

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1645 of 2024

&

I.A. No. 5996 of 2024

(Arising out of Order dated 02.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in IA/5826/2023 in C.P. (IB)/566(MB)/C-III/2022)

IN THE MATTER OF:

Audico Forge Kamgar Sangathana,
Through its Authorized Signatory,
i.e., Mr. Santosh Nimbalkar,
Gat No.1088 & 1091, Sanaswadi,
Tal-Shirur, Pune-412208.

... Appellant

Versus

1. CA Ramchandra Dallaram Choudhary,
Resolution Professional, Adico Forge Pvt. Ltd.
9-B, Vardan Complex, NR. Vimal House,
Lakhudi Circle, Navrangpura,
Ahmedabad-380014.
 2. Committee of Creditors,
Through HDFC Bank Ltd.,
5th Floor, Tower B, Peninsula Business Park,
Lower Parel West, Mumbai 400013.
 3. Trinity India Forgetech Pvt. Ltd.
Being the Successful Resolution Applicant,
Gat No.1425/2&3,
Pune – Ahmednagar Road,
Near Enkei Wheels Shikrapur,
Tal: Shirur, Pune Maharashtra – 412208.
 4. Adico Forge Pvt. Ltd.,
Gat No.1088 & 1091
Sanaswadi, Tal-Shirur, Pune-412208
Represented by the Successful Resolution Applicant
Trinity India Forgetech Pvt. Ltd.
- ... Respondents

Present:

For Appellant : Ms. Gayatri Singh, Sr. Advocate with Hamza Lakdawala and Abiha Zaidi, Advocates.

**For Respondents : Mr. Abhirup Dasgupta, Mr. Jayashree Shukla Dasgupta, Advocates for R-3.
Mr. Kunal Kannungo, Advocate.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging order dated 02.05.2024 passed by National Company Law Tribunal, Mumbai Bench, Court-III in IA No.5826/2023 filed by the Resolution Professional (“**RP**”) for approval of the Resolution Plan. By the impugned order, the Adjudicating Authority allowed the application and approved the Resolution Plan. Aggrieved by which order this Appeal has been filed.

2. Brief facts necessary to be noticed for deciding the Appeal are:

- (i) On an application filed by Financial Creditor, Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor - M/s Adico Forge Pvt. Ltd. commenced vide order dated 23.06.2023.
- (ii) The Appellant – Union filed their claim with the Interim Resolution Professional (“**IRP**”). Total claim of the workers of Rs.8,19,47,918/- was admitted, which was communicated by the RP to the Appellant by email dated 06.12.2023.

- (iii) A Resolution Plan was submitted by the Respondent – Trinity India Forgetech Pvt. Ltd. (Respondent No.3 herein), which Plan came to be approved by the CoC in the 9th Meeting with 92.87% vote shares.
- (iv) IA No.5826 of 2023 was filed by the RP for approval of the Plan. The Adjudicating Authority by the impugned order has allowed the Application and approved the Resolution Plan. Aggrieved by which order, this Appeal has been filed.

- 3. Heard learned Counsel for the parties and perused the records.
- 4. The learned Counsel for the Appellant challenging the order contends that the Resolution Plan does not secure rights of the workmen, which include, but are not limited to continued employment after the Successful Resolution Applicant (“**SRA**”) took over the Corporate Debtor (“**CD**”) or retiral/ termination benefits. The learned Counsel for the Appellant also contended that the Resolution Plan also need to take care of the provident fund and gratuity to which the workers are entitled and the same have to be paid in full.
- 5. When the Appeal was heard on 10.09.2024, the learned Counsel for the SRA took time to file an affidavit on behalf of the SRA and the same was filed on 28.09.2024. The learned Counsel for the SRA submits that entire claim of the workmen, which was filed in the CIRP of the Corporate Debtor has been admitted. The learned Counsel for the SRA submits that the Resolution Plan provides for payment of provident fund and gratuity dues of the Corporate

Debtor at actuals. The Resolution Plan fully takes care of claim of the workmen and the dues of the workmen having been accepted in full and paid in full in the Resolution Plan, no grievance can be raised by the learned Counsel for the Appellant. The learned Counsel for the SRA in affidavit, which has been filed, in paragraphs 12, 13 and 14 has pleaded as follows:

- “12. I say that the approved Resolution Plan provides for payment to the Operational Creditors of the Corporate Debtor in accordance with Section 30(2) of the IBC. I further say that Clause 6.6 (iii) of the approved Resolution Plan provides for payment of Provident Fund and Gratuity dues of the Corporate Debtor at actuals. The relevant extract of the Resolution Plan showing Clause 6.6 (iii) is annexed herewith and marked as ANNEXURE - 1.
13. I say that as per the approved Resolution Plan, the Appellant is being paid the entire admitted claim amount of TNR 8,19,47,9 18/- (inclusive of Provident Fund and Gratuity), as recorded in Para 21 of the Impugned Order. As mentioned above, the sum of INR 8,19,47,918/- includes the Provident Fund and Gratuity claimed by the Appellant.
14. I say that in addition to the Provident Fund and Gratuity claimed by the Appellant, the books of the Corporate Debtor reflect a sum of INR 1,86,03,300/- as due and payable towards Provident Fund, which is also being paid in full under the approved Resolution Plan.”

6. The entire admitted claim in question for provident fund and gratuity having been paid in the Resolution Plan, we do not find any ground to interfere with the order of the Adjudicating Authority of approving the Resolution Plan.

7. The learned Counsel for the SRA has referred to Clause 6.6 (iii) of the Resolution Plan, in which with regard to provident fund and gratuity, following has been contemplated:

“6.6 Other Creditor and Dues/ Liabilities

(iii) ... Needless to state, the admitted provident fund and gratuity dues of the Corporate Debtor shall be paid at actuals, from the total financial commitment proposed under this Resolution Plan, and shall be paid, at actuals, as on date of approval of the Resolution Plan, in priority to the payments contemplated to be made to the Secured Financial Creditors.”

8. The jurisdiction of the NCLT and NCLAT while considering the Plan approved by the Committee of Creditors (“**CoC**”) has a limited jurisdiction. The remit of the jurisdiction is to examine as to whether the Plan is in compliance of Section 30, sub-section (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC**”). Judgment of the Hon’ble Supreme Court in ***K. Sashidhar vs. Indian Overseas Bank and Ors. – (2019) 12 SCC 150*** is referred in this context, where the Hon’ble Supreme Court laid down following in paragraph 52:

“52. ... The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new

approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.”

9. The gratuity and provident fund having been admitted in full and paid in full in the Resolution Plan, compliance of provisions of IBC are fully met. We, thus, are of the view that no error has been committed by the Adjudicating Authority in approving the Resolution Plan. There are no grounds to interfere

with the impugned order. The Appeal is dismissed. Pending IAs, if any, are also disposed of. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

29th October, 2024

Ashwani