

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 63 of 2021**

In the matter of:

**Mr. Avil Menezes, Resolution Professional of AMW
Auto Component Ltd.**

....Appellant

Vs.

M/s. Shah Coal Pvt. Ltd.

....Respondent

Present:

**Appellant: Mr. Bishwajit Dubey, Mr. Madhav Kanoria, Ms.
Srideepa Bhattacharya, Mr. Prafful Goyal, Mr. Prakul
Thadi, Advocates.**

**Respondent: Mr. Abhishek Bharti, Ms. Kajal Malkan, Ms. Nikita
Bhansali, Advocates.**

ORDER

(Through Virtual Mode)

03.02.2021: This appeal filed by the Resolution Professional of ‘AMW Auto Components Ltd.’- (Corporate Debtor) is directed against the impugned order dated 18th December, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, Court-2, allowing application of Respondent- ‘Shah Coal Pvt. Ltd.’ under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) to include its claim in the category of ‘Financial Creditor’ assailing the decision on the ground that the claim related to supply of goods and fell within the purview of the ‘operational debt’, thus, could not be classified under the category of ‘financial debt’.

2. Heard learned counsel for the Appellant. It is flabbergasting to find that the appeal has been preferred by the Resolution Professional who is part of the Corporate Insolvency Resolution Process mechanism and in terms of sub-section (1) of Section 21, he is only supposed to collate the claims which implies comparison with the record and verification. Unlike a Liquidator who is

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empowered to admit or reject a claim under Section 40 of the 'I&B Code' against which an appeal lies to the Adjudicating Authority (NCLT), the Resolution Professional is not vested with any adjudicatory powers and being a part of the mechanism all actions taken by him are subject to control of the Adjudicating Authority. Even a decision taken by the Liquidator in regard to admission or rejection of the claim cannot be questioned by the Liquidator in appeal and it is only the Creditor who can assail the same, being aggrieved party. Viewed thus, the Resolution Professional cannot be an aggrieved party and has no locus to maintain this appeal.

Faced with this situation, learned counsel for the Appellant submits that he has instructions to withdraw the appeal. We allow such withdrawal. The appeal is dismissed as withdrawn.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

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