

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 19 of 2021

In the matter of:

Assets Care & Reconstruction Enterprise Ltd.

....Appellant

Vs.

Anish Niranjan Nanavaty & Ors.

....Respondents

Present:

Appellant: **Mr. Janak Dwarkadas, Senior Advocate with Ms. Nasifa Khandeparkar, Mr. Raghav Chadha, Advocates.**

Respondents: **Mr. Anoop Rawat, Mr. Vaijayant Paliwal, Mr. Saurav Panda, Ms. Charu Bansal, Ms. Ankita Mandal and Mr. Rishabh, Advocates for R1.**
Mr. Chetan Kapadia, Ms. Nishi Bhankharia, Mr. Siddharth Ranade, Ms. Saloni Gupta, Mr. Kaazvin Kapadia, Advocates for R4-5
Mr. Kamlendra Singh, Mr. Jinal Shah, Mr. Prateek Seksaria, Mr. Shubhabrata Chakraborti, Advocates for R2.
Mr. Rohan Rajadhyaksha, Ms. Apoorva Gupta, Advocates for R3

ORDER

(Through Virtual Mode)

19.01.2021: Resolution Plan qua the Corporate Debtor- 'Reliance Infratel Limited' was approved by the Adjudicating Authority (National Company Law Tribunal), Court-1, Mumbai Bench, in terms of the impugned order dated 3rd December, 2020 keeping in view the fact that the Resolution Plan had been unanimously approved by the Committee of Creditors (COC). The limited issue raised in this appeal by Financial Creditor- 'Assets Care & Reconstruction Enterprise Limited' is that the Adjudicating Authority allowed the approval of Resolution Plan while withholding its orders on the application filed by 'Doha Bank Q.P.S.C.'

2. It is submitted by Mr. Janak Dwarkadas, Senior Advocate representing the Appellant that the Adjudicating Authority, while approving the Resolution

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Plan did not pass any orders in regard to the application filed by 'Doha Bank Q.P.S.C.' though there was an oral agreement and that the rights of the Appellant and other Respondents in the application of 'Doha Bank Q.P.S.C.' have not been safeguarded.

3. Mr. Rohan Rajadhyaksha, Advocate representing the Respondent No.3 and Mr. Chetan Kapadia, Advocate representing Respondent Nos.4 and 5 support the contention of the Appellant, it being pointed out that IA Nos. 1960 of 2019 and 3055 of 2019 assailing the decision of the Resolution Professional recognizing the indirect lenders of the Corporate Debtor as Financial Creditors remains to be disposed off.

4. Mr. Anoop Rawat, Advocate appearing for the Resolution Professional submits that the provision has been made for the disposal of such applications and the distribution of the payments to the Creditors has been subjected to the outcome of these applications.

5. Mr. Prateek Seksaria, Advocate representing Respondent No.2 submits that Respondent No.2 is the Applicant as regards IA Nos. 1960 of 2019 and 3055 of 2019 which remain undecided though the Resolution Plan has been approved. He opposes the appeal.

6. After hearing learned counsel for the parties briefly, we find that in para 15 of the impugned order, the Adjudicating Authority has shown its awareness about pendency of IA Nos. 1960 of 2019 and 3055 of 2019 and observed that pendency of these and other applications would not come in the way of approval or otherwise of the Resolution Plan, more so, when the Resolution Plan has been unanimously approved by the COC. It has been observed in specific and unambiguous terms that the distribution of payments to the Creditors, Financial or Operational as the case may be shall be subject to orders to be passed in the respective interim applications. This observation has been reiterated in the order in clause (II) immediately following para 15.

It is abundantly clear that the Adjudicating Authority was conscious of the fact that the disposal of these two applications and other applications pending consideration before it may affect the distribution aspect; thus distribution was subjected to outcome of these applications. It goes without saying that the approval of the Resolution Plan by the COC being a business decision resting upon commercial wisdom of the COC is not amenable to judicial review, except for the limited grounds before the Adjudicating Authority under Section 30(2) and before this Appellate Tribunal on grounds falling within the ambit of Section 61(3) of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short). Since the approval of the Resolution Plan of the Corporate Debtor was unanimous at the COC level and nothing was brought to the notice of the Adjudicating Authority to demonstrate that the Resolution Plan did not conform to the conditions or that the same was in conflict with any extent law, the Resolution Plan was rightly approved subject to disposal of pending applications.

7. In the given circumstances, we are of the opinion that this appeal can be disposed off with direction to the Adjudicating Authority to dispose off the aforesaid applications with utmost expedition, preferably within three weeks' time and depending upon the outcome of such applications, if the impugned order requires to be reconsidered, the Adjudicating Authority would do the same after hearing the parties.

The appeal is accordingly disposed off.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

AR/g