

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 938 of 2020

IN THE MATTER OF:

IIFCL Mutual Fund

...Appellant

Versus

Committee of Creditors of GVR Infra & Ors.

...Respondents

Present:

For Appellant: Mr. Anand Varma, Mr. Dhairya Madan and Mr. Swagat Baruah, Advocates.

For Respondents: Mr. P. V. Dinesh and Mr. Ashwini Kumar Singha, Advocates for R-1.

Mr. Robin Sirohi, Advocate for R-2.

Ms. Shraddha Chaudhri, Mr. Aslam Ahmed, Mr. Sumant Nayak and Ms. Isha J. Kumar, Advocates for R-3.

O R D E R
(Through Virtual Mode)

02.11.2020: Appellant – ‘IIFCL Mutual Fund’, who had 3.94% voting share as member of the Committee of Creditors in the Resolution Process of ‘GVR Infra Projects Pvt. Ltd.’ (Corporate Debtor) and who voted in favour of the approval of the Resolution Plan submitted by ‘UVARC’ (Successful Resolution Applicant) has filed the instant appeal assailing the approval of the Resolution Plan of the Successful Resolution Applicant as regards distribution mechanism. The Appellant in terms of the impugned order is also aggrieved of dismissal of its application being MA No. 99 of 2020 in C.P. No. 941/IB/2018 seeking revision of share proportion of the resolution fund amongst the Secured Financial Creditors equally which also came to be dismissed in terms of the same impugned order.

2. It is submitted on behalf of the Appellant that the revised resolution plan of Successful Resolution Applicant was approved by the Committee of Creditors with 67.97% of the Members voting in favour of the Resolution Plan during the 16th meeting of Committee of Creditors. It is submitted that the Appellant had raised objections to the allocation of Rs.135 Crores in favour of only four Secured Creditors resulting in inequitable distribution of the proceeds of the Resolution Fund amongst the similarly placed five Financial Creditors. It is submitted that such allocation contravened provisions of Section 53 of Insolvency and Bankruptcy Code, 2016 (in short the 'I&B Code'). It is further submitted that M.A. No. 99 of 2020 filed by the Appellant seeking revision of share proportion of Resolution Fund amongst the Secured Financial Creditors equally has been arbitrarily dismissed in terms of the impugned order on the ground that the Appellant had consented to approval of the revised Resolution Plan of the Successful Resolution Applicant and he cannot object to the distribution of proceeds of the Resolution Fund by the Resolution Professional as approved by the Committee of Creditors.

3. After hearing Shri Anand Varma, Advocate representing the Appellant and wading through the impugned order and the record, we find that 'UVARC' emerged as Successful Resolution Applicant. Admittedly, the Appellant as a member of Committee of Creditors, voted in favour of the approval of Resolution Plan of the Successful Resolution Applicant. The Appellant appears to be

aggrieved of allocation of Rs.135 Crores by the Resolution Professional in regard to uninvoked Bank Guarantees. From the record, it comes to fore that the total admitted claims of the Financial Creditors of Rs.2271.08 Crores were to be settled for an amount of Rs.352 Crores. This included claim for a total amount of 86,09,59,759/- submitted by Appellant which had been admitted by the Resolution Professional. It further appears that it is post-approval of the Resolution Plan submitted by the Successful Resolution Applicant that the Appellant filed M.A. 99 of 2020 seeking direction from the Adjudicating Authority for revision of share proportion of the Resolution Fund amongst the Secured Financial Creditors equally. Reference is made to page 109-110 of the appeal paper book to demonstrate that the Appellant had raised the issue with the Resolution Professional and the Resolution Professional had taken the stand that the pay-out of Rs.135 Crores was essentially a contingent payment, regard being had to certain eventualities. The Resolution Professional iterated that if the contingencies do not arise, these amounts will not be required to be refunded/ released. She further stated that such pay-out was a business decision to keep the Corporate Debtor a going concern. She further stated that this was a business decision of the Committee of Creditors which cannot be commented upon by her.

4. In '**K. Shashidhar Vs. Indian Overseas Bank and Ors.**' reported in 2019 SCC Online SC 257, Hon'ble Apex Court observed that the decision in

regard to approval or rejection of the Resolution Plan by the Committee of Creditors is taken collectively after due negotiation between the Financial Creditors who are constituents of the Committee of Creditors and express their opinion on the proposed resolution plan through the process of voting. The proposed resolution plan is discussed threadbare and only thereafter the constituents of the Committee of Creditors exercise their opinion to approve or reject the proposed resolution plan. The commercial/ business decision of the Financial Creditors taken collectively or their individual opinions are not open to challenge. In '**Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others**' (Civil Appeal No. 8766-67 of 2019)', (2019) SCC OnLine SC 1478, the Hon'ble Apex Court held that the limited judicial review available under section 30(2) to the Adjudicating Authority and under Section 61(3) to the Appellate Tribunal cannot trespass upon the business decision of the majority of the Committee of Creditors. The parameters of limited judicial review stand clearly laid down in **K. Shashidhar's** case (*supra*).

5. Taking a holistic view of the provisions of the successful resolution plan into account, the Adjudicating Authority was of the view that the same was not in conflict with the provisions of Section 30(2) of the I&B Code. Thus, the resolution plan in question came to be approved. As noticed elsewhere in this judgment, the claim of the Appellant as Financial Creditor has been admitted by

the Resolution Professional during the Corporate Insolvency Resolution Process and the Appellant, as a constituent of the Committee of Creditors having voting right of 3.94%, has assented to the approval of the resolution plan of the Successful Resolution Applicant. After admission of Appellant's claim by the Resolution Professional he can hardly have a grievance against the Resolution Professional. Though, the Appellant appears to have raised an objection in regard to inclusion of uninvoked Bank Guarantees in the admitted claim, its approval of the resolution plan as an assenting Financial Creditor would estop it from questioning the same resolution plan, though only in regard to distribution mechanism, which admittedly rests upon commercial wisdom of the Committee of Creditors, who set apart amount of Rs.135 Crores as contingency fund to take care of certain eventualities which in itself was a business decision based on commercial wisdom of Committee of Creditors binding all constituents of Committee of Creditors including the Appellant. This is astonishing that while approving the resolution plan as an assenting creditor at the culminating stage of insolvency resolution process, the Appellant should call in question the action of Resolution Professional, who had no role to play when the proposed Resolution Plan emanating from the Successful Resolution Applicant was put to vote by the Committee of Creditors. The scope of judicial review under Section 61(3) of I&B Code being limited to grounds enumerated therein and no material irregularity

having been shown to have occurred during the Corporate Insolvency Resolution Process before approval of the Resolution Plan by the Committee of Creditors, we are of the considered opinion that the Appellant has no case. It is not the Appellant's grievance that he has been discriminated against as a dissenting Financial Creditor or that his admitted claim has not been taken into consideration while allocating the amount in terms of the distribution mechanism found perfectly in order by the Adjudicating Authority.

6. In the given facts and circumstances of the instant case, we are of the considered opinion that no case for judicial interference is made out. The appeal is accordingly dismissed at the very threshold stage being devoid of merit. There shall be no orders as to costs.

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

**[Justice Anant Bijay Singh]
Member (Judicial)**

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

am/gc