nature and extinguishment of claims not part of it which aligns with the resolution objective of the IBC.

12. In ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***[11], this Court speaking through the Chief Justice reiterated this principle thus:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

(emphasis ours)

13. We are, therefore, in agreement with the argument of the appellant, represented by Mr. Sinha, that on the date of approval of the resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan, shall stand extinguished. Even though not prayed by Mr. Choudhury in the changed scenario, we have no hesitation to conclude that we cannot permit the respondent to seek any affirmative relief from the Tribunal. This is owing to the simple reason that the respondent's said claim, raised by way of counterclaim before the Tribunal, does not find place in the resolution plan and hence stands extinguished.

14. However, as noticed above, Mr. Choudhury rather wisely has not carried the argument forward with regard to the respondent's counterclaim lodged before the Tribunal; instead, he has urged that the respondent be permitted to raise the plea of set-off before the Tribunal, not with a view to payment and settlement of its current and future dues but to ensure that the respondent, a public sector undertaking, does not lose on both fronts being required to pay the appellant despite the appellant's default, without taking into account or setting off the amount that the appellant actually owes to the respondent.

15. This submission of Mr. Choudhury has persuaded us to take note of certain facts and to examine whether, if at all, a limited indulgence is warranted in the matter.

16. Three aspects have particularly engaged our attention: first, that the respondent had raised its counterclaim prior to the approval of the resolution plan; second, that the Resolution Professional was aware of the said counterclaim, yet, the same was not made part of the resolution plan; and third, that the resolution plan bars all future "payments/ settlements" in respect of claims which were not raised before it.

17. Even though the respondent did not raise any claim before the Resolution Professional prior to approval of the resolution plan, for reasons best known to it, it is evident that the counterclaim was filed by the respondent before the Tribunal well within time. Appellant had objected, before approval of the resolution plan, to the respondent's counterclaim in view of the moratorium and such objection stood rejected by the Tribunal on 22nd December, 2023. The resolution plan, which we propose to quote hereafter, does reflect exclusion of a counterclaim in connection with any arbitration proceedings. The language in which the relevant paragraph is couched gives rise to an impression that the Resolution Professional, despite being aware of the counterclaim raised by the

[11] (2021) 9 SCC 657

respondent in the arbitration proceedings (initiated by the Resolution Professional itself), did not take the same into consideration while formulating the resolution plan and getting the same approved by the CoC and the adjudicating authority. These facts, in our opinion, though not decisive in any manner prompt us to slightly drift towards considering whether some equity in favour of the respondent does accrue or not.

18. For this purpose, we need to take note of the definition of the term "claim" as provided under Section 3(6) of IBC. It reads:

(6) "claim" means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

19. Clauses (a) and (b) encompass "right to payment"; (a) is irrespective of whether such right has been reduced to a judgment (i.e., ordered by a court), whether it is disputed or undisputed, whether it is secured or unsecured, or whether it is legal or equitable and (b) is the right arising from a breach of contract.

20. It is apposite to refer to and read the relevant paragraph of the resolution plan now, for a complete understanding of what is barred and what is not barred. Paragraph 12.4.1 reads as follows:

"12.4.1. Other than the payments/settlements under this Resolution Plan, no other payments or settlements (of any kind) will have to be made to any other Person in respect of the claims of any Person or Governmental Authority against the Company (whether or not filed or admitted by the Resolution Professional) all such claims against the Company including counter claims under any pending arbitration proceedings along with all related proceedings, including proceedings for enforcement of any securities/security interest shall stand irrevocably and unconditionally abated, discharged, settled and extinguished in perpetuity on the NCLAT Approval Date."

21. Paragraph 12.4.1 of the resolution plan has been read. Going by the very words employed in such paragraph of the plan, it does not appear to bar a plea of set-off being raised as a 'defence' in any pending arbitral proceedings, although claims for any "payment" or "settlement", including a counterclaim, not included therein is specifically not recoverable.

22. Given that non-inclusion of a claim in the resolution plan results in its extinguishment, it is only logical to conclude that any claim which is not expressly included in the resolution plan, and which is not expressly barred as per such plan, cannot be inferred to have been included therein.

23. In our opinion, the abovementioned clause of the resolution plan does not expressly, or even impliedly, exclude the plea of set-off as a defence; the same merely bars any claim for the purpose of payment or settlement. Since such defensive use has not been expressly provided and, in our view, is also not expressly covered, an intention to exclude it would ordinarily be inferred by application of the maxim *expressio unius est exclusio alterius*.

24. In the light of the alternative plea of the respondent, as noted above, vis-à-vis the contents of paragraph 12.4.1 of the resolution plan, we are inclined to take a path different from the one taken by the Single Judge and the Division Bench.

25. Upon a cumulative consideration of all relevant factors, we hold that the respondent, although not entitled to independently pursue its claim by way of counterclaim post approval of the resolution plan, ought to be permitted to raise the plea of set-off at least by way of defence. It is ordered accordingly.

26. We, however, clarify that the respondent shall not derive any positive or affirmative relief on the basis of the said defence and may only defend itself against the claim raised by the appellant. In other words, the respondent may rely upon the same in defence, to the extent necessary to prevent the appellant from succeeding in the arbitration proceedings either entirely or in part.

27. We also clarify as follows:

a. In the event the amount claimed in the counterclaim of the respondent, or any part of it, is found to be due and payable to the respondent by the appellant and such amount exceeds the amount awarded to the appellant, the surplus amount shall not be recoverable by the respondent.

b. Conversely, if any amount remains payable to the appellant after adjustment of the respondent's defence plea, the same shall be recoverable by the appellant and the Tribunal may order accordingly.

c. Further, if the arbitration proceedings initiated by the appellant are withdrawn, the counterclaim of the respondent shall also fail, as the same is permitted only for the limited purpose of defence.

28. Needless to mention, this judgment has been rendered considering the terms of paragraph 12.4.1 of the resolution plan and is, thus, limited to the facts and circumstances of the present case.

29. The decision of this Court in ***Bharti Airtel Ltd. v. Aircel Ltd. & Dishnet Wireless Ltd. (Resolution Professional)***[12] has been perused. The law laid down therein cannot be doubted. However, we find that the ratio of such decision may not be directly applicable in the present facts and circumstances. While ***Bharti Airtel Ltd.*** (supra) dealt with the aspect of set-off at the time of the CIRP, in this case, we are called upon to decide the issue of set-off in the light of the resolution plan which alone is binding apart from the fact that the claim arose before the resolution plan was approved by the CoC and the adjudicating authority.

30. For the reasons aforesaid, the impugned order of the Division Bench stands modified.

31. The appeal stands partly allowed, on the aforesaid terms.

32. Parties shall bear their own costs.

[12] (2024) 4 SCC 668