

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

**Comp. App. (AT) (Ins) No. 1083 of 2021 & I.A. No. 2902 of 2021**

**IN THE MATTER OF:**

**Balaji Minerals & Ors.**

**...Appellant**

**Versus**

**Essar Power M. P. Ltd.**

**(Through Professional) & Ors.**

**...Respondents**

**Present:**

**For Appellant :**

Mr. Piyush Singh, Mr. Akshay Srivastava & Mr. Vivek Kumar, Advocates.

**For Respondents :**

Mr. Ramji Srinivasan, Sr. Advocate along with Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra. Mr. Vishnu Shriram & Ms. Namrata Saraogi, for R-1.

Mr. Sandeep Singhi, Mr. Vishal Gehrana, Ms. Hancy Maini & Ms. Aakriti Vohra, for R-2.

Mr. Siddhant Kant & Mr. Nikhil Mathur, for CoC.

**J U D G M E N T**

**Per: Justice Rakesh Kumar Jain:**

This appeal is filed by four Appellants, namely, Balaji Minerals, Pawan Associates, V2P Engineering Services Pvt. Ltd. and M/s Shree Enterprises against the order dated 01.11.2021, passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) by which application bearing I.A. No. 3286 of 2021 filed by Balaji Minerals, I.A. No. 3293 of 2021 filed by Pawan Associates, I.A. No. 3318 of 2021 filed by V2P Engineering Services Pvt. Ltd. and I.A. No. 3614 of 2021 filed by Shree Enterprises, have been dismissed recording the following reason which read as under: -

“REASONING

24. That after going through the objections made by the Operational Creditors, and examining the reply given by the RP and CoC, this bench observes that as per Section 30(2)(b) of IBC, 2016, the higher of the following amount is required to be paid to the Operational Creditors i.e the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53.

25. Since the Liquidation value of the Operational Creditors is 'Nil' and the amount which shall be distributed to the Corporate Debtor in accordance with Section 53(1) would have been the Nil as well. Therefore, we are of the considered view that the Resolution Plan is not in violation of Section 30(2)(b) of IBC, 2016.

26. Since the plan is approved by the 100% votes by the CoC. Therefore, this bench cannot interfere in the Commercial Wisdom of the CoC, in absence of any contravention of any provision of law. Therefore, we dismiss IA 3286, IA 3293, IA 3318, IA 3396, IA 3614, IA 3862, IA 3869 Of 2021, IA 4099 filed by the Operational Creditors.

27. That IA 3608, IA 3619, IA 3620, IA 3621 were the Applications filed by the CoC to intervene in the Applications filed by the Operational Creditors. Since the objections of the operational Creditors are already decided, therefore these IAs are dismissed as infructuous.”

2. In brief, ICICI Bank, one of the financial creditors of the ESSAR Power M.P. Limited (Corporate Debtor), filed an application i.e. I.B. No. 863 (PB) of 2020 under Section 7 of the Insolvency And Bankruptcy Code, 2016 (in short 'Code') for the initiation of Corporate Insolvency Resolution Process (in short 'CIRP') against the Corporate Debtor.

3. The aforesaid application was admitted by the Adjudicating Authority on 03.10.2020 and Ashish Chhawchharia was appointed as the Interim Resolution Professional (in short 'IRP'). The IRP constituted the Committee of Creditors (CoC) with ICICI Bank Limited, REC Limited, Power Financial

Corporation Limited, Edelweiss Asset Reconstruction Company Limited and Punjab National Bank.

4. The IRP issued advertisement, inviting the claims, in terms of the order dated 03.10.2020. On 19.10.2020, the Appellants submitted their claim to the IRP of their respective operational debts i.e. Rs. 5,44,85,630/- (Appellant No. 1), Rs. 26,08,433.5/- (Appellant No. 2), Rs. 1,78,63,387.81/- (Appellant No. 3) and Rs. 3,28,63,598/- (Appellant No. 4). The claims of the Appellants were admitted by the IRP as under “Rs. 5,44,85,628/- (Appellant No. 1), Rs. 25,70,452/- (Appellant No. 2), Rs. 1,60,19,388/- (Appellant No. 3) and Rs. 3,28,31,045/- (Appellant No. 4)”

5. The Respondent No. 2 i.e. Adani Power Limited, submitted the resolution plan which was approved by the CoC. As per the said resolution plan, the total amount of admitted claim is Rs. 12025,63,31,567/-. The liquidation value is Rs. 1733 Cr. (approx.) and the Fair value is Rs. 2657 Cr. (approx.).

6. The IRP filed the application bearing I.A No. 2829 of 2021 before the Adjudicating Authority for approval of the resolution plan making the following prayers “(b) pass an order approving the Resolution plan dated 11.05.2021 (read with addendum dated 12.05.2021) submitted by Adani Power Limited (as annexed at Annexure Y) under Section 31(1) of the IBC. (c) Pass an order granting the reliefs and concessions sought in Section 9 of the Successful Resolution Plan dated 11.05.2021 (r/w addendum dated 12.05.2021) submitted by Adani Power Limited (as annexure Y)”

7. During the pendency of this application, the present Appellants filed their respective applications bearing I.A. No. 3286 of 2021, 3293 of 2021, 3318 of 2021 and 3614 of 2021, objecting to the resolution plan, approved by the CoC and sought amendment in it in conformity with the Code and Regulations.

8. The grievance of the Appellants raised in the said application is regarding the provision of NIL payment to the Operational Creditor in the resolution plan, however, all the applications have been dismissed by the Adjudicating Authority vide its impugned order after recording specific reasoning which has already been reproduced in the earlier part of this order.

9. Counsel for the Appellant has argued that the resolution plan is unfair as it must provide for payment of debts of the operational creditors, the distribution should be fair and equitable and since the resolution plan failed to make any provision for the operational creditors, therefore, the distribution cannot be said to be fair and equitable.

10. On the other hand, Counsel for Respondent No. 1 has submitted that the applications filed by the Appellants have rightly been dismissed by the Adjudicating Authority by recording cogent reasons. It is further submitted that as per Section 30(2) of the Code, the resolution professional is required to examine that payments proposed to the operational creditors shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the Corporate Debtor under Section 53 or less than the amount payable to operational creditor if the resolution proceeds were to be

distributed in accordance with the priority under Section 53 of the Code whichever is higher.

11. It is further submitted that liquidation value of the CD is approximately Rs. 1733 Cr. while the total admitted financial debt of the CD is Rs. 12607,57,69,383/- which is not sufficient to even cater to the secured financial creditors of the CD, therefore, there is NIL liquidation value due to operational creditors in the event of liquidation of the CD and thus, the provisions in the resolution plan to pay NIL amount to the operational creditors is not in violation of any of the provisions of the Code.

12. It is also submitted that when the liquidation value due to operational creditors in a given case is NIL, then a resolution plan proposing NIL payment to the operational creditors is in due compliance with Section 30(2) r/w Regulation 38 of the CIRP Regulations.

13. It is further argued that the operational creditors are not required to be paid anything more than the minimum liquidation value due to them and the CoC in its commercial wisdom is duly empowered to accept a resolution plan that may involve different payments to financial creditors and operational creditors. In this regard, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of COC of ESSAR Steel India Limited through its authorised signatory Vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 531 and also to the case of Pratap Technocrats (P) Ltd. & Ors. Vs. Monitoring Committee of Reliance Infatel Limited & Anr., Civil Appeal No. 676 of 2021.

14. Counsel for Respondent No. 1 has also submitted that the commercial wisdom of the CoC, approving the resolution plan, that it is compliant with the mandatory requirement of the Code is non-justiciable and also relied upon a decision of the Hon'ble Supreme Court in the case of K. Shashidhar Vs. Indian Overseas Bank & Ors., (2019) 12 SCC 50.

15. Counsel for Respondent No. 2 has submitted that the resolution plan was unanimously approved by the CoC in exercise of its commercial wisdom which is not open to judicial review. The liquidation value of the CD disclosed by Respondent No. 1 was Rs. 1733/- Cr. and as such the liquidation value of the operational creditors of the CD was NIL.

16. It is further submitted that the approved resolution plan, offered NIL payment to unsecured financial creditors, operational creditors and contingent creditors as such the offer is in accordance with Section 30(2)(b) of the Code.

17. Counsel for Respondent No. 3 has also made the similar submissions stating that the CoC has made all efforts in protecting the interest of all the stakeholders. It is submitted that the resolution plan submitted by Respondent No. 2 provided for an overall payout of Rs. 2500 Cr. towards the stakeholders with an additional commitment of upto Rs. 1100 Cr. towards, inter alia, investments in the CD towards working capital, operational improvements and capital expenditure.

18. We have heard Counsel for the parties and perused the record with their able assistance.

19. The amount provided for the stakeholders under the Resolution plan, culled out from the impugned order is as under:-

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan #	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditor	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	124,391,359,685	120,129,831,567	25,000,000,000	20.098%
	Total[(a)+(b)]	124,391,359,685	120,129,831,567	25,000,000,000	20.098%	

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	4,849,451,504	419,437,816	NIL	NIL
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		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	-  126,500,000	-  126,500,000	-  NIL	-  NIL
		Total [(a)+(b)]	4,975,951,504	545 937,816	NIL	NIL
3	<b>Operational Creditors</b>	(a) Related Party of Corporate Debtor	547,055,623	546,408,891	NIL	NIL
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Others	42,494,439,721 - 176,425,856 29,504,909,458	5,446,721,303 - 137 393,857 429 731,129	NIL - NIL NIL	NIL - NIL NIL
		Total[(a)+(b)]	72,722,830,658	6,560,255,180	NIL	NIL
4	<b>Other debts and dues</b>	-	-	-	-	-
	<b>Grand Total</b>		202,090,141,846	127,236,024,563	25,000,000	12.37%

# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

20. The resolution plan has been approved by 100% voting by the CoC. It is well settled that the commercial wisdom of the CoC is unjusticiable. Moreover, the liquidation value of the operational creditors is NIL and the amount which has been distributed to the CD in accordance with Section 53(1) shall have to be Nil as well, therefore, the resolution plan is not in violation of Section 30(2)(b) of the Code.

21. Moreover, admitted claim regarding the financial creditors is to the tune of Rs. 12067,57,69,383 and amount provided under the plan is Rs. 2500 Cr. which is to the tune of 20.098%, therefore, all the other creditors including unsecured financial creditors and operational creditors have been provided NIL.

22. Thus, in view of the aforesaid discussion, we do not find any error in the impugned order having been passed in respect of the applications filed by the Appellants, therefore, the appeal is found to be without any merit and the same is hereby dismissed. No costs.

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Mr. Naresh Salecha]  
Member (Technical)**

**[Mr. Indevar Pandey]  
Member (Technical)**

**New Delhi**

**29<sup>th</sup> April, 2024**

*Sheetal*