

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1058 of 2020

IN THE MATTER OF:

Berger Becker Coatings Pvt. Ltd.

....Appellant

Vs

**Committee of Creditors of
Asian Colour Coated Ispat Ltd.**

....Respondent

Present:

**For Appellant: Ms. Preeti Nair and Mr. Samrat Sengupta,
Advocates.**

For Respondent: Mr. Ankur Mittal, Advocate for R-1.

**Mr. Pooja Mahajan, Ms. Mohana Nijhawan and Mr.
Savar Mahajan, Advocates for Erstwhile RP.**

O R D E R
(Through Virtual Mode)

14.12.2020: For reasons stated in the application and the directions passed in *suo moto* jurisdiction extending/ exempting the limitation w.e.f. 15 March, 2020, we find that a case for condonation of 41 days delay in filing the instant appeal is made out. The delay is accordingly condoned. I. A. No. 2848 of 2020 stands disposed off.

I. A. No. 2849 filed on behalf of the appellant seeking exemption is disposed off with direction to the Appellant to file legible copies of the documents mentioned in the application within two weeks.

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Grievance of the Appellant – an Operational Creditor as regards approval of the Resolution Plan in respect of Corporate Debtor by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench, in terms of the impugned order dated 19th October, 2020 is that the Appellant has not been treated fairly in so far as satisfaction of its claim / distribution is concerned.

Ms. Preeti Nair, Advocate representing the Appellant submits that the Appellant has supplied goods even during Corporate Insolvency Resolution Process in difficult times arising out of COVID pandemic but in adopting the distribution mechanism it has not been given a fair deal. Relying upon the judgment of Hon'ble Apex Court in "Swiss Ribbons, it is submitted that the lofty objective of the I&B Code viz. ease of doing business would be frustrated, more so when the Operational Creditor like the Appellant is discriminated against by allotting a share even below the liquidation value.

Issue notice upon Respondent. Notice on behalf of Respondent is waived and accepted by Shri Ankur Mittal, Advocate. He may file his reply affidavit within two weeks. Rejoinder, if any, may be filed by the Appellant within two weeks thereof.

At this stage, we find Ms. Pooja Mahajan, Advocate has appeared on behalf of the erstwhile Resolution Professional who with the approval of Resolution Plan and after implementation of the successful Resolution Plan and dissolution of Monitoring Committee is not holding the position as Resolution Professional now. In view of this factual position while we are of the opinion that erstwhile Resolution Professional is not a necessary party, the Successful Resolution Applicant being a necessary party is required to be arrayed as Party Respondent No. 2. We accordingly direct arraying of the Successful Resolution Applicant as Party Respondent No. 2. Learned counsel for the Appellant may carry out necessary amendment in the Cause Title and at appropriate place in the body of the Memo of Appeal within three days and file requisites, email address and mobile phone number of the newly added Respondent No.2 within the same time. Notice may be served on Respondent No. 2 through any mode available.

List the matter 'for admission (after notice)' on **22nd January, 2021.**

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

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

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