

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 408 of 2024

(Arising out of Order dated 09.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-IV, in IA No.3908/2023 in C.P. (IB)/4002(MB)2019)

IN THE MATTER OF:

Gupta Textiles Through Its
Authorised Representative
Guhana Road, Near Sugar Mills,
Panipat, Haryana- 132013

... Appellant

Versus

1. Darshan Patel
31, Vrindavan, Nr Akshar Flat, Inquilab Society,
Gulbai Tekra, Ahmadabad, Gujarat 380015.
 2. Goblin India Limited Jointly With
M/S Khandwala Finstock Pvt Ltd
Successful Resolution Applicants
Camex House 1st Floorcommers Road
Navrangpura Na Ahmedabad, Gujarat 380009 In
Also At: 4th Floor, Kifs Corporate House (Khandwala House),
Nr. Land Mark Hotel, Nr. Neptune House,
Iskon-Ambli Road, Ahmadabad City GJ 380054
 3. Committee of Creditors of Television Home
Shopping Network Ltd.
Through Sole Member of Committee of Creditors
Centre for Economic & Social Inclusion Pvt. Ltd.
Shop No.11, Konark Tower,
Thane Ghantali Mandir Road,
Thane (W), Maharashtra India- 400 602
- ... Respondents

Present:

For Appellant: Mr. Nipun Gautam, Advocate.

For Respondents: Mr. Navin Pahwa, Sr. Advocate with Mr. Karan Valecha, Advocates for SRA/R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Operational Creditor has been filed challenging order dated 09.11.2023 passed by National Company Law Tribunal, Mumbai

Bench, Court-IV in IA No.3908 of 2023, by which order Resolution Plan submitted by Respondent No.2 has been approved.

2. Brief facts necessary for deciding this Appeal are:

- (i) Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor – Television Home Shopping Network Limited commenced on 03.03.2023. The Appellant, an Operational Creditor, filed its claim in Form-B on 25.04.2023 for amount of Rs.1,41,16,647/-. The claim of the Appellant was admitted to the extent of Rs. 1,24,73,281/-.
- (ii) The Financial Creditor – Centre for Economic and Social Inclusion Private Ltd. was the only Member of the Committee of Creditors (“**CoC**”), having 100% vote of share. Resolution Plan submitted by Respondent No.2, was approved by 100% vote share on 06.08.2023.
- (iii) The Resolution Professional (“**RP**”) submitted an Application being IA No.3908 of 2023 for approval of Resolution Plan. The Adjudicating Authority vide order dated 09.11.2023, approved the Resolution Plan. Aggrieved by which order, this Appeal has been filed.

In the Resolution Plan, which was submitted by Respondent No.2, total Plan amount was Rs.9.05 crores. Key features of the Resolution Plan have been noticed by Adjudicating Authority in paragraph 7 of the judgment, which is as follows:

“7. THE KEY FEATURES OF THE RESOLUTION PLAN ARE SUMMARIZED BELOW:

Resolution Applicant Proposed Amount	Admitted Amount	Amount (in Rs.)	Timeline	Section of Resolution Plan
Payment of CIRP cost	(at actual)	35,00,000	Within 25 days of NCLT Approval Date	Para 7.3.1
Payment to the Secured Financial Creditors	19,65,908	19,65,908	Within 25 days of NCLT Approval Date	Para 7.3.3
Payment to the Secured Financial Creditors	NA	NA	NA	NA
Payment to the Secured Creditors Operational Creditors – Government Departments	NA	NA	NA	NA
Payment towards the Operational Creditors (Government Departments) whose claims are contingent Total contingent claim as per claim register is Rs.377,37,53,914	4 (notional amount of Rs.1/- each statutory department)	15,00,000	With 25 Days of NCLT Approval Date	Para 7.3.4.1
Payment towards the Operational Creditors (Non-Government)	16,36,64,956	35,34,092 PLUS Option of Partly Paid redeemable	Within 25 Days of NCLT Approval Date	Para 7.3.4.2

		Preference Shares 1,60,00,000 Rs.8,00,00,000 PLUS Balance lying in CIRP bank account of Corporate Debtor as on Approval of this Plan by AA (other than the amount of EMD and Bank Guarantee as per this plan)		
TOTAL PLAN AMOUNT		9,05,00,000		

- (iv) The details of the Proposed Payment in the Resolution Plan for creditors has been captured by the Adjudicating Authority in paragraph-8 of the judgment, which is as follows:

“8. The details of the Proposed Payment in the Resolution Plan for creditors belong to various class are as following;

- A. Settlement of the claims of Secured Financial Creditors: (25 days)

The plan proposes to make an upfront payment of INR 19,65,908/- (Indian Rupees Nineteen Lakh Sixty-Five Thousand Nine Hundred Eight Only) to satisfy the claims of the Secured Financial Creditors within a period of 25 days from the Approval Date of this Resolution Plan. (Clause 7.3.3 of the Resolution Plan, ANNEXURE – D @ Pg No. 89 – 90 of the IA)

Payment to Dissenting Financial Creditors: (Not Applicable as the Plan as approved with a unanimous vote) That in the present CIRP there is only one Financial Creditor and hence

separate provisioning as to payment to dissenting financial creditor clause is not applicable in this Plan. (Clause 7.3.3 of the Resolution Plan, ANNEXURE – D @ Pg No. 89 – 90 of the IA).

B. Settlement of the claims of Unsecured Financial Creditors:

That in the present CIRP there are no unsecured financial creditors and hence separate provisioning as to payment to unsecured financial creditor clause is not applicable in this Plan.

C. Settlement of claims filed by Operational Creditors (Other than Workmen and Employees and Government dues): (25 days)

That the RP has admitted the Claim of INR 16,36,64,956/- is admitted claim of Operational Creditors (Other than Workmen and Employees and Government dues). The plan proposes to pay to the operational creditors an Upfront Amount of INR 35,34,092/- (Rupees Thirty-Five Lacs Thirty-Four Thousand Ninety-Two Only) in proportionate to the aggregate of their claims of Rs, 16,36,64,956/- admitted by the RP as per latest claim register, within a period of 25 days from the Approval Date of this Resolution Plan. The same shall be paid prior to making any payment to the financial creditors.

In addition to above referred upfront cash payment, each operational creditors (other than Statutory Claim of Government Departments whose claims are accepted as contingent claim by RP) within a period of 25 days from the Approval Date of this Resolution Plan by AA, shall have an Option (in proportion to the aggregate of their admitted claims) for subscription of the 6% total 1,60,00,000 partly paid (Rs 5/- paid) Non Cumulative, Non-Participating, Redeemable preference shares having face value of Rs 10/- each, redeemable at the end of 15 years from the date it becomes fully paid up. The said partly paid preference shares

is proposed to be allotted in proportion to their admitted claims which is unpaid after upfront cash payment to the operational creditors who have exercised its/their option for subscription of partly paid preference share.

After the approval of this resolution plan by AA, RA shall send communication to each operational creditor (other than Statutory Claim of Government Departments whose claims are accepted as contingent claim by RP) for exercise of option for subscription and if such option is exercised, then such operational creditors will be allotted such redeemable partly paid (Rs. 5/- paid up per share) preference shares of Rs. 10/- each within 45 days from the Approval Date. The Resolution Applicant shall have a right, in its sole discretion, to call for the balance amount of Rs. 5/- per each preference from operational creditors (who have been allotted partly paid up preference share) within 90 days from the date of its allotment. In the event of failure of any such preference shareholders to pay the called-up amount of Rs. 5/- per preference share within such time period from the date of issue of notice for payment of call money of Rs.5/- per share, as may be prescribed in such call notice, preference shares allotted to such operational creditors (who have exercised its /their option for subscription of partly paid preference shares) shall be liable to be forfeited and shall be dealt with by the Resolution Applicant in the manner provided under the Companies Act, 2013 including re-issuance of the same to any other person at such other price as the Resolution Applicant may deem fit. The payment set out in the resolution plan, shall be deemed to be in full and final settlement / discharge of the liabilities pertaining to claim of the Operational Creditors. The amount payable to the Operational Creditors under this Resolution Plan shall be given priority in payment over the Financial Creditors. (Clause 7.3.4.2 of the Resolution Plan, ANNEXURE – D @ Pg No. 96 - 100 of the IA)

D. Settlement of claims filed by Operational Creditors (Workmen & Employees):

That there are no claims from workers and employees of the Corporate Debtor. Therefore, the Resolution Applicant shall make Nil payment towards full and final settlement / discharge of the entire amounts of all workmen & employees (i.e., excluding “the Financial Creditors and the Operational Creditors including any dues to Statutory authorities”)

E. Payment to Statutory Dues & Contingent Liabilities: (25 days)

The plan proposes to pay the Operational Creditors- Government Dues, an Upfront Amount of INR 15,00,000/- (Indian Rupees Fifteen Lacs Only) within a period of 25 days from the Approval Date of this Resolution Plan against claims shown as contingent claims by resolution professional in the claim register amounting to INR. 377,37,53,910/-. It is to be noted that RP has admitted Rs 1/- as notional value against each four statutory government departments totalling to Rs 4/- as all these claims are contingent claims and balance amount shown under the head contingent claims in the claim register amounting to Rs. 377,37,53,910/

Sr. no.	Name of Department	Amount
1.	Deputy Commissioner of Income Tax, Circle 16(1) Mumbai (CLAIM FILED)	3, 62, 54, 74, 594/-
2.	Department of CGST & C. Excise Noida Sector – 3, Gautam buddha nagar, Uttar Pradesh (CLAIM NOT FILED)	6, 38, 80, 498/-
3.	Office of principal Commissioner of C.GST and Excise: Mumbai (CLAIM NOT FILED)	44, 17, 634/-
4.	Dy. Commissioner of Income Tax, Circle	7, 99, 81, 187/-

	76 (1), Laxminagar Delhi (CLAIM NOT FILED).	
	TOTAL	3,77,37,53,914

It may be noted that out of the said government departments, only one government department at Serial no. 1 of the above table had filed its claim with the RP. The contingent claims are pending at respective Appellate level and are disputed. To protect the interest of those disputed government demands and to ensure that this resolution plan does not affect prejudicially to any stakeholders and to buy peace, the RA proposes to pay abovementioned an Upfront Amount of INR 15,00,000/- (Fifteen Lacs only) in proportion to contingent claim, in respect of disputed demand amount of the respective government department, within a period of 25 days from the Approval Date of this Resolution Plan towards full and final settlement / discharge of the entire amounts of such government dues. Any and all liabilities and all amounts due and / or payable by the Corporate Debtor whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, shall stand settled, extinguished and written off as of the Approval Date pursuant to the NCLT Approval Order and neither the Corporate Debtor nor the Resolution Applicant shall be responsible and / or liable, directly or indirectly, for the same. (Clause 7.3.4.1 of the Resolution Plan, ANNEXURE – D @ Pg No. 91 – 96 of the IA).

F. Corporate Insolvency Resolution Process (CIRP) Costs: (25 days)

The plan proposes that the outstanding CIRP Cost shall be paid on actual basis as upfront payment within a period of 25 days from the Approval Date of this Resolution Plan. RA has proposed and provided INR 35,00,000/- for outstanding CIRP cost and in case of actual CIRP cost is in excess of INR

35,00,000/- it shall be adjusted from the payment to be made to operational creditors to keep proposed plan amount intact. Currently there are Interim finance and unpaid CIRP costs. In terms of Section 30(2) (a) of the IBC, the CIRP Costs are to be paid in priority to any other creditor of the Corporate Debtor. (Clause 7.3.1 of the Resolution Plan, ANNEXURE – D @ Pg No. 88 of the IA).

G. The Implementation and supervision of the Resolution Plan:

On and from the NCLT Approval Date and until the Effective Date, a Monitoring Committee, (“Monitoring Committee”) shall be appointed for supervision of implementation of this Resolution Plan. The Monitoring Committee shall be in the form of a committee comprising of three (3) members, being one (1) nominated by the Resolution Applicant, one (1) nominated by the CoC and (3) the Resolution Professional (Monitoring Agent or Chairperson of the Monitoring Committee). The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall be required and entitled to do all such acts, deeds, matter and things as may be necessary, desirable or expedient in order to implement and give effect to this Resolution Plan. The day to day functioning of the Corporate Debtor shall be monitored by the Monitoring Committee. All decisions of the Monitoring Committee shall be taken by majority consent of the members of the Monitoring Committee. (Clause 7.3.1 of the Resolution Plan, ANNEXURE – D @ Pg No. 88 of the IA.”

- (v) Under the Resolution Plan, total claim of the Operational Creditor was admitted as Rs.16,36,64,956/- and the amount proposed to the Operational Creditor was Rs.35,34,092/-, i.e., 2.16% as a cash payment. The Plan also proposed partly paid redeemable preference share of CD at the option of Operational Creditor, whose value was mentioned @ 49.96%.

The Appellant - Operational Creditor aggrieved by the order has come up in this Appeal.

3. We have heard Shri Nipun Gautam, learned Counsel appearing for the Appellant; Shri Navin Pahwa, learned Senior Counsel with Shri Karan Valecha, learned Counsel appearing for Respondent No.2. Learned Counsel for the parties have also filed their written submissions.

4. Learned Counsel for the Appellant, challenging the impugned order submits that the Resolution Plan submitted by Respondent No.2 was not in compliance of Section 30, sub-section (2) (b). It is submitted that under the Resolution Plan cash upfront amount, which has been offered to the Operational Creditor is contrary to Section 30 (2) (b) (ii). It is submitted that liquidation value of the Corporate Debtor is Rs.5.74 lakhs and the total Plan amount offered by Resolution Applicant was Rs.9.05 crores. The total amount of the Financial Creditor admitted in the CIRP was only Rs.19,65,908/-, which has been paid 100% and there being no unsecured Financial Creditor, Secured Operational Creditor and the dues of the Government Departments having been admitted at notional amount of Rs.1/- for each statutory department, the balance amount, which was offered in the Resolution Plan ought to be distributed as per Section 30(2)(b)(ii). Instead of making the payment of the amount to the Operational Creditor as is envisaged under Section 30(2)(b)(ii), the Operational Creditor are being paid only a meager amount of 2.16% and the Resolution Applicant has offered to pay redeemable preference shares of the CD at the option of the Operational Creditor, which is not in accordance with law laid

down by the Hon'ble Supreme Court in ***Jaypee Kenisington Boulevard Apartments Welfare Association & Ors. v NBCC & Ors.*** The Resolution Plan, ought not to have been approved.

5. The learned Senior Counsel for the Respondent refuting the submission of learned Counsel for the Appellant submits that Resolution Plan has been approved by 100% vote share of the CoC and the commercial wisdom of the CoC cannot be challenged by the Appellant. It is submitted that total Resolution Plan amount of Rs.9.05 crores and liquidation value being only Rs.5,74,822/-, out of which only upfront cash payment of Rs.1.05 crores has been offered. The Operational Creditor having been given option of partly paid redeemable preference shares 1,60,00,000 having paid value of INR 10 wherein the amount proposed is INR 8 crores. The total upfront payment being INR 1.05 crores, the plan provides to pay to the Operational Creditor upfront payment of INR 35,34,092/-, which is 2.16% of their admitted claim. The payment offered to the Operational Creditor is in compliance of Section 30, sub-section (2). The CoC has also noted that the return on funds involving partly paid amount comes to around 12% per annum. The present Appeal does not raise any question of law, which warrants adjudication by this Tribunal. The Resolution Plan is just and fair Plan.

6. We have heard learned Counsel for the parties and have perused the records.

7. The question, which needs to be answered in this Appeal is as to whether the Resolution Plan submitted, which was approved by the

Adjudicating Authority, is in compliance of provisions of Section 30, sub-section (2). The extent of judicial review of Resolution Plan approved by the CoC in its commercial wisdom are very limited. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors. - (2020) 8 SCC 531*** as well as in ***K. Sashidhar v. Indian Overseas Bank - (2019) 12 SCC 150*** has laid down that commercial wisdom of the CoC has to be given paramount importance and limited jurisdiction provided to interfere in the approval of the Plan by the Adjudicating Authority or the Appellate Tribunal, i.e., only when the Plan is not in compliance with statutory provisions of Section 30, sub-section (2).

8. The law is thus well settled that commercial wisdom of the CoC approving the Plan cannot be interfered and it can be interfered only when there is statutory non-compliance, i.e., non-compliance of Section 30, sub-section (2). Thus, we need to answer the question as to whether there is statutory non-compliance in the present case. We may also notice judgment of the Hon'ble Supreme Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. & Ors. - (2022) 1 SCC 401***, where the Hon'ble Supreme Court had laid down that Operational Creditors are to be paid in priority over the Financial Creditors only by cash and not by issuing of equity. In paragraph 164, following has been laid down:

“**164.** Taking up the provisions under debate, it is but clear that as per sub-section (2) of Section 30, the resolution plan ought to

provide for certain payments; and first of that is the insolvency resolution process costs. An action of “payment” being that of discharge of an obligation by delivery of money or other valuable thing accepted in discharge of obligation, one could at once notice that proposing to pay the insolvency resolution process costs in any form other than money would be an exercise in absurdity. Such a payment has to be in terms of money alone. Then comes clause (b) whereby and whereunder, the resolution plan is to provide for payment of debts of operational creditors and the minimum quantum is specified in terms of “amount to be paid” or “amount that would have been paid” with reference to the event of liquidation and/or distribution in terms of Section 53 of the Code. Here again, if any proposition is suggested for payment of debts of operational creditors by way of something other than money, and that too in the form of equities in the other corporate entities to be carved out of the corporate debtor, that would not be shunning off the debts of operational creditors but would only be keeping them glued to the corporate debtor or its successor entities. Such a method of payment could least be a step towards insolvency resolution. The same features, with necessary variations, would apply to the second part of clause (b) of sub-section (2) of Section 30 in regard to the dissenting financial creditors. The operational creditors as also the dissenting financial creditors are to be paid in terms of the amount to be determined with reference to Section 53 of the Code and are to be paid in priority, as described in Regulation 38(1) of the CIRP Regulations.”

9. Section 30, sub-section (2) has been amended by Act 26 of 2019, which amendment was brought in the statute with the object to balance the interest of the stake holders. It is relevant to notice Statement of Objects and Reasons of the Bill of The Insolvency and Bankruptcy Code amendment Bill, 2019. Statement of Objects and Reasons of the bill are as follows:

“STATEMENT OF OBJECTS AND REASONS

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.

2. The Preamble to the Code lays down the objects of the Code to include “the insolvency resolution” in a time bound manner for maximisation of value of assets in order to balance the interests of all the stakeholders. Concerns have been raised that in some cases extensive litigation is causing undue delays, which may hamper the value maximisation. There is a need to ensure that all creditors are treated fairly, without unduly burdening the Adjudicating Authority whose role is to ensure that the resolution plan complies with the provisions of the Code. Various stakeholders have suggested that if the creditors were treated on an equal footing, when they have different pre-insolvency entitlements, it would adversely impact the cost and availability of credit. Further, views have also been obtained so as to bring clarity on the voting pattern of financial creditors represented by the authorised representative.

3. In view of the aforesaid difficulties and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code (Amendment) Bill, 2019, inter alia, provides for the following, namely:—

(a) to amend clause (26) of section 5 of the Code so as to insert an Explanation in the definition of “resolution plan” to clarify that a resolution plan proposing the insolvency resolution of corporate debtor as a going concern may include

the provisions for corporate restructuring, including by way of merger, amalgamation and demerger to enable the market to come up with dynamic resolution plans in the interest of value maximisation;

(b) to amend sub-section (4) of section 7 of the Code to provide that if an application has not been admitted or rejected within fourteen days by the Adjudicating Authority, it shall provide the reasons in writing for the same;

(c) to amend sub-section (3) of section 12 of the Code to mandate that the insolvency resolution process of a corporate debtor shall not extend beyond three hundred and thirty days from the insolvency commencement date, which will include the time taken in legal proceedings, in order to prevent undue delays in the completion of the Corporate Insolvency Resolution Process. However, if the process, including time taken in legal proceedings, is not completed within the said period of three hundred and thirty days, an order requiring the corporate debtor to be liquidated under clause (a) of sub-section (1) of section 33 shall be passed. It is clarified that the time taken for the completion of the corporate insolvency resolution process shall include the time taken in legal proceedings;

(d) to insert sub-section (3A) in section 25A of the Code to provide that an authorised representative under sub-section (6A) of section 21 will cast the vote for all financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote, in order to facilitate decision making in the committee of creditors, especially when financial creditors are large and heterogeneous group;

(e) to amend sub-section (2) of section 30 of the Code to provide that–

(i) the operational creditors shall receive an amount that is not less than the liquidation value of their debt or the amount that would have been received if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priorities in section 53 of the Code, whichever is higher;

(ii) the financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt;

(iii) the provisions shall apply to the corporate insolvency resolution process of a corporate debtor–

(A) where a resolution plan has not been approved or rejected by the Adjudicating Authority; or

(B) an appeal is preferred under section 61 or 62 or such appeal is not time barred under any provision of law for the time being in force; or

(C) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(f) to amend sub-section (1) of section 31 of the Code to clarify that the resolution plan approved by the Adjudicating Authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities;

(g) to amend sub-section (2) of section 33 of the Code to clarify that the committee of creditors may take the decision to liquidate the corporate debtor, in accordance with

the requirements provided in sub-section (2) of section 33, any time after the constitution of the committee of creditors under sub-section (1) of section 21 until the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

4. The Bill seeks to achieve the above objectives.”

10. Now we may notice the amended provisions of section 30, sub-section (2) (b) as inserted in the statute with effect from 16.08.2019, which is as follows:

“30(2)(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the

provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;”

11. The legislative change, which has been brought by the aforesaid amendment with regard to Operational Creditor has been brought with the object of balance the interests of all the stake holders and opportunity provided for fair treatment to all stake holders. Sub-clause (b) of sub-section (2) of Section 30 provides that the Operational Creditor has to be paid **an higher** amount out of amount as provided in Section 30(2)(b) (i) and 30(2)(b)(ii). It is admitted fact between the parties that liquidation value of the Financial Creditor is INR 5.74 lakhs and the total Plan amount offered by SRA is INR 9.05 crores. The Plan value being higher, the payment to the Operational Creditor has to be made as per Section 30(2)(b)(ii). It is relevant to notice that there is only one Financial Creditor in the present case, who is 100% CoC Member and the Resolution Plan proposed payment of secured Financial Creditor to 100% of its dues, i.e., INR 19,65,908/-. There are no unsecured Financial Creditor. Secured Financial Creditor is apparent from the features of the Resolution Plan as noticed by the Adjudicating Authority in paragraph-7. With regard to

Government Departments only notional amount of Rs.1/- for each statutory department has been admitted. However, an amount of Rs.15 lakhs has been earmarked to the Government Department and the dues of Operational Creditor, which have been admitted is of Rs.16,36,64,956/-, whereas in the payment, it has been offered as Rs.35,34,092/-. When the Resolution Plan amount is distributed as per Section 30, sub-section (2) (b) (ii) and as per the priority under Section 53, sub-section (1) by excluding the amount paid to the Financial Creditor, in CIRP Rs.15 lakhs earmarked for the Government Departments, there being no other creditors, the balance amount of the Resolution Plan was to be distributed on pro-rata basis to the Operational Creditors, whereas cash amount offered to the Operational Creditor is only 2.16% and the rest amount, which is payable to the Operational Creditor as per Section 30, sub-section (2) (b) is sought to be subsumed by offering option of partly paid redeemable preference shares as noted above. The Hon'ble Supreme Court in **Jaypee Kenisington** has already held that the amount to be paid to the Financial Creditor has to be paid in priority only by way of cash payment and not by way of issuing equity. Hence, the payment offered to the Operational Creditor is not in accordance with Section 30, sub-section (2), (b) (ii) and is also contrary to the law laid down by the Hon'ble Supreme Court in **Jaypee Kenisington**.

12. We, thus, are of the view that distribution of the amount to the Operational Creditor (other than Government Departments) is clearly contrary to provisions of Section 30 (2)(b)(ii). The Adjudicating Authority

has failed to advert to Section 30, sub-section (2) (b) (ii) and failed to notice that amount proposed to the Operational Creditor is clearly contrary to Section 30(2)(b)(ii). We, thus, are of the view that order of Adjudicating Authority approving the Resolution Plan cannot be sustained. However, we make it clear that the Appeal has been filed by the Operational Creditor questioning only part of the Resolution Plan by which distribution to the Operational Creditor has been made under the Plan, no other part of the Resolution Plan is being sought to be challenged. In the facts of the present case, we are of the view that order passed by Adjudicating Authority dated 09.11.2023 requires to be modified. No other part of the Resolution Plan being under challenge, ends of justice will be served in modifying the order of the Adjudicating Authority only with respect to distribution to the Operational Creditor. It was obligatory for the Resolution Plan to comply with the provisions of Section 30(2)(b)(ii) in the facts of the present case. Hence, the order is modified to make it in compliance of the provisions of Section 30, sub-section (2) (b)(ii).

13. In the facts of the present case, ends of justice will be served in disposing of the Appeal with following directions:

- (I) The order of Adjudicating Authority dated 09.11.2023 is modified to the extent of approving the distribution to the Operational Creditors, including the Appellant. Rest of the order is affirmed.
- (II) To save the approval of Resolution Plan in its entirety, we direct that Resolution Applicant shall distribute the Resolution Plan amount to the Operational Creditor on pro-rata basis as per

Section 30, sub-section (2) (b) (ii) and as per priority under Section 53(1), i.e., by distributing the balance amount under the Resolution Plan in priority to the Financial Creditor as per priority under Section 53(1).

- (III) In event of non-compliance of above direction No.(II) as above, Resolution Plan submitted by Respondent No.2 shall be treated to be disapproved.

The Appeal is accordingly disposed of. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

1st April, 2024

Ashwani