NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.51 of 2025
& I.A. No. 127 of 2025

[Arising out of Order dated 04.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in IA No.37 of 2024 in CP(IB)- 639/PB/2018]

IN THE MATTER OF:

Raman Gupta **...Appellant**

Versus

Surendra Raj Garg **...Respondents**
Resolution Professional,
Metenere Ltd. & Ors.

Present:

For Appellant: **Mr. Virender Ganda, Sr. Advocate with Ms. Purti Gupta, Ms. Henna George and Mr. Ayandeb, Advocates.**

For Respondents: **Mr. Ankur Mittal and Ms. Muskan Jain, Advocates for NARCL.**
Mr. Vaijayant Paliwal and Ms. Tanya Chib, Advocates for RP.

J U D G M E N T
(18th February, 2025)

Ashok Bhushan, J.

This Appeal has been filed by a promoter/ suspended director of the corporate debtor- 'Metenere Limited' challenging the order dated 04.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi allowing the application IA No.37 of 2024 filed by

the Resolution Professional for approval of the Resolution Plan. Appellant aggrieved by the impugned order has filed this Appeal.

2. Brief background facts necessary to be noticed for deciding the Appeal are:-

2.1. On an application filed by the State Bank of India, Corporate Insolvency Resolution Process against the Corporate Debtor commenced by order dated 03.10.2020. In the CIRP process, Resolution Plans came to be considered by the CoC in the 35th meeting of the CoC dated 11.07.2024. On the basis of result of voting, the plan submitted by Orissa Metaliks Pvt. Ltd. was approved by 98.94% vote share. After approval of the plan, an application was filed by the Resolution Professional seeking approval of the Resolution Plan being IA No. 37 of 2024. The application came for consideration before the Adjudicating Authority on 10.09.2024 where all members of the CoC prayed that entire plan amount be kept aside in a separate interest bearing account until final adjudication of various applications which have been filed by different stakeholders. Adjudicating Authority passed an order on 10.09.2024 directing for depositing the amount of Rs.295,14,95,611/- in a high interest bearing account. The claim amount as and when adjudicated shall be paid as per the orders of the Adjudicating Authority. Subsequent to the aforesaid order, the SRA deposited the aforesaid amount in a fixed deposit. The Resolution Plan came for consideration before the Adjudicating Authority. Adjudicating Authority after hearing the parties approved the Resolution Plan by the impugned order dated 04.10.2024. This Appeal has been filed challenging the approval of the Resolution Plan.

3. We have heard Shri Virender Ganda, Learned Senior Counsel for the Appellant, Shri Vaijyant Paliwal, Learned Counsel for erstwhile Resolution Professional and Monitoring Committee and Shri Ankur Mittal, Learned Counsel appearing for the CoC.

4. Shri Virender Ganda, Learned Senior Counsel for the Appellant submits that the Resolution Plan which directed payment to be released after decision by the Adjudicating Authority in different application shall lead to reduction of the pay-out to the financial creditors which ultimately shall have bearing on the suspended director and guarantors like Appellant who has given personal guarantee. It is submitted that in the Resolution Plan, it is provided that the financial creditors shall continue to be entitled to avail recourse available to them in relation to the personal/corporate guarantees whereas in the Resolution Plan the liability of the Resolution Applicant has been completely wiped out. It is submitted that the Resolution Plan in a manner is a conditional plan, hence, ought not to have been approved. Counsel for the Appellant further contended that the Corporate Insolvency Resolution Process has commenced against the Appellant w.e.f. 01.03.2024 and after insolvency commencement against the Appellant he has not been intimated to participate in the meeting of the CoC.

5. Counsel for the CoC refuting the submissions of the Counsel for the Appellant submits that the Appellant is suspended director/ promoter of the corporate debtor and has no right to challenge the commercial wisdom of the CoC under which Resolution Plan has been approved. Direction was issued

by the Adjudicating Authority to deposit the entire amount in a fixed deposit is to protect the interests of all stakeholders including the Indian Bank who has filed IA No.4275 of 2024, the dissenting financial creditors objecting to the amount to be distributed. It is submitted that all operational creditors and other stakeholders after determination of their claims by the Adjudicating Authority shall be entitled to receive the amount from the amount deposited which is the term of approval of the Resolution Plan. The Resolution Plan is neither conditional nor suffers from any error. It is submitted that under the Resolution Plan, the personal guarantees have not been extinguished, hence, Appellant is still liable to the financial creditors. It is submitted that there is no ground to interfere with the plan. It is submitted that the Appeal filed by some of the operational creditors including the EPFO has not been entertained by this Court against the impugned order relying on the order of the Adjudicating Authority dated 10.09.2024 by which entire amount was deposited.

6. We have considered the submissions of the Counsel for the Appellant and perused the record.

7. Adjudicating Authority in paragraph 11.3 has noticed the earlier order passed on 10.09.2024 where on the request of the CoC, the entire amount was directed to be deposited in a separate interest bearing account. It is useful to extract paragraph 11.3 of the impugned order which is as follows:-

> *"11.3. During the course of hearing on 10.09.2024, the members of CoC represented by Ld. Sr. Counsel*

Mr. Niranjan Reddy and Ld. Counsel Mr. Ankur Mittal along with Ld. Counsel for the SRA Mr. Rahul Gupta submitted that in the present case entire plan amount can be kept aside in a separate interest bearing account until final adjudication of these applications. All have consented to the above. Para 7 to 12 of the order dated 10.09.2024 is extracted below:

> *7. In so far as IA-4275/2024 is concerned the Ld. Counsel for the Indian Bank states that at best their ultimate interest and their claim is in terms of their share which is ₹18.68 Crores approx which is denied by the other CoC members. Primarily the Counsel for the Indian Bank relied upon para 5.5 & 5.6 of the plan to say that the entitlement as a dissenting financial creditor is in an amount of ₹18.68 Crores. Therefore, their interest should be secured assuming the plan application is approved. They have no objection to proceed on the plan application.*
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> *8. On this issue we note that the COC members against whom the prayer is sought have not been impleaded. Applicant bank Indian Bank is hereby directed to implead other CoC members and prosecute this matter.*
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> *9. The members of the CoC represented by Mr. Niranjan Reddy, Ld. Sr. Counsel and Mr. Ankur Mittal, Ld. Counsel fairly state that the entire plan amount may be kept aside in an interest bearing account. All applications including claims of Operational Creditors can be decided separately.*

The Application for approval of the Resolution Plan should be decided. The claim amount as adjudicated should be distributed to them as per the order of the Adjudicating Authority. In terms of the Resolution Plan the balance will go to the benefit of the CoC members as per their entitlement.

10. In view of the above, the suggested course of action of depositing the plan amount in a separate interest bearing account is accepted, as agreed by parties. The plan Application will be heard and proceeded with. This will also ensure that the SRA will be able to run the Corporate Debtor if the Plan is approved.

11. By consent, the applications of Indian Bank, the employees and vendors and the service provider will be considered separately after the plan application is decided.

12. Accordingly, these IAs will be taken up separately as per the consent obtained from all Ld. Counsels appearing both physically and on VC, who have agreed to this course of action."

8. Further in paragraph 11.4, the Adjudicating Authority directed that after depositing the entire amount in a high interest-bearing account, claim amount as and when adjudicated in favour of the Applicants which applications were pending shall be distributed as per the order of the

Adjudicating Authority. The order passed by the Adjudicating Authority as noted in paragraph 11.4 amply protect the interests of all the stakeholders.

9. Now coming to the submission of the Appellant that Appellant is promoter and personal guarantor of the corporate debtor. Appellant in its appeal itself has noted clause 4.6.5 of the Resolution Plan in paragraph VIII (e) which is as follows:-

> *"e. It is understood that however, in complete contradiction thereto, Clause 4.6.5 of the Resolution Plan stipulates that the Financial Creditors shall continue to be entitled to avail any recourse available to them in relation to the personal/corporate guarantees/third party security that may have been extended by any member of the promoter Group or any third party to secure the facilities granted by such Financial Creditors. Clause 4.6.5 is reproduced as under:*
>
> *"4.6.5.....*
>
> *Provided however, the Financial Creditors shall continue to be entitled to avail any recourse available to them in relation to the personal/corporate guarantees/third party security that may have been extended by any member of the promoter Group or any third party to secure the facilities granted by such Financial Creditors. However, to the extent that there are any that subrogation rights such personal/corporate guarantors/third party security may have against the Corporate Debtor, any and all such subrogation rights shall be deemed to be extinguished as on the Payment Date, with no*

> *requirement for any further action on part of the Corporate Debtor or the Resolution Applicant."*

10. The law is well settled that approval of a Resolution Plan does not *ipso facto* discharge a personal guarantor. The Hon'ble Supreme Court in ***"Lalit Kumar Jain vs. Union of India and Ors.- (2021) 9 SCC 321"*** laid down following in paragraph 125:-

> *"**125.** In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract."*

11. Clause 4.6.5 as extracted above indicate that the financial creditor shall continue to be entitled to avail any recourse available to them in relation to the personal/ corporate guarantees which clause has been approved by the CoC and binds all stakeholders. Appellant cannot be heard to say anything against the said clause which is equally binding on the promoter/ guarantors of the corporate debtor.

12. Insofar as the submission of the Appellant that by virtue of the order passed by the Adjudicating Authority the amount which is to be determined

by the Adjudicating Authority on application filed by different stakeholders shall lead to reduction of the total amount deposited which shall further expose the liability of the personal guarantor. We are of the view that above being terms of the approval of the Resolution Plan, no exception can be taken to the direction of the Adjudicating Authority to make payment to the different stakeholders on the basis of determination in their applications. Entire plan amount has been deposited in the interest bearing account to protect the interests of all the stakeholders with which we do not find any error. The financial creditors having been given the right to proceed against the personal guarantor for the balance liability, it is always open for the financial creditor to proceed against the personal guarantor/ corporate guarantor that being the approved clause of Resolution Plan, Appellant cannot be heard to say anything against that. One more ground which has been taken in the appeal is that after the commencement of the insolvency proceeding against the Appellant against the personal guarantor w.e.f. 01.03.2024, Appellant has not been invited to participate in the meeting of the CoC. In the present case, Appellant has not pleaded that in the CoC meeting which was held subsequent to 01.03.2024 there was no representation of the suspended director of the corporate debtor. The personal insolvency having been commenced on 01.03.2024 not allowing participation of the Appellant cannot be said in any manner affect the meeting of the CoC where it is not even pleaded that suspended management was not invited to participate. It is not the case of the Appellant that the Resolution Plan submitted by the SRA is not compliant of Section 30(2) of the IBC. The jurisdiction of the Adjudicating

Authority and this Tribunal to interfere with the commercial wisdom of the CoC is too limited and the Adjudicating Authority and this Tribunal can interfere with approval of the Resolution Plan only when plan is not in compliance of Section 30(2).

13. We do not find any ground to interfere with the impugned order. There is no merit in the appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali