

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 161 of 2022**

In the matter of:

Arun Mittal & Anr.

....Appellants

Vs.

Narmada Cereals Pvt. Ltd. & Ors.

...Respondents

**For Appellants: Mr. Rajesh Bohra, Ms. Sangeeta Bohra,
Advocates.**

**For Respondents: Mr. Abhishek Naik, Advocate for R1 & 2
Mr. Iswar Mohapatra, Advocate for R3.**

ORDER

(Through Virtual Mode)

18.02.2022: Heard Shri Rajesh Bohra, Learned Counsel for the Appellant, Shri Abhishek Naik, Learned Counsel for Respondent Nos.1 and 2 and Shri Iswar Mohapatra, Learned Counsel for Respondent No.3.

2. This Appeal has been filed against the judgment and order of the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court III dated 04.01.2022 by which the Adjudicating Authority has directed for liquidation of the Corporate Debtor- 'M/s. Narmada Cereals Pvt. Ltd.'. Aggrieved by the said order, this Appeal has been filed. Appellants, who has filed the Appeal are Promoters of the Corporate Debtor, filed Resolution Plan and there are other three Resolution Plans also which have been considered by the Committee of Creditors (CoC).

3. Learned Counsel for the Appellants submits that the Appellants' Resolution Plan was Rs. 37 Crore which was higher than the liquidation value and in the 11th CoC meeting held on 17th, 18th and 20th September, 2021, Appellants' plan was decided to be put for consideration. He submits that the sole CoC member when found that plan is agreeable, there was no question of rejecting the plan by e-voting. He submits that Appellant did not get any opportunity to further improve their plan and they were under impression that their plan is acceptable. He further submits that other three proposals which were earlier not found in favour and were rejected were also put to vote which vitiates the process.

4. Learned Counsel appearing for Respondent Nos. 1 and 2 submits that in the 11th CoC meeting, the only observation which was recorded in the proceeding is that the plan was found to be worth consideration and there was no approval of the plan in the said meeting and decision was ultimately taken to obtain a decision by e-voting. He submits that approval of the CoC was also taken by taking a final decision and in the final decision e-voting plan was rejected with 100% voting of the Financial Creditors. He submits that rejection of other three plans does not cause any prejudice to the Appellants. He submits that present is a proceeding which was initiated by the Corporate Debtor under Section 10. On a pointed query that whether CoC is ready to give an opportunity to Appellant to enhance its plan, the Learned Counsel submits that CoC is not agreeable to give any further opportunity and decision has already been taken.

5. We have considered the submissions of the Counsel for the parties and perused the record.

6. It is well settled that CoC has power to take a decision either to accept a Resolution Plan or reject a plan. The commercial wisdom of the CoC is not subject matter of judicial review except on the limited ground as provided under Sections 30 and 61. In the present case, although 11th CoC meeting indicates that plan was considered and it was decided to put it for consideration but we do not agree with the submission of the counsel for the Appellants that the plan found approval of the CoC. In the 11th CoC meeting ultimate decision was to obtain a decision by e-voting and in the e-voting, it was held that the plan was rejected with 100% votes. We are of the view that in the facts of the present case, it cannot be held that CoC has approved the plan.

7. As far as the submissions of the counsel for the Appellants that other three plans were put to vote which were already not approved, we say that consideration and rejection of the said plans once again may at best be redundant and in no way prejudice the case of the Appellants.

8. Looking to the fact that Appellants are Promoters and even the plan which although was considered but not found in favour, we are of the view, in the ends of justice, we reserve liberty to the Appellants to participate in the liquidation process when the liquidation starts as on going concern of the Appellants. We say no more than this with regard to participation and

consideration of the Appellants' bid in the liquidation as and when it takes place. Subject to these observations, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[V.P. Singh]
Member (Technical)

Anjali/nn