

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 1504 of 2022

&

I.A. No. 645 of 2023

IN THE MATTER OF:

1. BHUSHAN SHRINGARPURE,

Proprietor of Aaron Chemicals Corporation
Having hi address at A-2-5, Laxmi Krupa
Chikuwadi, Near SBI, Borivali West,
Mumbai – 400 092.

2. SHINDE CHEMICALS PVT. LTD.

A Company Incorporated under the
Companies Act, 2013,
Having its registered Address at:
6/21 Varma Nagar, Old Nagardas Road,
Andheri East, Mumbai 400 069.

3. PALS PHARMA

A Partnership Firm through its
Partner Mr. Prasad Prabhakar Lavekar
Having Its address at: 70/202/Dattadham
CHS, Dattamandir Cross Road,
Dahanukar Wadi, Kandivali West,
Mumbai – 400 067

...Appellants

Versus

1. MR. B.K. MISHRA

Resolution Professional of Lakeland Chemicals (India) Ltd.
Having registered office at:
Survey No. 63/6A, 6B, Khopoli Rasayani Road,
Madap, Khalapur, Raigad – 410202

2. COMMITTEE OF CREDITORS

Represented by Bank of Baroda
 Having Its Office At Modi Chambers
 Opp. Royal Opera House,
 Pandit Paluskar Chowk, Opera House,
 Mumbai – 400 004

3. KLJ RECOURSES LIMITED

Successful Resolution Applicant
 A Company Registered under the provisions of
 The Companies Act, 1956
 Having its registered office at 8,
 Cammac Street, Kolkata, West Bengal – 700 017 ...**Respondents**

Present:

For Applicant: Mr. Amol Chitale, Mr. Nirnimesh Dube, Advocates

For Respondent: Mr. Aayush Agarwala & Bhumika Sharma, Advocates for R1
 Mr. Arunav Guha Roy, Mr. Anmol Saxena, Ms. Threcy Lawrence, Advocates for R3

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

Corporate Insolvency Resolution Process (in short ‘CIRP’) of Lakeland Chemicals (India) Ltd. (Corporate Debtor) was initiated by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – III) by its order dated 23.09.2019 passed on an application filed by Mahavir Interchem under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’). Nandkishore Bhatia was appointed as the Interim Resolution Professional (in short ‘IRP’) but the Committee of Creditors (in short ‘CoC’) in its meeting held on 13.01.2020 appointed B.K Mishra as the Resolution

Professional (in short 'RP') which was approved by the Adjudicating Authority vide its order dated 24.01.2020.

2. The IRP published a public announcement on 22.10.2019, inviting the claims of the creditors from the Corporate Debtor. The claims of the Financial and Operational Creditors were received and admitted as under:-

Stakeholder	Claim received	Claim Admitted
Financial Creditors		
Bank of Baroda	182.13	182.13
Total Secured Financial Creditors Dues	182.13	182.13
Financial Creditor Unsecured and related	6.96	6.85
Operational creditors	34.19	24.98
Statutory Dues	8.50	4.61
Claims filed by workman	4.87	4.19
Other Creditor (other than financial and operational)	0.73	0.35
Total	237.39	223.10

3. The RP obtained the valuation of the fixed assets, the securities and financial assets and during the period of CIRP issued Form-G for inviting Expression of Interest (EOI). He received EOIs from three Prospective Resolution Applicants (PRAs) which was evaluated on the evaluation matrix in the 17th meeting of CoC held on 08.06.2021 and e-voting conducted on 21.08.2021. The plan submitted by the Respondent No. 3 'KLJ Resources Ltd.' was approved with the voting share of 96.38% and compliance certificate Form-H was issued by the RP. In the resolution plan, approved by the CoC, Operational Creditors (other than workmen and statutory dues) has been

given 1.00% (approx.) of the total admitted claim. The relevant part of the plan in this regard is reproduced as under:-

“Admitted as per the Information Memorandum are Rs. 24.98 Cr. Based on the admitted claims in respect of the operational creditors in the estimate of the resolution applicant the Company liquidation value is not sufficient to cover the debt of the operational creditor in full. However, out of total fund infused Rs. 0.25 Cr shall be earmarked for payment to operational creditors i.e. 1.00% (approx.) of the total admitted claim.

- Rs. 0.25 Cr. shall be paid upfront within 30 days from the Effective Date (At least a day before payment to financial creditors.)
- No interest shall be paid to Operational Creditors.”

4. The RP filed an application i.e. I.A. No. 2464 of 2021 under Section 30(6) and Section 60(5) of the Code before the Adjudicating Authority for seeking its approval of the resolution plan submitted by Respondent No. 3. While the application filed by the RP bearing I.A. No. 2464 of 2021 was pending before the Adjudicating Authority, one of the Operational Creditor, namely, Bheron Corporation filed I.A. No. 2524 of 2021 in which it was prayed that since there is non-compliance of Section 24(3)(c) and Section 24(4) of the Code, therefore, the resolution plan purported to have been approved by the CoC be rejected. The Applicant in this application submitted a claim as an Operational Creditor to the IRP of an amount of Rs. 24,65,839/-. This application was heard on the same day when I.A. No. 2464 of 2021 filed by the RP for approval of the resolution plan was heard but this application was dismissed on 19.09.2022 on the ground that since the Applicant is having merely a claim of 0.191% of the total debt of the Corporate Debtor, therefore, there was no question to give notice to it and the application was dismissed with costs of Rs. 1 Lakh which

was ordered to be paid to the RP who was further ordered to pay it to the Financial Creditors.

5. On 19.09.2022, the application bearing I.A. No. 2464 of 2021 filed by the RP for approval of the resolution plan was allowed.

6. The present appeal has been filed by three Operational Creditors mentioned hereinabove to challenge the order dated 19.09.2022 passed in I.A. No. 2464 of 2021, inter alia, on the ground that the RP has committed a serious error of law in not complying with the provision of Section 24(3)(c) and 24(4) of the Code for not issuing notice to the Appellants despite the fact that the Appellant as a class (Operational Creditors) are having the debt exceeding 10%.

7. Counsel for the Appellant has vehemently argued that as per Section 18(1)(b) of the Code, it is the duty of the IRP to receive and collate all the claims submitted by the Creditors to him. It is further submitted that the IRP had collated the claims of the Financial Creditors, Operational Creditors, Statutory Dues, Claims filed by workman & other Creditor (other than financial and operational). The Operational Creditor submitted a claim of Rs. 34.19 Crores out of which he admitted 24.98 Crores which is admittedly more than 10% of the total claims. He has then referred to Section 24(3)(c) of the Code to contend that it is mandatory duty of the RP to give notice of each meeting of the CoC to the Operational Creditors or their representatives if the amount of aggregate due is not less than 10% of the debt. He has further submitted that even though it is provided in Section 24 that the Operational Creditors may not be having the right to vote in such meetings but they certainly have a right to watch the proceedings and express their views in the

CoC to come to the conclusion in one way or other. In support of his submission, he has relied upon an order of this Tribunal rendered in the case of ANG Industries Ltd. Vs. Shah Brothers Ispat Pvt. Ltd. & Anr., 2018 SCC Online NCLAT 270.

8. On the other hand, Counsel appearing on behalf of Respondent No. 1 (RP) has submitted that the Appellant had the knowledge of initiation of CIRP and the subsequent meetings of the CoC after filing their claims but they were sleeping over their rights for a long time, therefore, the present appeal has been filed with an ulterior motive to delay the process. He has further submitted that since the Operational Creditors or their representatives are not have the right to vote in such meeting in view of Section 24(4) of the Code, therefore, the non-representation in the meeting shall not be treated as a ground to set aside the approved resolution plan. It is further argued that the amount owed to the Appellant No. 1 is Rs. 3,87,52,963/-, the Appellant No. 2 is Rs. 1,67,71,359/- and the Appellant No. 3 is Rs. 1,63,43,257/- and none of the individual Appellants are creditors of more than 10% of the total debts and even cumulatively the said amount does not cross the mark of 10% of total debt, therefore, the appeal is totally mis-conceived. It is also argued that one of such Operational Creditor had filed individual application bearing I.A. No. 2524 of 2021 in which the same prayer has been made about non-issuance of notice to him but the said application was dismissed by the Adjudicating Authority. In the end, he has relied upon a decision of this Tribunal rendered in the case of Rahul Khilnani & Anr. Vs. Sh. Atul Kumar Jain & Ors., CA (AT) (Ins.) No. 586 of 2021 decided on 23.09.2022 to contend that since Section 24(4) of the Code does not make a room for the Operational

Creditor to vote in the meeting of the CoC, therefore, no prejudice has been caused to them for not-complying with Section 24(3) of the Code.

9. Counsel for Respondent No. 3 (SRA) has submitted that there is no lapse on its part in so far as the compliance of the provision of the Code is concerned and if there is any lapse then it is attributable to the RP if he has not issued notice as prescribed under Section 24(3)(c) of the Code because the SRA has bonafidely persued the application and the CoC has approved its plan by voting share of 96.38%. He has thus submitted that his plan may not be set aside.

10. We have heard Counsel for the parties and perused the record.

11. Admitted facts are that the present Appellants are part of Operational Creditors whose claim is cumulatively admitted to be Rs. 24.98 Crore which is more than 10% of the admitted debt of the Corporate Debtor. There is also no denial of the fact that the RP did not issue notice to the Operational Creditors in terms of Section 24(3)(c) of the Code. It is also a fact that even if notice had been given to the Operational Creditors even then they had no right to vote in the meeting of the CoC in view of Section 24(4) of the Code but the question herein arises is as to whether is it not mandatory on the part of the RP to issue notice to all the Operational Creditors in terms of Section 24(3)(c) of the Code if it is found by him that their admitted claim is more than 10%?

12. In this regard, it would be relevant to refer to Section 24 of the Code which is reproduced as under: -

“Section 24: Meeting of committee of creditors.

(1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice¹ of each meeting of the committee of creditors to—

(a) members of 2[committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) 3[Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor] who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.”

13. Section 24 deals with the meeting of committee of creditors. Section 24(1) provides that the members of the CoC may meet in person or by such electronic means as may be specified. Section 24(2) provides that all the meetings of the CoC shall be conducted by the RP. Section 24(3) provides that the RP shall give notice of each meeting of the CoC including the authorised representatives, members of suspended board of director and or partners of the Corporate Persons and Operational Creditors or their representatives if the amount aggregated is not less than 10% of the debt. Section 24(4) says that the directors or partners and representative of Operational Creditors who are mentioned in sub-section (3) may attend the meetings of CoC but shall not have any right to vote in such meetings and in case they remain absent despite notice then the proceedings of the CoC shall not be invalidated on that account.

14. A bare reading of the aforesaid provision i.e. Section 24(3)(c) shows that it is mandatory in nature and it is incumbent upon the RP to serve notice to all the Operational Creditors of each meeting of the CoC or if they elect their authorised representatives after notice is received by them, then the notice of meeting to the authorised representatives. There is no question of otherwise knowledge acquired of the meetings of the CoC by the Operational Creditors as has been argued by Counsel for Respondent No. 1. It is also true that in view of Section 24(4) the Operational Creditor or their representatives shall not have a right to vote in each meeting of the CoC in which they participate and in case they remain absent despite notice then they cannot rake up a dispute for getting the proceeding invalidated on that account. However, in the decision rendered by this Tribunal in the case of ANG Industries Ltd.

(Supra), dealing with the same situation arising from the non-compliance of Section 24(3)(c) it has been held that:

“15. From the aforesaid provisions the intention of the legislature is clear that the Committee of Creditors while approving or rejecting one or other resolution plan should follow such procedure which is transparent. Those who will watching the proceeding such as (suspended) Board of Directors or its Partners; Operational Creditors or its representatives and Resolution Applicant(s) are not mere spectator but may express their views to the Committee of Creditors for coming to conclusion in one or other way”

15. Whereas observation made in the case of Rahul Khilnani (Supra), relied upon by the Respondent No. 1, that since the Operational Creditors have no right to vote in the meeting of the CoC, therefore, they have not suffered any prejudice, does not apply because in such a situation the provision of notice to the Operational Creditors or their representatives in Section 24(3)(c) would be otiose and the said provision itself would become redundant.

16. Thus, keeping in view of the aforesaid facts and circumstances, it is held that it is incumbent upon the RP to serve notice of each meeting of the CoC to the Operational Creditors or their representatives if the amount of the aggregated due is not less than 10% of the debt. Since, in this case, we have found that no notice was given by the RP to the Operational Creditors, therefore, in our considered opinion, it is a dereliction of duty on his part for which he deserves to be burdened with costs. The cost is assessed at Rs. 1 Lakh which shall be paid by the RP to the Operational Creditors (Appellants), who are three members, in equal proportion, by way of bank draft within a period of 30 days from the date of receipt of the certified copy of this order.

17. In so far as, the impugned order is concerned, we have categorically asked Counsel for the Appellants that in case they had the notice and were

present in the meeting in which they could have advised the CoC by expressing their views then how much they would have been given. It is submitted that they would have been benefited by another 1 or 2% of the amount over and above the amount which has been allocated to them in the plan.

18. Thus, looking at the fact that amount involved is too meagre to set aside the resolution plan which has been approved by the CoC by not less than 96.38% voting share, we do not find it to be a fit case for setting aside the resolution plan much less the order dated 19.09.2022. The appeal is thus disposed of in the terms mentioned hereinabove.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi

20th April, 2023

Sheetal