

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 769 of 2018**

**IN THE MATTER OF:**

**Alloysmin Industries & Ors. ...Appellants**

**Vs.**

**Punkaj Jain, R.P, Fenace Auto Ltd & Anr. ...Respondents**

**Present: For Appellant: - Ms. Divya Aggarwal, Advocate.**

**For Respondents: - Mr. Hitesh Sachar and Mr. Anuj Jain,  
Advocates for R-1.**

**Ms. Chetan Sharma, Senior Advocate with Ms.  
Aakanksha Kaul, Advocate for R-2.**

**Company Appeal (AT) (Insolvency) No. 05 of 2019**

**IN THE MATTER OF:**

**Vesuvius India Ltd. & Ors. ...Appellants**

**Vs.**

**Fenace Auto Ltd. & Ors. ...Respondents**

**Present: For Appellants: - Mr. A.R. Chowdhury and Ms. Vatsala  
Singh, Advocates.**

**For Respondents: - Mr. Hitesh Sachar and Mr. Anuj Jain,  
Advocates for R-1.**

**Ms. Chetan Sharma, Senior Advocate with Ms.  
Aakanksha Kaul, Advocate for R-2.**

**O R D E R**

**28.03.2019—** In the 'Corporate Insolvency Resolution Process'  
against 'Fenace Auto Ltd.', the 'Committee of Creditors' approved the

'Resolution Plan' submitted by the 'Resolution Applicant'- 'M/s. Badve Engineering Ltd.'. The said 'Resolution Plan' was approved by the Adjudicating Authority (National Company Law Tribunal), New Delhi, by order dated 17<sup>th</sup> October, 2018. The Appellants, who are the 'Operational Creditors', including the intervenors being aggrieved by the impugned order dated 17<sup>th</sup> October, 2018 preferred these appeals on the ground that they have been discriminated as there being huge difference between the percentage of the claim amount allowed in favour of the 'Financial Creditors' and the 'Operational Creditors'.

2. Earlier, on 5<sup>th</sup> March, 2019, when the matter was taken up, following order was passed:

*“05.03.2019: Learned counsel for the Successful Resolution Applicant- 'M/s. Badve Engineering Ltd.' on instruction submits that the Successful Resolution Applicant is ready to equate Operational Creditors ranging from Rs. 5 Lakhs to Rs.10 lakhs onwards by paying similar percentage of the claim amount of 26.36% as allowed in favour of all the 'Financial Creditors'. He prays for and allowed ten days' time to file a supplementary affidavit substituting the Clause (B) for Operational Creditors, as shown at page 38 of the Resolution Plan and approved by the Adjudicating Authority.*

*We make it clear that the Appellants having not alleged any fraud before the Adjudicating Authority, we are not going to decide such issue in these appeals.*

*Post these appeals ‘for orders’ on 28<sup>th</sup> March, 2019.”*

3. A supplementary Affidavit has been filed by ‘M/s. Badve Engineering Ltd.’- (‘Successful Resolution Applicant’) wherein the following statement has been made:

*“2. That the present supplementary affidavit is being filed pursuant to Order dated 05.03.2019 passed by this Hon’ble Commission. In the course of the hearing on 05.03.2019, the answering Respondent (through its Counsel) stated that it was ready to equate Operational Creditors ranging from Rs. 5 lakhs to Rs. 10 lakhs onwards by paying similar percentage of claim amount of 26.36% as allowed in favour of all the ‘Financial Creditors’.*

<b>Category</b>	<b>Amount</b>	<b>Percentage</b>	<b>Payout</b>
Dues ranging from Rs.5,00,000- Rs. 10,00,000	Rs.2,07,02,992	20%	Rs.41,40,598.00
Dues over Rs. 10,00,000	Rs.18,17,97,836	10%	Rs.1,81,79,784.0
<b>Total</b>	<b>Rs.20,25,00,828</b>		<b>Rs.2,23,20,382</b>

3. That in terms of the approved Resolution Plan (Para 3.1.2), the payout for Operational Creditors with dues ranging from Rs. 5,00,000 – 10,00,000 and with dues over Rs. 10,00,000 was proposed to be as under:

4. That pursuant to Order dated 05.03.2019 the Resolution plan is sought to be amended and the payout to Operational Creditors with dues ranging from Rs.5,00,000- 10,00,000 and with dues over Rs.10,00,000 is proposed to be as under:

Category	Amount	Percentage	Payout
Dues ranging from Rs. 5,00,000-10,00,000	Rs.2,07,02,992	26.36%	Rs.54,57,309
Dues over Rs.10,00,000	Rs.18,17,97,836	26.36%	Rs.4,79,21,910
<b>Total</b>	<b>Rs.20,25,00,828</b>		<b>Rs.5,33,79,218</b>

5. That thus, the Respondent No.2/ the successful Resolution Applicant has proposed an additional payout of Rs. 13,16,711/- to Operational Creditors with dues ranging from Rs. 5,00,000-10,00,000 and of Rs.2,97,42,126 to Operational Creditors with dues over Rs. 10,00,000. The total additional payout is thus, proposed to be Rs. 3,10,58,836.

6. That the said additional payout will ensure that Operational Creditors with dues ranging from

*Rs.5,00,000-10,00,000 and with dues over Rs.10,00,000 are equated with Financial Creditors who are entitled to receive 26.36% of their claim amount in terms of the approved Resolution Plan.”*

4. It is stated that in terms with the revised ‘Resolution Plan’, cheques have been issued.

5. Learned counsel appearing on behalf of the Appellants- (‘Operational Creditors’) and the intervenors (‘Operational Creditors’) while accepted the revised ‘Resolution Plan’, as proposed and quoted above are in accordance with law and that the ‘Operational Creditors’ are satisfied, submitted that they have not received the cheques as on date.

6. Learned counsel for the ‘Successful Resolution Applicant’ submits that the ‘Successful Resolution Applicant’ will provide the cheques if not yet received.

7. In the circumstances, we approve the revised part of the ‘Resolution Plan’ submitted by ‘M/s. Badve Engineering Ltd.’- (‘Successful Resolution Applicant’) which in addition to other conditions already made therein. The statement made by ‘M/s. Badve Engineering Ltd.’ as quoted above, is substituted in the ‘Resolution Plan’ in question.

8. The ‘Resolution Professional’, ‘M/s. Badve Engineering Ltd.’- (‘Successful Resolution Applicant’), the Adjudicating Authority and other

stakeholders are bound by and will act as per the substituted 'Resolution Plan' as approved.

Both the appeals stand disposed of with aforesaid observations and directions. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

Ar/g