

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 969 of 2020

In the matter of:

Hindustan Oil Exploration Company

....Appellant

Vs.

**Erstwhile Committee of Creditors JEKPL Pvt. Ltd.
&Ors.**

....Respondents

Present:

Appellant: Mr. Rohit Rajershi, Mr. Abhijeet Sinha and Mr. Ramaswamy Meyyappan, Advocates.

**Respondents: Mr. Abhinav Vasisht, Senior Advocate with Ms. Misha, Mr. Siddhant Kant, Ms. Charu Bansal and Mr. Saurav Panda, Advocate for R2.
Mr. Sujoy, Advocate for R3.**

ORDER

(Through Virtual Mode)

17.11.2020: Appellant is the 'Unsuccessful Resolution Applicant' whose Resolution Plan was rejected by the Committee of Creditors. It has assailed impugned order dated 9th September, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench in I.A. No. 208/2020 in CA No. 188/2019 in CP No. (IB) 24/ALD/2017 by virtue whereof the Adjudicating Authority while declining to accede to the prayer for reversal of money to the Successful Resolution Applicant in the event of dismissal order from the Hon'ble Apex Court, directed implementation of the approved Resolution Plan on or before the extended date i.e. 30th September, 2020. The impugned order has been assailed on the ground that the erstwhile Committee of Creditors of the Corporate Debtor, in connivance with the Successful
Company Appeal (AT) (Insolvency) No. 969 of 2020

Resolution Applicant, accepted a re-negotiated fresh Resolution Plan and the application of the Committee of Creditors under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed before the Adjudicating Authority was not maintainable and should not have been entertained by the Adjudicating Authority for the Committee of Creditors had become *functus officio* after approval of the Resolution Plan. It is submitted that the Adjudicating Authority had approved the Resolution Plan on 04.02.2020 and in terms of the approved Resolution Plan the Successful Resolution Applicant had to bring in Rs.123 Cr. for Resolution within 30 days of approval of the plan which expired on 05.03.2020. However, the Successful Resolution Applicant did not implement the Resolution Plan and the erstwhile Committee of Creditors of the Corporate Debtor, in connivance with the Successful Resolution Applicant, accepted a fresh resolution plan to the detriment of legal rights of the Appellant whose Resolution Plan was rejected on the ground that he could not provide for lump sum time bound payment within 30 days of the approval of its Resolution Plan.

2. After hearing Mr. Abhijeet Sinha, Advocate for the Appellant, we are of the considered opinion that the Appellant has no locus to question the implementation of the approved Resolution Plan of the Successful Resolution Applicant. Admittedly, appeal preferred against approval of the Resolution Plan of the Successful Resolution Applicant stands dismissed by this Appellate Tribunal. Direction given in terms of the impugned order on the application filed under Section 60(5) of the 'I&B Code' to the Successful Resolution Applicant follows as a necessary corollary to the dismissal of appeal filed

against approval of Resolution Plan of the Successful Resolution Applicant to implement the approved Resolution Plan on or before the extended date of 30th September, 2020. Once the Appellant is out of the fray, it has neither locus to call in question any action of any of the stakeholders qua implementation of the approved Resolution Plan nor can it claim any prejudice on the pretext that any of the actions post approval of the Resolution Plan of Successful Resolution Applicant in regard to its implementation has affected its prospects of being a Successful Resolution Applicant. If the terms of the approved Resolution Plan of Successful Resolution Applicant have been varied or time extended to facilitate its implementation and the creditors have not claimed any prejudice on that count and the Committee of Creditors comprising of the creditors as stakeholders has not objected to same rather been privy to it on account of hardship due to prevailing circumstances, the Appellant cannot be permitted to cry foul. It is not a case of alleged material irregularity in the Corporate Insolvency Resolution Process which is in final stages with the approved Resolution Plan being under implementation. Outbreak of COVID-19 pandemic has slowed down the economic activity and operations have been adversely impacted. Viewed in that context some necessary changes in the agreed terms and extension of time for implementation would not be uncalled for. Be that as it may, the Appellant has no locus to maintain that the change in terms of the approved Resolution Plan in regard to extension of time for induction of upfront amount as also implementation of the Resolution Plan has jeopardized its legal rights qua consideration of its Resolution Plan which has been rejected.

3. There being no merit in this appeal, same is dismissed in *limine*.

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

**[Justice Anant Bijay Singh]
Member (Judicial)**

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

AR/g