

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

**Company Appeal (AT) (Insolvency) No. 37 of 2020**

[Arising out of Order dated 13<sup>th</sup> November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in M.A. No.1124/2019 in CP(IB) No.2714/IBP/MB/2018]

**IN THE MATTER OF:**

Dipco Private Limited  
Having its registered office at  
8, Moira Street, Kolkata,  
West Bengal – 700017.

.... Appellant

Versus

1. Mr. Jayesh Sanghrajka,  
Resolution Professional,  
of Ariisto Developers Pvt. Ltd.  
8<sup>th</sup> Floor, Ariisto House, N.S. Phadke Road,  
Near Ease West Flyover,  
Andheri (E), Mumbai – 400069.

2. Aasan Corporate Solutions Pvt. Ltd.  
Having its registered office at  
4<sup>th</sup> Floor, Piramal Tower Annexe,  
Ganpatrao Kadam Marg,  
Lower Parel, Mumbai – 400013.

3. IIFL Trustee Ltd.  
Having its registered office at  
6<sup>th</sup> Floor, IIFL Centre, Kamala City,  
Senapati Bapat Marg,  
Lower Parel, Mumbai – 400013.

4. Vistra ITCL (India) Ltd.  
Having its registered office at  
IL&FS Financial Centre,  
Plot No.22, G Block,  
Bandra Kurla Complex,  
Bandra (East), Mumbai – 400051.

.... Respondents

**Present:**

**For Appellant: Mr. Siddharth Bhatnagar, Senior Advocate  
with Mr. Gaurav Nair, Mr. Varun Singh,  
Ms. Pranati Bhatnagar and Mr. Aditya Sidhra,  
Advocates.**

**For Respondents: Mr. Dharav Shah, Advocate for RP**

## J U D G M E N T

### SUDHANSU JYOTI MUKHOPADHAYA, J.

In the 'Corporate Insolvency Resolution Process' of M/s Ariisto Developers Private Limited ('Corporate Debtor'), Miscellaneous Applications under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') were filed by 'Financial Creditors'. The HDFC Bank Ltd. filed M.A. No.999/2019 raising question of voting shares of some of the 'Financial Creditors' on the ground that if the voting shares were granted properly, HDFC voting share in the 'Committee of Creditors' would increase from 21.26% to approximately 51%.

2. The Appellant -Dipco Private Limited also filed an application under Section 60(5) against the decision of the 'Resolution Professional' of Vistra ITCL (India) Limited and M/s Aasan Corporate Solutions Private Limited alleging that there is no debtor-creditor relationship between the 'Corporate Debtor' and the aforesaid Vistra ITCL (India) Limited and M/s Aasan Corporate Solutions Private Limited. It was alleged that the 'Resolution Professional' wrongly accepted their claims, resulting in reduction of voting shares of Appellant – Dipco Private Limited in the 'Committee of Creditors'. It was also alleged by the Appellant - Dipco Private Limited that Vistra ITCL (India) Limited, IIFL Trustee Ltd. and another 'Financial Creditor' are attempting to defend their inclusion in 'Committee of Creditors', claiming themselves to be 'Financial Creditors' without any documentary evidence.

3. The aforesaid Miscellaneous Applications were rejected by impugned order dated 13<sup>th</sup> November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai with a direction to the 'Resolution Professional' to proceed with the decisions taken in the meeting of the 'Committee of Creditors' as regards the approval of the 'Resolution Plan'.

4. The Appellant has alleged that the debt claimed by Vistra& IIFL from the 'Corporate Debtor' did not constitute 'Financial Debt' as defined under Section 5 of the I&B Code and they had not disbursed any amount to the 'Corporate Debtor' for 'time value of money'. The 'Corporate Debtor' is also not a 'Guarantor' in absence of any 'Guarantee'.

5. Reliance has been placed on Regulation 40A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to suggest that 'Resolution Professional' can file an application to the Adjudicating Authority for appropriate relief for the preferential transactions within 135 days of the commencement of CIRP. In the present case, despite repeated communication, the 'Resolution Professional' did not take any steps against the concerned 'Financial Creditors' alleging preferential transactions, hence, the Appellant filed an application under Section 60(5) of the Code within 126 days.

6. The Respondents brought to the notice of the Adjudicating Authority that more than 330 days had passed in the present case and the 'Committee of Creditors' has already approved the Plan, which was to be placed before the Adjudicating Authority. It was just before the same, the Applicant – HDFC Bank moved an application under Section 60(5) of the I&B Code.

7. In **'Arecelormittal India Private Limited vs. Satish Kumar Gupta &Ors. (2019) 2 Supreme Court Cases 1: 2018 SCC OnLine1733'** the Hon'ble Supreme Court had held as follows:-

*"84. If, on the other hand, a resolution plan has been approved by the Committee of Creditors, and has passed muster before the Adjudicating Authority, this determination can be challenged before the Appellate Authority under Section 61, and may further be challenged before the Supreme Court under Section 62,*

*if there is a question of law arising out of such order, within the time specified in Section 62. Section 64 also makes it clear that the timelines that are to be adhered to by the NCLT and NCLAT are of great importance, and that reasons must be recorded by either the NCLT or NCLAT if the matter is not disposed of within the time limit specified. Section 60(5), when it speaks of the NCLT having jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person, does not invest the NCLT with the jurisdiction to interfere at an applicant's behest at a stage before the quasi-judicial determination made by the Adjudicating Authority. The non-obstante clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.”*

8. As per Section 60(5), though the NCLT is empowered to entertain or dispose of any application or proceeding by or against the 'Corporate Debtor' or 'Corporate Person', it does not invest the NCLT with the jurisdiction to re-determine and collate the claim. The decision for collating the claim, if any, taken by the 'Resolution Professional', the same being judicial or quasi-judicial, the NCLT cannot sit in Appeal.

9. In the present case, though the Adjudicating Authority has no jurisdiction, but for the purpose of transparency, considered the documents relied upon by the Respondents in support of their claim and observed that the basic principle is that **“Documents speak for themselves”**, a simple verification of the above documents in fact are sufficient enough to

conclude that the Corporate Debtor has a liability to pay the amounts as claimed in the documents.

10. It is not in dispute that the 'Committee of Creditors' had approved the 'Plan' and only thereafter at that stage, the Appellant and another moved applications under Section 60(5) against collation of claim by the 'Resolution Professional', by the time, the period of 'Corporate Insolvency Resolution Process' was to conclude and had completed during the pendency. The Adjudicating Authority has rightly dismissed the application.

11. In absence of any merit, the Appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

**NEW DELHI**

24<sup>th</sup>January, 2020

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