

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

Company Appeal (AT) (Insolvency) No. 205 of 2023

IN THE MATTER OF:

Pani Logistics

Through its sole proprietor, Kiran M. Jain

...Appellant

Versus

Vikas G. Jain & Ors.

Respondents

Present:

For Appellant: Mrs. Lakshmy Iyengar, Sr. Advocate with Ms. Vishakha Gupta and Mr. Kshitij Maheshwari, Advocates.

For Respondents: Mr. Sumit Shukla, Advocate for R-1 (RP).

Mr. Krishnendu Datta, Sr. Advocate with Mr. Mohd. Shahan Ulla, Mr. Nikunj Mahajan and Mr. Krishan Kumar, Advocates for R-3.

ORDER

03.04.2023: Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This Appeal has been filed challenging order dated 06.02.2023 by which order the Adjudicating Authority has by separate order has disposed of I.A. No.314/(AHM)/2021 as well as I.A. No.431/(AHM)/2021. I.A. No. 314/(AHM)/2021 was filed by the Resolution Professional for approval of the Resolution Plan submitted by the Successful Resolution Applicant – MTC Business Pvt. Ltd. I.A. No. 431/(AHM)/2021 was filed by the Appellant raising objections to the Resolution Plan which too was rejected by separate order of the same date i.e. 06.02.2023. The Appellant before us is an Unsecured Financial Creditor who has vote share in the CoC of 0.264%. The plan has been approved by the CoC with more than 99% vote

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share. The objection which were raised by the Appellant before the Adjudicating Authority has been noticed in the order dated 06.02.2023 passed in I.A. No. 431/(AHM)/2021. Para 2 of the order notes objections, which are to the following effect:

“2. Applicant in present IA has made out case for rejection of the Resolution Plan mainly on the ground stated in para 22 to 27 of the IA No.431 of 2021, which are reproduced below for benoalent reference:

“22. As per the provisions of the Code and the Regulations made thereunder, a Resolution Plan must fulfill the following criteria for it to be viable;

- (a) The Resolution Plan must be fair and equitable in terms of settlement of claims of the Operational Creditors vis-as-vis the Financial Creditor.*
- (b) The Resolution Applicant must provide for performance security in accordance with Regulation 36B(4A) of the Regulations, 2016 and the same should be sufficient to ensure the performance of obligations by the Resolution Applicant according to the approved plan.*
- (c) The Resolution Professional is obligated to submit evidence of receipt of performance security (as required under Regulations 36B (4A) along with the certificate in Form H of the Schedule.*

23. Contrary to the requirements mentioned above, the Resolution Plan submitted by the Respondent No.3 does not ensure balancing the interest of all the

stakeholders and is contrary to Section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016. The Section 30(2)(b) of the Code requires that the Operational Creditors be paid at least the liquidation value and be treated fairly, Contrary to this, the Resolution Plan approved by the Committee of Creditors of the Corporate Debtor does not treat the operational creditors equitably and fairly as required by the mandate of the Code, 2016.

- 24. The Resolution Plan undermines the interest of the Operational Creditors. The Resolution Plan provides for payment of Rs.365.85 Crores to the secured financial creditors as against the admitted claim of Rs.1696.82 crore, while the application against the Resolution Professional for having rejected the claims are still pending before this Tribunal in I.A. No.457, 458, 507, 508 of 2020. The claim of the secured financial creditors agreed upon by the Respondent No.3 to be paid is equivalent to 21.56%*
- 25. Contrary to the aforementioned settlement, the claims of the operational creditors is unjustly paid under the Resolution Plan and in contravention to the Code and the Regulations, 2016. As against the admitted claim of Rs.114.7 Crores, only Rs.0.19 Crores is approved by the Committee of Creditors to be paid as per the Resolution Plan to the Operational Creditors. This is equivalent to approximately 0.096% of the admitted claims of the Operational Creditors other than the statutory dues.*

Category	Admitted Claim	Payment as per Plan	Percentage of Admitted Claim paid in Resolution Plan
<i>Financial Creditors</i>	<i>Rs.1696.82 Crore</i>	<i>Rs.365.85 Crores</i>	<i>21.56%</i>
<i>Operational Creditors</i>	<i>Rs.114.7 crores</i>	<i>Rs.0.19 Crores</i>	<i>0.0969%</i>

26. *The Regulations stipulate that the performance security be provided by the Resolution Applicant pursuant to approval of the plan by the CoC. The Respondent No. 3 failed to provide sufficient performance security. As per the Resolution Plan, the Respondent No.3 had agreed to provide merely 10 crore as performance security in the form of Bank Guarantee and the same is insufficient as against the sanction of Rs.808 Crores involved in the Resolution Plan.*

27. *Additionally, the Respondent No. 1. Resolution Professional has failed to produce evidence of receipt of performance security as required by Regulation 39 (4) of the Regulations, 2016. In fact the LA filed before this Hon'ble Tribunal seeking approval of Resolution Plan states that performance security provided. However, only certificate in Form- H is filed and no evidence of performance security is provided.”*

2. Learned counsel for the Appellant challenging the order submits that the objections with regard to partial rejection of the claim of the Appellant and

other creditors being pending before the Adjudicating Authority, the plan ought not to have been approved. It is further submitted that there has been several material have come in to light which indicate that the Asset Reconstruction Company is a fraudulent company which is involved in several illegal activities. An additional affidavit has been filed by the Appellant bringing on record Income Tax raid and several newspaper articles and press release issued by Ministry of Finance dated 15.12.2021. It is submitted that a fraudulent company should not be allowed to take over the Corporate Debtor.

3. The submission of the learned counsel for the Appellant has been refuted by learned counsel for the Successful Resolution Applicant as well as the Resolution Professional. It is submitted that in the resolution process there were two resolution applicants. M/s Vedanta Ltd., who has also filed resolution plan, raised objection to the approval of plan of Successful Resolution Applicant before the Adjudicating Authority, which objection has been separately dealt with. It is submitted that one of the objection raised by M/s Vedanta Ltd. was with regard to conflict of interest between the Successful Resolution Applicant and the Financial Creditors, which was dealt and rejected by the Adjudicating Authority.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. The commercial wisdom of the Committee of Creditors in approval of a resolution plan is to be given due regard is the settled law of the Hon'ble

Supreme Court in **“Essar Steel India Ltd. Committee of Creditors vs. Satish Kumar Gupta”**. Approval of Resolution Plan by the Adjudicating Authority can be questioned on a limited ground that plan is violative of any statutory provision including provision of Section 30 Sub-section (2) of the I&B Code.

6. One of the submission which has been raised by learned counsel for the Appellant is that very limited amount has been paid to the Appellant and other creditors that comes to 0.0969% of the admitted claim.

7. Present is not a case that it is contended that payment to the other creditors/ Operational Creditors is less than the liquidation value. The allocation in the plan to the creditors can be questioned when the plan value earmarked for them is less than the liquidation value. Mere allocation of meagre amount cannot be a ground to question the resolution plan.

8. It is also submitted by learned counsel for the Appellant that several cases against the ‘Rare Asset Reconstruction Ltd.’ are pending including Income Tax raid.

9. Be that as it may. The law will take its own course. On these grounds, we are unable to interfere with the order approving the Resolution Plan. As far as, applications regarding rejection of claim which are pending, learned counsel for the Respondent has pointed out that the same has been dealt with in the order of the Adjudicating Authority in Para 39(iv), where relief and concessions have been noticed at page 65 of the paper book. Para 39(iv) is as follows:

“iv. The reliefs granted in (i) (ii) & (iii) supra are subject to outcome of interlocutory applications regarding claims presently pending before the Adjudicating Authority and as per undertaking given by the Resolution Professional in para 8 of affidavit filed on 08.01.2023 in IA 431/AHM/2021, such creditors will be entitled to pro rata amount as per their respective category in accordance with the Resolution Plan, from the escrow account maintained for this purpose, as per said undertaking.”

10. The above direction of the Adjudicating Authority takes care of the pending applications and it has been submitted that if, the Adjudicating Authority passes any order, enhancing/ accepting any claim in addition to one which has been approved in the plan, the same shall be given on pro rata basis. In view of the above, the said ground of the Appellant regarding pending applications is also taken care of. We do not find any reason to entertain this Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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