NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

05.01.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

MR. ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.643 of 2024

1. Ashok Mansukhlal Kapasi	**...Appellant No.1**
2. Vikram Ashok Kapasi	**...Appellant No.2**
3. Arun Kapasi	**...Appellant No.3**

Vs

1. Bhavi Shah, Resolution Professional of Techno Forge Limited	**...Respondent No.1**
2. Paisalo Digital Limited	**...Respondent No.2**
3. Bank of India	**...Respondent No.3**

(Arising out of Order dated 02.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench) in I.A. No.864 of 2021 in C.P. (IB) No.264 of 2018)

For Appellant: Mr. Arjun R Sheth, Advocate

For Respondent: Mr. Atul Sharma, Advocate for R1
Mr. Harshal Kumar, Advocate for R2

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1.1 M/s Techno Forge Ltd., is the corporate debtor in this case, of which the appellants herein include the directors of the suspended Board and its Chief Financial Officer. The CoC was constituted of two financial creditors of the CD, namely the 3rd respondent (M/s Bank of India with 89.11 % voting share), and the 2nd respondent (with 10.89% voting share).

1.2 The CD was registered as a MSME and hence, during the resolution process, the appellants themselves participated in the resolution process as enabled by Sec.240A of the IBC. They submitted their joint plan which eventually came to be accepted by the CoC. One of the terms of the resolution plan relates to exoneration of the personal guarantors of the corporate debtor, and this was opposed by the third respondent, but it was over ruled by the majority vote-sharer, the Bank of India.

1.3 The RP would then move the Adjudicating Authority with I.A.864 of 2021 for the latter's approval to the resolution plan. While lending its approval to the plan vide its Order dated 02.02.2024, the Adjudicating

Authority has modified the term of the plan which relieved the personal guarantors of their liability and kept the liability of the personal guarantors alive. This apart, it introduced a term directing that the revived CD post the resolution plan should set aside 5% of the equity to the public.

1.4. Aggrieved by the decision of the Adjudicating Authority, the appellant has approached this tribunal with this appeal.

2. After completion of the hearing in the matter, and when this appeal was reserved for Orders, the appellants have resolved the issue regarding the extinguishment of personal guarantors amicably with the second respondent and filed an affidavit dated 28.08.2025 to that effect. They also backed it with a letter of the 2nd respondent dated 14.08.2025. The counsel for the 2nd respondent has also concurred with the appellants' statement. Thus, of the two outstanding issues in this appeal, one has been resolved.

3. This takes us to consider the sustainability of the only issue of remains to be considered, and it relates to Part G of the resolution plan. It reads:

> *1. On the effective date existing issued, subscribed and paid-up share capital held by promoters and a group of promoters shall stand cancelled and considered extinguished. New Shares shall be issued in the name of Resolution applicants or any person nominated by Resolution Applicants in the ratio as proposed by Resolution Applicants upon approval of this resolution*

plan, against the upfront payment to be brought by Resolution Applicants.

2. Any other equity-linked securities/warrants, securities/warrants convertible into or exchangeable with equity shares of the corporate debtor and all other securities of the corporate debtor, if any, shall also stand cancelled and extinguished without any payment and/or further act and deed. None of the Equity shareholders, preference Shareholders or holder of any security/warrants convertible rights shall stand cancelled immediately upon sanction of the Resolution Plan.

4. However, the Adjudicating Authority in its Order approving the resolution plan, may be by inadvertence, has inserted a paragraph between Clauses 1 and 2 extracted above, which was not there in the Plan approved by the CoC, and re-numbered the original paragraph 2 as paragraph 3. The paragraph thus inserted reads:

2. Shares held by the public (Public Shareholding) shall be reduced to 5% of their shareholding.”

5. The submission of the learned Counsel for the appellant is predictable: that inasmuch as the reproduction of the resolution plan in the impugned Order has a clause which is not there in the resolution plan as approved by the CoC, the clause so inserted has to be deleted.

6. The mistake in the Order is obvious. The resolution plan as approved by the CoC does not have a clause for reserving 5% equity to public and

this is found not in the operative portion of the Order but in the text of the narration of the resolution plan. This wrong or inadvertent insertion of a clause in the resolution plan changes the complexion of the plan as regards the existence of the CD post CIRP. It is therefore, imperative that this term which is not part of the original resolution plan may have to be deleted.

7. To conclude this appeal is allowed and the Order of the Adjudicating Authority in I.A. No.864 of 2021 in C.P. (IB) No.264 of 2018 dated 02.02.2024 is modified to the extent that it must be now read without the inserted 'paragraph 2' as extracted in paragraph 4 above. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

rs/sk