

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 327 of 2017

IN THE MATTER OF:

Darshak Enterprise Pvt. Ltd.

...Appellant

Versus

Chhaparia Industries Pvt. Ltd. & Ors.

...Respondents

Company Appeal (AT) (Insolvency) No. 328 of 2017

IN THE MATTER OF:

Symphony Ltd.

...Appellant

Versus

Chhaparia Industries Pvt. Ltd. & Ors.

...Respondents

Present:

**For Appellant(s) : Mr. Mayank Mishra and Mr. Ritunjay Gupta,
 Advocates**

For 1st Respondent: Ms. Jyoti Singh, Advocate

O R D E R

02.05.2018 Both the appeals have been preferred by the appellant(s) ('Operational Creditor') against the order dated 29th September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in M.A. No. 349/2017 in C.P. No. 23/I&BP/NCLT/MB/MAH/2017 whereby and whereunder the Adjudicating Authority approved the 'Resolution Plan' with the following observations:

“8. *On perusal of this Resolution Plan, this Bench being satisfied*

with the valuation ascertained by the Registered Valuer appointed by the Insolvency Resolution professional in respect of the properties of the Corporate Debtor for all valuations are contemporaneous with the sale transactions happening in the vicinity where the Corporate Debtor is located, whereby this Bench hereby approved the Resolution Plan filed by the Insolvency Resolution professional.

9. *Accordingly, MA No. 349/2017 is hereby allowed by vacating the moratorium already granted at the time of the admission of the Company Petition 23/2017 and extension given on 23.8.2017.*
10. *In view of the approval given to the Resolution Plan filed by the Insolvency Resolution Professional, this Bench hereby discharges the Insolvency Resolution Professional from the duties of the Insolvency Resolution process by submitting all the records maintained by the Insolvency Resolution professional before Insolvency and Bankruptcy Board of India, as prescribed under law.”*

2. Learned counsel appearing on behalf of the appellants submitted that the ‘Resolution Plan’ has not taken care of the total outstanding dues of the appellants. Out of the total dues 5% of the principal amount has been allowed in favour of the appellant –Darshak Enterprise Private Limited. In the case of Symphony Ltd., 5% of principal amount has been allowed with certain rider. It

is submitted that the appellant – Symphony Ltd. has already filed a winding up proceedings before the High Court of Mumbai, which is pending, in the meantime, the proceeding under Section 10 preferred by the ‘Corporate Applicant’ has been admitted and the impugned order was passed.

3. Learned counsel appearing on behalf of the 1st respondent – ‘Corporate Debtor’ submitted that the appellants had failed to file their respective claim within the prescribed period. In spite of the same, their claims have been taken care in the ‘Resolution Plan’ based on the books of accounts of the ‘Corporate Debtor.’

4. Insofar as the appellant – Darshak Enterprise Private Limited is concerned the following plea has been taken by the respondent:

*“I say that the Resolution Plan, which was approved by the ‘Hon’ble National Company Law Tribunal (**Adjudicating Authority**) vide an order dated September 29, 2017, inter alia, provides for the settlement of the dues of the operational creditors of Respondent No. 1. I further state that despite the non-receipt of the Appellant’s claim before the approval of the resolution plan by the committee of creditors (**CoC**) of the Corporate Debtor, i.e. the maximum time stipulated under regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**), the dues of the Appellant were taken into account by the Respondent*

*No.2/the Resolution professional from the books of accounts of the Corporate Debtor. I state that as per the books of accounts of the Corporate Debtor, the outstanding dues of the Appellant aggregated to an amount of Rs.26,57,271/-(Rupees Twenty Six Lakh Fifty Seven Thousand Two Hundred and Seventy One only) i.e. the principal outstanding. As the dues are Non-current Dues, as per the terms of the Resolution Plan, the Appellant was entitled to be settled at 5% of its total outstanding within thirty days of the approval of the Resolution Plan. Accordingly, admittedly a cheque dated October 28, 2017 for Rs. 1,32,864/- (5% of the Appellant's total outstanding dues against the Respondent No. 1) was issued in favour of the Appellant, which was encashed by the Appellant. Annexed hereto and marked as **Exhibit 'A'** are the relevant extracts from the Resolution Plan.”*

5. As regard the Symphony Limited, the respondent has taken the following stand:

“4. I further state that despite the non-receipt of the Appellant's claim before the approval of the resolution plan by the committee of creditors (CoC) of the Corporate Debtor, i.e. the maximum time stipulated under regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

(CIRP Regulations), the dues of the Appellant were taken into account by the Respondent No. 2/the Resolution Professional from the books of accounts of the Corporate Debtor. I state that as per the books of accounts of the Corporate Debtor, the contingent liability of the Respondent No. 1 towards the Appellant is Rs.67,76,000/-.

5. *I stay that the Resolution Plan inter alia provides for “Contingent Operational Dues/Operational Dues which are the subject matter of litigation”. The Resolution Plan takes note that the Respondent No. 1 has disputed certain claims made against it, in respect of which legal proceedings have been initiated against the Respondent No. 1. It further notes that the Respondent No. 1 may incur liability subject to the outcome of the legal proceedings. It ought to be noted that several proceedings are pending adjudication between the Appellant and the Respondent No. 1, and the Respondent No. 1 has contested all the claims made by the Appellant before every forum. On account of the pending litigation between the parties, the Appellant’s claims fall under the category of “contingent claims” as per the Resolution Plan where monies might become payable to the Appellant upon adjudication of the disputes between the Appellant and the Respondent No. 1.*

*Hereto annexed and marked as **Exhibit 'A'** are relevant extract from the Resolution Plan.*

6. *As is evident from all that is stated above, the Appellant's purported claim, on account of the pending litigation between the parties, falls under the category of **"Operational dues which are subject matter of litigation"**. Accordingly, any payment purportedly due to the Appellant is subject to the final adjudication of the claims. I say that should the contingency arise where it is finally adjudicated/held that monies are due from the Respondent No. 1 to the Appellant, then the same shall be paid in accordance with the terms of the Resolution Plan."*

6. In these cases as we find that in spite of receipt of their claim much beyond the period prescribed under the I & B Code, the 'Resolution Plan' has taken care of the claim of the appellants, we are not inclined to interfere with the order passed by the Adjudicating Authority. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor or 'Secured Creditor' or 'Unsecured Creditor' can be decided by the Committee of Creditors based on facts and circumstances of each case. In absence of any discrimination or perverse decision, it is not open to the Adjudicating Authority or this Appellate Tribunal to modify the plan.

7. We find no merit in the appeal. They are dismissed Insofar the winding up proceedings or other litigations pending before any Court of law, we are not

expressing any opinion as the Court of competent jurisdiction will decide the same. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk