

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No.1134 of 2020

IN THE MATTER OF:

1. Pratap Technocrats (P) Ltd.
B-21, Shakti Bhagwan Shivaji Godhara Colony,
Khatipura Road, Jhotwara,
Jaipur – 302 012.
 2. Pace Digitek Infra Private Limited
(formerly Pace Power Systems Pvt. Ltd.)
Plot No. V-12, Industrial Estate,
Kumbalagodu, Bangalore – Mysore Highway,
Bangalore – 560 074.
 3. Lineage Power Pvt. Ltd.
Plot NO. V-12, Industrial Estate,
Kumbalagodu, Bangalore – Mysore Highway,
Bangalore KA 560 074.
 4. Frontline (NCR) Business Solutions Pvt. Ltd.
B-48, Frontline House,
Naraina Industrial Area, Phase II,
New Delhi – 110028.
 5. Veremax Technologies Services Ltd.
156 Doshi Tower,
Poonamallee High Road, Kilpauk,
Chennai – 600 010.
 6. Vertiv Energy Private Limited
Plot No. C-20, Road No. – 19,
Wagle Industrial Estate,
Thane (W), Mumbai,
Maharashtra – 400 604.
 7. PowerHF India Private Limited
(Formerly Known As Shandong Weichat
Huafeng Power India Private Limited)
525, Tower A, DLF, Jasola,
New Delhi – 110 025.
- ...Appellants

Versus

1. Monitoring Committee of Reliance Infratel Limited
H Block, 1st Floor,
DhirubhaiAmbani Knowledge City,
Navi Mumbai – 400 710.
2. Anish Niranjan Nanavaty,
Resolution Professional for
Reliance Infratel Limited
H Block, 1st Floor,
DhirubhaiAmbani Knowledge City,
Navi Mumbai – 400 710.

...Respondents

Present: -

**For Appellant: Ms. Ankita Singhania, Mr. Gautam Swarup,
Ms. Gunjan Jindal, Mr. Kartikeya Jaiswal and
Mr. RajatSinghal, Advocates.**

**For Respondents: Mr. Anoop Rawat, Mr. Vaijayant Paliwal, Mr. Saurav
Panda, Ms. Charu Bansal, PrabhSimran Kaur,
Ms. Ankita Mandal, Advocates for Respondent Nos.
1 and 2.**

ORDER
(Virtual Mode)

04.01.2021 Appellants are the ‘Operational Creditors’ of the Corporate Debtor - Reliance Infratel Limited. They are aggrieved of the impugned order dated 3rd December, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Court-I, Mumbai Bench) by virtue whereof Resolution Plan in respect of Corporate Debtor submitted by the Resolution Applicant Reliance Projects and Property Management Services Limited (formerly known as Reliance Digital Platform and Project Services Limited) came to be approved. The impugned order is assailed primarily on the ground that the Appellants were kept unaware of the Corporate Insolvency Resolution Process (for short

the 'CIRP') qua the Corporate Debtor, thus being wholly unaware of the progress of Resolution Process with no details provided by the Resolution Professional as regards disbursement of fund towards their claims and that their claims have not received a fair and equitable treatment.

2. It is contended that the fair market value as also the liquidation value of the Corporate Debtor has not been taken into account and such amount consisting of Rs.800 crores does not form part of the corpus of payments to the Operational Creditors. It is further contended on behalf of the Appellants that the Adjudicating Authority approved the Resolution Plan of Successful Resolution Applicant overlooking the material irregularities in the accumulation and disbursement of funds constituting the corpus of the Corporate Debtor for the purpose of making distribution to the creditors. It is submitted that the Appellants have been made to suffer a reduction of around 90% of their total claims while substantial claims of Appellants of around Rs.120 crores have been rejected.

3. Heard Ms. Ankita Singhania, learned Counsel representing the Appellants, Mr. Anoop Rawat, learned Counsel representing Respondent Nos.1 and 2 and perused the record of Appeal paper-book.

4. Mr. Anoop Rawat, learned Counsel representing Respondent Nos.1 and 2 submits that the Appellants have been treated fairly and allocated 19.62% as against 10.32% allocated to Financial Creditors out of an upfront payment of Rs.3,720 crores under the approved Resolution Plan. It is further pointed out

that the Appellants have participated in the Resolution Process and their being unaware of the CIRP and its outcome is factually incorrect.

5. After hearing learned Counsel for the parties and going through the impugned order we find that the Appellants, admittedly being Operational Creditors cannot claim that they have been treated unfairly or inequitably as regards distribution of funds provided under the approved Resolution Plan. It is not the case of the Appellants that they have been completely ignored or left out of consideration while distributing the upfront money provided under the plan approved by the Committee of Creditors with the requisite majority and finally passing the muster under Section 30(2) of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code'), which stands approved by the Adjudicating Authority. Infact what emerges from the record and is borne out from page 45 of the Appeal paper-book (Financial Terms of the approved Resolution Plan) is that the Operational Creditors other than related parties and Statutory Creditors (the Class to which the Appellants belong) have been allocated 19.62% of the upfront payment of Rs.3,720 crores while the Financial Creditors have been paid only 10.32% of the upfront payment. The relevant portion of the page 45 (supra) is reproduced below: -

Particulars	Amount Admitted	Amount Proposed under the Plan	% of recovery under the Plan
CIRP Costs	-	To be paid in priority in full. [Refer Note 1]	100%
Workmen/ Employees	1,81,27,767/-	1,81,27,767/-	100%
Related Parties/ potential Related Parties	269,94,30,465/-	NIL	NIL

Statutory Creditors	31,32,81,573/-	404,45,218/-	12.91% [Refer Note 2]
Operational Creditors (other than Related Parties, Statutory Creditors)	1,29,28,99,328/-	25,36,38,128/-	19.62% [Refer Note 2]
Other Creditors	904,45,24,882/-	43,87,534/-	100% [Refer Note3]
Financial Creditors	41055,38,58,711/-	4235,77,87,067/- [Refer Note 4]	~10.32% [Refer Note 4]

6. This factual position being undisputed, it should not lie in the mouth of the Appellants that they have been discriminated against and treated unfairly. The approved Resolution Plan ensures restructuring and revival of the Corporate Debtor. The Appellants are also not justified in claiming that they have been excluded from the Resolution Process proceedings. Admittedly they have filed claims during CIRP proceedings and their claims have been partly admitted. In the face of this factual position, it is of no avail on their part to allege being excluded from CIRP proceedings.

7. It is by now well settled that equitable treatment can be claimed only by similarly situated creditors. Operational Creditors stand at a different footing as compared to Financial Creditors. They are entitled to receive a minimum payment being not less than liquidation value, which does not apply to Financial Creditors. Para 77 read in juxtaposition with para 76 of the judgment delivered by the Hon'ble Apex Court in **"Swiss Ribbons Private Limited v. Union of India MANU/SC/0079/2019 : (2019) 4 SCC 17"** dealing with this aspect of legal proposition clearly lays down that there is a difference in payment of the debts of Financial and Operational Creditors, Operational

Creditors having to receive a minimum payment, being not less than the liquidation value, which does not apply to Financial Creditors. This is elucidated in para 56 of the judgment rendered by the Hon'ble Apex Court in **“Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors. – Manu/SC/1577/2019”**, which reads as under: -

“56. By reading paragraph 77 de hors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Paragraph 76 clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, paragraph 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment

over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution Applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.”

Again in para 57 of the same judgment, it was observed by the Hon’ble Apex Court as under: -

“57. the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code-to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational.”

8. Admittedly, Appellants are Operational Creditors and being different from the Financial Creditors and Secured Creditors, they were not entitled to the same treatment. Their claim to proceeds of sale of preference shares, not being part of the assets value or a component of upfront payment is not warranted as the Corporate Debtor has been restructured and revived and protected from being pushed into liquidation. It is futile to contend on their behalf that the Financial Creditors being lenders having huge financial resources can take a

bigger hair cut as compared to the financial condition of the Appellants. The distribution mechanism adopted in the instant case being not only conformable to the mechanism envisaged under Section 53 of the I&B Code but also according priority in upfront payment to Operational Creditors cannot be termed unfair or inequitable qua the Appellants – Operational Creditors.

9. We find no merit in this Appeal. The Appeal is accordingly dismissed at the very threshold stage.

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

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

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

Ash/GC/