

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Comp. App. (AT) (Ins.) No. 665 of 2022

In the matter of:

Union Bank of India (earlier known as Corporation Bank) Through Sh. Pritpal Singh Vilku, Chief Manager Vs.Appellant

Mr. Rajender Kumar Jain, Resolution Professional of M/S Kudos Chemie Ltd. & Ors. ...Respondents

For Appellant: Mr. Kamal Satija, Advocate.

For Respondents: Mr. Abhishek Anand, Mr. Prateek Kushwaha, Advocates for R1.

ORDER

(Through Virtual Mode)

20.07.2022: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 17.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, by which order the Application I.A No. 333 of 2021 filed by the Appellant- a Financial Creditor of the Corporate Debtor seeking following two directions has been rejected:-

“i. To direct respondent No.1 to distribute an amount of Rs.17.26 Crores under the Resolution Plan Amount to the applicant as per option No.3 i.e. if CDR was never implemented and in accordance with Section 53 of the Code;

ii. To pass any other order(s) as this Tribunal may deem fit in the given facts of the present case.”

3. Learned Counsel for the Appellant submits that the Resolution Professional has given four options for distribution of amounts to the Financial

Creditors. He submits that the Appellant has opted for option 3 but in view of the fact that Appellant is a minority CoC member holding only 2.31% voting share, the Option-3 was voted out and CoC decided to make the payment as per Option-1 i.e. as per the claim accepted by the Resolution Professional. The Adjudicating Authority considered the Application of the Appellant and has rejected the same taking the view that CoC by majority has decided for distribution as per Option-1. In paragraph 11 of the order, all four options have been captured, which is to the following effect:-

“11. Thereafter in 21st CoC Meeting dated 21.01.2021, the members of the Committee of Creditors deliberated upon the distribution of Resolution Plan amount in Agenda Item No. 21.04. On the request of the members of the Committee of Creditors. Respondent No.1 shared the consolidated sheet of distribution chart (Annexure A-8), wherein the Resolution Professional, made the calculations as per four different scenarios which are mentioned below:-

- 1) Plan amount as per claims accepted by RP;*
- 2) Plan amount as per security interest by assuming WCTL and FITL as part of Term Loan;*
- 3) Plan amount if CDR package was assumed to have not been implemented; and*
- 4) Plan amount if CDR package was assumed to have been implemented.”*

4. The objection was raised by the Appellant Bank and it wanted that distribution should be done as per the Option-3. The CoC by majority having taken decision to distribute the amount as per Option-1 by 97.61% vote, we see no reason to take a different view from one which has been taken by the

Adjudicating Authority. The Adjudicating Authority in paragraph 40 has made following observations:-

“40. Both these contentions of learned counsel for the applicant are not tenable because the distribution of the amount was made by the Committee of Creditors resting on total dues of voting share of individual creditors which is neither whimsical nor arbitrary in any manner. Although the applicant gave a dissenting vote for approval of the Plan, based on the reason that distribution of resolution fund was discriminatory against it and despite the plea that it was entitled to the equal share in regard to the distribution of the resolution fund on the value of the assets of the corporate debtor as security. However, the committee of creditors, deciding to go with option no.1 i.e. distribution of plan amount as per claims admitted, has approved the resolution plan by 97.61% votes.”

5. The decision of the CoC regarding the distribution of amount is in its commercial wisdom which we cannot question or be questioned by the Appellant. The Adjudicating Authority has rightly referred the judgment of the Hon’ble Supreme Court in **“India Resurgence Arc. Pvt. Ltd. Vs. M/s. Amit Metaliks Ltd. & Anr.- Civil Appeal No. 1700 of 2021”** where in paragraph 13.1, the Hon’ble Supreme Court has held that what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest. Paragraph 13.1 of the judgment is as follows:-

“13.1. Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related

Regulations, is essentially the commercial wisdom of the Committee of Creditors and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.”

6. The above judgment of the Hon’ble Supreme Court is fully attracted in the facts of the present case and we do not find any error in the order of the Adjudicating Authority rejecting the Application relying on the above judgment of the Hon’ble Supreme Court. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice M. Satyanarayana Murthy]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

Anjali/nn