

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) Nos. 459-460 of 2019**

**IN THE MATTER OF:**

Bank of India .... Appellant

Vs

Paramashakti Steels Ltd. & Anr. .... Respondents

**Present:**

**For Appellant: Mr. Harshit Garg, Advocate.**

**For Respondents: Mr. Sudipto Sarkar, Senior Advocate with Mr. Puneet Singh Bindra, Mr. Dhiraj, Mr. Sanampreet Singh, Ms. Simran and Mr. Akash Singh, Advocates for Respondent No.2.**

**Ms. Purti Marwaha Gupta and Mr. Arvind Kumar Gupta, Advocates for Respondent No.1.**

**Mr. P.V. Dinesh, Ms. Sindhu T.P., Mr. R.S. Lakshman and Mr. Ashwini Kumar Singh, Advocates for Respondent No.4.**

**ORDER**

**23.09.2019** In the ‘Resolution Process’ against Paramshakti Steels Limited, the ‘Resolution Professional’ filed application under sub-section (6) of Section 30 of the Insolvency and Bankruptcy Code, 2016 (for short the ‘I&B Code’) r/w Section 31 praying for *inter alia* approval of the ‘Resolution Plan’ submitted by Gopani Iron & Power (India) Private Limited (‘Resolution Applicant’). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, taking into consideration the ‘Resolution Plan, which was approved by the ‘Committee of Creditors’ with a majority of 75.95%, its feasibility and viability and in compliance of sub-section (2) of Section 30, approved the ‘Resolution Plan’ with certain modifications with the following observations: -

“44. *The resolution plan shall be approved subject to the Resolution Applicant filing the following undertakings:*

- (a) *Since no details regarding the persons or the entities that will constitute the Special Purpose Vehicle have been provided in the plan, the Bench directs the Resolution Applicant to file an undertaking stating that the persons or the entities constituting the SPV will include a person ineligible under Section 29A, IBC.*
  - (b) *We are extending the term of Resolution Plan as stipulated on page 280 of MA No.243/2018.*
  - (c) *Given amended Regulation 38(1), the Operational Creditors will be paid in priority to the Financial Creditors.*
45. *Since we have approved the Resolution Plan with certain modifications, it further requires the acceptance by the Resolution Applicant. Therefore we are of the considered opinion that the modified resolution plan may be sent to the Resolution Professional for seeking acceptance from the Resolution Applicant.”*

2. Subsequently, the ‘Resolution Professional’ filed affidavit in compliance of the order dated 14<sup>th</sup> February, 2019 and brought to the notice of the Adjudicating Authority that there were certain typographical errors. The Adjudicating Authority checked and found that there were certain typographical errors in Clause 44(a) and, therefore, the same was rectified by replacing the word “will include” with the word “will not include” and noticed the compliance report by order dated 21<sup>st</sup> February, 2019.

3. Both the aforesaid orders, approving of ‘Resolution Plan’ with modification dated 14<sup>th</sup> February, 2019 and order of typographical errors dated 21<sup>st</sup> February, 2019 are under challenge in this Appeal.

4. The learned Counsel for the Appellant submitted that the Appellant has not been provided same treatment. It is submitted that State Bank of India has been provided with 32.30% of its claim, whereas, the Bank of India (Appellant herein) has been provided with 23.96% of its claim and Union Bank of India has been provided with 11.88% of their claim.

5. Both the ‘Resolution Professional’ and the ‘Successful Resolution Applicant’ were allowed to file respective affidavits with charts on the basis of which the distribution amongst the ‘Financial Creditors’ and ‘Operational Creditors’ were made and if distribution was made in terms of Section 53(1) of the I&B Code. Pursuant to the said order, both of them have filed affidavit and the ‘Resolution Professional’ has given details in his affidavit, which reads as follows: -

“3. It may be noted that Liquidation Value computed on the basis of average of Valuation by two valuers is Rs.34.11 Crores. The net liquidation value available for distribution to secured creditors after deducting cost of CIRP of Rs.0.50 Crores is Rs.33.61 Crores.

4. The Amount of “Secured Creditors” is Rs.174.94 Crores whereas the available Liquidation Value is Rs.33.61 Crores which works out to Rs.19.21% of the secured creditors claim amount calculated on the proportion of their claims.

5. The distribution of the liquidation value amongst secured creditors would be as follows.

<i>Name of the Creditor</i>	<i>Amount Claimed</i>	<i>Amount Payable as per Liquidation Value</i>	<i>Percentage</i>
<i>Bank of India</i>	<i>75.20 Crores</i>	<i>Rs.14.45 Crores</i>	<i>19.21%</i>
<i>State Bank of India</i>	<i>25.54 Crores</i>	<i>Rs.4.91 Crores</i>	<i>19.21%</i>

<i>Union Bank of India</i>	<i>42.08 Crores</i>	<i>Rs.8.09 Crores</i>	<i>19.21%</i>
<i>Prudent ARC</i>	<i>32.12 Crores</i>	<i>Rs.6.17 Crores</i>	<i>19.21%</i>
	<i>174.94 Crores</i>	<i>33.61 Crores</i>	

6. *The total claim filed by “Unsecured” operational creditors of Rs.7.28 Crores who have been given only a symbolic amount of Rs.1 lakh.*
7. *I say that initially Respondent No.2 had proposed a payment plan of Rs.42.95 crores under the Resolution Plan, after reduction of corporate insolvency resolution process cost of Rs.50 lakhs, the net payment proposed was Rs.42.45 crores. The Chart of payout as per the Resolution Plan approved by financial creditors including the Appellant “Bank of India” is as follows:-*

<i>Name of the Creditor</i>	<i>Amount Claimed</i>	<i>Amount Payable as per Resolution Plan</i>	<i>Percentage Payable as per Resolution Plan</i>	
<i>Bank of India</i>	<i>75.20 Crores</i>	<i>18 Crores</i>	<i>23.94%</i>	<i>Upfront payment</i>
<i>State Bank of India</i>	<i>25.54 Crores</i>	<i>8.25 Crores</i>	<i>32.30%</i>	<i>Upfront payment</i>
<i>Union Bank of India</i>	<i>42.08 Crores</i>	<i>5 Crores</i>	<i>11.88%</i>	<i>Upfront payment</i>
<i>Prudent ARC</i>	<i>32.12 Crores</i>	<i>11.2 Crores</i>	<i>34.87%</i>	<i>Deferred payment over 8 years</i>
	<i>174.94 Crores</i>	<i>42.45 Crores</i>		

8. *This percentage of distribution Resolution Plan was approved by the Financial Creditor including the Appellant on the basis of their understanding about their respective value of securities.”*

6. Mr. Sudipto Sarkar, learned Senior Counsel appearing on behalf of Successful Resolution Applicant submits that he will deal with the amount in terms of the aforesaid percentage as approved by the Adjudicating Authority and reflected by the 'Resolution Professional'.

7. Mr. Sarkar also submits that the Bank of India also approved the 'Resolution Plan' and their percentage of heading has been counted for the purpose of counting the total voting share of 75.95%.

8. Having heard learned Counsel for the parties and also on perusal of the record, we find that the Appellant has been provided same treatment as provided to the similarly situated 'Financial Creditors' and therefore, no interference is called for in absence of any merit. The Appeal is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

Ash/GC