

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**COMPANY APPEAL (AT)(INSOLVENCY) NO.717 OF 2019**

**In the matter of:**

Pr Commissioner of Income Tax-6, Chennai

Appellant

Vs

Star Agro Marine Exports Pvt Ltd & Ors

Respondent

Mr Vibhooti Malhotra and Mr. Shailendera Singh, Advocates for Appellant.  
Mr. Rajiv S Roy, Mr Avrojyoti Chatterjee, Mr Abhijit S Roy, Mr. Udhyan  
Agarwal, Advocates for R3.

Mr. Abhishek Anand, Mr. Anant A Pangi, Mr. Tushar Tyagi, MR Nakul  
Sachdeva, Mr. Aakarshan Sahay, Advocates for Respondent/RP.

**ORDER**

**11.12.2019-** The appeal has been preferred, after delay of 99 days, against the order dated 11<sup>th</sup> March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai whereby resolution plan submitted by M/s Seelam Infra Developers Pvt Ltd, Respondent No.4 has been approved. This sole ground has been taken that the appellant/operational creditor is entitled for statutory dues of Rs. 55 crores and have been distributed only a sum of Rs.19 lakhs i.e. .34% has been allowed by the COC.

2. Learned counsel for appellant submitted that there is material irregularity committed by the Resolution Professional. However, we find that the aforesaid fact was never agitated by appellant.

3. Admittedly the distribution of upfront amount as offered by the successful Resolution Applicant was made by the COC. However, it has also been approved by the Adjudicating Authority.

4. In the case of ***“Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs Satish Kumar Gupta and ors-Civil Appeal Nos 8766-67 of 2019 etc”*** the Hon’ble Supreme Court observed that the NCLT/NCLAT cannot interfere with the distribution made by the COC

which is based on commercial wisdom and is not covered by any ground under sub-section (3) of Section 61 of I&B Code. In view of this fact, the question of distribution of the amount amongst financial creditors and operational creditors is within the domain of COC and this Appellate Tribunal has not been provided with power to look into the validity of the resolution plan and as per Section 61(3) we cannot reverse the decision of the COC so far it relates to the distribution of amount.

5. The appellant has pleaded in the appeal that the impugned order was received on 3.4.2019 by the office of Tax Recovery Officer in the office of appellant enclosed with letter dated 18.3.2019. On the said pleading we find that this appeal is barred by limitation. The appeal has been filed after 15 days beyond 30 days of preferring the appeal as prescribed under sub-section (2) of Section 61 of I&B Code.

6. For both reasons for delay and on merit this Appellate Tribunal is not inclined to interfere with the impugned order. The appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member (Judicial)

(Justice Venugopal M)  
Member(Judicial)

Bm/gc