

**National Company Law Appellate Tribunal,**  
**Chennai Bench**  
**Company Appeal (AT) (CH) (Insolvency) No. 110 of 2021**

(Arising out of order dated 29<sup>th</sup> January, 2021 passed by National Company Law Tribunal, Bengaluru Bench in I.A. No. 334 of 2020 in CP (IB) No. 132/07/BB/2017)

**IN THE MATTER OF:**

1. **M/s. Genius Security and Allied Services**  
**No. 672, 2<sup>nd</sup> Floor,**  
**MKK Road, 20<sup>th</sup> Cross,**  
**2<sup>nd</sup> Block**  
**Rajaji nagar,**  
**Bangalore - 560010**

**...Appellant**

**Versus**

1. **Mr. Shivadutt Bannanje,**  
**Resolution Professional**  
**M/s. Fortuna UrbanscapePvt. Ltd.**  
**No. 288, Classic Orchid,**  
**Behind Meenakshi Temple,**  
**Banerghatta Road,**  
**Bangalore- 560076**

**Also at:**

**Manipal Centre, S-709,**  
**South Block, 47, Dickenson Road,**  
**Bangalore- 560042**

2. **M/s. Koncept Shelters**  
**Resolution Applicant**  
**No. 36/6/8, 17<sup>th</sup> Cross, Annaporneswari**  
**Nagar,**  
**Bangalore- 560072**

**...Respondents**

**With**  
**Company Appeal (AT) (CH) (Insolvency) No. 225 of 2021**

**IN THE MATTER OF:**

1. **M/s. RCC Mix**  
**Sy No. 153/2, Opp. Andhra Bank,**  
**Kattigenahalli Village,**  
**Bagalur Main Road,**  
**YelahankaHobli,**  
**Bangalore- 560063** **...Appellant**

**Versus**

1. **Mr.ShivaduttBannanje,**  
**Resolution Professional**  
**M/s. Fortuna UrbanscapePvt. Ltd.**  
**No. 288, Classic Orchid,**  
**Behind Meenakshi Temple,**  
**Banerghatta Road,**  
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**Also at:**

**Manipal Centre, S-709,**  
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2. **M/s. Koncept Shelters**  
**Resolution Applicant**  
**No. 36/6/8, 17<sup>th</sup> Cross, Annaporneswari**  
**Nagar,**  
**Bangalore- 560072.** **...Respondents**

**Present:**

**For Appellant:** **Ms. Ankita Paul, Advocate**  
**For Respondent** **Mr. Raghuram Cadambi, Advocate**  
**No.1:** **For Mr. Shyam Harindra, Advocate**  
**For Respondent** **Mr. Naman Jhabakh, Advocate**  
**No. 2** **Ms. Abita Banu, Advocate**

**J U D G M E N T**  
**(7<sup>th</sup> April, 2022)**

**KANTHI NARAHARI, MEMBER (TECHNICAL)**

**Preamble:**

The Present Appeals are filed against the order passed by the Adjudicating Authority (National Company Law Tribunal, Bengaluru Bench in I.A. No. 334 of 2020 dated 29.01.2021.

Since in both the Appeals, the Appellants have challenged the order of the Adjudicating Authority dated 29.01.2021 passed in I.A. No. 334 of 2020 in CP (IB) No. 132 of 2017, hence, this Tribunal decided to dispose of the Appeals by passing a common Judgment.

**Brief Facts:**

**Appellant's Submissions in CA (AT) (Ins) No. 110 of 2021:**

2. The Learned Counsel for the Appellant submitted that the Appellant being Operational Creditor aggrieved by the impugned order dated 29.01.2021 passed by the Hon'ble Adjudicating Authority in I.A. No. 334 of 2020, whereby the Hon'ble Adjudicating Authority without appreciating the facts with respect to claims of the Operational Creditors passed an order approving the Resolution Plan. It is submitted that the Appellant provided security and

**[Company Appeal \(AT\) \(CH\) \(Insolvency\) Nos. 110,225 of 2021](#)**

housekeeping services for the projects undertaken by the Corporate Debtor. It is submitted that the security services provided were of due importance and did aid the timely completion of the projects and shall be right fully treated as operational debt under the provisions of IBC.

**3.** Upon initiation of CIRP against the Corporate Debtor, the Appellant by an email dated 21.10.2019 submitted proof of claim in form B to the first Respondent specifying the amount of claim of Rs. 8,77,317/- and furnished details of invoices and account statements. The First Respondent by email dated 09.12.2019 duly approved the claim amount at Rs. 8,47,147/- stating that a sum of Rs. 30,0170/- was with respect to TDS and refused to take the said amount into consideration for approval.

**4.** However, the 2<sup>nd</sup> Respondent deliberately kept the claims out of the purview of the Resolution Plan, thus, giving a clear indication on the part of the 2<sup>nd</sup> Respondent that such claims find no merit in the Plan. While considering the Plan during 8<sup>th</sup> CoC meeting, held on 30.07.2020, one Mr. Prakash a Real-Estate Allottee had raised

concerns with respect to allocation of funds towards the unsecured creditors which includes the Appellant.

**5.** The Ld. Counsel further submitted that the Plan provided by the 2<sup>nd</sup> Respondent is not in conformity with Section 30 (1) of the I & B Code, 2016 and the Hon'ble Adjudicating Authority ought not to have approved the Resolution Plan submitted by the 2<sup>nd</sup> Respondent despite the fact that it did not provide for the payment of the Appellant i.e. the Operational Creditors. Further, the Hon'ble Adjudicating Authority ought to have liquidated the Corporate Debtor on the ground that the Resolution Plan was not in conformity with Section 30 (1) of the I & B Code, 2016.

**6.** In view of the reasons as stated above, the Ld. Counsel prayed this Bench to allow the Appeal by setting aside the order passed by the Adjudicating Authority dated 29.01.2021.

**Brief Facts in CA (AT) (Ins) No. 225 of 2021:**

**7.** The Ld. Counsel for the Appellant submitted that the Appellant is an Operational Creditor aggrieved by the order dated 29.01.2021 passed in I.A. No. 334 of 2020 in CP No.132 of 2017, whereby the Hon'ble Adjudicating Authority without appreciating

the facts with respect to claims of the Operational Creditors passed an order approving the Resolution Plan.

**8.** The Appellant by an email dated 08.02.2020 submitted a revised proof of claim in form B to the 1<sup>st</sup> Respondent claiming an amount of Rs. 1,08,55,500/- and furnished details of the sales invoices and VAT/GST returns. The 1<sup>st</sup> Respondent by an email dated 11.02.2020 approved the revised claim. The 2<sup>nd</sup> Respondent deliberately kept the claims out of the purview of the Resolution Plan, thus, giving a clear indication on the part of the 2<sup>nd</sup> Respondent that such claims find no merit in the Plan. The act of the 2<sup>nd</sup> Respondent is in clear violation and contrary to the provisions of the code.

**9.** The 2<sup>nd</sup> Respondent failed to verify and acknowledge the claims submitted by the Appellant (Operational Creditor) and completely disregarded the rightful claims of the Appellant which was duly admitted by the 1<sup>st</sup> Respondent.

**10.** While considering the Plan during 8<sup>th</sup> CoC meeting, held on 30.07.2020, one Mr. Prakash a Real-Estate Allottee had raised

concerns with respect to allocating of funds towards the unsecured creditors which includes the Appellant.

**11.** The Ld. Counsel further submitted that the Plan provided by the 2<sup>nd</sup> Respondent is not in conformity with Section 30 (1) of the I & B Code, 2016 and the Hon'ble Adjudicating Authority ought not to have approved the Resolution Plan provided by the 2<sup>nd</sup> Respondent despite the fact that it did not provide for the payment to the Appellant i.e. the Operational Creditors. Further, the Hon'ble Adjudicating Authority ought to have liquidated the Corporate Debtor on the ground that the Resolution Plan was not in conformity with Section 30 (1) of the I & B Code, 2016.

**12.** In view of the reasons as stated above, the Ld. Counsel prayed this Bench to allow the Appeal by setting aside the order passed by the Adjudicating Authority dated 29.01.2021.

**1<sup>st</sup> Respondent's Submissions:**

**13.** In both the Appeals the 1<sup>st</sup> Respondent is the Resolution Professional and similar plea has been taken in both the Appeals hence, the contents have been taken from both the counter affidavits as under.

**14.** The Ld. Counsel appearing for this Respondent submitted that at the outset the Appeal is not maintainable in law or on facts.

**15.** The grievance of the Appellant in CA (AT) (Ins) No. 110 of 2021 is that the claim to the extent of Rs. 8,47,147/- has not been paid under the Plan which has been approved by the Hon'ble Adjudicating Authority. The Appellant is under the impression that every creditor regardless of the nature of debt, the quantum of debt, the assets of the Corporate Debtor, and the total amount of investment being brought in by the Resolution Applicant is required to be paid the entire amount due to it. It is submitted that the said understanding of the Appellant is fundamentally flawed and squarely contrary to the provisions of the I & B Code, 2016.

**16.** It is submitted that Section 30(2) (b) of the I & B Code, 2016 which mandates that the payment of debts to the Operational Creditors as provided for in the Resolution Plan shall not be less than (a) the amount to be paid to them in the event of a liquidation under Section 53 or (b) the amount that would have been paid to them 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. It is well settled that in either of these two circumstances, if no some would have been payable to the Operational Creditors, no some need to be earmarked in the Resolution Plan to be paid to the Operational Creditors.

**17.** It is submitted that in the present case the total admitted claims in respect of the Corporate Debtor is as follows:

(a) Secured Financial Creditors: Rs. 123,05,76,095/- (Rupees One Hundred and Twenty Three Crores Five Lakhs Seventy Six Thousand and Ninety Five only)

(b) Homebuyers: Rs. 13,99,74,125/- (Rupees Thirteen Crores Ninety Nine Lakhs Seventy Four Thousand One Hundred and Twenty Five only)

(c) Employees/Workmen: Rs. 47,16,621/- (Rupees Forty Seven Lakhs Sixteen Thousand Six Hundred and Twenty One only)

(d) Operational Creditors (of which class the Appellant forms a part): Rs. 99,50,075/- (Rupees Ninety Nine Lakhs Fifty Thousand and Seventy Five only).

**18.** It is submitted that the liquidation value of the Corporate Debtor is Rs. 18,06,64,274/-. It is evident that the liquidation value is far lower than the total admitted claims made against the Corporate debtor and in light of the waterfall mechanism set out in Section 53 of the Code, no payment would be paid to Operational Creditors in the event of the liquidation of the Corporate Debtor.

**19.** In view of the aforesaid fact, it is clearly stated in the Resolution Plan that payment to the Operational Creditors is not proposed, since the liquidation value of the Corporate Debtor is insufficient to satisfy their claims, or even those of the secured Financial Creditors. It is submitted that non-payment of the Operational Creditor's including the Appellant is permissible in accordance with Section 30 (2) (b) read with Section 53 (1) of the Code. Since in the event of liquidation of the Corporate Debtor, the Appellant would not have received any payment at all.

**20.** It is submitted that the Resolution Plan clearly states that payment to Operational Creditors as a class is not contemplated at all due to the insufficiency of the liquidation value of the Corporate Debtor.

**21.** It is submitted that the Committee of Creditors of the Corporate Debtor have by majority vote of 95.07% approved the Resolution Plan submitted by the 2<sup>nd</sup> Respondent considering the feasibility and viability of the Plan. The Plan has been approved by the Hon'ble Adjudicating Authority.

**22.** In view of the reasons as stated above the Appeal is devoid of merits and liable to be dismissed.

**2<sup>nd</sup> Respondents Submissions:**

**23.** In both the Appeals the 2<sup>nd</sup> Respondent is the Successful Resolution Applicant and similar plea has been taken in both the Appeals hence, the contents have been taken from both the counter affidavits as under.

**24.** The Ld. Counsel appearing for the 2<sup>nd</sup> Respondent submitted that the present Appeal should be dismissed on the ground of barred by limitation as it is a time barred debt.

**25.** It is submitted that the grievance of the Appellants are that the debt has been admitted to the extent of Rs. 8,47,147/- of the Appellant in Appeal No. 110 of 2021 and Rs. 1,08,55,500/- in respect of Appellant in Appeal No. 225 of 2021 and the amounts

have not been earmarked in the Resolution Plan nor paid to the Appellants.

**26.** It is submitted that the total admitted claim in respect of Corporate Debtor were as follows:

(a) Secured Financial Creditors: Rs. 123,05,76,095/- (Rupees One Hundred and Twenty Three Crores Five Lakhs Seventy Six Thousand and Ninety Five only)

(b) Homebuyers: Rs. 13,99,74,125/- (Rupees Thirteen Crores Ninety Nine Lakhs Seventy Four Thousand One Hundred and Twenty Five only)

(c) Employees/Workmen: Rs. 47,16,621/- (Rupees Forty Seven Lakhs Sixteen Thousand Six Hundred and Twenty One only)

(d) Operational Creditors (of which class the Appellant forms a part): Rs. 99,50,075/- (Rupees Ninety Nine Lakhs Fifty Thousand and Seventy Five only).

**27.** It is submitted that the liquidation value of the assets of the Corporate Debtor is between 17.58 and 18.55 Crores. This is evidently far lower than the total admitted claims made against the

Corporate Debtor and in light of the waterfall mechanism set out in Section 53 of the Code no payment would be paid to Operational Creditors in the event of liquidation of the Corporate Debtor.

**28.** It is submitted that this Respondent vide revised Resolution Plan dated 03.08.2020 contemplated to invest a sum of Rs. 8,80,00,000/- Crores inclusive of CIRP Cost. If these sums were to be distributed in accordance with the waterfall mechanism set out in Section 53, no amount would be payable to the Operational Creditor.

**29.** It is submitted that after considering the feasibility and viability of the Resolution Plan, the Committee of Creditors of the Corporate Debtor have by a majority vote of 95.07% approved the Resolution Plan submitted by this Respondent. Even though under Section 30(4) of the I & B Code, 2016 the requisite voting share of the Committee of Creditors required to approve the Resolution Plan is 66%. The Plan was approved by the CoC in their commercial wisdom, the Plan is ultimately a commercial roadmap for the restructuring of the Corporate Debtor.

**30.** In view of the reasons as stated above the Appeal is devoid of merits and liable to be dismissed.

**Analysis/Appraisal:**

**31.** Heard the Ld. Counsel appeared for the respective parties perused the pleadings, documents filed by them. Having analysed the pleadings the only point for consideration is whether the Plan is violation of any provision of Law and made any discriminatory treatment towards the Appellants and similarly situated operational creditors.

**32.** The Adjudicating Authority vide its order dated 29.01.2021 approved the Resolution Plan submitted by the 2<sup>nd</sup> Respondent dated 03.08.2020. It is seen that the Committee of Creditors at their 8<sup>th</sup> CoC held on 30.07.2020 approved by declaring the Resolution Plan will be binding on the Corporate Debtor and its Employees, Members, Creditors including the Central Government, any State Government etc.

**33.** It is an admitted fact that the Appellant in Appeal No. 110 of 2021 submitted a claim of Rs. 8,77,317/- in form B dated 21.10.2019 to the IRP claiming as an Operational Creditor. The

Appellant in Appeal No. 225 of 2021 submitted its claim as an Operational Creditor in form B dated 08.02.2020 to the IRP claiming a sum of Rs. 1,08,55,500/-.

**34.** The 8<sup>th</sup> CoC held on 30.07.2020 approved the revised Resolution Plan dated 03.08.2020. In the discussions held on 30.07.2020 it is resolved as under:

*“The Resolution Applicant informed that after considering the suggestion and feasibility of the suggestions, the revised Resolution Plan can be submitted by Monday i.e. 03.08.2020 and that shall be the final Resolution Plan.”*

**35.** As per the decision of the CoC the 2<sup>nd</sup> Respondent submitted its revised Resolution Plan dated 03.08.2020. In the Plan Schedule-4 deal with financial proposal for all stakeholders and Schedule-6 deal with payment to creditors and cost of Resolution Plan and means of finance. Sub clause-(iv) of Schedule-4 a provision is made to pay a sum of Rs. 8 Crore towards a Financial Creditors Debt. Further, a provision is made to homebuyers who form part of Financial Creditors. Sub clause-(xii) of Schedule-4 of Plan dealt with proposal for Operational Creditors. It is stated that the total claims filed by Operational Creditors of the Company for an amount

of Rs. 3,03,05,776/- out of which claims aggregating to Rs. 99,50,075/- have been verified and admitted for the purposes of CIRP by the Resolution Professional. It is also stated that no claims in relation to workmen's dues have been admitted by the Resolution Professional and consequently the workmen's dues as verified and admitted by the Resolution Professional is shown as **nil**. With regard to payment to the Operational Creditors the following proposal is made in Sub clause -(xii) as under:

*“ii. The Liquidation Value is insufficient for payment to the Operational Creditors of the Company as the Liquidation Value is insufficient to satisfy the claims of even the Secured Financial Creditors in full and **nil** payment has been proposed under the Resolution Plan towards claims of Operational Creditors whether filed or not, whether admitted or not, whether asserted or not and whether or not set out in the balance sheets of the company or the profit and loss account statements of the Company or the List of Creditors and no source has been identified for such payment under this Resolution Plan.”*

**36.** Even in the Plan the outstanding Government dues, taxes etc. which was admitted as operational creditor debt, **nil payment** has been proposed under the Plan towards payment of any Government dues, taxes etc.

**37.** Schedule -6 of the Resolution Plan the payment to creditors and cost of Resolution Plan other than homebuyers have been provided. From the said schedule it is seen that Rs. 8 Crores has been earmarked for payment to Financial Creditors against a claim of Rs. 123,05,76,095/-. Further, payment to employees has been earmarked a sum of Rs. 30 Lakh against a claim of Rs. 13,99,74,125/-.

**38.** A sum of Rs. 50 Lakh has earmarked for payment towards CIRP cost. It has been categorically stated that the payment to unsecured creditors including operational creditors and dues to Government/Statutory dues and equity shareholders shown as nil. From the overall Plan only three categories of payments have been made i.e. (i) CIRP Cost, (ii) Employees dues, (iii) Financial Creditor. Therefore, no payments have been made to any of the Operational Creditor, including Government dues and equity shareholders. Even in the case of liquidation the waterfall mechanism to be followed in priority i.e. IRP Cost and the liquidation Cost, Workmen's dues, debts owed to Secured Creditor, Debts owed to Unsecured Creditors etc. It is evident from the Provision made for

payments that the Plan provides for payment of CIRP Cost, Workmen's dues and Financial Creditors dues. No payments have been earmarked to any other category including the Operational Creditors and shown as **nil**.

**39.** It is an admitted fact that the Plan has been approved by a majority vote of 95.07%. Therefore, the commercial wisdom of the CoC cannot be interfered with. It is apt to mention that in catena of Judgments the Hon'ble Supreme court held that the commercial wisdom of Committee of Creditors cannot be interfered with.

**40.** The Resolution Plan has been submitted in accordance with Section 30 of the I & B Code, 2016. However, Sub-clause b of Sub-Section (2) of Section 30 provides for the payments of debt 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. While so as per Sub-Section 4 of Section

30, the Committee of Creditors may approve a Resolution Plan by a vote of not less than 66% of voting share of the Financial Creditors, after considering its feasibility and viability, (the manner of distribution proposed, which may taken into account the order of priority amongst creditors as laid down in Sub-section(1) of Section 53 including the priority and value of the security interest of a secured Creditor) and such other requirements as may be specified by the Board.

**41.** Further, Section 31 of the I & B Code, 2016 deal with approval of Resolution Plan. As per Sub Section (1) if the Adjudicating Authority is satisfied that the Resolution Plan as approved by the Committee of Creditors under Sub-Section (4) of Section 30 meets the requirements as referred to in Sub-Section (2) of Section 30, it shall by order approve the Resolution Plan which shall be binding on the Corporate Debtor and its employees, members, creditors (including the central Government, any State Government or any Local authority to whom a debt in respect of the payment of dues arising under any law for the time being enforced, such as

Authorities to whom Statutory dues are owed,) guarantors and other stakeholders involved in the Resolution Plan.

**42.** Due procedure as contemplated under I & B Code, 2016 is to be followed to submit a Resolution Plan. Accordingly, the Resolution Applicant shall submit a Plan before the Resolution Professional and it should contain the requirements as per the said provision including the payments of debts to the Operational Creditors etc. After submission of the Resolution Plan the Committee of Creditors may approve a Resolution Plan by a vote of not less than 66% of voting share of Financial Creditors. After approval of the plan by the Committee of Creditors, the Adjudicating Authority under Sub-Section (1) of Section 31 may approve the Resolution Plan if it is satisfied that the Plan meets the requirements as per Sub-Section (2) & (4) of Section 30 of the Code and the same shall be binding on the Corporate Debtor, its employees, members, creditors and other stakeholders.

**43.** Once the Plan is approved by the Adjudicating Authority under Sub-Section (1) of Section 31 it shall be binding on the Creditors including the Operational Creditors i.e. the Appellants herein.

**44. Conclusion:**

From the perusal of the Resolution Plan this Tribunal finds that there is no infirmity or illegality in the Plan as approved by the Committee of Creditors by majority vote of 95.07% and approved by the Adjudicating Authority and the same shall be binding on the Appellants apart from other stakeholders. This Tribunal comes to a resultant conclusion that the approval of Resolution Plan is legal and valid. It is also seen that there is no discrimination amongst the Operational Creditors, for the reason that no amounts earmarked for any of the Operational Creditors. Moreover, in the Plan **nil** payments have been shown against the payments to be made to the Operational Creditors. While so the question of discrimination arises when some of the Operational Creditors paid the dues by excluding some of the Operational Creditors. In the present case no such situation arises. Hence, there is no discrimination as alleged by the Appellants. No grounds have been made out to interfere in the order passed by the Adjudicating Authority dated 29.01.2021 in approving the Resolution Plan. Accordingly, the issue is answered against the Appellants.

**45.** In fine, both the Company Appeals i.e. CA (AT) (Ins) No.110 of 2021 and CA (AT) (Ins) No. 225 of 2021 are dismissed. No orders as to cost. Applications if any pending stand closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Kanthi Narahari]**  
**Member (Technical)**

New Delhi  
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