



2026 INSC 1103

**Non-Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVILL APPELLATE JURISDICTION**

**Civil Appeal No.....of 2026  
[@ Special Leave Petition (C) No.25068 of 2026]**

**Modern Asset**

**.... Appellant**

**Versus**

**KNK Construction Private Limited.**

**.... Respondent**

**J U D G M E N T**

**K. VINOD CHANDRAN, J.**

Leave granted.

2. The instant appeal raises an interesting question, apropos the Insolvency and Bankruptcy Code, 2016 (IBC for short) as to whether an Operational Creditor (OC) who suffered a major haircut in the Corporate Insolvency Resolution Process (CIRP) can be proceeded against by the Successful Resolution Applicant (SRA) for pre-CIRP dues due from the OC, to the entity which had fallen into CIRP.

3. On background facts, we have to notice that the appellant and the respondent entered into a contract for civil and structural

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work of construction of an office building by an agreement dated 09.07.2018, in which Clause 19.13 provided for arbitration with respect to disputes or differences in relation to or arising out of or touching the said contract; the total contract amount of which was Rs.133.68 Crores. The appellant paid the mobilisation advance and the respondent furnished bank guarantee of Rs.1,56,13,250/- towards successful completion of work. The respondent claims that the work was commenced on 01.06.2018 with the timeline extended once, till 31.12.2019 and 95% of the work was completed, when the appellant threatened termination; if the defects pointed out were not rectified within 14 days without just cause. The appellant on the other hand stands by its termination notice and subsequent termination effected on 25.02.2020 by which time admittedly the respondent had been admitted into CIRP as on 11.12.2019. It was after admission into CIRP that an application was made to register the respondent as a small enterprise with the Ministry of Micro, Small and Medium Enterprises (MSME).

**4.** The appellant approached the Resolution Professional (RP) with a claim of Rs.12,26,30,840/- of which only 0.72% was

admitted after a major haircut, in the resolution plan submitted by the erstwhile promoter; on the strength of the CD being an MSME, by virtue of Section 240A(1) of the IBC. The resolution plan obtained the majority of the Committee of Creditors (CoC) and the appellant's claim was allowed to the extent of Rs.8,82,942/- with interest. The National Company Law Tribunal (NCLT) approved the resolution plan on 05.04.2022 and the erstwhile promoters of the CD came into the saddle of management, as the SRA. Subsequent to this, though not strictly related to the dispute raised for arbitration, the appellant lodged an FIR in Crime No.20 of 2023 against the Directors of the respondent under Sections 420, 468, 471 of the Indian Penal Code, 1860 (IPC). The allegation was that the respondent had furnished a work completion certificate on the letter head of the appellant, with a forged signature to the Karnataka State Road Transport Corporation. It is the contention of the appellant that as a counterblast, the respondent invoked arbitration by notice dated 13.03.2023. The respondent also filed a complaint bearing Crime No.77 of 2023 alleging misappropriation against the appellant, which was later quashed by the High Court on 25.07.2025. Admittedly the

payment under the resolution plan was also commenced on 15.06.2023 by the respondent to the appellant and is fully satisfied as on today.

5. On 20.06.2023, the respondent filed an application under Section 11 before the High Court of Karnataka raising a plea for arbitration, comprising of amounts allegedly payable to the respondent arising from the very same contract on which the appellant raised a claim before the RP and received a paltry amount after a major haircut. The High Court elaborately considered the issue, by the impugned judgment and appointed an Arbitrator, but eventually directed the parties to approach the Karnataka Mediation Centre initially and on failure of mediation, the Director of the Mediation Centre was directed to inform the Director, Bengaluru International Arbitration and Conciliation Centre so as to take necessary action. The appellant is aggrieved by the impugned order passed enabling the arbitration of a dispute in which the appellant's claim submitted before the RP, was accepted *in toto*, but the amounts considerably reduced for payment, as would be enabled on liquidation of the assets of the CD. The R.P. had not raised any counterclaim on behalf of the CD.

**6.** Sri Shyam Divan, learned Senior Counsel appeared for the appellant and pointed out the gross inequity in the respondent being let off completely from the claims raised by the appellant, against the respondent, by virtue only of the CIRP proceedings in which the appellant suffered a major haircut. It is with respect to the very same contract on which the claim was raised by the appellant before the RP that the respondent is now raising their claim. It is pointed out that being an MSME, the very same promoters of the CD, which pushed the enterprise into CIRP, has been resumed to its management by virtue of the CIRP, in the garb of a SRA and has now raised the claim against the applicant. It is the argument of the appellant that the claim as per the contract having been raised before the RP and the same having been settled for a paltry amount, there is no question of any further amount being claimed by the SRA on the very same contract. The agreement has worked itself out in the CIRP process and there is no subsisting agreement or an arbitration clause, is the compelling argument.

**7.** If the arbitration is allowed at this point then it would be a one way street and the appellant would be restricted from raising

any counterclaim on the 'clean slate' principle under the IBC. The agreement is bipartite and the arbitration clause also enables settlement of the disputes between the parties, which permits claims and counterclaims. Insofar as the appellant is concerned, his claim stands extinguished by statute, in which event, there can be no further claim made by the SRA who came into the saddle of the CD. This is especially so, in the present case, where the erstwhile promoters have come back to the management of the CD as an SRA, which is only by reason of the benefit conferred on a MSME. The RP very well could have raised the claim on behalf of the CD and the respondent also, in the resolution plan was aware of the claim made, which could have been countered with a counterclaim at that stage itself. The resolution plan submitted by the erstwhile promoters ought to have taken into account, the counterclaim if at all surviving on the CD, either by themselves or through the RP. The same having not been done there is no surviving claim for arbitration. In conclusion, it is submitted that there is no agreement itself subsisting between the parties and so has the arbitration clause suffered a natural death. There cannot be a one way reference to arbitration to settle the claim raised by

the respondent against the appellant, while the monetary claim of the appellant against the respondent has already been settled in the CIRP, for a paltry amount, thus extinguishing the entire balance due to it as an OC.

8. Sri Nikhil Nayyar, learned Senior Counsel who appeared for the respondent, first requested us to disabuse ourselves of the angst regarding the erstwhile promoters having come back to the management of the CD as an SRA, which the law permits for a MSME. Whether it be the erstwhile promoters or a completely new one, the status of the SRA remains the same and is entitled to proceed against the debtors of the erstwhile CD, if the RP had not initiated proceedings against such debtors of the CD while the CIRP was in progress.

9. The scope of Section 11 is confined to prima facie existence of an arbitration agreement as has been laid down by this Court in ***SBI General Insurance v. Krish Spinning***<sup>1</sup> and ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act, 1899***<sup>2</sup>. Section 31 of the IBC does not extinguish the arbitration agreement or the

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<sup>1</sup> (2024) 12 SCC 1

<sup>2</sup> (2024) 6 SCC 1

claim of the respondent against the appellant. The arbitration agreement is a separate and independent contract, as held by this Court in the above cited decisions. After the CIRP is admitted, the erstwhile Directors of the CD have no role to play and because the RP failed to raise a counterclaim, it cannot disable the SRA from realizing the dues to the CD, which is also permissible as per Section 31. It is vehemently argued relying on ***Swiss Ribbons Pvt. Ltd. v. Union of India***<sup>3</sup>, that the RP does not carry out an adjudication of the claim raised by the OC and it is only an administrative measure. Section 30(2) enables the resolution plan to provide for payment of amounts to OCs, which is not less than what they would be entitled in a liquidation. The insertion of Section 31(6) w.e.f. 26.05.2026 clarifies the 'clean slate' principle and all claims against the CD prior to the approval of the resolution plan would stand extinguished; which clarificatory amendment enables retrospective effect to the said provision. Reference is made to a number of decisions including ***Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***<sup>4</sup> to canvas the complete extinguishment

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<sup>3</sup> (2019) 3 SCC 17

<sup>4</sup> (2021) 9 SCC 657

of the claim of an OC after participating in the CIRP raising a claim, which has been allowed to the extent possible, as would be permissible in a liquidation process and the resolution plan having been approved by the adjudicating authority, which is the NCLT. The fact remains that the claim of the appellant has been settled and the claim of the SRA survives because the law intends that every endeavour should be made to ensure that an enterprise is not liquidated at the first instance and an effort be made to revive the same. The IBC is aimed at timely resolution of a CD, with preservation of its assets. The resolution process also ensures that the SRA is able to pursue the claims left with the CD, which again is in preservation of its assets. The application of Section 31, which extinguishes debts due to the FCs and OCs but keeps alive that due to the CD is by a statutory imprimatur; a device employed to avoid liquidation and enable revival. In fact, all questions have been left open by the impugned order, which requires no interference at this point, the Arbitrator being entitled to resolve all such disputes.

**10.** Insofar as limitation is concerned reliance is placed on ***New Delhi Municipal Council v. Minosha India Limited***<sup>5</sup>, wherein the order allowing Section 11 petition under the Arbitration and Conciliation Act was upheld finding the limitation to be computed excluding the date on which the CIRP commenced and the NCLT approved the resolution plan. The said decision is also an authority for enabling an SRA to pursue the claims of the CD in arbitration even after conclusion of CIRP; especially when the ‘clean slate;’ principle is not made applicable to the CD’s debts, when limitation to proceed for realisation of subsisting debts of the CD by the SRA is extended, by exclusion of the moratorium period under Section 14, by Section 60(6).

**11.** The impugned order framed six questions and answered them in the following manner: -

- i) Clause 19.13 of the contract dated 09.07.2018 constitutes a valid arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act and by virtue of the doctrine of separability survives the termination of the contract and subsists, notwithstanding the approval of the resolution plan under Section 31(1) of the IBC.

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<sup>5</sup> (2022) 8 SCC 384

ii) The inquiry under Section 11(6-A) of the Arbitration and Conciliation Act contemplates only a prima facie examination of the existence of an arbitration agreement, whereas the consequences flowing from the approval of resolution plan and the 'clean slate' principle doctrine are to be appropriately left to be determined by the Arbitral Tribunal under Section 16 of the Act.

iii) The extinguishment of the claims under Section 31(1) of the IBC operates as against the CD and the claims of the CD including those asserted by the SRA would not be automatically extinguished by the approval of the resolution plan and survives as has been held by this Court in a catena of decisions; the final determination of the effect of the resolution plan, being left to the Arbitral Tribunal.

iv) The question of extinguishment of the claim of the petitioner (here, the respondent) by operation of law or on account of satisfaction, waiver or estoppel; again are disputed questions of law, which has to be decided by the Arbitral Tribunal; but still the disputes sought to be raised by the petitioner constitute, a live and arbitral dispute.

v) The doctrine of competence-competence under Section 16 of the Arbitration and Conciliation Act, mandates that a prima facie arbitration agreement being shown, the objections related to the substantive effect of the resolution plan should be left to the Tribunal. The statutory consequences of approval of the resolution plan does not constitute a threshold

jurisdictional bar required to be examined under Section 11.

vi) Live and subsisting arbitral disputes prima facie survive between the parties warranting exercise of jurisdiction under Section 11 of the Arbitration and Conciliation Act by appointment of an Arbitrator. The question raised on law and on facts are left to be considered by the Arbitral Tribunal, wherein both parties could raise all their contentions.

**12.** Effectively there is only appointment of an Arbitration Tribunal, and all questions have been left for consideration before that Tribunal. The only twist would be insofar as the appellant having raised a claim of more than Rs.12 crores, it stood extinguished in the CIRP by virtue of only 0.72% of the claim being paid as per the resolution plan, which stood approved by the adjudicating authority, the NCLT. The resolution plan having become final, there is no question of a claim being raised against the SRA, insofar as those which were raised before the RP stands settled by way of the successful resolution plan. In fact even if such a claim was not raised before the RP, it would have stood extinguished on a resolution plan being approved by the NCLT and the SRA taking charge.

**13.** We are also of the opinion that merely because the erstwhile directors/promoters of the CD came back into the management as a SRA, that cannot permit any deviance from the essential law on the point, which permits the SRA to proceed with the claims as available to the CD against its debtors. Insofar as limitation is concerned, the termination of the contract was on 26.02.2020 and the CIRP proceedings were pending between 11.12.2019, when the Section 9 petition was admitted and it was on 05.04.2022 the NCLT approved the resolution plan. The termination of the contract was after the CIRP commenced and the notice was issued within the limitation period on 13.03.2023; excluding the period of moratorium. The application under Section 11 was moved before the High Court also within the limitation period, on 20.06.2023.

**14.** The 'clean slate' principle as coming forth from Section 31(1) of the IBC, is too well entrenched by the decisions of this Court for us to attempt to upset it or even ponder over it, more so, by introduction of sub-section (6) of Section 31. The Arbitration Tribunal also cannot deviate from the established principle of law. However, the inequities insofar as this case, which concerns

itself with the same transaction between the CD and the OC, wherein both have claims against each other, commend us to issue directions, which would not in any manner interfere with the 'clean slate' principle but also would ensure an equitable consideration of the conflicting claims; especially in the context of the OC having suffered a massive haircut in having to contend with 0.72% of its claim. We cannot also find fault with the erstwhile promoters of the CD having come back into the saddle in the garb of the SRA; which as submitted by learned Senior Counsel appearing for the respondent, is permissible in law.

**15.** Be that as it may, the aspects of; (i) the massive haircut suffered by the appellant resulting in total extinguishment of its claim, (ii) the erstwhile promoters having come back into the saddle of the CD as a SRA and (iii) the claims of both parties arising from the very same contract, assume relevance in adjusting equities, especially, in an arbitration, which, as submitted by the learned Senior Counsel for the appellant, is a two-way street. As we would presently notice, these aspects are pertinent even when viewed in the perspective of the various

provisions of the IBC, regulating the CIRP; particularly those leading to a resolution plan being approved by the NCLT.

**16.** In this context, we notice the provisions of the IBC, which after initiation of the proceedings by admission of an application under Sections 7/9/10, leads to the approval of the Resolution Plan submitted by an SRA, first by a majority of the CoC and then by the NCLT. After admission of an application under Sections 7/9/10, the Adjudicating Authority as per Section 13, declares a moratorium to be enforced as per Section 14. It makes a public announcement of the initiation of CIRP, together with a call for submission of claims under Section 15 and appoints an Interim Resolution Professional (IRP) as provided under Section 16. The duties of the IRP are enumerated under Section 18; who takes over the management of the operations of the CD as a going concern under Section 20 and after collation of all claims, constitutes a CoC under Section 21. It is the CoC who appoints the RP; either by continuing the IRP or by making an application for replacing the IRP before the Adjudicating Authority, the NCLT, who appoints the RP, as proposed by the CoC. It is the RP who

conducts the Corporate Insolvency Resolution Process (CIRP) and the duties of the RP are almost akin to that of IRP.

**17.** The IRP, on appointment, is duty bound to collect all the information of the assets, finances and operations of the CD for determining the financial position of the CD, receive and collate all the claims submitted and such other matters specified in Section 18. The Resolution Professional, likewise, takes the custody and control of all the assets and then on, represents and acts on behalf of the CD and exercises rights for the benefit of the CD as against third parties. In collating the information relating to the assets, finances and operations of the CD, Section 19 provides for the personnel of the CD; its promoters or other persons associated with the management of the CD to extend co-operation to the IRP; which is made available to the RP. The RP is also enjoined upon to prepare an Information Memorandum under Section 29 in addition to providing, to any Resolution Applicant, access to all the information in physical and electronic form; which relevant information includes the financial position of the CD and all the information related to disputes by or against the

CD and any other matter pertaining to the CD as per the Explanation to Section 29.

**18.** Hence, the erstwhile promoters are not completely alien to the proceedings in the CIRP and their active participation at the time when the IRP collates every information with respect to the CD, including the claims, so as to constitute the CoC is statutorily provided. The Information Memorandum, as prepared by the RP, should contain the entire financial position of the CD, including those related to disputes by or against the CD. The claim of the OC having been received by the RP and revealed in the Information Memorandum, the erstwhile promoters, who was a Resolution Applicant, were aware of the claim raised by the OC and by the plan submitted, provided for 0.72% payment, which necessarily is deemed to be acceptance of the claim. It is with respect to the very same transaction on which the OC raised the claim that the SRA now proposes to raise a claim seeking reference to arbitration.

**19.** The High Court's observation that the liberty to decide as to whether the 'clean slate' principle would apply equally to the SRA, is left to the Arbitrator, cannot be accepted in view of the

clear legal position; that, as against the SRA, the 'clean slate' principle applies, while the SRA could proceed for the dues of the CD. Nothing remains to be considered by the Arbitrator on those aspects. We would only enable a measure which would not interfere with the clean slate principle, but at the same time ensure an equitable consideration of the claims of both parties to the contract. While finding no grounds to interfere with the appointment of an Arbitration Tribunal by the impugned order with respect to the extinguishment of claim of a creditor as against the CD and the right of the SRA to proceed against any debtor of the CD, we came across a decision of this Court, the principle in which applies squarely to this case.

**20. *Ujaas Energy Ltd. v. West Bengal Power Development Corporation Ltd.***<sup>6</sup> though specifically observed to be on the peculiar facts of that case, we find the same to be almost similar insofar as the equitable directions sought in this case. Therein, the appellant was registered as a MSME, engaged in installation of Solar PV power plants. The respondent-Corporation entered into a contract for supply, installation and commissioning of Solar

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<sup>6</sup> 2026 SCC OnLine SC 453

power plants at various locations in West Bengal. Three years later the appellant was admitted into a CIRP. While the CIRP was pending, the RP on behalf of the appellant, invoked the arbitration clause, on disputes with respect to the agreement with the Corporation. On the claim statement being filed by the RP, there was a counter claim made by the respondent-Corporation. However, the respondent-Corporation did not pursue the counter claim before the RP during the CIRP. After the resolution plan was approved, the appellant, SRA, moved the Tribunal pointing out that all claims against the appellant would stand extinguished, which stood allowed. The respondent, unsuccessful under Section 34 before a Single Judge, challenged it before the Division Bench which directed the Tribunal to continue the arbitral proceedings; against which the appellant/SRA had approached this Court.

**21.** This Court relying on ***Ghanashyam Mishra & Sons (P) Ltd.***<sup>4</sup>, held that once a resolution plan is duly approved by the adjudicating authority under Section 31 (1), then the claims as provided in the resolution plan would be frozen and would be binding on all and sundry, including the CD its employees, members, creditors and so on. Further, all such claims, which are

not a part of the resolution plan, on the date of its approval, shall stand extinguished and no person would be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan.

**22.** Though, this Court, in *Ujaas Energy Ltd.*<sup>6</sup> was convinced that the claim of the respondent would stand extinguished, especially since it had not raised a counter claim before the RP, three important aspects were noticed. That, the respondent had raised its counter claim in the arbitration initiated by the RP, prior to the approval of the resolution plan. That, hence, the RP was aware of the counter claim and yet the same was not made part of the resolution plan. That, the resolution plan bars all future payments or settlements, in respect of claims which were not raised before it. Finding also that the definition of 'claim' as provided under Section 3 (6) of the IBC encompassing 'a right to payment' and 'right to remedy for breach of contract under any law' irrespective of whether such right is reduced to an order of Court, disputed or undisputed, secured or unsecured, legal or equitable; the provisions of the resolution plan were also pertinently noticed. It was found that the resolution plan does not

bar a plea of set-off being raised as a defence in any pending arbitral proceedings, although such claims, including that of a counter claim, not included in the resolution plan would not be recoverable. On a cumulative consideration of the relevant factors, as an equitable measure, it was directed that the Arbitral Tribunal would consider the counter claim for the purpose of set-off alone without the respondent deriving any positive or affirmative relief of recovery, based on the said counter claim.

**23.** The circumstances or aspects, this Court found compelling in the above cited decision, resulting in permitting set-off to be considered, according to us, applies with more force in the present case. Therein, despite the respondent having raised a counterclaim in an arbitration initiated by the RP, the respondent did not think it fit to approach the RP as an Operational Creditor (OC). The RP also, in spite of being aware of the counter-claim raised in the arbitration initiated by the RP itself; failed to make it a part of the resolution plan. In the present case, it was after the CIRP was initiated that the appellant terminated the contract and moved the RP as an OC with a claim of Rs.12 crores and odd, which was settled in the resolution plan at 0.72%. The RP did not,

even as an administrative measure, bring the counterclaim as available to the CD, in the Information Memorandum before the resolution plans were invited. The SRA, being the erstwhile Directors/Promoters of the CD also did not reckon this counterclaim when the resolution plan was submitted for consideration of the COC and then later approved by the NCLT. In fact in admitting 0.72% of the claim, the SRA had accepted the entire claim and provided for a major haircut @ 99.28%, and the balance amounts were agreed to be paid by the SRA in the resolution plan submitted by itself. The claim raised for arbitration arises from the very same contract on which a claim was raised by the appellant, as an OC during the CIRP process; which claim, by the offer made in the resolution plan to pay 0.72%, is deemed to have been accepted *in toto* by the SRA, but restricting the payability to the offer made, which would be the amount receivable by the OC, if the CD had been liquidated.

**24.** In the above circumstances, we are of the opinion that just as in the decision in ***Ujaas Energy Ltd.***<sup>6</sup>, the appellant should be permitted to raise a counterclaim for the sole purpose of claiming set-off and the appellant would not derive any positive or

affirmative relief of recovery on the basis of the counterclaim. However, in the more compelling circumstance of the SRA, being the very erstwhile promoters of the CD, who accepted the claim of the OC, in the CIRP with a major haircut by a Resolution Plan, the SRA is deemed to have accepted the entire claim of the appellant/OC. In the arbitration constituted, after considering the monetary claim raised by the respondent/SRA, the Arbitration Tribunal shall allow set-off to the extent of the entire claim raised by the appellant, before the RP in the CIRP, accepted *in toto* by the SRA in its resolution plan, favoured with a majority of the CoC and approved by the NCLT.

**25.** The impugned order is sustained with only the above modification that the appellant would be entitled to raise the counterclaim as specified above only for the purpose of set-off. If any amounts are found due by the Arbitration Tribunal to be paid by the appellant to the respondent then there shall be a set-off to the extent of the entire counterclaim as put forth by the appellant. Even in the extreme event of the claim of the respondent being found untenable *in toto* the appellant cannot seek any payment on the basis of such award since his claim stands extinguished as

against the CD and the SRA. The benefit granted of the set-off, is only to ensure equity and further the process of preservation of assets of CD in the hands of the SRA, within the contours of the IBC. Needless to observe that the issue raised by the respondent regarding the encashment of the bank guarantee furnished by the respondent, whether it was proper or improper, shall also be considered by the Arbitration Tribunal.

**26.** The appeal stands disposed of with the above modification.

**27.** Pending application(s), if any, shall stand rejected.

..... J.  
**(J. B. PARDIWALA)**

..... J.  
**(K. VINOD CHANDRAN)**

**NEW DELHI;  
OCTOBER 08, 2026.**