

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

Company Appeal (AT) (Insolvency) No. 1642 of 2024

[Arising out of Order dated 02.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in IA No. 5826 of 2023 in C.P. (IB)/566(MB)/C-III/2022]

In the matter of:

Sai Balaji Facility

...Appellant

Vs.

**CA Ramchandra Dallaram Choudhary,
RP for Adico Forge Pvt. Ltd. & Ors.**

...Respondents

For Appellant: Ms. Gayatri Singh, Sr. Advocate

For Respondents: Mr. Kunal Kanungo, Advocate Mr. Abhirup Dasgupta, Mr. Rohan Agarwal, Mr. Akshat Khetan, Advocates for R-3/SRA

J U D G M E N T
(19th September, 2024)

Ashok Bhushan, J.

This Appeal by an Operational Creditor has been filed challenging the order dated 02.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III, in I.A No. 5826 of 2023. By the impugned order, the Adjudicating Authority has allowed the aforesaid IA filed by the Resolution Professional under Section 30(6) and Section 31 of the IBC seeking approval of the Resolution Plan.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. CIRP against the Corporate Debtor commenced on 23.06.2023. In pursuance of publication issued by the IRP, Appellant submitted its claim on 19.10.2023 in Form B for dues amounting to Rs.16,77,047/-. Appellant's claim was duly admitted by the Resolution Professional. In the CIRP, the Resolution Plan was submitted which was approved by the CoC in its 9th meeting with majority of 92.87% vote share. The Resolution Professional filed an application IA No.5826 of 2023 seeking approval of the Resolution Plan. The Adjudicating Authority by impugned order dated 02.05.2024 approved the Resolution Plan, aggrieved by which order, this Appeal has been filed.

3. We have heard Counsel for the Appellant as well as Counsel appearing for the Resolution Professional as well as Counsel for the SRA.

4. Counsel for the Appellant submits that although the operational claim of the Appellant was admitted in full, however, in the Resolution Plan, the payment proposed to the Operational Creditor is nil. It is submitted that all stakeholders' claims have to be considered in the Resolution Plan and no payment has been proposed to the Operational Creditor. Resolution Plan did not require any approval.

5. Counsel for the Respondents refuting the submissions of the Counsel for the Appellant submits that the liquidation value which would have been available to the Appellant in event the Corporate Debtor was liquidated, Appellant would have received nil amount in the distribution mechanism, hence, Resolution Plan was fully compliant and no error has been

committed by the Adjudicating Authority in approving the Resolution Plan. It is submitted that no case has been made out by the Appellant that Resolution Plan is violative of Section 30(2) of the IBC.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. There is no dispute that Appellant claim as operational creditor for an amount of Rs.16,77,047/- was admitted. Apart from Appellant there were other operational creditors. Total claim of operational creditor which was admitted in the CIRP was Rs.9,54,85,539/- and the plan proposes 'nil' payment to all the operational creditors, even the payment towards government dues was also proposed as nil. As per Section 30(2) of the IBC, operational creditor is entitled an amount not less than the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53. Section 30 (2) (b) is as follows:-

“30. Submission of resolution plan.- 2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the

resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.--For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-- For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor--

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]"

8. The statutory protection granted to the operational creditor in Section 30(2)(b) is that they shall not be paid any amount less than as mentioned in

(i) and (ii). Appellant case in the Appeal is not that the Appellant was entitled for any payment as per Section 30(2)(b) which has been denied in the Resolution Plan. The issue raised by the Appellant is fully covered by the recent judgment of this Tribunal in Company Appeal (AT) (Insolvency) No.1063 of 2022- **“Rajat Metaal Polychem Pvt. Ltd. vs. Mr. Neeraj Bhatia and Anr.”** where this Tribunal while dealing with the similar claim of the operational creditors has laid down following:-

“15. It is true that Operational Creditor’s claim was submitted for an amount of ₹1,54,64,926/- but as per the provisions of Section 30(2)(b), it cannot be said that in the facts of the present case there is any non-compliance of Section 30(2)(b) in proposing NIL amount to the Operational Creditor. It is true that non-payment of any payment of Operational Creditor is harsh but the law as stand today is to that effect. We may notice that this Tribunal in the matter of ‘Damodar Valley Corporation’ Vs. ‘Dimension Steel and Alloys Pvt. Ltd. & Ors.’ in Comp. App. (AT) (Ins.) No. 62/2022, has observed that time has come when it should be examined by the Government to find out as to whether there are any grounds for considering change in the Legislative Scheme towards the payment to the Operational Creditor which also consists of the Government dues. In Paragraph 31 of the Judgment following has been observed:

“31.We are consistently receiving the Plans, where Operational Creditors either not paid any amount towards their claim or paid negligible amount, sometime even less than 1%. In the present case, the Operational Creditors have been given only

miniscule of their admitted claim to the extent of only 0.19%. As the law stand today, no exception can be taken to such Plans, which provide payment to Operational Creditor in accordance with Section 30(2)(b) of the Code. However, the time has come when it should be examined by the Government and the Board to find out as to whether there are any grounds for considering change in the legislative scheme towards the payment to the Operational Creditors, which also consist of Government dues and other statutory dues. We make it clear that our observation is only to facilitate the Government and other competent Authority to consider this issue and take decision, so as to the objective of equitable and fair distribution can be fulfilled with clear parameters to guide the all concerned to arrive at the fair and equitable distribution.”

16. It is true that Operational Creditors as the law stands now are denied any payment when the amount payable to them in the event of Liquidation is NIL, but till the Legislature comes to the aid of the claim of Operational Creditor by amending the Legislative Scheme hands of the Courts are tied to take any other view in the matter.

17. In view of the aforesaid, we do not find any error in the Order of the Adjudicating Authority, approving the Resolution Plan which was approved by the CoC. There is no merit in the Appeal.

The Appeal is dismissed.”

9. The above judgment of this Tribunal fully covers the issue raised in this Appeal. Following the above judgment, we dismiss this Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi
Anjali**



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