

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
Company Appeal (AT) (Insolvency) No. 390 of 2021**

**In the matter of:**

**Dr. Anees Ahmad & Ors.**

**....Appellants**

**Vs.**

**1.Amit Jain (Resolution Professional)**

**Registered Address**

**8<sup>th</sup> Floor, Tower B, Dlf Building No.10,**

**Dlf Cyber City, Phase Ii,**

**Gurgaon 122 002, India**

**Ip Registration No. IBBI/IPA-001/IP-P01447/2018-  
2019/12196**

**Email ID [rpneesa@kpmg.com](mailto:rpneesa@kpmg.com)**

**2. Authorized Representative for FD**

**Holders**

**CA Bhupendra Singh Rajput**

**Insolvency Professional**

**A-309, Atma House, Opp. Old RBI, Ashram Road**

**Ahmedabad- 380009**

**Email: [CABSRAJPUT309@GMAIL.COM](mailto:CABSRAJPUT309@GMAIL.COM)**

**3. M/S. Neesa Leisure Limited**

**Registered and Corporate Office:**

**Cambay Square, Plot No. X-22-24,**

**GIDC Electronic Estate Sector-25,**

**Opp. Hill Wood School,**

**Gandhi Nagar- 382044, Gujarat**

**....Respondents**

**For Appellants: Mr. Pramod Kr. Singh, Advocate.**

**For Respondents: Mr. Sumant Batra, Ms. Niharika Sharma, Mr. Karan  
Kohli, Advocates for R1.**

**ORDER**

**(Through Virtual Mode)**

**02.07.2021:** This Appeal has been filed against the impugned order dated 10<sup>th</sup> February, 2021 passed by the Adjudicating Authority (National Company Law

Tribunal, Ahmedabad Bench, Ahmedabad, Court-2) in I.A Nos. 849 and 853 of 2020. Record shows that there is Corporate Insolvency Resolution Process (CIRP) proceedings against Corporate Debtor- 'Neesa Leisure Ltd.'. It appears that the Committee of Creditors (CoC) has approved the Resolution Plan and the same has been placed before the Adjudicating Authority for decision. Some Applicants claiming to be Fixed Deposit Holders and their authority holders filed I.A claiming that the Resolution Plan which was filed and cleared by the Resolution Professional for placing it before CoC was not in compliance with the provisions of the Companies Act, 2013 read with applicable Rules. The Learned Counsel for the Appellants is claiming that as per the Companies Act, 2013, the debt payable to the Fixed Deposit Holders cannot be reduced or varied or extinguished by way of a Resolution Plan. Learned Counsel for the Appellants is submitting that the voting done on the Resolution Plan before CoC was also not correct.

2. The impugned order shows that the Adjudicating Authority heard the parties and referring to the judgment in the matter of **“K. Shashidhar v. Indian Overseas Bank & Ors.”** observed in para 7 of the impugned order as under:-

*“7. In the above backdrop, when the Resolution Plan has already been received and the same is approved by the CoC based on its commercial wisdom, we find no reason to interfere with the Resolution Plan as all the secured creditors, unsecured creditors and the other stakeholders which includes FD holders etc, have lodged their claim and they are considered by the CoC at the time of approval of the Resolution Plan as per Section 53 of IBC.”*

3. The Adjudicating Authority did not accept the claims made by the Appellants and rejected the Application. Thus, the present Appeal.

4. Learned Counsel for the Resolution Professional is submitting that the Adjudicating Authority has already heard the parties with regard to the Resolution Plan and the same is before the Adjudicating Authority under Section 31 of 'I&B Code' which has to take a decision now.

5. The Learned Counsel for the Appellant is submitting that the Appellants-deposit holders were represented in the CoC through representatives with a voting right of 4.8%.

6. The Learned Counsel is submitting that the CoC while taking the haircut could not have reduced the claims of the Fixed Deposit Holders as the same are contractual and protected under the Companies Act, 2013. It is stated that under Section 30(2) (e) of the 'I&B Code', the Resolution Professional could not have put the Resolution Plan itself before the CoC because the Resolution Plan which curtailed the amounts of the Fixed Deposit Holders was in contravention of the Companies Act.

7. The Learned Counsel for the Resolution Professional submits that the Hon'ble Supreme Court in the matter of ***"Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd."*** [Civil Appeal No. 3395 of 2020- decided on 24<sup>th</sup> March, 2021] held that the Fixed Deposit Holders are bound by the decision of the CoC in terms of commercial decision taken on Resolution Plan.

8. It appears to us that it would have been more appropriate for the Adjudicating Authority to decide the IAs filed by the Appellants along with the Resolution Plan which the Adjudicating Authority was considering. However, the Adjudicating Authority has in advance taken a decision and the matter is now in Appeal before us. We find that Adjudicating Authority is yet to accept or reject the Resolution Plan. As

and when the Adjudicating Authority decides whether to accept or reject the Resolution Plan, Appellants would be at liberty to challenge the same on its merits. Present agitation is premature.

9. We do not find any reason to entertain the Appeal. The admission of Appeal is declined.

**[Justice A.I.S. Cheema]**  
**The Officiating Chairperson**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

***Anjali/g***