

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Company Appeal (AT) (Insolvency) No. 128 of 2019 &
I.A. No. 675 of 2019**

IN THE MATTER OF:

Padmanabhan Venkatesh

...Appellant

Vs

Shri V. Venkatachalam & Ors.

....Respondents

Present:

For Appellant: Mr. Amit Singh Chadha, Sr. Advocate with Mr. John Mathew, Mr. G. Ramakrishna Prasad, Mr. Aditya Shankar, Mr. Prateek K Som, Mr. Soumabho Ghose and Mr. P. Kartik and Mr. S. P. Singh Chawla, Advocates.

For Respondents: Mr. Abhinav Vasisht and Mr. Rajiv Nayar, Sr. Advocates with Mr. Venancio D'Costa, Ms. Astha, Mr. Rohit Jolly, Mr. Ajay Bhargava and Ms. Wamika Trehan, Advocates for R-4.

Mr. Ramji Srinivasan, Sr. Advocate with Mr. Verghese Thomas, Ms. Pallavi Kumar, Mr. Raghav Sabharwal and Ms. Sylona Mohapatra, Advocates.

Mr. Rajive Mehra, Senior Advocate with Mr. Raghav Sabharwal, Advocate for DB International (Asia) Ltd.)

**Mr. Arun Kathpalia, Sr. Advocate for RP.
Mr. Aditya Verma and Mr. Shrey Patnaik,
Advocates for R-1.**

With

Company Appeal (AT) (Insolvency) No. 247 of 2019

IN THE MATTER OF:

Indian Bank

...Appellant

Vs

Shri V. Venkatachalam,

**Resolution Professional,
M/s. United Seamless Tubular Pvt. Ltd. & Ors.**

...Respondents

Present:

For Appellant: Mr. T. N. Durga Prasad, Advocate.

**For Respondents: Mr. Abhinav Vasisht, Sr. Advocate with
Mr. Venancio D'Costa and Ms. Astha, Advocates
for Successful Resolution Applicant.**

WITH

Company Appeal (AT) (Insolvency) No. 220 of 2019

IN THE MATTER OF:

Maharashtra Seamless Ltd.

...Appellant

Vs

Shri Padmanabhan Venkatesh & Ors.

...Respondents

Present:

**For Appellant: Mr. Rajiv Nayar and Mr. Abhinav Vasisht, Sr.
Advocates with Mr. Venancio D'Costa, Ms. Astha,
Mr. Rohit Jolly, Mr. Ajay Bhargava, Mr. Aseem
Chaturvedi and Ms. Wamika Trehan, Advocates.**

**For Respondents: Mr. Amit Singh Chadha, Sr. Advocate with
Mr. John Mathew and Mr. G. Ramakrishna Prasad,
Advocates for R-1.**

**Mr. Aditya Shankar, Mr. Prateek Som and Mr. S.
P. Singh Chawla, Advocates for R-2.**

Mr. Arun Kathpalia, Sr. Advocate for RP.

J U D G M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J.****In Company Appeal (AT) (Insol.) Nos. 128 & 247 of 2019**

Two appeals have been preferred one by 'Mr. Padmanabhan Venkatesh'- (Promoter) and another by 'Indian Bank'- ('Financial Creditor') against the order dated 21st January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad. By the impugned order, the 'Resolution Plan' submitted by the Respondent- 'M/s. Maharashtra Seamless Ltd.'- ('Resolution Applicant') has been approved.

2. Other appeal has been preferred by 'M/s. Maharashtra Seamless Ltd.' ('Resolution Applicant') against the part of the order dated 28th February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, whereby the Adjudicating Authority refused to direct the Superintendent of Police and Collector to take over the charge of the 'Corporate Debtor'.

3. The 'Corporate Insolvency Resolution Process' was initiated against 'M/s. United Seamless Tubulaar Private Limited'- ('Corporate Debtor'). In the said 'Resolution Process', out of four Expression of Interest along with the 'Resolution Plan' were received by the 'Committee of Creditors'.

4. The 'Resolution Plan' submitted by 'M/s. Maharashtra Seamless Ltd.'- ('Resolution Applicant') was approved by the 'Committee of Creditors' on 20th April, 2018 in its 8th Meeting with majority by 87.10% of voting shares. However, in spite of the approval of the plan, due to objections filed by various parties, the Adjudicating Authority did not approve the plan.

5. At that stage, 'Resolution Applicant'- ('M/s. Maharashtra Seamless Ltd.') preferred an appeal wherein this Appellate Tribunal by order dated 22nd October, 2018, directed the Adjudicating Authority to pass an order under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) uninfluenced by the order impugned in the said case.

6. The 'Resolution Professional' took plea that the 'Resolution Plan' submitted by 'M/s. Maharashtra Seamless Ltd.'- ('Resolution Applicant') meets all the requirements of the 'I&B Code' and 'Corporate Insolvency Resolution Process Regulations, 2016' and does not contravene any of the provisions of law.

7. A number of parties raised objections against the 'Resolution Plan' submitted by 'M/s. Maharashtra Seamless Ltd.'- ('Resolution Applicant') on different grounds. One of the grounds was taken that the 'Resolution Plan' is below the liquidation value and the fair value should be adopted before approval of the 'Resolution Plan'. The other ground taken by the objectors was that 'M/s. Maharashtra Seamless Ltd.'- ('Resolution Applicant') is not eligible to submit the 'Resolution Plan'.

8. Learned counsel appearing on behalf of the Appellant- Mr. Padmanabhan Venkatesh submitted that the liquidation value submitted by the 'Resolution Professional' and accepted by the 'Committee of Creditors' in its meeting dated 16th October, 2018 for approval of the 'Resolution Plan' was Rs. 597 Crores. Therefore, according to him, the plan proposed to upfront amount of Rs. 477 Crores is less than the liquidation value of Rs. 597.54 Crores and the same cannot be accepted.

9. It was submitted that the 'Resolution Plan' is against the object of the 'I&B Code' as it does not reflect the maximization the value of the assets of the 'Corporate Debtor' nor balances the other stakeholders.

10. It was further submitted that infusion of funds that is sought to be advanced for the first time by the 'Resolution Applicant' do not form part of the 'Resolution Plan' and, therefore, cannot be taken into consideration as it does not maximize the value of the assets of the 'Corporate Debtor'.

11. According to the Appellant- Mr. Padmanabhan Venkatesh, 'M/s. Maharashtra Seamless Ltd.' wants to buy an asset of Rs. 597.54 Crores for a sum of Rs.477 Crores resulting in a windfall.

12. Learned counsel appearing on behalf of the 'Indian Bank'- ('Financial Creditor') submitted that the 'Corporate Debtor' was declared as NPA by the 'Indian Bank'. The total debt of 'United Seamless Tubulaar Private Limited'- ('Corporate Debtor') was Rs. 1897 Crores of which Rs. 1652 Crores was in the

form of Term Loans from 'Deutsche Bank, Singapore' and the working capital borrowings of Rs. 245 Crore from the Appellant- 'Indian Bank'.

13. Further, according to learned counsel for the 'Indian Bank', one 'UMW' has provided Corporate Guarantee to 'Deutsche Bank, Singapore' as collateral to the term loans (Rs. 1652 Crore) apart from first charge on the entire fixed assets of the company. The Corporate Guarantee given by 'UMW' to 'Deutsche Bank' is outside India. On the other hand, the 'Indian Bank' has first charge on the current assets of the company for the working capital limits.

14. The grievance of the Appellant- 'Indian Bank' is that the claim of the Bank has not been properly decided and the 'Resolution Plan' did not take care of the report of the valuers.

15. It was brought to the notice of the Adjudicating Authority that the 'Resolution Professional' had taken plea that there were substantial differences in the two estimates of values, methodologies and principles between the two valuers appointed by the 'Interim Resolution Professional' and therefore, the 'Resolution Professional' appointed a third valuer whose valuation was accepted.

16. Apart from raising the question of voting rights, the stand of the Appellant- 'Indian Bank' is that the 'Resolution Plan' is in contravention of the provisions of Section 30(2) of the 'I&B Code' and the plan do not conform the maximization of assets of the 'Corporate Debtor' or the 'Financial Creditors' and the other stakeholders.

17. It was further submitted that the 'Resolution Professional' has in exercise of its powers acted with material irregularity in contravention of the provisions under Regulations 35 & 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016.

18. Learned counsel for the 'Indian Bank' also submitted that the 'Resolution Professional' declined to accept the revised offer of 'M/s. Area Projects Consultants Pvt. Ltd.', one of the 'Resolution Applicants', whose revised offer was Rs. 490 Crores which is more than the offer given by 'M/s. Maharashtra Seamless Ltd.' and profitable.

19. 'DB International (Asia) Limited' has taken plea that it is the largest member of the 'Committee of Creditors' with 73.40% voting shares. It is opposed the prayer made by Mr. Padmanabhan Venkatesh on the ground that the ex-Director has no *locus standi*.

20. So far as the appeal preferred by 'Indian Bank' is concerned, it is submitted that the 'Indian Bank' is the dissenting 'Financial Creditor' which has expressed its dissent for the 'Resolution Plan' of 'M/s. Maharashtra Seamless Ltd.' of Rs. 477 Crores.

21. According to 'DB International (Asia) Limited', the acknowledged debt of creditors is itself over Rs. 2060 Crores. Consequently, whether the liquidation value is Rs. 432 Crores or Rs. 597 Crores is academic and moot since the objection relating to maximization of value is entire frivolous.

22. Learned counsel appearing on behalf of 'M/s. Maharashtra Seamless Ltd.'- ('Resolution Applicant') submitted that the liquidation value of the 'Corporate Debtor' is of no relevance whatsoever at the stage of Resolution. According to him, Section 53 of the 'I&B Code' will be applicable only once the 'Corporate Debtor' goes into liquidation. Reliance has been placed on the decision of this Appellate Tribunal in **“Central Bank of India vs. Resolution Professional of the Sirpur Paper Mills Ltd. & Ors.— Company Appeal (AT) (Insolvency) No. 526 of 2018”**.

23. It was also submitted that the financial exposure in the matter i.e. the 'Committee of Creditors' having already approved the plan with 87.10% voting shares which is much more than the requisite majority 66% required under Section 30(4), has accepted the offer of Rs. 477 Crores of the 'Successful Resolution Applicant' (4th Respondent).

24. It was submitted that actually the total exposure of the 'Successful Resolution Applicant' is around Rs.657.50 Crores although Rs. 477 Crores is upfront amount. In addition to that Rs. 180.50 Crores which would be infused directly in the 'Corporate Debtor' by 'M/s. Maharashtra Seamless Ltd.'- (4th Respondent). Further, Rs. 57 Crores would be infused towards 25% margin money of working capital expenditure. Moreover, in fact, the total working capital Rs. 224 Crores, the balance to be taken as loan from Bank(s), which would also require Corporate Guarantees of the 4th Respondent.

25. It was further contended that the 'Corporate Debtor' plant has been lying closed for the last three years. Additionally, in all its operational life prior thereto, the 'Corporate Debtor' over a period of seven years could not produce even a total of 1,50,000 MT, which is supposed to be its production capacity of one year. Thus, it was only after due and in-depth consideration, including taking into account extensive further investments, which would mandatorily have to be made to get the 'Corporate Debtor' up and running, that the 'Successful Resolution Applicant' offered Rs. 477 Crores, which was payable within 30 days of the approval of the plan.

26. Therefore, according to counsel for 4th Respondent, the aforesaid infusion of funds by the 4th Respondent aggregating Rs.657.50 Crores is for the maximization of the assets of the 'Corporate Debtor'.

27. Learned Counsel for the 4th Respondent highlighted the factors which were considered by 4th Respondent while offering a fair value of Rs.477 Crores are as follows:

- a. Long distance from the sea port;
- b. Unfavourable location from the point of view from both market and raw material;
- c. Refurbishing cost of the plant, considering the fact that the plant is closed for the last three-four years;
- d. Infusion of further cost to bring the company back into business, and further increase its manufacturing capacity;

- e. Interest on the loan amounts of new lenders;
- f. Value of land at Nalgonda (which is approximately 100km away from Hyderabad);
- g. Condition of plant and machinery being shut for more than 3 years (needs immediate refurbishment and upgradation) and resolving technical limitations.

28. It was further submitted that almost a year has passed since the Plan was submitted. As such due to the shut-down, the plant and machinery must have further been deteriorated/depreciated by at least 25% of its value. Further, apart from the natural depreciation of the plant and machinery, Respondent No. 4 also fears that the plant is vulnerable to theft and vandalism since, it is in the hands of disgruntled management/miscreants, which may further affect the revival of the company and may result in unforeseen additional cost.

29. It was submitted that the claims received of the 'Operational Creditors' by the Respondent No. 1 were to the tune of Rs.2,26,70,153/-, whereas the claims verified were of Rs. 2,02,88,948/-. However, it was submitted that the 4th Respondent is willing to pay the verified 'Operational Creditors' at the same percentage as that of the 'Financial Creditors', i.e. 25%, which shall be paid within 30 days of the 'Successful Resolution Applicant' getting clear and unfettered possession of and rights to the 'Corporate Debtor'.

30. Further, according to learned counsel for the ‘Successful Resolution Applicant’, initially K. Vijay Bhaskar Reddy and P. Madhu were appointed as the valuers to determine the value of the ‘Corporate Debtor’, who valued it as Rs. 681 Crores and Rs. 513 Crores, respectively. However, Mr. K. Vijay Bhaskar Reddy admitted that he had prepared his valuation Report at the behest of ‘Indian Bank’, as noted categorically in the Report itself. Further, there being substantial difference in the two valuations, the ‘Committee of Creditors’, in its wisdom, chose to appoint a third valuer, ‘Duff and Phelps’, who valued the ‘Corporate Debtor’ at Rs. 352 Crores. In terms of Regulation 35(1)(c) of Insolvency Resolution Regulations, 2016, the ‘Resolution Professional’ and ‘Committee of Creditors’ rightly took into consideration the average of the two closest estimates of the values, i.e. the value of P. Madhu and ‘Duff & Phelps’, and concluded the Liquidation Value as Rs. 432.92 crores.

31. On hearing the parties and on perusal of the record, we find that there are seven ‘Financial Creditors’ and six ‘Operational Creditors’ of the ‘Corporate Debtor’, whose details as shown below:

“B. LIST OF DEBTS OF CORPORATE DEBTOR PREPARED BY RP:

List of Financial Creditors of United Seamless Tubulaar Private Limited (Page 191 of Appeal)

Sl. No	Name of Financial Creditor	Amount Claimed	Amount verified	Security Interest
1	DB International (Asia)Limited	1391,72,01,404	1391,72,01,404	1006,50,00,000
2	Deutsche Bank AG, Singapore	259,86,56,081	259,82,96,081	392,86,25,100
3	Indian Bank	245,76,95,828	244,58,20,661	195,00,00,000

4	UMW HoldingsBerhad	110,60,63,753	110,60,63,753	-
5	UMW India Ventures(L) Ltd	49,60,11,783	23,78,24,268	-
6	UMW Corporation SDN BHD	2,25,83,972	2,25,83,972	-
7	UMW Oilfield International(L) Ltd	47,31,912	-	-

List of Operational Creditors of United Seamless Tubulaar Private Limited (Page 192 of Appeal)

Sl. No	Name of Operational Creditor	Amount Claimed	Amount Verified
1	UMW Oilfield International (L) Ltd	2,09,22,456	1,79,44,354
2	SBI CAP Trustee Company Limited	6,90,000	6,90,000
3	UMW Holdings Berhad	2,49,710	-
4	UMW Petropipe (L) Ltd	7,229	-
5	M/s Asian Bearings & Tools Corporation	12,67,591	11,21,427
6	M/s Bearing Age	5,33,167	5,33,167

32. From the record, we find that Mr. K. Vijay Bhaskar Reddy and Mr. P. Madhu, who were appointed as the valuers to determine the value of the 'Corporate Debtor', valued it as Rs. 681 Crores and Rs. 513 Crores, respectively. However, Mr. K. Vijay Bhaskar Reddy admitted that he had prepared the valuation Report at the behest of 'Indian Bank'. A third Valuer, 'Duff and Phelps' who valued the 'Corporate Debtor' at Rs.352 Crores, therefore, the definite conclusion about the liquidation value of the 'Corporate Debtor' cannot be derived except by taking average of the three valuation.

33. In the 9th meeting of the 'Committee of Creditors' held on 16th October, 2018, in Agenda A3, the 'Committee of Creditors' noticed and recorded the liquidation value of the 'Corporate Debtor', relevant portion of which reads as follows:

*“**Agenda A3** – To record the views and suggestions expressed by the members of the suspended board, and to reconsider, approve and vote for a Resolution plan amongst the qualified resolution plans (which were already placed before CoC for approval in the Meeting of CoC dated 20th April 2018) in light of the revised liquidation value of the Corporate Debtor, in compliance with the directions of the Hon’ble National Company Law Tribunal, Hyderabad Bench vide order dated 28th September 2018 in IA No. 125 & 282 of 2018 in CP (IB) No. 49/7/HDB/2017.*

*“a) **The RP submitted to the CoC that in light of the Order of the Hon’ble NCLT the revised liquidation value of the Corporate Debtor is Rs. 597.54 Crores being the average of the valuation of Mr. K. Vijay Baskar Reddy and Mr. P. Madhu, and was taken on record by the CoC.**”*

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xxx

xxx

“d) The majority of the CoC was of the view that based on the above factors including the legal view and plain reading of the Order and directions of the Hon’ble NCLT, the existing qualified Resolution Plans that were placed for voting on 20th April 2018 were to be reconsidered in light of the new Liquidation Value voted upon again after obtaining the views of the suspended Board of Directors.”

“g) **The members of the COC proceeded to reconsider the qualified Resolution Plan as well as the plan submitted by MSL in view of the new liquidation value, as directed by the Hon’ble NCLT, Hyderabad and the evaluation matrix.** Members constituting majority of the CoC gave their reasons with respect to selecting M/s. Maharashtra Seamless Limited (“MSL”) as the successful Resolution Applicant.....”

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“k) Pursuant to the above discussion, RP called for voting on the qualified resolution plans (which were already placed before CoC for approval in the

Meeting of CoC dated 20th April 2018) in light of the revised liquidation value of the Corporate Debtor, in compliance with the directions of the Hon'ble National Company Law Tribunal, Hyderabad Bench vide order dated 28th September 2018 in IA No. 125 & 282 of 2018 in CP (IB) No. 47/7/HDB/2017. Ballot papers were circulated to the Members of CoC for voting.”

34. Therefore, it is clear that the ‘Committee of Creditors’ has also accepted the average of the liquidation value which comes to Rs. 597.54 Crores and on the basis of which the ‘Resolution Plan’ was considered. If the ‘Resolution Plan’ is considered, then it will be evident that 25% of the admitted dues of the ‘Financial Creditors’ have been allowed in the ‘Resolution Plan’. On the other hand, the ‘Operational Creditors’ have been discriminated. The liquidation value being Rs.597.54 Crores, the upfront payment suggested by the ‘Resolution Applicant’ being less i.e., Rs. 477 Crores, the payment to the ‘Operational Creditors’ is lower than the proportionate liquidation value, therefore, the ‘Resolution Plan’, as approved by the Adjudicating Authority is against Section 30(2) (b) of the ‘I&B Code’.

35. In “***Binani Industries Limited vs. Bank of Baroda & Anr.— Company Appeal(AT) (Insolvency) No. 82 of 2018 etc.***” this Appellate Tribunal taking

into consideration the viability and feasibility of the 'Resolution Plan', held that there cannot be any discrimination amongst the same set of group such as 'Financial Creditors' or 'Operational Creditors' and the 'Operational Creditors' must get roughly the same treatment as 'Financial Creditors', and if they are not, such plans are to be rejected or modified so that the 'Operational Creditor's' rights are safeguarded.

36. The Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.**— 2019 SCC OnLine SC 73" upheld the decision and held:

"71. The NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the committee of creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, on 05.10.2018,

Regulation 38 has been amended. Prior to the amendment, Regulation 38 read as follows:

“38. Mandatory contents of the resolution plan.— (1) *A resolution plan shall identify specific sources of funds that will be used to pay the—*

(a) insolvency resolution process costs and provide that the [insolvency resolution process costs, to the extent unpaid, will be paid] in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.”

Post amendment, Regulation 38 reads as follows:

“38. Mandatory contents of the resolution plan.— (1) *The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.*

(1-A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

xxx xxx xxx”

“72. *The aforesaid Regulation further strengthens the rights of operational creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors' rights, together with priority in payment over financial creditors.”*

37. In the present case, as we find that the ‘Operational Creditors’ have been discriminated and not given the same treatment as ‘Financial Creditors’, the impugned order approving the ‘Resolution Plan’ cannot be upheld.

38. The question arises for consideration is whether the order approving the ‘Resolution Plan’ should be set aside or the said plan should be substituted with certain modification to ensure successful Resolution?

39. It is open to the 'Committee of Creditors' to negotiate and ask the 'Resolution Applicant' to revise its plan, if it does not confront with the 'I&B Code'. Such power being vested with the 'Committee of Creditors', it is also open to the Adjudicating Authority and this Appellant Tribunal to ask the 'Resolution Applicant' to appropriate modification in the plan to make it in consonance with the provisions of the 'I&B Code' and thereby to substitute the plan with modification.

40. The object of the 'I&B Code' mandates the Resolution in a time bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of Government dues.

41. A 'Resolution Plan', therefore, must ensure not only maximization of value of assets of the 'Corporate Debtor' as also the value of assets of the 'Financial Creditors' and the 'Operational Creditors', thereby, balancing the interest of all the stakeholders.

42. In the present case, as we noticed that the upfront amount of Rs. 477 Crores is much less than the average liquidation value of Rs. 597.54 Crores, we find that the 'Resolution Applicant' wants to take the assets of the 'Corporate Debtor' at a lessor value than the value which may be received on liquidation.

43. Taking into consideration the aforesaid difficulty, 'M/s. Maharashtra Seamless Ltd.' ('Resolution Applicant') has agreed to infuse Rs.180.50 Crores directly in the 'Corporate Debtor' and also agreed that a sum of Rs. 57 Crores

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would be infused towards 25% margin money of working capital expenditure to maximize the value of the assets of the 'Corporate Debtor'.

44. However, no provision has been made to maximize the value of the 'Financial Creditors' and the 'Operational Creditors', so as to make it at par with minimum of the liquidation value i.e. Rs. 597.54 Crores.

45. 'M/s. Maharashtra Seamless Ltd.' ('Successful Resolution Applicant') has taken plea that out of verified claims of Rs.2,02,88,948/-, and is willing to pay the verified 'Operational Creditors' at the same percentage as that of the 'Financial Creditors' i.e. 25% which shall be paid within 30 days of the 'Successful Resolution Applicant' getting clear and unfettered possession of and rights to the 'Corporate Debtor'. The 25% of verified claim of Rs.2,02,88,948/- is Rs. 50,72,237/- approximately, therefore, even if such offer is accepted then it will be Rs.577,50,237/- i.e. Rs.578 Crores approximately, which is also much less than the liquidation value of Rs.597.54 Crores.

46. Taking into consideration the nature of the case, we are of the view that 'M/s. Maharashtra Seamless Ltd.' should increase upfront payment of Rs.477 Crores as proposed to the 'Financial Creditors', 'Operational Creditors' and other Creditors to Rs.597.54 Crores by paying additional Rs. 120.54 Crores approximately to make it at par with the average liquidation value of Rs.597.54 Crores. If the upfront amount is increased to Rs.597.54 Crores, the total amount should be distributed amongst the 'Financial Creditors' and the 'Operational Creditors' at same ratio as suggested. As per suggestion of the 'Resolution

Applicant’, the ‘Operational Creditors’ can be given same percentage of amount as allocated to the ‘Financial Creditors’.

47. If the ‘Resolution Applicant’ fails to undertake the payment of additional amount of Rs.120.54 Crores in addition to Rs.477 Crores thereby raising it to Rs.597.54 Crores (total) and deposit the amount in the Escrow Account within 30 days in such case, the impugned order of approval of the ‘Resolution Plan’ be treated to be set aside. Thereafter, the Adjudicating Authority will pass appropriate order in accordance with law.

In Company Appeal (AT) (Insol.) No. 220 of 2019

48. In Company Appeal (AT) (Insolvency) No. 220 of 2019, the plea taken by ‘M/s. Maharashtra Seamless Ltd.’ is that the Appellant on 15th February, 2019 issued a cheque for Rs.4,77,00,00,000/- drawn on HDFC Bank, Kailash Building, 26 Kasturba Gandhi Marg, New Delhi, to the ‘Resolution Professional’ for presenting it to the designated Escrow Agent, appointed in terms of the ‘Resolution Plan’, subject to giving an undertaking that the said funds would be utilized only after physical possession of the plant of the ‘Corporate Debtor’. However, the plant has not been handed over to the Appellant.

49. The ‘Resolution Professional’ accepted that Rs.477 Crores have been deposited by the ‘Resolution Applicant’ in the Escrow Account on 19th February, 2019 as per the approved ‘Resolution Plan’ and that it initiated the transfers from the Escrow Account as directed by the Adjudicating Authority by order dated 20th February, 2019. By the same order, the terms of the ‘Resolution Company Appeal (AT) (Insol.) Nos. 128, 247 & 220 of 2019

Professional' as implementing Agency was extended till 26th February, 2019. He visited the plant premises along with the current Directors of the 'Corporate Debtor' on 21st February, 2019 but Plant in-charge Mr. G. Narayana Reddy refused entry into the Plant, except for the 'Resolution Professional'.

50. It was submitted by the 'Resolution Professional' that the control of the 'Corporate Debtor' vests with the new Management of 'M/s. Maharashtra Seamless Ltd.' and order of the Adjudicating Authority approving the 'Resolution Plan' confers deemed change in management and ownership of the 'Corporate Debtor'.

51. The Director of the suspended Board opposed the prayer on the ground that the 'Resolution Professional' unlawfully changed the names of the Directors in the Registrar of Companies records. It was also submitted by the erstwhile Directors of the 'Corporate Debtor' that there is no provision in the 'I&B Code' that after passing order approving the 'Resolution Plan', the share transfer is deemed to be completed and new Directors are deemed to be appointed by the 'Resolution Applicant'.

52. Similar plea taken by the another erstwhile Director of the 'Corporate Debtor', who is 2nd Respondent, alleged that the Appellant- 'Resolution Applicant' is aware about the appeal pending before this Appellate Tribunal and under the guise of implementation of the 'Resolution Plan' tried to take possession of the factory premises and also took steps to add the names of the nominees of the Appellant as Directors and removed the names of the old Directors.

53. The Adjudicating Authority while passing order on 28th February, 2019 noticed that the officials of the 'Resolution Applicant' are not allowed to take over the 'Corporate Debtor' (Company) and its premises and observed that no direction can be given to the Superintendent of police and Collector because by the date of application, the Appellant- 'Resolution Applicant' has not deposited the bid amount, relevant of the which reads as follows:

“19. In the course of arguments, it is brought to my notice that officials of Resolution Applicant are not allowed to take Corporate Debtor Company and its premises and that there is no cooperation. I already made it clear Resolution Applicant can take steps in the course of implementation of the Resolution Plan to take control of the Corporate Debtor Company only after depositing the bid amount. It is an undisputed fact Resolution Applicant deposited the bid amount. Therefore, Applicant can initiate steps for implementing the Resolution Plan of the Corporate Debtor Company and all the concerned to extend cooperation to the Applicant and also provide access to the accounts in view of deposit of bid amount on or after filing of this Application.

20. *Even though appeal is preferred by Respondent No.5 to the Hon'ble NCLAT, there is no stay and the appeal is coming up for hearing on 07.03.2019. The implementation of this Plan is subject to the outcome of the Appeal. Therefore, a direction can be given to the concerned to extend cooperation to the Applicant herein in implating the Resolution Plan of the Corporate Debtor Company and it is only subject to the outcome of the Appeal which is pending before Hon'ble NCLAT.*

21. *A direction cannot be given to the Superintendent of Police and Collector because by the date of Application, the Applicant has not deposited the bid amount. Therefore, at the first instance direction can be given to all concerned of the Corporate Debtor Company to extend all cooperation to the Applicant. It is always open to the Applicant to approach the Tribunal for suitable direction, if so required."*

54. In the present case, we find that the 'Resolution Plan' is against the statement and object of the 'I&B Code' and, therefore, we have directed M/s. Maharashtra Seamless Limited' to modify the plan. Till the plan is modified, as ordered above, 'M/s. Maharashtra Seamless Limited' cannot take over the

'Corporate Debtor' without complying with the direction as given and recorded above.

55. However, it does not mean that the Promoters/ Ex-Directors will create hindrance in the matter of taking over the premises and plant of the 'Corporate Debtor' which for the present should be taken over by the 'Resolution Professional'. The Adjudicating Authority will direct the 'Resolution Professional' to take over the possession of the plant and offices and other premises and assets of the 'Corporate Debtor' to ensure that the assets remain intact till the plan is improved by the 'Resolution Applicant' in a manner as directed above. For taking over such possession, the Adjudicating Authority will direct the concerned District Collector and the Superintendent of Police of the District to provide necessary force to enable the 'Resolution Professional' to take over the premises and plant of the 'Corporate Debtor' and all the moveable and immoveable assets.

56. If the 'Resolution Applicant' modifies the 'Resolution Plan', as ordered above and deposits another sum of Rs.120.54 Crores within 30 days, by improving the plan, the Adjudicating Authority will allow 'M/s. Maharashtra Seamless Limited' to take over the possession of the 'Corporate Debtor' including its moveable and immoveable assets and the plant. On failure, the plan approved in favour of 'M/s. Maharashtra Seamless Ltd.' deemed to be set aside and the Adjudicating Authority will pass appropriate order in accordance with law.

57. All the appeals stand disposed of with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

NEW DELHI

8th April, 2019

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