

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1387 of 2019

IN THE MATTER OF:

Union Bank of India

...Appellant

Vs

**EMC Ltd.
Through Resolution Professional
Kannan Triuvebgadam & Ors.**

...Respondents

Present:

For Appellant: Mr. Rahul Gupta, Advocate.

**For Respondents: Mr. Diwakar Maheshwari and Mr. Shreyas
Edupuganti, Advocates.**

ORDER

04.12.2019: The Appellant has challenged the plan approved by order dated 21st October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata. By said order other applications were also disposed of.

2. On 2nd December, 2019, when the matter was taken up, the following observation was made by this Appellate Tribunal:-

“ORDER

02.12.2019 *Prima-facie the Appeal appears to be frivolous filed by Union Bank of India as it has consented in favour of the ‘Plan’ and is now challenging the ‘Plan’. Nothing on the record to suggest that grounds mentioned in either sub-section (3) of Section 61 of Insolvency and Bankruptcy Code,*

2016 have been taken and if that be so, the Appellant has not stated as to why it has approved the 'Plan'.

Post the case for orders on **4th December, 2019.**"

3. Today, it is informed that Union Bank of India has conditionally approved the plan and not on distribution. Section 32 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') has provisions for filing an appeal against the approved plan and it reads as follows:-

"32. Appeal. - Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61."

4. As per Section 32, the plan approved can be challenged on the grounds laid down in sub-section (3) of Section 61, which are as follows:-

"61. Appeals and Appellate Authority.(1)
Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

.....X....X...X.....

(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.”*

5. In the present case, the only ground taken is that the distribution has not been properly made. As the Appellant is a member who distributed the

amount, no ground is made out in terms of sub-section (3) of Section 61 and we find that the distribution was made by the Committee of Creditor in which Appellant was also a member.

6. For aforesaid reason, we observe that this is a frivolous appeal. We accordingly dismiss the appeal. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/sk