

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT)(INSOLVENCY) NO.1080 OF 2019

In the matter of:

Damodar Valley Corporation

Appellant

Vs

Venky Hi-Tech Ispat Ltd & Ors

Respondent

Mr. Gopal Jain, Ms Prashanti, Ms Srija Choudhury, Ms Madhumita Bhattacharjee, Ms Arti Jain, Ms Urmi De Dasgupta, Advocates for appellant.
Mr. Arjun Asthana, Ms S Ghosh, Advocates for R1 & 3.

ORDER

11.12.2019- The appellant has challenged the order dated 08.01.2019 passed by the Adjudicating Authority, (National Company Law Tribunal), Kolkata Bench, Kolkata approving the resolution plan submitted by Respondent No.3, M/s Gliana Tradecom LLP. The appeal has been filed after long delay on 14.10.2019.

2. Learned counsel appearing on behalf of the appellant submitted that the distribution as made in favour of Damodar Valley Corporation, operational creditor is arbitrary. On the other hand according to learned counsel appearing on behalf of the successful Resolution Applicant, the Damodar Valley Corporation has been paid a sum of Rs.78.09 lacs which is more than liquidation value.

3. Learned counsel for the appellant submits that the claim amount is Rs.16.19 crores which Corporate Debtor defaulted to pay and the amount now offered/distributed is much less than 1%.

In the case of **“Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs Satish Kumar Gupta and ors-Civil Appeal Nos 8766-67 of 2019 etc”** the Hon’ble Supreme Court observed that the NCLT/NCLAT cannot interfere with the distribution made by the COC which is based on commercial wisdom and is not covered by any ground under sub-section (3) of Section 61 of I&B Code. In view this fact, the question of distribution of the amount amongst financial creditors and operational creditors is within the domain of COC and this Appellate Tribunal has not been provided with power to look into the validity of the resolution plan and as per Section 61(3) we cannot reverse the decision of the COC so far it relates to the distribution of amount.

4. In the present case we find that no ground is made out and the grievance is against distribution which cannot be looked into by this Appellate Tribunal. We are not inclined to interfere with the impugned order. The appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

(Justice Venugopal M)
Member(Judicial)

Bm/sk