

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 207-208 of 2020

[Arising out of Orders dated 30th January, 2020 passed by the National Company Law Tribunal, Cuttack Bench in I. A. No. 157/CTB/2019 and I.A. No. 175/CTB/2019 connected with TP No. 42/CTB/2019 arising out of CP(IB) No. 251/KB/2017]

IN THE MATTER OF:

1. Rai Bahadur Shree Ram and Company Pvt. Ltd.,

Shreeram Bhawan, Tumsar, Dist. Bhandara
Maharashtra – 441912.

Through: Mr. Madhav Saraf,
Authorised Representative.

2. Ram Kishan Saraf,

191-A, Ekta Marg,
Western Avenue,
Sainik Farms,
New Delhi – 110 062.

...Appellants

Vs

**1. Mr. Bhuvan Madan, Resolution Professional of
Ferro Alloys Corporation Ltd.**

Price Waterhouse Coopers Professional Services LLP,
Building No. 10, 17th Floor, Tower – C,
DLF Cyber City, Gurugram – 122 002.

Also at:

A-103, Ashok Vihar – Phase 3
(Behind Laxmi Bai College)
Delhi – 110 052.

**2. Committee of Creditors of Ferro Alloys
Corporation Ltd. Through REC Ltd.,**

Having its registered office at:
Core 4, Scope Complex,
7 Lodi Road, New Delhi – 110 003.

3. REC Ltd.

Having its registered office at:
Core 4, Scope Complex,
7 Lodi Road, New Delhi – 110 003.

4. Sterlite Power Transmission Ltd.

Having its registered office at:
4th Floor, Godrej Millennium
9 Koregaon Road, Pune,
Maharashtra – 411 001.

5. Ferro Alloys Corporation Ltd.

Having its registered office at:
DP Nagar, Randia,
Bhadrak, Odisha – 756135.
Through – Resolution Professional.

....Respondents

Present:

For Appellants: Mr. Rajeev Ranjan, Senior Advocate with Mr. S. C. Das, Mr. Saurav, Mr. N. S. Ahluwalia and Mr. Deepak Chawla, Mr. Adhish Sharma, Mr. Neeraj and Ms. Aliya Durafshan, Advocates.

For Respondents: Mr. Krishnan Venugopal, Senior Advocate with Mr. Saurav Pander and Ms. Charu Bansal, Advocates for Resolution Professional.

Mr. Ramji Srinivasan, Senior Advocate with Mr. Karan Kanwal, Mr. Kunal Godhwani and Mr. Rishab Kapoor, Advocates for Respondent No. 3.

Mr. Amit S. Chaddha and Ms. Pratiksha Mishra, Advocates for Successful Resolution Application.

J U D G M E N T

BANSI LAL BHAT, J.

Resolution Plan submitted by Respondent No. 4 'Sterlite Power Transmission Ltd.' (SPTL) was approved by 95.15% of voting share of the Committee of Creditors and same was further approved by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench, Cuttack by deciding in terms of order dated 30th January, 2020 passed in I.A. No. 157/CTB/2019 arising out of CP (IB) No. 251/KB/2017. Appellant's application being I.A. No. 175/CTB/2019 arising out of CP (IB) No. 251/KB/2017 to direct the Committee of Creditors to consider the settlement proposal came to be rejected by virtue of another order passed on same date viz. 30th January, 2020, regard being had to approval of Resolution Plan of SPTL coupled with the fact that the settlement proposal emanating from the Appellants has been rejected by the Committee of Creditors with requisite majority leaving no scope for the Adjudicating Authority to direct reconsideration of settlement proposal. Being aggrieved of both orders passed by the Adjudicating Authority on 30th January, 2020, the Appellants have filed the instant appeal.

2. It is contended before us that the Adjudicating Authority while passing the impugned orders, failed to consider whether the approved Resolution Plan conformed with Section 30 of Insolvency and Bankruptcy Code, 2016

(for short 'I&B Code') and its objective i.e. maximization of value of assets of the Corporate Debtor. The impugned orders have also been assailed on the ground of being non-speaking cryptic orders without application of mind.

3. Having heard learned counsel for the parties, we are of the considered opinion that the Committee of Creditors, Acting on the basis of evaluation of Proposed Resolution Plan and assessment made by their team of experts, expressed their opinion after due deliberations in CoC Meetings through voting as per voting share which is a collective business decision. The commercial wisdom of the Financial Creditors individually or their collective decision is beyond the pale of challenge before the Adjudicating Authority and the same has been made non-justiciable. This is the dictum of Hon'ble Apex Court in '**K. Sashidhar vs. Indian Overseas Bank**', (2019) 12 SCC 150: (2019) 4 SCC (Civ) 222: 2019 SCC OnLine SC 257. Dealing with the scope of an appeal under Section 61(1) of the I&B Code, the Hon'ble Apex Court noticed that apart from other grounds the appeal could be instituted against an order approving a Resolution Plan limited to six grounds noticed therein including that the approved Resolution Plan is in the contravention in the provisions of any law for the time being in force or that there has been any material irregularity in exercise of powers by the Resolution Professional during the Corporate Insolvency Resolution Process. Thus, it is clear that the jurisdiction bestowed upon this Appellate Tribunal too is expressly circumscribed. The examination in challenge to the approved Resolution Plan by this Tribunal is limited to matters other than enquiry into the

business decision based on commercial wisdom of the Committee of Creditors. The limited judicial review in appeal does not extend to oversee and question the business decision of the majority of Committee of Creditors and the Committee of Creditors cannot be directed to reverse its business decision or reconsider a settlement proposal that has been rejected with requisite majority.

4. In **‘Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Others’**, Civil Appeal No.4242 of 2019 vide judgment dated 22nd January 2020, the Hon’ble Apex Court held that the Appellate Tribunal ought to cede ground to the commercial wisdom of the Creditors rather than assess the Resolution Plan on the basis of quantitative analysis.

5. The dictum of law laid down in **‘K. Sashidhar vs. Indian Overseas Bank’ (Supra)** stands reiterated in **‘Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others’**, (2019) SCC OnLine SC 1478 wherein the Hon’ble Apex Court observed as under:-

“48. Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the

parameters of such review having been clearly laid down in K. Sashidhar (supra).

49. The argument, though attractive at the first blush, but if accepted, would require us to re-write the provisions of the I&B Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground - to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of “approval” of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional,

the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the “commercial decision” of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history, there is contraindication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.

51. Suffice it to observe that in the I&B Code and the regulations framed thereunder as applicable in October 2017, there was no need for the dissenting financial creditors to record reasons for disapproving or rejecting a resolution plan. Further, as aforementioned, there is no provision in the I&B Code which empowers the adjudicating authority (NCLT) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by the CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the

resolution plan, under Section 30(4) of the I&B Code. At best, the Adjudicating Authority (NCLT) may cause an enquiry into the “approved” resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors - be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the Appellate Authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial creditors albeit by requisite percent of voting share to approve the resolution plan; and in the process authorize the adjudicating authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of jurisdiction vested in the adjudicating authority under Section 31 of the I&B Code dealing with approval of the resolution plan.”

6. Thus, it is the settled proposition of law that the commercial wisdom of the Committee of Creditors in approving or rejecting a resolution plan is essentially based on a business decision, which involves evaluation of the Resolution Plan based on its feasibility besides the Committee of Creditors being fully informed about the viability of the Corporate Debtor. Such commercial wisdom of the Committee of Creditors with requisite voting majority is non-justiciable and the discretion on Adjudicating Authority is circumscribed to scrutiny of Resolution Plan as approved by the requisite majority voting share of the Financial Creditors. The enquiry postulated under Section 31 of the I&B Code is limited to matters covered under Section 30(2) of the I&B Code when the Resolution Plan does not confirm the stated conditions. Therefore, the Appellants cannot question the commercial wisdom of the Committee of Creditors in rejecting the settlement proposal emanating from the Appellants, with the requisite majority and in approving the Resolution Plan of SPTL. No material irregularity in Corporate Insolvency Resolution Process before the Resolution Professional has been demonstrated. Merely because the Adjudicating Authority has declined to direct reconsideration of the already rejected settlement proposal of Appellants does not impinge upon the legality and conformity of the approved Resolution Plan with the conditions stated in Section 32 of the I&B Code.

7. Viewed thus, we find that the impugned orders have been passed on proper application of mind and conform to the proposition of law as

propounded by their lordships of the Hon'ble Apex Court in '**K. Sashidhar vs. Indian Overseas Bank**' (*Supra*) and '**Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others**' (*Supra*). We find no merit in these appeals and same are dismissed. However, there shall be no orders as to costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

12th March, 2020

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