

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

**Company Appeal (AT) (Insolvency) No. 417 of 2023**

**IN THE MATTER OF:**

**Ashvinkumar Jayantilal Patel**

**...Appellant**

**Versus**

**Shri Sanjay Jitendralal Shah & Ors.**

**...Respondents**

**Present:**

**For Appellant:** Mr. Palash S Singhai, Advocate

**For Respondent:**

**ORDER**

**18.04.2023:** Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 24<sup>th</sup> January, 2023 by which order the Adjudicating Authority has rejected Resolution Plan submitted by the Appellant, the ex-Director of the Corporate Debtor. The Adjudicating Authority in paragraph 18 has made following observations:

*“18. It shows that the claims of the creditors which are not part of the Resolution Plan get extinguished upon approval of the Resolution Plan. In this Resolution Plan, the claims of the Directors of the Corporate Debtor are not considered by the RP as they being related parties of the Corporate Debtor. However, at the same time, the CoC in their commercial wisdom allowed the claim of those directors of the Corporate Debtor to be carried forward against the provisions of law and overlooking the judgement of the Hon’ble Supreme Court as stated above, At the same time, the claims of the Operational Creditors are extinguished completely. In our considered opinion, this*

*Resolution Plan is not only against the provisions of law but also this plan does not give equitable treatment to its creditors.”*

3. The Appellant who was the director has submitted the plan where they did not propose anything to be paid to Operational Creditors. The secured creditors were allotted certain amounts. With regard to unsecured debts of the directors which was verified by the Resolution Professional in the plan with regard to Ashvinkumar Jayantilal Patel and Labhuben Ashvinkumar Patel, the ex-directors, following has been stated:

<b>Sr. No.</b>	<b>Name of Financial Creditor</b>	<b>Verified Amount of Claims</b>	<b>Nature of Claim</b>	<b>Amount Offered as part of Resolution Plan</b>	<b>% of amount offered as part of Resolution Plan</b>
..	...	....	.....	....	....
<b>3.</b>	Ashvinbhai J Patel	2,75,22,445/-	Unsecured Loan (Related Party-Director)	As this is a related party debt, no amount shall be offered as part of the Resolution Plan. The existing debt will be taken over as a liability in the new company and only repaid if funds are available in the new company.	
<b>4.</b>	Labhuben A Patel	1,11,66,502/-	Unsecured Loan (Related Party-Director)	As this is a related party debt, no amount shall be offered as part of the Resolution Plan. The existing debt will be taken over as a liability in the new company and only repaid if funds are available in the new company.	

4. The Adjudicating Authority has taken exception to the aforesaid continuing the liability on the Corporate Debtor and has refused to approve the Resolution Plan. The ex-directors being related parties, they were not entitled to receive any amount in the Resolution Plan as per waterfall mechanism under Section 53 of the Code however indirectly directors who are propounder of the plan wanted to continue the liability on the corporate debtor

so they may in future realise the same for them which was found to be objectionable. We see no reason to interfere with the order of the Adjudicating Authority, the Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

*Basant/nn*