

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 610 of 2021

IN THE MATTER OF:

Mr. Keshav Agrawal

...Appellant

Vs.

Abhijit Guhathakurta,

RP of Videocon Industries Ltd. & Ors

...Respondents

Present:

**For Appellant: Mr. Vijayesh Atre and Ms. Deepali Garhewal
Advocates.**

**For Respondents: Mr. Abhinav Vasisht, Sr. Advocate, Mr. Anoop Rawat,
Zeeshan Khan, Mr. Moulshree Shukla, Ms. Radhika
Indapurkar, Mr. Bryan Pilla, Vaijayant Paliwal and Ms.
Meghna Rajadhyaksha, Advocates for RP, R1
Mr. Shreyas Edupuganti, SRA, Mr. Diwakar
Maheshwari Advocates for R2**

ORDER

(20th September, 2021)

Jarat Kumar Jain: J.

Ld. Counsel for the Appellant submits that the Appellant is a shareholder of the Corporate Debtor, which is a listed Company. The Appellant has invested all his earned money in the Company. The Resolution Professional (RP) is duty bound to examine the Resolution Plan and to ensure that the Plan does not contravene any of the provisions of law for the time being in force as provided in Sub-Section (2) (e) of Section 30 of the IBC, not only this, when the Resolution Plan was submitted for approval before the Adjudicating Authority, The Ld. Adjudicating Authority has to satisfy whether the requirements as referred in Sub-Section(2) of

Section 30 of the IBC has been complied with or not. However, Ld. Adjudicating Authority has not ensured the compliance of the provisions relating to reduction of share capital under Section 66 of the Companies Act, 2013 and National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 as well as the provisions of SEBI (Delisting of Equity Share) Regulations, 2009 and SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

2. Ld. Counsel for the Appellant cited the Judgment of Hon'ble Supreme Court in the case of Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. (2018) 2 SCC 674. In this Judgment, Hon'ble Supreme Court held that the non obstante clause contained in Section 238 of the Code will not override the Advocates Act as there is no inconsistency between provisions of IBC in Advocates Act on the same analogy Section 238 of the Code will not override the provisions of 66 of the Companies Act, 2013 and SEBI Regulations as there is no inconsistency between these two provisions. Therefore, their compliance is necessary.

3. It is also submitted that Ld. Adjudicating Authority approved the Resolution Plan without giving any notice of the Resolution Plan to the shareholders of the Company whose lifetime investment has become zero, after approval of the Resolution Plan.

4. Ld. Adjudicating Authority has approved the plan despite their being gross factual inconsistency in its own findings and it had doubts about

confidentiality of the crucial data. The Resolution Plan is approved in contravention of the provisions of the law.

5. Also heard on I.A. No. 1622 of 2021 an Application for stay of the impugned order. Ld. Counsel for the Appellant submits that the Appellant has a prima facie case in his favour and balance of convenience is also in its favour and if the operation of the impugned order is not stayed, it would cause severe financial loss and mentally agony to the Appellant.

6. On the other hand, Ld. Sr. Counsel representing the Respondent No. 1 (RP) submits that it is incorrect that the RP has not examined the Resolution Plan as per the Section 30(2) of the IBC and the Resolution Plan is approved in contravention of provisions of 66 of the Companies Act, 2013 and SEBI Regulations.

7. It is submitted that there is no requirement of any enactment or Regulation to serve notice on each of the shareholders and provide the copy of the Resolution Plan to the shareholders before approval. The objections which are raised by the Appellant in regard to non-compliance of the provisions of 66 of the Companies Act, 2013 and the SEBI Regulations. The same objections were raised before the Hon'ble Supreme Court in the case of Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Ltd. and Ors. 2021 SCC Online SC 253. Hon'ble Supreme Court in Para 366 to 375 recorded the submissions and the findings are in Para 376 to 388.

8. Ld. Counsel for the Respondent No. 1 also drew our attention towards the explanation which provides that "for the purpose of clause (e) of Sub-

Section 2 of Section 30 of the IBC if any approval of shareholder is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be contravention of the Act or Law. Thus, there is deeming provisions in regard to compliance of the provisions of Section 66 of the Companies Act, 2013 and SEBI Regulations. Therefore, it cannot be said that the Resolution Plan is approved in contravention of provisions of Section 66 of the Companies Act, 2013 or any other law for the time being in force.

9. We have considered the submissions of Ld. Counsels for the parties. We would like to refer the Judgment of Hon'ble Supreme Court in the case of Jaypee Kensington Boulevard Apartments Welfare Association and Ors. (Supra) in Para 376 to 383 held that:-

“376. Having given anxious consideration to the rival submissions, we are clearly of the view that objections sought to be taken by the minority shareholders must fail.

377. It is noticed from the resolution plan that the Delisting Regulations, as amended on 31.05.2018, have been duly taken note of; and the step for delisting and extinguishment of existing shareholding is provided in Schedule 2 thereof, in the following terms: -

“IX. STEP 8: DELISTING AND EXTINGUISHMENT OF EXISTING SHAREHOLDING

1. As an integral part of the Resolution Plan, post implementation of Step 1, the shares of the Corporate Debtor shall be de-listed, in terms of SEBI (Delisting of Equity Shares) Regulations, 2009. (“Delisting Regulations”), as amended by Amendment to Delisting Regulations dated May 31, 2018, which prescribes that the procedure under the Delisting Regulations are not applicable for any delisting pursuant to an approved resolution plan under the Code, if:

- (a) the resolution plan sets out a specific delisting procedure; or
- (b) the resolution plan provides an exit option to existing public shareholders at a price which is higher of the liquidation value

(as applied in the order of priority of claims prescribed under Section 53 of IBC) and the exit price being paid to the promoters.

In this regard, the Non-Promoter Shareholders (i.e. the public shareholders) shall be paid an exit price aggregating to INR 1 Cr and pursuant to the same, their shareholding shall be extinguished.

2. In terms of the definition of Public Shareholders under the Delisting Regulations, Existing Promoters are specifically carved out. Accordingly, simultaneous to the de-listing, the issued equity share capital of the Corporate Debtor as held by the Existing Promoters i.e. 84.70 Cr equity shares of face value of INR 10 (Rupees Ten each) shall be extinguished and cancelled in its entirety without any consideration.

3. Extinguishment of shares of Corporate Debtor may be done through Capital Reduction or selective Capital Reduction.

4. Extinguishment of shares of Corporate Debtor may be done through credit to Capital Reserve Account.

The equity shareholding of the Corporate Debtor post De-listing and Capital Reduction shall be as follows:

Category of shareholder	% of Equity Shareholding
NBCC SPV (New Promoter)	100%
Existing Promoters	Nil
Non-Promoter Shareholder (public shareholder)	Nil
Total Issued, subscribed and Paid up equity Capital	100.00%”

378. It cannot be said that the resolution plan is not compliant with the requirements of Regulation 38(1A) of the CIRP Regulations.

379. As noticed, by way of Explanation to Section 30(2)(e) of the Code, it has been made clear by the legislature that if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law. The attempt on the part of minority shareholders to raise objection against the resolution plan simply flies in the face of this Explanation to Section 30(2)(e) of the Code.

380. Needless to reiterate that in the scheme of IBC, only the CoC is entrusted with the task of dealing with and approving the plan of insolvency resolution; and the shareholders of a corporate debtor, who is already reeling under debts, have not been provided any participation in the insolvency resolution process. It goes without saying that in the case of a corporate debtor like JIL, if the process of liquidation is resorted to under Chapter III of the Code, there is a very little likelihood of the shareholders getting even dewdrops out of the waterfall of distribution of assets, as delineated in Section 53 of the Code, where the preference shareholders and equity shareholders stand last in the order of priority. In the totality of circumstances, when the promoters' shareholding is extinguished and cancelled in toto without any consideration, even nominal exit price of INR 1 crore for minority shareholders cannot be termed as unfair or inequitable. In any case, a decision in regard to the aforesaid step in the resolution plan had been that of the commercial wisdom of the Committee of Creditors and is not amenable to judicial review.

381. Reference to Section 230 of the Companies Act, 2013, which deals with power to compromise or make arrangements with creditors and members is entirely inapt in the context of the present case because no such proceedings for compromise or arrangements are in contemplation. On the contrary, in the present case, the proceedings of CIRP under the Code have reached an advanced stage with approval of resolution plan by the CoC and the Adjudicating Authority.

382. Apart from the above, NBCC also appears right in contending that once the resolution plan stands approved by the Adjudicating Authority, the objecting shareholders, who did not even raise any grievance before the Adjudicating Authority, cannot now, for the first time, object to the arrangement arrived under the resolution plan, in view of Section 31 read with Section 238 of the Code which provide that the approved resolution plan shall be binding on all stakeholders and that the provisions of IBC shall prevail not only over the laws but also the instruments having effect by virtue of any such law.

383. Viewed from any angle, in our view, it cannot be said that the resolution plan does not adequately deal with the interests of minority shareholders. The grievances as suggested by these shareholders cannot be recognised as legal grievances; and do not provide them any cause of action to maintain their objections. The objections by the minority shareholders stand rejected."

10. We are of the view that in the aforesaid Judgment Hon'ble Supreme Court has dealt with all the objections and rejected the same, which are raised by the Appellant (Shareholder) in this Appeal. Therefore, we are of the view that there is no merits in this Appeal.

Thus, the Appeal is dismissed in *limine* without notice to the Respondents. No order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member(Technical)

SC