

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1071 of 2020

IN THE MATTER OF:

**Prole Hotels Pvt. Ltd. Through Erstwhile Director
Sh. Vijay Kumar Kashinath Fadke**

....Appellant

Vs

The Greater Bombay Co-operative Bank Ltd. & Ors.

....Respondents

Present:

**For Appellant: Mr. Praveen Jha and Mr. Mrinal Kumar Sharma,
Advocates.**

**For Respondents: Mr. Shantanu Singh and Mr. Rishabh Shah,
Advocates for R-1.**

Mr. Vijay Lulla, Advocate for RP.

Mr. Akash Sinha, Advocate for RA.

Ms. Anju Bhansali, Advocate for CoC.

ORDER
(Through Virtual Mode)

16.12.2020: Resolution Plan in the Corporate Insolvency Resolution Process of the Corporate Debtor – ‘Parole Hotels Pvt. Ltd.’ came to be approved in terms of order dated 6th October, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench subject to submission of additional affidavit for acceptance of the modifications in the Resolution Plan and other information in terms of the directions in the order. The impugned order has been assailed by the Corporate Debtor through one Vijay Kumar Kashinath Fadke, claiming to be the erstwhile Director of the Corporate Debtor primarily

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on the ground that the Appellant was prepared to pay the outstanding dues and the Resolution Process culminating in the passing of impugned order is in consequence of connivance between the Resolution Professional and the Financial Creditor.

2. Heard learned counsel for the Appellant. We find that the Committee of Creditors has approved the Resolution Plan with 100% voting which has been approved by the Adjudicating Authority subject to the requirement of filing of an additional affidavit as indicated above. We are told by learned counsel representing Committee of Creditors that the condition has been met and the additional affidavit has been filed.

3. The decision in regard to approval of Committee of Creditors being a business decision based on commercial wisdom of the Committee of Creditors is not amenable to judicial review. This is the settled position of law. That apart, the endeavours on the part of learned counsel for the Appellant to demonstrate that it has made efforts to settle the dues of the Financial Creditor, with reference to the documents on record, fail to impress this Appellate Tribunal as there is ample proof on record to demonstrate that the Adjudicating Authority was approached at the time when the Corporate Insolvency Resolution Process was at an advanced stage and it had permitted the Appellant to take immediate steps for settlement of the claim of the Financial Creditor. This is clearly borne out by

the order passed by the Adjudicating Authority on 27th June, 2019 which forms Annexure-10 at page 116 of the appeal paper book. The Resolution Plan came to be approved more than three months thereafter. There is nothing demonstrable on record that the Appellant has taken any steps to settle the claim of the Financial Creditor, though Financial Creditor had expressed its willingness to withdraw the cases filed by it against the Appellant/Corporate Debtor provided its claim was satisfied and payment was made as per Recovery Certificate. This emerges from the communication forming page 120 of the appeal paper book.

4. In this factual background, we find that no ground across the ambit of Section 61(3) of I&B Code demonstrating any material irregularity in the Corporate Insolvency Resolution Process is made out for interference. There is no merit in this appeal. The same deserves to be dismissed. Accordingly, the appeal is dismissed. However, there shall be no order as to costs.

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

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

**[V. P. Singh]
Member (Technical)**

am/gc