

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA/471/2022

in

Comp App (AT)(CH) (INS) No. 215/2022

(Under Section 61(3) of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the 'Impugned Order' dated 10.01.2022 in

IA/746/2021 in CP (IB) No. 326/7/HDB/2020,

**passed by the 'Adjudicating Authority', (National Company Law
Tribunal, Hyderabad Bench, Hyderabad)**

In the matter of:

Employees' Provident Fund Organisation,
Regional Office,
Bhavishya Nidhi Bhavan 3-4-763,
Barkatpura, Hyderabad. – 500 027.

... Petitioner / Appellant

V

- 1) Dommeti Surya Rama Krishna Saibaba,
IBBI Registration No.IBBI/IPA-003/IP-N000165/
2018-19/12106.
Flat No.A-105, Mahindra Ashvita, Hafeejpet Road,
Near Hi-Tech City MKTS Railway Station, KPHB Colony,
Hyderabad, Telangana – 500 085. ... Respondent No.1
- 2) M/s. Harsha Constructions Private Limited
4-8-38, IIND Floor, BGR Towers Opp Congress Bhavan,
Hanamkonda, Warangal, Telangana 506 001
...Respondent No.2 /
Resolution Applicant

Present :

For Appellant	: Mr. M.S. Vishwanathan, Advocate
For Respondents	: Mr. R.S. Sravan Kumar, Advocate for Successful Resolution Applicant / Respondent No.2

ORDER
(Virtual Mode)

Justice M. Venugopal, Member (Judicial)

The ‘Petitioner’ / ‘Appellant’ in IA/471/2022 in Comp. App. (AT)(CH) (INS) No.215/2022, has sought ‘Leave’ to prefer the instant Comp. App. (AT)(CH) (INS) No.215/2022, being dissatisfied with the ‘impugned order’ dated 10.01.2022 in IA/746/2021 in CP (IB) No.326/7/HDB/2020, passed by the ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Hyderabad Bench, Hyderabad).

2. According to the ‘Petitioner’ / ‘Appellant’, it was not a ‘Party’ to the ‘Proceedings’, before the ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Hyderabad Bench, Hyderabad) in IA/746/2021 in CP (IB) No.326/7/HDB/2020, as the ‘impugned order’, pertains to the ‘Approval’ of the ‘Resolution Plan’, submitted by the 2nd Respondent.

3. It is the stand of the ‘Petitioner’ / ‘Appellant’ that it is the ‘Statutory Authority’ and ‘Creditor’ to the ‘Corporate Debtor’ and the ‘grievance’ of the ‘Petitioner’ / ‘Appellant’ is that its ‘Claim’, was ‘not paid’, ‘in entirety’ and ‘in priority’, in the ‘Resolution Plan’, and hence, the ‘Petitioner’ / ‘Appellant’ prays for ‘Allowing’ IA/471/2022 in Comp. App. (AT)(CH) (INS) No.215/2022.

4. Considering the fact that the ‘Petitioner’ / ‘Appellant’ is ‘not a Party’ to the ‘Proceedings’, before the ‘Adjudicating Authority’, (‘National

Company Law Tribunal’, Hyderabad Bench, Hyderabad) in IA/746/2021 in CP (IB) No.326/7/HDB/2020, and in view of the grievance of the ‘Petitioner’ / ‘Appellant’, that it was ‘not paid’ in ‘Full’, and in ‘Priority’, in the ‘Resolution Plan’, this ‘Tribunal’, grants ‘Leave’ to the ‘Petitioner’ / ‘Appellant’, to prefer the instant Comp. App. (AT)(CH) (INS) No.215/2022 and, accordingly, ‘allows’ the IA/471/2022 in Comp. App. (AT)(CH) (INS) No.215/2022, but, without Costs.

Comp App (AT)(CH) (INS) No. 215/2022

(Under Section 61(3) of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the ‘Impugned Order’ dated 10.01.2022 in IA/746/2021 in CP (IB) No.326/7/HDB/2020, passed by the ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Hyderabad Bench, Hyderabad)

In the matter of:

Employees’ Provident Fund Organisation,
Regional Office,
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Barkatpura, Hyderabad. – 500 027.

... Appellant

V

- 1) Dommeti Surya Rama Krishna Saibaba,
IBBI Registration No.IBBI/IPA-003/IP-N000165/
2018-19/12106.
Flat No.A-105, Mahindra Ashvita, Hafeejpet Road,
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- 2) M/s. Harsha Constructions Private Limited
4-8-38, IIND Floor, BGR Towers Opp Congress Bhavan,
Hanamkonda, Warangal, Telangana 506 001
...Respondent No.2/
Resolution Applicant

JUDGMENT
(Virtual Mode)

Justice M. Venugopal, Member (Judicial)

Preface :

5. The ‘Appellant’, has focused the instant Comp. App. (AT)(CH) (INS) No.215/2022, being affected by the ‘impugned order’, in IA/746/2021 in CP (IB) No.326/7/HDB/2020 dated 10.01.2022, whereby and whereunder, the ‘Resolution Plan’, was approved.

6. The ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Hyderabad Bench, Hyderabad), while passing the ‘impugned order’, in IA/746/2021 in CP (IB) No.326/7/HDB/2020 (filed by the ‘Petitioner’ / ‘Resolution Professional’) dated 10.01.2022 at Paragraph Nos.15 to 22, had observed the following: -

15. “The RP has inter-alia filed the following Certificate in Form H:-

“I have examined the Resolution Plan received from Resolution Applicant, M/s Harsha Constructions Private Limited and approved by Committee of Creditors (CoC) of M/s. SVEC Constructions Ltd.

I hereby certify that-

i) The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons} Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

ii) *The Resolution Applicant, M/s. Harsha Construction Pvt. Ltd. has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*

iii) *The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 97.18% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.*

iv) *I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.”*

16. *It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its meeting dated 09.11.2021 with 97.18% votes cast in favour of Approval of Resolution Plan.*

17. *In K Sashidhar Vs. Indian Overseas Bank & Others, decided on 05.02.2019 in Civil Appeal No.10673/ 2018 with CA Nos.10719/2018, 10971/2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), held that if the CoC had approved the resolution plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the resolution professional to submit the same to the adjudicating authority (NCLT). On receipt of such a proposal, the adjudicating authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.*

18. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2) when the resolution plan does not conform to the stated requirements.

19. In the recent judgement in Essar Steel (Civil Appeal No.8766-67 of 2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority will not have power to modify the Resolution Plan as approved by the CoC in their Commercial Wisdom. In para 42 of the said judgment, Hon'ble Apex Court has observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30 (2) of the Code, in so far as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Shashidhar (*supra*)."

20. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38 (1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law.

Therefore, the 'Resolution Plan' annexed with Application bearing IA No.746 of 2021 filed in CP(IB) No.326/7/HDB/2020 is hereby approved, which forms part of this Order and which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

21. *However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and the same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same has also been held by Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited.*

22. *Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law. Etc.,"*

and 'disposed of' the 'Interlocutory Application'.

Appellant's contentions:

7. Challenging the 'impugned order' in IA No.746/2021 in CP (IB) No.326/7/HDB/2020 passed by the 'Adjudicating Authority', (National Company Law Tribunal, Hyderabad Bench, Hyderabad), the Learned Counsel for the 'Appellant' / 'EPFO' submits that the 'Corporate Debtor', is 'Chronic Defaulter', and had 'not paid' the 'EPF dues', promptly and had committed 'default', in payment of certain 'EPF dues' / 'damages' / 'interest', including the 'Employees' share of contributions', for the period from 08/199 to 02/2021, amounting to Rs.40,09,102/-.

8. The Learned Counsel for the 'Appellant' points out that the 'short remittance' was of Rs.18,46,674/-, the 'pending dues' amounts to Rs.1,06,014/-, the 'Revenue Recovery Default' was of Rs.20,46,640/- (relating to the period from 03/2005 to 03/2011), and the 'Revenue Recovery for the Default Period from 04/1998 to 02/1999 was of Rs.14,267/- was recovered and the balance of Rs.9,754/- is pending.

9. The Learned Counsel for the 'Appellant' proceeds to take a stand that, as per the 'Employees Provident Fund and Miscellaneous Provisions Act, 1952' and 'Employment Provident Fund Scheme 1952', any delayed 'EPF Dues Remittance', is subject to 'Default', (Penal Damage), under Section 14B and Para 32-A of the 'Scheme' and 'Interest' under Section 7Q of the Act. Furthermore, it is projected on the side of the 'Appellant', that, since the 'Employer', had not paid the 'EPF contribution', 'inclusion

of 'Penal Damage', was also determined.

10. The Learned Counsel for the 'Appellant', refers to Section 7Q of the 'Employees Provident Fund and Miscellaneous Provisions Act, 1952', which provides that an 'Employer', shall be liable to pay 'simple interest' at the rate of 12% per annum, or at such rate specified in the 'Scheme'.

11. The Learned Counsel for the 'Appellant', brings to the 'Notice', of this 'Tribunal' that the 'Corporate Debtor', was 'admitted' in the 'Corporate Insolvency Resolution Process', (CIRP) on 08.01.2021, and that the 1st Respondent through a 'Letter' dated 21.01.2021 had intimated the 'Appellant' about the 'initiation of the 'Corporate Insolvency Resolution Process', (CIRP) for the 'Corporate Debtor', and his appointment as an 'Interim Resolution Professional'. As such, the 'Appellant', had submitted its 'Claims', in Form B dated 29.01.2021, in respect of the 'Corporate Debtor', for Rs.40,09,102/- along with necessary 'Documents', through an 'E-mail dated 29.01.2021' and the same was forwarded and submitted to the 'Interim Resolution Professional', in physical form, by the 'Appellant'.

12. It is brought to the fore, by the Learned Counsel for the 'Appellant', that the 1st Respondent / Resolution Professional had responded to the 'Claim' of the 'Appellant', through an 'E-Mail dated 20.02.2021', that the 'Claim Form' was received and the 'whole Claim' for a sum of Rs.40,09,102/- was 'admitted'. Further that, the 'Resolution Plan' submitted by the 2nd Respondent was approved by the 'Committee of

Creditors’, and the same was submitted before the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) for getting an ‘Approval’, which was approved, through an ‘Order’ dated 10.01.2022.

13. The ‘Grievance of the Appellant’, is that the ‘2nd Respondent’ / ‘Resolution Applicant’, in the ‘Resolution Plan’, had provided for 2.51% of the amount, admitted to all the ‘Operational Creditors’ of the ‘Corporate Debtor’, and ‘allotted’ a total amount of Rs.20,00,000/- to ‘pay off’ ‘Debts’, towards the ‘Operational Creditor’. In fact, the 1st Respondent through an ‘E-mail’ dated 04.02.2022 had intimated the ‘Appellant’, about the ‘approval’ of the ‘Resolution Plan’, attaching the ‘impugned order’, mentioning that it was uploaded on the website of the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad), only on 04.02.2022, etc.

14. According to the ‘Appellant’, as per the ‘approved Resolution Plan’, a sum of Rs.46,400/- was paid to the ‘Appellant’, through a ‘Cheque dated 10.02.2022’ and further, that, the ‘allocation’ of a such amount to the ‘Appellant’, under the ‘Resolution Plan’, is ‘gross injustice’, done to the ‘Appellant’, in violation of Section 11 of the ‘Employees Provident Fund and Miscellaneous Provisions Act, 1952’.

15. It is represented on behalf of the ‘Appellant’, that the ‘Resolution Plan’, is in ‘breach of Section 36 (4) (a) (iii) and Section 30 (2) (e) of the

‘Insolvency & Bankruptcy Code, 2016, clearly laying that the ‘Provident Fund Dues’, are outside the ‘Assets’ / ‘Liquidation Estate’ of the ‘Corporate Debtor’ and that the 1st Respondent, is duty bound to confirm that the ‘Resolution Plan’ proposed by the ‘2nd Respondent’ / ‘Resolution Applicant’, does not contravene any of the ‘Provisions of Law’, for the time being in ‘Force’.

16. The clear cut stand of the ‘Appellant’ is that the ‘Resolution Plan’, goes against the ‘Employees Provident Fund and Miscellaneous Provisions Act, 1952’ and the EPF Scheme, 1952, which do not permit, any such violation of ‘Provident Fund dues’. Also, it goes against the Insolvency & Bankruptcy Code, 2016, which is under Section 36 (4) (a) (iii), excludes all sums due to ‘any workman’ or ‘employee’ from the ‘Provident Fund’, the ‘Pension Fund’ and the ‘Gratuity Fund’, from being included in the ‘Liquidation Estate’, as these are considered to be ‘Assets’, owned by a ‘Third Party’, which are in possession of the ‘Corporate Debtor’.

17. The Learned Counsel for the ‘Appellant’ points out that the ‘Resolution Plan’, is against Section 30 (2) (b) of the ‘Insolvency & Bankruptcy Code, 2016’, as it does not provide for payment of ‘Debt’ of the ‘Appellant’, which as per the said Provision, should not be less than (i) the amount to be paid to such ‘Creditors’ in the event of a ‘Liquidation’, of the ‘Corporate Debtor’ under Section 53; or (ii) 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, whichever is higher.

18. The Learned Counsel for the ‘Appellant’, adverts to the fact that in the ‘instant case’, the ‘higher amount’ is the same, to be paid to the ‘Appellant’, in the event of a ‘Liquidation of the Corporate Debtor’, under Section 53 of the I&B Code, 2016, which will be the ‘total claim’, admitted by the 1st Respondent, being Rs.40,09,102/- and payment of only Rs.46,400/- towards the ‘dues of the payment’, is in violation of Section 30 (2) (b) of the I&B Code, 2016, as the ‘Appellant’, would have received, the ‘whole claim sum’, in accordance with Section 53 of the I&B Code, 2016, as the ‘Claim’ of the ‘Appellant’, is not included in the ‘Liquidation Assets’ of the ‘Corporate Debtor’, being ‘all sums due’ to any ‘workmen or employees’ from the Provident Fund.

19. The Learned Counsel for the ‘Appellant’, refers to the ‘Judgment’ of this ‘Tribunal’, in Regional Provident Fund Commissioner – I v Ramachandra D. Choudhary vide Comp. App. (AT) (Ins) No.1001 of 2019, wherein it was observed that Section 14B & 7Q and other PF dues, cannot be diluted by the ‘Resolution Applicant’ and the same is as under: -

44. “However, as no provisions of the ‘Employees Provident Funds and Miscellaneous Provision Act, 1952’ is in conflict with any of the provisions of the ‘I&B Code’ and, on the other hand, in terms of Section 36 (4) (iii), the ‘provident fund’ and the gratuity fund’ are not the assets of the ‘Corporate Debtor’,

there being specific provisions, the application of Section 238 of the 'I&B Code' does not arise.

*45. Therefore, we direct the 'Successful Resolution Applicant' – 2nd Respondent ('Kushal Limited') to release full provident fund and interest thereof in terms of the provisions of the 'Employees Provident Funds and Miscellaneous Provision Act, 1952' immediately, as it does not include as an asset of the 'Corporate Debtor'. The impugned order dated 27th February, 2019 approving the '**Resolution Plan**' stands modified to the extent above."*

20. The Learned Counsel for the 'Appellant' relies on the 'Order' of the 'Adjudicating Authority' / 'Tribunal', in 'Precision Fasteners Ltd. (Through the 'Liquidator') v. Employees Provident Fund Organisation in MA Nos.576 and 752 of 2018 in Comp. Petition No.1339 of 2017, wherein it was, among other things, clarified and held that the 'EPF dues of the 'Corporate Debtor', do not form part of the 'Liquidation Estate', under Section 36 of the I &B Code, 2016.

21. The forceful stand of the 'Appellant' is that the 'EPF Dues', are to be paid in 'priority', overall 'Remaining Dues', without the 'Application' of the 'Waterfall Mechanism', under Section 53 of the I&B Code, 2016. Moreover, the 'Tribunal', had also vacated the 'Attachment' of the 'EPFO', but directed that the 'EPFO dues', shall be paid in 'priority', from the 'Liquidation Estate', 'over other dues', owed by the 'Corporate Debtor'.

22. The Learned Counsel for the ‘Appellant’, points out that in the instant case, ‘waiver’, can be sought, only in regard to the ‘Damages’, under Section 14B of the ‘Employees Provident Fund and Miscellaneous Provisions Act, 1952, while the remaining amount ‘claimed’ by the ‘Appellant’ is not subject to ‘any waiver’, at all. Therefore, it is the plea of the ‘Appellant’, that the Respondent Nos.1 and 2, are ‘not in compliance’ with neither the ‘Provisions of the Insolvency & Bankruptcy Code’, 2016 nor the ‘Employees Provident Fund and Miscellaneous Provisions Act, 1952’, etc.

Assessment:

23. It comes to be known that the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad), through an ‘Order’ dated 08.01.2021, had admitted the ‘Corporate Debtor’ into a ‘Corporate Insolvency Resolution Process’ (CIRP) and appointed the ‘Interim Resolution Professional’ and later, the ‘1st Respondent’ / ‘Petitioner’, was appointed as the ‘Resolution Professional’.

24. It transpires that the ‘Interim Resolution Professional’, was in receipt of ‘Claims’, from numerous ‘Creditors’ and ‘admitted’ the same. The said details run as under: -

Financial Creditors: -

(Amount in Rupees)

S. No.	Name of Financial Creditor	Amount of Claim	Amount Admitted by IRP
1.	State Bank of India	3,68,54,47,056	3,68,54,47,256
2.	IDBI Bank Limited	2,31,49,63,100	2,31,49,63,100
3.	UCO Bank (Asset Management Branch)	17,38,14,812	17,38,14,812
Total		6,17,42,24,968	6,17,42,24,968

Operational Creditors:-

(Amount in Rupees)

Sl. No.	Name of the Operational Creditor	Amount of Claim	Amount Admitted by IRP
1.	Employees Provident Fund Organization	40,09,102	18,46,674
2.	Goods and Services Tax	7,12,98,098	7,12,98,098
3.	Exercise and Taxation Officer, Panchkula	64,54,711	64,54,711
Total		8,17,61,911	7,95,99,483
Grand Total (i + ii)		6,25,59,86,879	6,25,38,24,451

That besides these claims no other claims were received within the stipulated time.

c. That valuation of the Corporate Debtor as ascertained from the Registered Valuers by the RP is as under: -

S. No.	Asset Class	Name of the Valuer	Liquidation Value in (Rs.)	Average Liquidation Value in (Rs.)
1.	Land and Building	Aradhi Venkata Rama Krishna Rao	1,12,37,000	1,16,69,500
2.	Land and Buildings	Sai Vara Prasad Siddabathuni	1,21,02,000	
3.	Plant and Machinery	Poinasetty Kanak Rao	19,88,261	19,59,521
4.	Plant and Machinery	P Madhu	19,30,780	

5.	Financial Assets	Gotta Koteswara Rao	2,68,23,266	2,65,78,377
6.	Financial Assets	Kasi Srinivas	2,63,33,488	
Average Liquidation Value of the Enterprise				4,02,07,398

25. Before the ‘Committee of Creditors’, the ultimate ‘prospective Resolution Applicants viz., 1) M/s. Harsha Constructions Pvt. Ltd. (2nd Respondent in the ‘Appeal’) and 2) M/s. PNC Infratech Limited were placed. Moreover, the ‘Corporate Insolvency Resolution Process’ (CIRP) period through an ‘Order’ dated 01.07.2021 was extended by ‘90 Days’, beyond the period of ‘180 Days’.

26. There is no ‘dispute’ of the fact that the ‘2nd Respondent’ / ‘M/s. Harsha Constructions Pvt. Ltd.’ / ‘Successful Resolution Applicant’, submitted its ‘Resolution Plan’, to the ‘Committee of Creditors’, in the ‘meeting’, that took place on 27.09.2021. Furthermore, the ‘2nd Respondent’ / ‘M/s. Harsha Constructions Pvt. Ltd.’, was advised to improve the ‘Offer’, in the ‘8th Committee of Creditors Meeting’, that took place on 27.10.2021.

27. At this juncture, it is useful for this ‘Tribunal’, to advert to the ‘essential ingredients’ of the ‘Resolution Plan’, furnished by the ‘2nd Respondent’ / ‘Successful Resolution Applicant’ and the same is as follows: -

Sl. No.	Category of Stakeholder	Amount claimed (Rs)	Amount Admitted (Rs)	Amount Provided under the Plan	Amount Provided to the Amount Admitted (%)
1.	Secured Financial Creditors	6,17,42,24,968	6,17,42,24,968	5,50,00,000	0.89%
2.	Operational Creditor	8,17,61,911	7,95,99,483	20,00,000	2.51%
3.	CIRP expenses	NA	NA	30,00,000	NA
Grand Total		6,25,59,86,879	6,25,38,24,451	6,00,00,000	0.96%

Source of Funding	Amount (Rs.) (In Crore}
EMD deposited by Resolution Applicant	0.50
Payment of Resolution plan amount — 30 days after the approval of Resolution Plan by Adjudicating Authority	5.50
Total payment offered to financial creditors/operational creditor/CIRP expenses	6.00

28. Be it noted, the interests of all ‘Stakeholders’, in the ‘successful Resolution Plan’ in what manner, it is dealt with, is mentioned in the ‘Tabular Form’, as under:-

Sl.No.	Name of Creditors / Expense	Claims admitted (Rs.)	Total payment as per Resolution Plan (Rs.)
1.	CIRP Expenses (Assumed)	30,00,000/-	30,00,000/-
2.	Operational Creditors (Workmen / Employees / Suppliers / Vendors)	0.00	0.00
3.	Secured Financial Creditors	617,42,24,968/-	5,50,00,000/-
	Operational Creditors (Statutory Dues)	7,95,99,483/-	20,00,000/-
	Total	625,68,24,451/-	6,00,00,000/-

29. As a matter of fact, the ‘Implementation Schedule’, is described as follows: -

S.No.	Actionable	Time Lines (in days unless specifically mentioned)
1.	Date of the Adjudicating Authority’s approval of the Resolution Plan and constitution of the Supervisory Committee	X
2.	Opening / Identification of Designated Account in the name of the Corporate Debtor	X+3
3.	Change in Management of the Corporate Debtor, by appointment of Directors nominated by RA on the Board of the Corporate Debtor	X+10
4.	Mobilization of Upfront Resolution Fund into the Corporate Debtor	X+7
5.	Re-organization of Share Capital as per clause 3*	X+7
6	Payment of Insolvency Resolution Process Cost as per Clause 5.1 and Operational Creditors (Statutory dues) as per Clause 5.4	X+7
7	Payment of consideration to secured Financial Creditors	X+30

30. The ‘Resolution Professional’, is to ensure, that a ‘Resolution Plan’, is ‘complete’, in all respects, and to conduct a ‘due diligence’, with a view to ‘Report’, to the ‘Committee of Creditors’, whether or not it is in ‘Order’.

31. By virtue of ‘Clause 6’ of the ‘Successful Resolution Plan’ dated 01.11.2021, the ‘2nd Respondent’ / ‘Successful Resolution Applicant,’ had

intended to ‘implement’ the said ‘Plan’, keeping in tune with the ‘milestone’, mentioned.

32. Indeed, the ‘Resolution Plan’ of the ‘2nd Respondent’ / ‘Successful Resolution Applicant’, was voted by 97.18% ‘voting share’ of ‘Committee of Creditors’ and the ‘2nd Respondent’ / ‘Successful Resolution Applicant’, was ‘declared’ as the ‘Successful Resolution Applicant’, in terms of the ‘ingredients of Section 30 (2)’ of the ‘Insolvency & Bankruptcy Code, 2016’. The ‘1st Respondent’ / ‘Resolution Professional’ had evaluated the ‘Resolution Plan’ of the ‘2nd Respondent’ and, ‘affirmed’, that it fulfills the requirements of the Insolvency and Bankruptcy Code, 2016.

33. It is ‘axiomatic principle’, in ‘Law’, that before ‘approving’ the ‘Resolution Plan’, the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) is to ‘apply his mind’ and ‘come to a conclusion’, that the same satisfies the requirements ‘adumbrated’ under Section 30 (2) of the I&B Code, 2016.

34. Undoubtedly, ‘an approval of Resolution Plan’, is to be ‘Judged’, with ‘due diligence’, by an ‘Adjudicating Authority’. In fact, the ‘Resolution Plan’ is not a ‘Sale’ / ‘Auction’ / ‘Not Recovery’ / ‘Not Liquidation’. The ‘Creditors’ will be bound by the ‘Sums’, stated to be ‘Payable’, under the ‘Resolution Plan’, of course, in accordance with ‘Section 31’, of the Insolvency & Bankruptcy Code, 2016.

35. The 'Object' / 'Aim' of the 'Resolution', is for

- a) 'Maximisation' of the 'value of Assets', of the 'Corporate Debtor' and, thereby for to all 'Creditors';
- b) For 'promoting' an 'Entrepreneurship', availability of 'Credit'; and
- c) Balancing the 'interest' of all 'Stakeholders'.

The I & B Code, 2016, is for 'Reorganisation' and 'Insolvency Resolution' of 'Corporate Persons', 'Partnership Firms' and 'Industries', in a 'Time Bound' manner. Ofcourse, 'Speed' is the gist of the Code.

36. The 'pros and cons' of the 'Scheme' / 'Resolution Plan', is required to be thoroughly 'scrutinised', regarding a 'subjective satisfaction', being arrived at, by an 'Adjudicating Authority'. A 'Resolution Professional' is to find out, whether the 'Resolution Plan' of a 'Resolution Applicant', satisfies the 'requirements', mentioned in 'Section 30 (2)' of the I&B Code, 2016.

37. It is pointed out by this 'Tribunal', that 'Clause 11' of the 'Resolution Plan' (refers to the grant of the 'Reliefs', pertaining to 'Concessions' and 'Disposals', etc.), and according to the 'Resolution Professional', the same will ensure that the 'Corporate Debtor', will run as a 'Going Concern', falling in line, with the 'Aim' and 'Objectives' of the Insolvency & Bankruptcy Code, 2016.

38. In the ‘instant case’, the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) ‘came to the conclusion’, that the ‘Resolution Plan’, satisfies the requirements of the I&B Code, 2016, and approved the said ‘Plan’, through an ‘Order’ dated 10.01.2022 in IA No.746/2021 in CP (IB) No.326/7/HDB/2020.

39. In the ‘instant Case’, the ‘Liquidation Value’, was ascertained by the ‘Resolution Professional’ as Rs.4,02,07,398/-, and the ‘Fair Market Value’, was determined at Rs.7,06,62,736/-. The ‘Claim’ of the ‘Appellant’ / ‘EPFO’ in this ‘Appeal’, is that a ‘direction’ to be issued to the ‘2nd Respondent’ / ‘Successful Resolution Applicant’, to pay the ‘remaining’, ‘Full Claim Amount’ of the ‘Appellant’, as ‘admitted’ by the ‘1st Respondent’ viz., Rs.39,62,940/-.

40. The ‘Adjudicating Authority’, is empowered to ‘turn down’ the ‘Resolution Plan’, when it does not satisfy the ‘parameters’ mentioned in Section 30 (2) of the I&B Code, 2016. A ‘Judicial Review’, of the ‘approved’ ‘Resolution Plan’, by the ‘Committee of Creditors’ is ‘limited’, by the ‘Adjudicating Authority’, (Tribunal).

41. Section ‘53’ of the Insolvency & Bankruptcy Code, 2016 deals with the ‘Distribution of Assets’, in ‘Liquidation’, which runs as follows: -

- (a) The cost of the ‘Insolvency Resolution Professional’ (including ‘any Interim Finance’) and ‘Liquidation Costs’, have ‘First Priority’

followed by 'Debts', owed to the 'Secured Creditor' (where such 'Creditor' had relinquished) his 'Security Interests' and 'Workmen' 'Dues' for a period of 12 months, preceding the 'Liquidation Commencement Date'.

(b) 'Wages' and 'Unpaid Dues' for a period of 12 months, preceding the 'Liquidation Commencement Date' owed to 'Employees' (other than 'Workmen') are paid. After such payment, 'Financial Debts', owed to 'Unsecured Creditors', are repaid.

(c) 'Any sum', due to the State Government and Central Government in respect of the 'entire or any part of the period' of 'Two Years', before the 'Liquidation Commencement Date' (including 'any sum' to be received on account of 'Consolidated Fund of India' and 'Consolidated Fund of State', if any,) and the amount of an 'unpaid Debt', owing to a 'Secured Creditor', following the 'Enforcement of Security Interests' are repaid. 'Any Balance Debts' and 'Dues' are repaid and finally, 'Surplus', if any, is distributed to the 'Shareholders' / 'Partners' of the 'Corporate Debtor'. Further, the 'Unsecured Financial Creditors', shall be paid, before the 'Workmen' and this is meant to 'Promote' an alternative 'Sources of Finance' and consequent 'Development' of 'Bond Market in India'.

42. In the present Case ‘on hand’, the ‘Adjudicating Authority’, in the ‘impugned order’ dated 10.01.2022 in IA No.746/2021 in CP (IB) No.326/7/HDB/2020 (filed by the ‘Resolution Professional’), at Paragraph No.21, had clearly mentioned as under: -

21. “However, the Resolution Plan approved shall not construe any waiver to any statutory obligations / liabilities arising out of the approved Resolution Plan and the same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same has also been held by Hon’ble Supreme Court in the case of Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited.”

43. In this connection, this ‘Tribunal’, worth ‘recalls’ and ‘recollects’ the ‘decision’ of the ‘Hon’ble Supreme Court of India’ in the matter of **‘Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another (2021) 7 SCC 474’**, whereby and whereunder, it is observed as follows: -

95. “However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well

thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

44. More importantly, the Hon’ble Supreme Court of India, in the ‘Judgment’ dated 03.06.2022 in the matter of ‘Vallal RCK v M/s. Siva Industries and Holdings Limited and Others (vide Civil Appeal Nos.1811-1812 of 2022), wherein at Paragraph No.21 had observed as under: -

*21. “This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others. (2019) 12 SCC 150 Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others (2020) 8 SCC 531 Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others (2020) 11 SCC 467 Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another***

(2021) 10 SCC 401 and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others (2022) 1 SCC 401”

45. An ‘Analytical Subjective Satisfaction’, to be arrived at by an ‘Adjudicating Authority’, (‘Tribunal’), being a ‘Condition Precedent’, before according an ‘approval’ of a ‘Resolution Plan’. The ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Hyderabad Bench, Hyderabad), after going through the ‘Resolution Plan’, affirmed that, it satisfies, the requirements of not only the ‘Insolvency & Bankruptcy Code, 2016, but, also, the requirements prescribed by the ‘Insolvency & Bankruptcy Board of India’. Significantly, the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Hyderabad Bench, Hyderabad) had found that the ‘Resolution Plan’, had provided for ‘Management’ of the affairs of the ‘Corporate Debtor’, after the ‘approval’ of the ‘Resolution Plan’, as per Section 30 (2) (C) of the I & B Code, 2016 without any ‘qualm of doubt’, this ‘Tribunal’, points out that the ‘Adjudicating Authority’, (‘Tribunal’) has ‘power’ to examine the ‘Resolution Plan’, as approved by the ‘required percentage’ of ‘voting share’ of the ‘Financial Creditors’, which is ‘limited’. ‘The Adjudicating Authority’ / ‘the Appellant Authority’, cannot sit, in an ‘Appeal’, over the ‘Commercial Wisdom’ of the ‘Committee of Creditors’.

46. At the risk of ‘repetition’, this ‘Tribunal’, relevantly points out that 97.18% Vote, the ‘Resolution Plan’, was approved by the ‘Committee of Creditors’, in the ‘Meeting’ that took place on 09.11.2021. Due weightage to the ‘Commercial Wisdom’ of the ‘Committee of Creditors’ is to be accorded by the ‘Adjudicating Authority’, and the ‘Appellate Tribunal’, in the considered opinion, of this ‘Tribunal’.

47. In the instant case, the ‘Appellant’, was paid a sum of Rs.46,400/- through a ‘Cheque’ dated 10.02.2022, although its ‘Claim’ in Form B dated 29.01.2021, in respect of the ‘Corporate Debtor’ was Rs.40,09,102/-. Be that as it may, in view of the fact that in the ‘impugned order’, the ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Hyderabad Bench, Hyderabad), had clearly observed that the ‘Resolution Plan’, furnished by the ‘2nd Respondent’ / ‘successful Resolution Applicant’ is in ‘conformity’ with the ‘requirements’ of Section 30 (2) of the I & B Code, 2016 and the ‘other requirements’, prescribed by the ‘Insolvency & Bankruptcy Board of India’, and this ‘Tribunal’, keeping in mind an ‘important fact’ that the ‘Resolution Plan’ came to be ‘approved’ with a majority of 97.18% Vote, by giving a ‘due consideration’ and ‘weightage’ to the ‘commercial wisdom’ of the ‘Committee of Creditors’, this ‘Tribunal’ comes to a ‘resultant conclusion’, that the ‘impugned order’ dated 10.01.2022 in

IA No.746/2021 in CP (IB) No.326/7/HDB/2020 in ‘allowing’ the IA No.746/2021, by approving the ‘Resolution Plan’, is free from any ‘Legal Flaws’. Resultantly, the ‘Appeal’, fails.

Conclusion:

In fine, the instant Comp. App. (AT) (CH) (INS) No.215/2022, is ‘dismissed’, but, no Costs. The connected IA/470/2022 (seeking ‘Exemption’ to file a ‘Certified copy’ of the ‘Impugned Order’) is Closed.

Before parting with the ‘Case’, this ‘Tribunal’, pertinently points out that the ‘dismissal’, of the instant Comp. App. (AT) (CH) (INS) No. 215 / 2022 will not preclude the ‘Appellant’ / ‘EPFO’, to pursue its ‘Claim’ for the ‘Balance Amount’, before the ‘Competent Forum’, of course, in accordance with ‘Law’ and in the manner known to ‘Law’, if it so desires / advised.

**[Justice M. Venugopal]
Member (Judicial)**

**[Kanthi Narahari]
Member (Technical)**

09/12/2022

ghk/tm