

Government of West Bengal  
Labour Department, I. R. Branch  
N. S. Building, 12<sup>th</sup> Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 310 /(LC-IR)/ 22015(16)/42/2025

Date: 17/03/2025


ORDER

WHEREAS an industrial dispute existed between (1) M/s. Dewan Housing Finance Corporation Limited, having its regional office at : Duckbak House, 1st Floor, 41, Shakespaere Sarani, Kolkata- 700017 & (2) M/s. Piramal Capital & Housing Finance Ltd., 4th Floor, Piramal Towers, Peninsula Corporate Park, Ganapatrao Kadam Marg, Lower Parel (West), Mumbai, Maharashtra- 400013 and having its regd. office at- Duckback House, 1st Floor, Unit 1d, 41, Shakespaere Sarani, Kolkata- 700017 and their workman Sri Prasenjit Chanda, 65/3, Satyen Roy Road, Behala, Kolkata- 700034, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the 7<sup>th</sup> Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 03.03.2025 in Case No. 09 of 2019 on the said Industrial Dispute Vide e-mail dated 11.03.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award in the Labour Department's official website i.e. **wblabour.gov.in**

By order of the Governor,

  
Assistant Secretary

to the Government of West Bengal

No. Labr/ 310 /1(6)/(LC-IR)/ 22015(16)/42/2025

Date: 17/03/2025

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/S. Dewan Housing Finance Corporation Limited, having its regional office at : Duckbak House, 1st Floor, 41, Shakespaere Sarani, Kolkata- 700017.
2. M/s. Piramal Capital & Housing Finance Ltd., 4th Floor, Piramal Towers, Peninsula Corporate Park, Ganapatrao Kadam Marg, Lower Parel (West), Mumbai, Maharashtra- 400013 and having its regd. office at- Duckback House, 1st Floor, Unit 1d, 41, Shakespaere Sarani, Kolkata- 700017.
3. Sri Prasenjit Chanda, 65/3, Satyen Roy Road, Behala, Kolkata- 700034
4. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
6. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

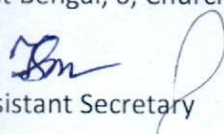
  
Assistant Secretary

No. Labr/ 310 /2(3)/(LC-IR)/ 22015(16)/42/2025

Date: 17/03/2025

Copy forwarded for information to :-

1. The Judge, 7<sup>th</sup> Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 11.03.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

  
Assistant Secretary

**IN THE SEVENTH INDUSTRIAL TRIBUNAL, WEST BENGAL**  
New Secretariat Buildings, Kolkata

**Present :**  
**Miss Yogita Gaurisaria,**  
Judge, Seventh Industrial Tribunal, West Bengal

**Case No. 9 of 2019**  
**Under Section 10(1B)(d) of the Industrial Disputes Act, 1947**

Sri Prasenjit Chanda  
65/3, Satyen Roy Road,  
Behala, Kolkata- 700034

.... Applicant

---versus---

1. M/s. Dewan Housing Finance Corporation Limited,  
Having its Regional Office at : Duckbak House, 1<sup>st</sup> Floor, 41, Shakespaere Sarani, Kolkata- 700017

... Opposite Party

2. M/s. Piramal Capital & Housing Finance Ltd.  
4<sup>th</sup> Floor, Piramal Towers, Peninsula Corporate Park, Ganapatrao Kadam Marg, Lower Parel (West), Mumbai, Maharashtra- 400013  
And having its regd office at-  
Duckback House, 1<sup>st</sup> Floor, Unit 1d, 41, Shakespaere Sarani, Kolkata- 700017.

.... Added Opposite Party

This Award delivered on Monday, the 3<sup>rd</sup> Day of March, 2025

**AWARD**

The instant case has been initiated on 14.11.2019 on filing of an application under section 10(1B)(d) of the Industrial Disputes Act, 1947 as amended, by the workman namely Sri Prasenji Chanda of 65/3, Satyen Roy Road, Behala, Kolkata- 700034 against the employer M/s. Dewan Housing

Finance Corporation Limited in connection with the termination of his service by the O.P. no.1 company praying for an Award holding that the applicant's termination of service with effect from 03.10.2018 by the O.P. no.1 company is illegal and void ab-initio and to pass an order granting reinstatement in service with full back wages and other consequential benefits and the reasonable costs and interest thereto.

**Case of the Applicant/ Workman**

The facts of the case of the Workman as per his Application in a nutshell is that he was a permanent employee of the O.P. no.1 since his joining on 08.05.2017 till his illegal and unjustified termination of his service by way of dismissal from service with effect from 03.10.2018 and that the applicant had discharged his duties with unblemished service record and that he was posted all along at branch office of the O.P. no.1 at UBI building, UBI Syndication Branch, DHFL, 1<sup>st</sup> Floor, 4, N.C. Dutta Sarani, Kolkata- 700001 and that he was covered under the EPF Scheme of the OP no.1 having EPF Account. He joined the O.P. no.1 company as the Branch Recovery Manager on 08.05.2017 and he was confirmed in service and there was no probation period. He was allotted duty as Branch recovery Manager collecting outstanding loan, due amount from NPA defaulter as tagged in the loan book of the O.P. no.1. His prescribed performance as per was not reviewed by the O.P. no.1 nor shared by the management of O.P. no.1 company and his performance was labeled as incompetent talent by letter dated 01.06.2018 issued by the Chief People Officer of the O.P. no. 1 company. The applicant further stated that he was issued Show Cause letter dated 04.06.2018 with allegation that the applicant has conducted serious misbehavior with his reporting manager, Mr. FAizan Ansari and Zonal

Recovery Manager, Mr. Sanjay Guin including use of abusive languages and threatening both of them with dire consequences allegedly pursuant to low rating being given to him during that year's appraisal cycle by the OP no.1 company. The applicant was directed to submit reply to Show Cause notice within 48 hours at O.P. no. 1 Kolkata office. The applicant replied to the same by letter dated 06.06.2018. The applicant vide his another letter dated 28.09.2018 raised various issues highlighting many malpractices and misdeeds. The applicant suddenly on 03.10.2018 was issued termination letter by Mr. Rajendra Mehta, Head Human Resources of the management of the O.P. no.1 Company and no reason were cited by them for such illegal termination. The applicant contacted the management of O.P. no.1 through all communication channels with the sole prayer to revoke his termination but of no avail rather he was inflicted with physical and verbal abuse on 05.10.2018 when he had again visited the office to make prayer of revoking his termination letter, but found his computer system forcefully locked without any intimation by the management. The applicant submitted a complaint before the Officer-in-charge of Hare Street Police Station on the same day. The applicant further made representation dated 11.10.2018 and 15.12.2018 which were not even replied by O.P. no.1 and as such, by implication the prayer of the applicant was rejected. The applicant was compelled to send a legal notice on 26.06.2019 and the same was replied by the O.P. no.1 company on 09.07.2019 (received by applicant on 17.07.2019 wherein the O.P. no.1 denied the contents of applicant's legal notice dated 26.06.2019 and refused to reinstate the applicant. The applicant further stated that his termination has no legal footing and jobs that were being discharged by the applicant are still being discharged by other workmen of the O.P. no.1 company. The applicant as such, was compelled to raise an

industrial dispute as to his illegal termination of service by the OP no.1 before the Labour Commissioner, Govt. of West Bengal, Kolkata by letter dated 24.07.2019. The same was registered as file No. 125/ 2019. After passage of time, the applicant applied in Form-P4 on 16.10.2019 for pendency certificate from the Conciliation Officer which was ultimately issued on 25.10.2019 being Memo no. 1154(2)/125/19/LC/Kol on strength of which he filed instant case. The applicant further stated that he is in deep financial and mental turmoil since his termination of service by OP no.1 company for which he could not file the instant case any day before the same is being done as such the delay caused may be condoned for the interest of justice. The applicant stated that his duties were purely and exclusively manual and clerical in nature and he was engaged in collection and recovery of outstanding loan dues from the NPA defaulters of the OP no.1 and he did not hold any administrative, supervisory and managerial post and had no power to sign and submit any statutory returns, grant advance, salary to any other workman and initiate any disciplinary proceeding in respect of any workman of the OP no.1 and that he did not discharge any duties in any supervisory capacity and had no power to judge the performance of any other workman nor had any power to allot duties to them and to take disciplinary action against anybody. The applicant submitted that he was terminated dehors the provisions of law and also in violation of the principles of natural justice. His last drawn wages was Rs. 45,490/- per month as gross salary. He further submitted that no domestic enquiry was held to prove the allegations brought against him and was deprived the opportunity of being heard before imposing the ultimate punishment of illegal termination. The applicant further stated that a biased enquiry committee was formed by the OP no.1 whose members were the

employees of the management of the OP no.1 company and the applicant appeared before such enquiry committee on 21.07.2018 and he felt that the enquiry committee was formed by the OP no.1 company only to establish the premeditated decision of the company. The applicant further stated that the OP no.1 company inflicted the capital punishment under the Labour Law by terminating the service of the applicant in abject violation of the principles of natural justice and as such, the order of termination of his service is ab-initio void and liable to be set aside and the same is also grossly violative of the procedure prescribed in law and that the same jobs are being done by other workmen.

The Applicant/ workman prayed to pass an Award holding this termination of service with effect from 03.10.2018 by the O.P. no.1 company as illegal and void ab-initio and further for an order granting reinstatement in service with full back wages and all other consequential benefits and reasonable costs and interest thereto.

**Case of the Opposite Party(ies)**

Initially the O.P. no.1 appeared before this Tribunal, but later on M/s. Piramal Capital & Housing Finance Ltd appeared before this Tribunal and filed one petition dated 28.07.2023 for adding it as party in this case. This Tribunal was pleased to add the said M/s. Piramal Capital & Housing Finance Ltd as added O.P. no.2 in this case vide order dated 28.03.2024. The O.P. no.2 filed one Written Statement before this Tribunal.

The OP no.2 submitted that the OP no.2 has been merged into with OP no.1 company by virtue of order dated 07.06.2021 passed by the Hon'ble National Company Law Board (hereinafter referred to as NCLT),

Mumbai Bench approving the resolution plan of OP no.2 Company. Thereafter, the OP no.1 & OP no.2 are one and the same entities.

The OP no.2 denied all the allegations raised by the applicant in his application u/sec. 10(1B)(d) of the Industrial Disputes Act.

The OP no.2 further stated that the NCLT vide order dated 03.12.2019 was pleased to admit the application u/sec. 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) and Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) was initiated with regard to OP no.1 pursuant to the said order. The OP no.2 further stated that pursuant to said admission order, on 04.12.2019, the Administrator issued a Public Announcement in accordance with Regulation 6(1) of the IBC, 2016 (hereinafter referred to as CIRP Regulations) which specified the insolvency commencement date as 03.12.2019. The said Public Announcement invited the creditors and public depositors to submit their claims on or before 17.12.2019. The applicant in complete disregard of the same failed to submit his claim in accordance with law. The OP no.2 further stated that during the CIRP period, the OP no.2 emerged as the Successful Resolution Applicant (SRA) of the OP no.1 company and the Resolution Plan (RP) was thereafter approved by the National Company Law Tribunal (NCLT) vide its order dated 07.06.2021 u/sec. 30(6) and 31 of IBC read with Regulation 39(4) of the CIRP Regulations. Accordingly, following approval of the Resolution Plan (RP), a new Board of Directors took over the operations of the OP no.1 company and the same is now known as Piramal Capital & Housing Finance Ltd. (OP no.2). The OP no.2 further stated that as per Sec. 31 of the IBC, 2016 it is very clearly provided that the Resolution Plan approved under section 30 of the IBC is binding on the corporate debtors and all its stakeholders. The OP

no.2 further stated that the Reolution Plan submitted in respect of OP no. 1 company unequivocally extinguished all claims, demands, liabilities and/or obligations on account of operational creditors prior to the CIRP date.

The OP no. 2 further stated that one of the principles of the IBC is providing for revival of the corporate debtor and to make it a going concern and also that the legislative intent behind this is to freeze all the claims so that the corporate debtor can resume its operations with a clean slate and is not faced with any claim which relates to its pre-insolvency period.

The OP no.2 further stated that as per the settled law laid down in the judgment of Ghanshyam Mishra and Sons Private Limited – vs – Edelweiss Asset Reconstruction Company Limited (2021 SCCOnLine SC 31) once a Resolution Plan is approved by the Adjudicating Authority under section 31 of the IBC, all claims relating to the pre-insolvency period of the corporate debtor get extinguished as per terms of the resolution plan.

The OP no.2 further stated that in light of the above judgment of Ghanshyam Mishra (supra) and the judgment of the Hon'ble Supreme Court in M/s. Ruchi Soya Industries Ltd vs. Union of India (dated 17.02.2022) which held that upon approval of the resolution plan, all such claims which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect of a claim which is not a part of the resolution plan.

The OP no.2 further stated that there are no amounts payable to the applicant by the OP at this point of time. The applicant does not even fall under the definition of the “workman” under the provisions of sec. 2(s) of the Industrial Disputes Act, 1947 and as such, the application u/sec. 10(1B) (d) of the said Act is misconceived and has been filed in gross disregard of the applicable laws and reflective of oblique motives. The applicant has

intentionally suppressed the fact that he was appointed and working as Branch Recovery Manager which is a post in the managerial cadre of the OP no.1 company and was also accountable for discharging Managerial and Administrative and in view of his responsibilities and designation as a Manager of the OP no.1 company, the applicant fell under the exception to the definition of the “Workman” under section 2(s) of the Industrial Disputes Act, 1947 and is not at all entitled to maintain the instant proceedings u/sec. 10 of the said Act. The applicant has also not placed on record all the correspondences exchanged between OP no.1 company and the applicant from which it could be borne out that the applicant has no case at all.

The OP no.2 further stated that in any event there is no liability of the OP no.2 company pertaining to the period prior to the CIRP date i.e. 03.12.2019 and the same is permanently extinguished in view of the approved Resolution Plan vide aforesaid order passed by the NCLT.

The OP Company no.2 filed an application on 17.03.2022 praying for dismissal of the petition filed by the applicant owing to the approval of Resolution Plan. The OP no.2 filed a further application that the demurrer application dated 17.03.2022 be heard and disposed of before disposing of the main case.

The OP No.2 company further stated that the Hon’ble Supreme Court in the case of Azhar Hussain vs Rajiv Gandhi (1986) Supp SCC 315 has held that the entire purpose of powers to reject a plaint under Order VII Rule 11 CPC is to ensure that a litigation, which is meaningless and bound to prove abortive is not permitted to occupy the precious time of the courts and exercise the mind of the respondent. It has been further held in the case of Dahiben vs Arvindbhai Kalyanji Bhanusal (2020) 7 SCC 366 that filing

of an application challenging maintainability of the main petition is a necessary remedy to put an end to the sham litigation, so further judicial time is not wasted.

The OP no.2 prayed for dismissal of the instant case of the applicant as not maintainable.

The OP no.2 by separate application dated 17.03.2022 challenged the maintainability of the instant case filed by the applicant u/sec. 10 (1B) (d) of the said Act owing to the approval of Resolution Plan under CIRP under IBC, 2016. The Hon'ble High Court at Calcutta in WPA No. 28732 of 2024 vide order dated 27.01.2025 (communicated to this Tribunal on 07.02.2025 by way of put up petition) interalia directed to dispose of the petition challenging maintainability of the proceedings before the Tribunal filed by the OP no.2 first.

The said petition filed by the OP no.2 challenging maintainability of the proceedings of the instant case was taken up for hearing.

The Ld. Advocates for both the sides were heard at length.

The Ld. Advocates for both sides had filed their respective written notes of arguments also.

Perused the materials on record as well as written notes of arguments.

The moot point of OP no. 2 challenging the maintainability of the instant case u/sec.10 (1B) (d) of the said Act is owing to the approval of Resolution Plan under CIRP under IBC, 2016 by the NCLT, Mumbai and that the applicant did not approach the said NCLT despite there being public announcement of the admission in CIRP of the OP no.1. The claim of the applicant was not part of the Resolution Plan approved by the NCLT, as such, the OP no.2 has no liability to meet out the same and the instant case is not maintainable in view of the rigours of the IBC, 2016.

The Ld. Advocate for the OP no.2 company relied on the following citations-

1. (2021) SCC ONLine SC 31 :: (2021) 9 SCC 657 (Ghanshyam Mishra and Sons Private Limited – vs - Edelweiss Asset Reconstruction Company Limited)
2. (2022) 6 SCC 343 (Ruchi Soya Industries Ltd –vs- Union of India & Ors.)
3. The judgment of Narsinha Anant Joshi vs M/s. Century Shipping & Anr reported in 1994 Mh.LJ 1606.

The Ld. Advocate for the applicant, on the contrary, submitted that the instant case is well maintainable and argued that the OP no.2 is successor-in-interest of OP no.1 and that the public announcement as regard OP no.1 is restricted to the creditors and finance providers of the corporate debtor (OP no.1) as per provisions of IBC, 2016 and that in clause 7.4 as regards moratorium, the institution of any suit or continuation of proceeding of execution of every decree against the financial service provider (DHFL) shall be prohibited. The Ld. Advocate for the applicant argued that the present proceeding (u/sec. 10(1B)(d) of the Industrial Disputes Act) has been instituted over the justifiability of termination of service and no such claim of dues which is recoverable from the erstwhile company has been made before the Tribunal and as such, the provisions of IBC, 2016 is not applicable to the present proceedings.

The Ld. Advocate for the applicant relied on the judgment delivered by the Hon'ble High Court at Calcutta in WPA no. 25738 of 2014 dated 12.02.2018.

Perusal of the record and the documents filed reveals that in the case being number CP(IB) No. 4258/MB/C-II/2019, the order dated 03.12.2019

was passed by the NCLT Mumbai admitting the application under section 7 of the IBC, 2016 thereby initiating the CIRP in respect of OP no.1 company pursuant to the said order and the insolvency commencement date being 03.12.2019. The last date for submission of claim thereunder was 17.12.2019. It is also not in dispute that the applicant herein (Sri Prasenjit Chanda) failed to submit his claim before the said NCLT.

Sec. 14 of IBC, 2016 states as under—

“Sec. 14. Moratorium-- (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

***Explanation.***-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

The resolution plan was approved by the NCLT vide its order dated 07.06.2021 passed by NCLT Mumbai whereby it observed that the Resolution Plan does not contravene the provisions of Sec. 29A of the Code and is in accordance with law and the same deserves to be approved and ordered that the Application IA No. 449 of 2021 in CP no. 4258 of 2019 be and the same is allowed. It reflects from the same that it is specifically stated therein that ‘it shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority....’ The OP no.2 became successful resolution Applicant (SRA) and management of OP no.1 handed over to OP no.2.

I feel it imperative to reproduce Sec. 31 of the IBC, 2016 as hereunder—

Sec. 31. **Section 31: Approval of resolution plan.**

\*31. (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.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.”

The **Hon’ble Supreme Court** in the judgment reported in **(2021) SCC ONLine SC 31 :: (2021) 9 SCC 657 (Ghanshyam Mishra and Sons Private Limited – vs - Edelweiss Asset Reconstruction Company Limited)** interalia held-

*“58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.”*

The Hon’ble Supreme Court further held—

*“In the result, we answer the questions framed by us as under:*

- (i) *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;*
- (ii) *2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;*
- (iii) *Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”*

The **Hon’ble Apex Court** in another judgment reported in **(2022) 6 SCC 343 (Ruchi Soya Industries Ltd –vs- Union of India & Ors.)** relying on the above paragraphs of the judgment in Ghanshyam Mishra (Supra) interalia held—

*“Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent no. 2 after public announcements were issued under Sections 13 and 15 of the*

*IBC. As such, on the date on which the Resolution Plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.”*

The non-obstante clause or the over-riding clause provided in **section 238 of IBC, 2016** reads as under-

*“238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

It is undisputed between the parties that the applicant Prasenjit Chand has not preferred any claim before the Resolution Professional. The CIRP has been finally approved vide order dated 07.06.2021 passed by NCLT whereby the OP no.2 has been successful Resolution Applicant and has been handed over the management of the OP no.1. There is no whisper of applicant on that score.

The provisions of IBC and CIRP thereunder has overriding effect over other laws as spelt out in sec. 238 of the IBC, 2016.

The judgment relied upon by the Ld. Advocate for the applicant passed in WP no. 25738 (W) of 2014 does not deal with the legal fiction grown out of the IBC, 2016 and its overriding clause and is not applicable in the facts of the instant case regarding IBC, 2016 and CIRP.

In view of the settled position of law as laid down by the Hon’ble Supreme Court in the case of Ghanshyam Mishra (*Supra*) and reiterated in case of Ruchi Soya (*Supra*), I find that the instant case of the applicant under section 10(1B)(d) of the Industrial Disputes Act, 1947 is not maintainable on this score.

In view of the fact that the instant case has been found not maintainable on the above discussion regarding IBC, I do not find it necessary to discuss further whether the applicant is a workman or not in view of his designation being Branch Recovery Manager and as such, the same is left untouched while disposing of the instant petition.

In sum, the application filed by the applicant under section 10(1B)(d) of Industrial Disputes Act, 1947 is held not maintainable and is dismissed on contest.

Hence, it is

**ORDERED**

that the instant case being Case No. 9/2019 under Section 10(1B)(d) of the Industrial Disputes Act, 1947 be and is hereby held not maintainable and is dismissed on contest but without any order as to costs.

The aforesaid shall constitute as Award.

The copies of the Award be sent to the concerned authorities for information and necessary action thereupon.

Let the copy of this Award be supplied to the parties free of cost.

Dictated & Corrected by me

Judge

(Yogita Gaurisaria)  
Judge  
Seventh Industrial Tribunal  
Kolkata  
03.03.2025