

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 936 of 2019

IN THE MATTER OF:

Sreeram E. Techno School Pvt. Ltd.

...Appellant

Versus

**Beans and More Hospitality Pvt. Ltd.
Through R.P. Prabhjit Singh Soni**

...Respondent

Present:

For Appellant :

**Mr. Rakesh Kumar and Mr. Anjenya Mishra,
Advocates**

ORDER

11.09.2019 ‘Shree Siyaram Automations Private Limited’ (now ‘Shreeram E Techno School Private Limited’ – Appellant herein) moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, ‘the I&B Code’), pursuant to which ‘Corporate Insolvency Resolution Process’ was initiated against ‘Beans and More Hospitality Pvt. Limited (Corporate Debtor). In the said case, the ‘resolution plan’ was submitted by one Mr. Abhay Jain, ‘Promoter’, was considered by the ‘Committee of Creditors’ in its meeting on 12th November, 2018 by voting of 74.19% of voting share discussing all aspects of approved ‘resolution plan’. The Adjudicating Authority taken into consideration all the facts and the plan being in consonance of Section 30(2) of the ‘I&B Code’ approved the said plan by impugned order dated 19th July, 2019. Relevant portion of which reads as :

“13. It is stated in the CA that the Resolution Plan envisages that the Financial Creditors are

proposed to be paid against the full and final settlement of their entire financial/ operational debt against the Corporate Debtor including contingent liabilities), as tabulated on page 16 of the typed set of the CA.

<i>S. No.</i>	<i>Particulars</i>	<i>Amount o/s as per claims admitted As on CIRP date INR</i>	<i>Amount o/s in financial statement but no claim received/ admitted INR</i>	<i>Proposed liability post INR</i>	<i>Remarks</i>
1.	<i>CIRP Cost</i>			33,45,000	<i>To be paid on Priority</i>
2.	<i>Workmen & Employee</i>	<i>NIL</i>	<i>Provisions</i>	5,00,000	<i>Full amount to be paid within 6 Months</i>
3.	<i>Employee benefit (dues)</i>	<i>NIL</i>	<i>If Any</i>	<i>Full Amount</i>	<i>Amount to be carried forward and pay as and when become payable</i>
4.	<i>Financial Creditor (unrelated)</i>	198105341	198105341	198105341	<i>Full amount within 12 months or earlier if possible</i>
5.	<i>Financial Creditor (related)</i>	675457977	675457977	675457977	<i>Full amount within 24 months or earlier if possible</i>
6.	<i>Government liabilities</i>	<i>NIL</i>	<i>If any</i>	<i>Full Amount</i>	<i>Despite no claims were submitted, RA proposes to make full</i>

					<i>payment of Govt. dues</i>
7.	<i>Government Dues</i>	<i>NIL</i>	<i>Dues if Any</i>		<i>Government dues. No notice received if any amount pending it will be paid.</i>
8.	<i>Operational Creditors</i>	<i>NIL</i>	<i>Amount Due</i>	<i>Pending amount</i>	<i>Although these claims were not submitted and verified by the RP thus under IBC Code no payment is due to them. Will be paid 50% if raised pending bill</i>
	<i>Total</i>	<i>877408318</i>		<i>877408318</i>	

14. *It is also submitted that the Resolution Plan envisages the continuation of the Corporate Debtor as a “going concern” and previous management will run the company to make it viable so that society and other stakeholder will gain and keeping company as going concern and continuity of the company will contribute significantly to the society and government by putting the natural resources to best use and contributing significant direct and indirect*

employment and income generation opportunities in the region and will wait for the decision of the court and acquisition.”

2. While considering the same, the Adjudicating Authority also noticed that the ‘Promoter’ issued an affidavit to the effect that they are not ineligible under Section 29A of the I&B Code.

3. The Appellant, one of the ‘dissenting financial creditor’ has challenged the impugned order dated 19th July, 2019 alleging different infirmities and irregularities.

4. Learned counsel appearing on behalf of the Appellant submitted that the ‘resolution applicant’ was the erstwhile ‘Promoter’ and, therefore, is the relevant eligible party under Section 29A of the I&B Code. However, such submission cannot be accepted as it has no bar for the ‘Promoter’ to file ‘resolution application’, even if otherwise not eligible in terms of Section 29A. There is nothing on record to suggest that the ‘Corporate Debtor’ is an undischarged insolvent or wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulations Act, 1949 or at the time of submission of ‘resolution plan’ has an account, classified as ‘Non-Performing Asset’ (NPA) in accordance with the guidelines of the Reserve Bank of India or that the ‘Promoter’ or its Directors or has been convicted for any offence punishable with imprisonment or is disqualified to act as a Director under the Companies Act, 2013 or was prohibited by ‘Securities and Exchange Board of India’ (SEBI) or made any preferential transaction , an undervalued transaction or granted extortionate credit transaction or made fraudulent transaction etc.

5. Next, it was contended that the 'Corporate Debtor' is not a going concern. However a 'resolution plan' cannot be rejected on such ground if the resolution applicant can show the feasibility to run the company in future. The question of viability, feasibility and other conditions as prescribed by the 'Insolvency and Bankruptcy Board of India (for short, 'the **Board**) of a 'Corporate Debtor' can be looked into by the 'Committee of Creditors' which has expertise in the financial field. Such issue of viability, feasibility and other conditions of the 'Corporate Debtor' cannot be looked into by the Adjudicating Authority or by this Appellate Tribunal. The 'Committee of Creditors' having gone through the financial aspects, including the viability, feasibility and other conditions of the 'Resolution Plan' and having approved the plan with 74.19% of voting share, this Appellate Tribunal is not inclined to decide such issue.

6. It was next submitted that the Regulation 38 has not been complied with. However, we have noticed that the 'Committee of Creditors' has noticed all the aspects and merely because the Appellant is a dissenting financial creditor, no interference is called for in absence of any illegality.

7. We have also noticed that the 'successful resolution applicant' proposed to pay 100% dues of all the 'financial creditor' with interest including the Appellant. In this background also, no interference is called for.

In absence of any merit, the appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)