

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 162 of 2018

IN THE MATTER OF:

Tomorrows Sales Agency Pvt. Ltd.

...Appellant

Vs

**Rajiv Khurana,
R.P. for Power Himalayas Ltd. & Ors.**

....Respondents

Present:

**For Appellant: Dr. U. K. Chaudhary, Sr. Advocate with
Ms. Manisha Chaudhary, Mr. Mansumyer Singh,
Mr. Himanshu Vij, Advocates.**

**For Respondents: Mr. Rajiv Khurana, Resolution Professional in
person and Mr. Arora Vishwas Kumarand,
Advocate for R-1 (RP).**

**Mr. Kunal Vajani, Mr. Chanakya Dwivedi,
Mr. Paras Anand and Ms. Harsha Satyakam,
Advocates for R-2, R-3 and R-4.**

ORDER

05.07.2018: The Appellant (Successful Resolution Applicant) has challenged order dated 20th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, who refused to grant approval to its Resolution Plan on the ground that:

- (i) consent of shareholders for transfer of shares has not been taken.
- (ii) there is discrimination in the matter of payment to Promoters and Operational Creditors as it was proposed that the Promoters will be paid in three years as and when the financial position of the Corporate Debtor will permit and 40% upfront payment will be made in favour of Operational Creditors.

- (iii) the two of the Directors of the Corporate Debtor has been allowed to be retained by the Resolution Applicant.

2. It is stated that the Appellant filed affidavit stating that they have consent of 94.5% of the Shareholders for reduction of their share capital and cancellation of their share in favour of the Appellant and there is no discrimination on the matter of payment to Promoters and Operational Creditors. Payment Plan has been renewed by agreeing to make 100% upfront payment in favour of 'Operational Creditors' and to pay the amount to the 'Promoters' only if the financial position of the Corporate Debtor permits and that the Resolution Plan has been approved by 100% vote of the Committee of Creditors. In spite of the same the Adjudicating Authority by impugned order dated 20th April, 2018 passed in CA No. 63/2018 in CP(IB) No. 75/Chd/HP/2017 rejected the same on the ground that it has no power to revisit order or to allow revised Resolution Plan.

3. On notice the Respondents including the 'Resolution Professional' and 'Committee of Creditors' have appeared. Learned counsel appearing on behalf of the 'Committee of Creditors' submits that they have approved the Resolution Plan unanimously on 09.03.2018. Learned counsel appearing on behalf of the 'Resolution Professional' submits that the Resolution Plan being in accordance with Sub-section (2) of Section 30 was cleared and approved by the 'Committee of Creditors' with 100% of voting share. It is also submitted that both the 'Resolution Professional' and the 'Committee of Creditors' have no objection to the proposed amendment made by the 'Successful Resolution Applicant'.

4. Having heard learned counsel for the parties and taking into consideration the fact that the Resolution Plan was in consonant with Section 30(2) of the I&B Code and was approved by the Committee of Creditors unanimously, we are of the view that the Adjudicating Authority should not have rejected the same.

5. Section 29A relates to ineligibility of the Resolution Applicant. Admittedly, the Resolution Applicant is eligible and not ineligible under any of the clause of Section 29A or explanation below the same. Merely retention of two of the Directors of the Corporate Debtor does not violate any of the provision of Section 29A of the I&B Code.

6. Further, if the Directors of the Corporate Debtor are employees, it is always open to the Resolution Applicant to allow them to continue as employees, who are otherwise Operational Creditors and the Resolution Applicant is bound to pay them. In view of the aforesaid position while we hold that the original application for approval of Resolution Plan was wrongly rejected by the Adjudicating Authority, we are of the view that to ensure that the Corporate Insolvency Resolution Process undergoes successfully, the Adjudicating Authority should have accepted the amended Resolution Plan, which is advantageous to the parties and amounts to maximization of the assets of the Corporate Debtor.

7. For the reasons aforesaid while we set aside the impugned order dated 20th April, 2018 passed by Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, in CA No. 63/2018 in CP(IB) No. 75/Chd/HP/2017, approve the amended Resolution Plan of the Successful Resolution Applicant (Appellant

herein). The Adjudicating Authority, the Resolution Professional and Corporate Debtor and also the Successful Resolution Applicant (Appellant herein) are directed to take immediate steps for execution of Resolution Plan and Appellant is directed to make upfront payment as agreed in the Resolution Plan and amended terms within 15 days from the date of receipt of copy of this order.

8. The appeal is allowed with aforesaid observations and directions. There shall be no orders as to costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk