

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

Comp. App. (AT) (Ins.) No. 371 of 2022

In the matter of:

Sharavan Kumar Vishnoi

....Appellant

Vs.

Upma Jaiswal & Ors.

...Respondents

For Appellant:

Mr. Abhishek Anand, Mr. A.K. Jain, Mr. Karan Kohli, Advocates.

For Respondents:

**Mr. Ramji Srinivasan, Senior Advocate with Mr. Pranaynath Jha, Ms. Simran Soni, Mr. Mahesh Kumar, Mr. Shubham Gupta, Advocates for R1.
Mr. GP Madaan, Mr. Aditya Madaan, Ms. Aishwarya Adlakha, Advocates for R3**

Comp. App. (AT) (Ins.) No. 374 of 2022

In the matter of:

Kumari Durga Memorial Sansthan

....Appellant

Vs.

Shravan Kumar Vishnoi & Ors.

...Respondents

For Appellant:

Mr. GP Madaan, Mr. Aditya Madaan, Ms. Aishwarya Adlakha, Advocates

For Respondents:

Mr. Ramji Srinivasan, Senior Advocate with Mr. Pranaynath Jha, Ms. Simran Soni, Mr. Mahesh Kumar, Mr. Shubham Gupta, Advocates for R3.

ORDER

(Through Virtual Mode)

05.04.2022: These two Appeals have been filed against the same order dated 02.03.2022 passed by the Adjudicating Authority (National Company

Law Tribunal), Allahabad Bench, Prayagraj, in IA No. 59 of 2022. I.A No. 59 of 2022 was filed by one Ms. Upma Jaiswal seeking a direction to the Resolution Professional to place the Resolution Plan submitted by the Appellant before the Committee of Creditors (CoC). The Adjudicating Authority after hearing the parties issued following directions in para 5:

“5. When these provisions are read together along with the judgment of the Hon’ble Supreme Court cited above, what appears is that the RP is a facilitator and not a gatekeeper. In these circumstances, the ends of justice would be met if we direct the RP to place all Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law before the CoC which should take a considered view in the matter, if not already done.”

2. The Appeal being Company Appeal (AT) (Ins.) No.371 of 2022 has been filed by the Resolution Professional challenging the order. It is submitted by the Learned Counsel for the Appellant that according to the opinion obtained by the Resolution Professional, the plan submitted by Ms. Upma Jaiswal was not eligible as per Section 29A of the Code. It is submitted that due to the said difficulty, the Resolution Professional is unable to place the plan before the CoC for approval.

3. Learned Counsel for the Appellant in Company Appeal (AT) (Ins.) No.374 of 2022 submits that in fact the plan which was submitted by the Appellant was considered by the CoC and CoC has in fact asked the Appellant to increase its plan value which it had done. It is submitted that at

this stage, the Adjudicating Authority ought not to have directed the plan of Ms. Upma Jaiswal to be considered by the CoC.

4. Shri Ramji Srinivasan, Learned Senior Counsel for the Respondent i.e. Resolution Applicant- Ms. Upma Jaiswal refuting the submissions of the Learned Counsel for the Appellant contends that the question as to whether the plan submitted by Ms. Upma Jaiswal is to be rejected or approved is a question which need to be decided by the CoC. The Resolution Professional at best can give his opinion with regard to eligibility of the Resolution Applicant whether it conforms to Section 29A and other provisions of the Code or not. It is submitted that the Resolution Professional of its own cannot withhold any plan and refuse to submit the same before the CoC.

5. We have considered the submissions of the Counsel for the Appellant and Respondents.

6. Both the parties have placed reliance on the judgment of the Hon'ble Supreme Court in **"Arcelormittal India Private Limited vs. Satish Kumar Gupta- (2019) 2 SCC 1"** wherein in Paras 78, 79, 80 & 81 the Hon'ble Supreme Court observed and held as follows:

"78. What has now to be determined is whether any challenge can be made at various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a Resolution Professional under Section 30(2). At this stage is it open to the concerned resolution applicant to challenge the Resolution Professional's rejection? It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable. In Commissioner of Income Tax, Delhi v. S. Teja Singh, [1959] Supp. 1 S.C.R. 394, this Court said, at page 403:

“We must now refer to an aspect of the question, which strongly reinforces the conclusion stated above. On the construction contended for by the respondent, S.18- A(9)(b) would become wholly nugatory, as ss.22(1) and 22(2) can have no application to advance estimates to be furnished under s.18-A(3), and if we accede to this contention, we must hold that though the legislature enacted s.18-A(9)(b) with the very object of bringing the failure to send estimates under s.18-A(3) within the operation of s.28, it signally failed to achieve its object. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, “ut res magis valeat quam pereat”. Vide Curtis v. Stovin [1889] 22 Q.B.D.513 and in particular the following observations of Fry, L. J., at page 519:

“The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect”.

Vide also Craies on Statute Law, p. 90 and Maxwell on The Interpretation of Statutes, Tenth Edn., pp. 236-237. “A statute is designed”, observed Lord Dunedin in Whitney v. Commissioners of Inland Revenue [1925] 10 Tax Cas.88, 110, “to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable”.

79. *Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional*

may only invite fresh resolution plans if no other resolution plan has passed muster.

80. However, it must not be forgotten that a Resolution Professional is only to “examine” and “confirm” that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his *prima facie* opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to “decide” whether the resolution plan does or does not contravene the provisions of law. Regulation 36A of the CIRP Regulations specifically provides as follows:-

“36-A. (8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-

(a) the provisions of clause (h) of sub-section (2) of section 25;

(b) the applicable provisions of section 29A, and

(c) other requirements, as specified in the invitation for expression of interest.

(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).

(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.

(12) On considering the objections received under subregulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.”

81. *Thus, the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order. Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law.*

82. *Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place.”*

7. The ratio of the judgment of the Hon'ble Supreme Court as is culled out from paras 80 & 81 is that the Resolution Professional is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the Resolution Professional to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not the Resolution Professional can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not. In para 5 of the impugned order, we have noticed that the direction has been issued to the Resolution Professional to place all the Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law. The aforesaid direction clearly indicates that the Resolution Professional is free to submit his opinion with regard to contravention or otherwise of the various provisions of law. The aforesaid observations take care of the duties and

responsibilities of the Resolution Professional. The Resolution Professional can give his opinion with regard to each Resolution Applicants and further steps are to be taken for the CoC as per the direction issued by the Adjudicating Authority.

8. At this stage, we are of the view that, various issues regarding ineligibility or eligibility need not be gone into in this Appeal. It is only after the CoC's decision if any question arise regarding eligibility that can be gone into before the Adjudicating Authority in accordance with the law.

9. With these observations, both the Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Shreesha Merla]
Member (Technical)**

Anjali/nn