

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 150 of 2025

28.08.2025

CORAM : JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
Mr. BARUN MITRA, MEMBER (TECHNICAL)

IN THE MATTER OF:

Central Bank of India **...Appellant**

Versus

Cure Life Care Pvt. Ltd.
Through Its Liquidator Vcan Resolve IPE LLP **...Respondent**

Present:

For Appellant : Mr. Tushar Singh, Ms. Aastha Kaushik,
Advocates.

For Respondent : Ms. Vishwas V. Shah, Advocates.

O R D E R
(Hybrid Mode)

Per: Justice N. Seshasayee, Member (Judicial)

The appellant herein challenges the order of the Adjudicating Authority in I. A. No. 37 of 2024, dated 21.11.2024, which application RP had moved for obtaining the approval of the Adjudicating Authority to the Resolution Plan approved by the CoC.

2. The brief facts are:

- a) the appellant had extended certain loan facility to the CD amounting to Rs. 23,08,33,945/- (Rupees Twenty Three Crores Eight Lakhs Thirty Three Thousand Nine Hundred Five Only). This debt was secured through the fixed assets of the CD. Be that asset may, the appellant had sold the secured assets under the provision of the SARFAESI Act and realised the part of the loan dues from the CD.

This sale later came to be confirmed on 23.05.2019.

b) In the meantime the appellant had also moved the Adjudicating Authority under section 7 of the IBC, which was essentially confined to the default in paying balance amount of Rs. 06,89,38,756/- (arrived after adjusting the sale proceeds of the secured assets of the CD). This application under section 7 IBC came to be admitted and the resolution process commenced.

c) The resolution was successful, and the CoC approved the resolution plan of the SRA. As indicated earlier the RP moved I.A. 37 of 2024 seeking the approval of the Adjudicating Authority under section 31 of the IBC.

3. This came to be rejected on the ground that the CoC had not obtained the consent of operational creditors and the unsecured creditors of the CD and directed liquidation of the CD. This order is now under challenge.

3.1 The learned counsel for the appellant submitted that he Adjudicating Authority in effect has insisted that consent of operational creditors and unsecured creditors is necessary vis-a-vis what the plan proposed to pay, and this is not warranted in law as it is beyond the jurisdiction of the Adjudicating Authority.

3.2 Developing his argument further, the learned counsel submitted that the fair value and the liquidation value of the CD was determined at Rs. 1.15 lakhs and 1.14 lakhs respectively. It is on this basis resolution plans were invited. In the resolution plan it is inter alia proposed:

a)	<i>Particulars</i>	<i>Amount in Rs.</i>
	<i>Upfront Cash Amount to the secured Financial inclusive of CIRP cost at actuals (upfront payment i.e 60</i>	<i>INR 1,04,00,000/-</i>

<i>days from NCLT Approval date)</i>	
<i>Upfront Cash Amount to the unsecured financial creditors being related parties (upfront payment i.e 60 days from NCLT Approval date)</i>	<i>INR 20,000/-</i>
<i>Upfront Cash amount to Operational Creditors (including Statutory Claims) upfront payment i.e 60 days from NCLT Approval Date)</i>	<i>INR 20,000/-</i>
Total Payment to all stakeholders	INR 1,04,00,000/-
<i>Working Capital/capex for business (within 1 to 5 years)</i>	<i>As per business Requirement</i>
Means of Finance	
<i>Internal Accrual of CD</i>	<i>At Actual</i>
<i>From Net worth of RA / its related concerns, nominees, Affiliates/ spv</i>	<i>Balance Required to meet cash payment obligations as per this resolution plan. Resolution applicant has ample liquidity and net worth to discharge payment obligations of this resolution plan. Further RA clarifies that the entire revival of the Company including its working capital requirements would be financed from the available cash reserves with Resolution Applicant. Resolution Applicant do not envisage any borrowing from any external source for the same</i>
Total	INR 1,04,00,000/-

3.3 In paragraph 6.2 of the plan it was made evident that payment of the amount proposed would be based on the waterfall mechanism provided under section 53 of the IBC. Subsequently in paragraph 6.3.3.2 and 6.3.4 the resolution applicant had come out with an additional offer over and above Rs. 20,000/- which was proposed for unsecured creditors and the operational creditors and this clause in reads:

“they will be allotted partly paid unsecured debentures having face value Rs 10/- each with a paid-up value of INR 5/- each. The CD shall have right, in his sole discretion, to call for the balance amount of INR 5/- each per debenture(unsecured) at any time. In the event of failure of such debentures holders (unsecured) to pay the called-up amount within such time period as mentioned by the CD, such debentures shall be liable to be forfeited and shall be dealt with 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 CD may deems fit or transfer the forfeited amount to capital Reserve.”

3.4 The Learned counsel argued that the Adjudicating Authority initially thought that this clause is perhaps a substitution of Rs. 20,000/- each which the appellant had offered for the operational creditor, and the unsecured creditor but the same was clarified by the RP vide his affidavit dated 15.10.2024. In this affidavit it is clarified that issue of debentures as stated above is in addition to the payment and not in substitution or alteration of Rs. 20,000/-. However, in the impugned order the Adjudicating Authority had held that the consent of the operational creditor and the unsecured creditor is necessary. The learned counsel emphasised that resolution plan in terms of statute requires only approval by a minimum of 66% voting share of the CoC. And there is hardly any necessity to obtain the consent of operational creditors. So far as unsecured creditors are concerned they are all related parties and hence they do not have any voting rights.

4. The Learned counsel for the liquidator merely emphasised that the liquidation charges of Rs. 1,00,656/- might be paid. The counsel for the appellant on instruction submitted that it would be paid in terms of the resolution of the stake holders dated 28.01.2025.

5. This Tribunal carefully perused the resolution plan and also the impugned order and finds that there is considerable force and merit in the submissions of the counsel for the appellant. The Adjudicating Authority has erred in requiring or insisting that the consent of the operational creditors and unsecured creditors of the CD must be obtained by the CoC, whereas under the scheme of IBC it is not required. The area of investigation for granting approval to the resolution plan by the Adjudicating Authority is very narrow, and very evidently, the Adjudicating Authority is seen to have over reached its jurisdiction. Other than this the impugned order does not indicate any other violation of law or provisions of the IBC.

6. In conclusion this appeal deserves to be allowed and the order of the Adjudicating Authority in I.A. 37 of 2024 dated 21.11.2024 is set aside and resolution plan is approved by the CoC now stand approved.

[Justice N. Seshasayee]
Member (Judicial)

[Barun Mitra]
Member (Technical)

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