

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) Insolvency No. 694 of 2020

IN THE MATTER OF:

**Shree Sidhivinayak Cotspin
Private Limited & Anr**

...Appellants

Versus

**Resolution Professional of
Maruti Cotex Limited & Anr**

...Respondents

Present:

For Appellant : Mr Alok Dhir and Ms Varsha Banerjee, Advocates

**For Respondent : Mr Abhijeet Sinha and Mr Naveen Kumar, Advocates
for Respondent No. 1 (Resolution Professional)
Mr Abhishek Anand and Mr Viren Sharma, Advocates
for Respondent No. 2**

ORDER
(Through Virtual Mode)

20.08.2020 The Successful Resolution Applicant has filed this Appeal under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short 'I&B Code') against the impugned order dated 02nd July 2020 passed by Adjudicating Authority/NCLT Mumbai Bench in MA No. 422 of 2020 in CP (IB) No.241/30(6)/MB/2018, whereby the Adjudicating Authority while approving the Resolution Plan as submitted by the Appellants, has made observations in para 23, 24 and 25 of the Impugned Order thereby modifying the provisions of the approved Resolution Plan.

The Appellant contends that the observations made in para 23, 24 and 25 of the Impugned Order are without any basis and reasoning, and the

Adjudicating Authority has proceeded arbitrarily. The observation made by the Adjudicating Authority in para 23, 24 and 25 is as under:

“23. The Resolution Applicant has sought certain reliefs and concessions in the resolution plan. This bench is not inclined to allow any of the said reliefs and concessions prayed by the Resolution Applicant. Therefore, the resolution applicant may apply to the relevant regulatory authorities for said reliefs and concessions and the relevant authorities may consider it as per relevant applicable laws.

24. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable laws for the time being in force. It is made clear that the resolution applicant shall takeover the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan.

25. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.”

Appellant contends that the Adjudicating Authority vide the impugned order has failed to grant certain reliefs and concessions as provided in the approved Resolution Plan which is permissible and also necessary for successful implementation of the Resolution Plan by the Appellants herein failing which the approved Resolution Plan shall become commercially unviable. It is submitted that the Adjudicating Authority exercises limited jurisdiction while approving a Resolution Plan in terms of Section 31 of I&B

Code and the observations made in para 23, 24 and 25 of the impugned order dated 02nd July 2020 are contrary to the scope of Section 31 of I&B Code.

Appellants further contend that the relief and concessions sought by the Appellants are germane for the successful implementation of the approved Resolution Plan. The impugned observations modify the Resolution Plan regarding the reliefs and concessions sought under the said plan.

This Appeal is filed under Section 61(3) of the Insolvency & Bankruptcy Code, 2016, which is as under:

“61(3) An appeal against an order approving a resolution plan under Section 31 may be filed on the following grounds, namely—

- (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*
- (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;*
- (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*
- (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or*
- (v) the resolution plan does not comply with any other criteria specified by the Board.”*

It is thus, clear that the Resolution Plan can only be challenged before the Appellant Tribunal on very limited grounds which is specified in sub Clause

(3) of Section 61 of the I&B Code. In this case, the Successful Resolution Applicant has challenged the approved Resolution Plan on the ground of the observations made in para 23, 24 and 25 of the impugned order, whereby the Adjudicating Authority has declined to allow reliefs and concessions prayed by the Resolution Applicant. The said grounds of challenge of the approved Resolution Plan under this Appeal are beyond the limited scope of Appeals prescribed under sub-Section (3) of Section 61 of the I&B Code, 2016.

In para 23 of the impugned order, the Adjudicating Authority has stated that “the Resolution Applicant has sought certain reliefs and concessions in the resolution plan. The Bench is not inclined to allow any of reliefs and concessions prayed by the Resolution Applicant.”

In the above para, it is also mentioned that the Resolution Applicant may apply to the relevant regulatory authorities for the said reliefs and concessions and the relevant authorities may consider it as per relevant applicable laws.

It is important to mention that para 6.4 of the approved Resolution Plan deals with the waiver of liability which runs from internal page 48 to 67 of the approved Resolution Plan. It is to be clarified that the Resolution Plan has a binding effect on all the stakeholders. The Adjudicating Authority has not allowed reliefs and concessions as prayed for in the Resolution Plan. Still, at the same time, the Adjudicating Authority has clarified that the Resolution Applicant may apply to the relevant Regulatory Authorities for said reliefs and concessions and the relevant authorities may consider it as per relevant applicable laws.

Thus, it is clear that the Adjudicating Authority has not given a general exemption regarding all reliefs and concessions sought in the Resolution Plan, but at the same time, it has clarified that the Resolution Applicant may apply for reliefs and concessions to the relevant Authorities who may consider the same as per applicable laws.

It is further observed by the Adjudicating Authority that the Resolution Applicant on taking control of the Corporate Debtor shall ensure compliance under all applicable laws for the time being in force. It is also observed that the Resolution Applicant shall take over the Corporate Debtor as per the terms of the approved Resolution Plan. It means that terms of the approved Resolution Plan has been approved subject to compliance of applicable laws for the time being in force.

Thus, it is clear that by observation made in para 24 only, it has been emphasised by the Adjudicating Authority that the Resolution Applicant has to ensure compliance under all applicable laws for the time being in force. This does not mean that the Adjudicating Authority has changed the terms of the Resolution Plan. It is pertinent to mention that after approval of the Resolution Plan, in every case, the Successful Resolution Applicant has to ensure compliance under applicable laws.

In para 25 of the approved Resolution Plan, the Adjudicating Authority has only stated that the Resolution Plan is approved with modifications and shall be binding on all the stake holders. After approval of the Resolution Plan it has a binding effect on all the stake holders including employees, members,

creditors, guarantors, resolution applicant and other stakeholders involved in the Resolution Plan.

The Ld Counsel for the Appellant contended that the relief and concession is sought only with the view that the Resolution Applicant wants to revive the company with complete peace and certainty, therefore, any statutory dues, taxes and penalties, penal interest, demands etc. other than that which is proposed to be paid by the Resolution Applicant, is fully waived off and maybe assured to the Resolution Applicant that no such claim from any person or authority shall disturb the process of revival of the Corporate Debtor.

It is relevant to mention that Hon'ble the Supreme Court of India in Civil Appeal No. 8766-67 of 2019 in Diary No. 24417 of 2019 Committee of Creditors of Essar Steel India Limited Through Authorized Signatory vs Satish Kumar Gupta and Others has held;

*“44. On a bare reading of the provisions of the I&B Code, it would appear that the remedy of Appeal under Section 61(1) is against an “order passed by the adjudicating authority (NCLT)” - which we will assume may also pertain to recording of the fact that the proposed resolution plan has been rejected or not approved by a vote of not less than 75% of voting share of the financial creditors. Indubitably, the remedy of Appeal including the width of jurisdiction of the appellate authority and the grounds of Appeal, is a creature of statute. The provisions investing jurisdiction and authority in the NCLT or NCLAT as noticed earlier, has not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same, justiciable. **This position is reinforced from the limited grounds specified for instituting an appeal that***

too against an order “approving a resolution plan” under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers “by the resolution professional” during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds - be it under Section 30(2) or under Section 61(3) of the I&B Code - are regarding testing the validity of the “approved” resolution plan by the CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by the CoC in exercise of its business decision.

45. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited

jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.

86. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In *State Bank of India v. V. Ramakrishnan*, 2018 (9) SCALE 597, this Court relying upon Section 31 of the Code has held:

88. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.”

(emphasis supplied)

Thus, it is clear that successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted. All claims must be submitted to and decided by the resolution professional, so that a prospective Resolution Applicant knows exactly, what has to be paid, in order that it may then take over and run the business of the Corporate Debtor. The law laid down by Hon’ble the Supreme Court in the above-mentioned case is applicable in this case as well. The Adjudicating Authority has neither varied the terms of the approved Resolution Plan, nor denied any concession. In fact, the Adjudicating Authority has not allowed general waiver from the statutory liabilities and has specified that the Resolution Applicant may apply for such reliefs and concessions to the relevant Authorities who may consider the same as per applicable laws.

In the circumstances as stated above, it is clear that instant Appeal against the Approved Resolution Plan is not maintainable under Sec 61(3) of the I&B Code 2016 hence, dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[V.P. Singh]
Member (Technical)

[Alok Srivastava]
Member (Technical)

pks/gc