NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal(AT) (Insolvency) No. 597 of 2022

IN THE MATTER OF:

C.P. Ispat Pvt. Ltd. **...Appellant**

Versus

Maan Steel & Power Ltd. & Ors. **...Respondents**

Present:

For Appellant	**:**	**Mr. Gaurav Mitra, Mr. Soumya Dutta, Mr. Siddhant Upmanyu and Ms. Lavanya Pathak, Advocates.**
For Respondents	**:**	**Mr. Rohit Dutta and Ms. Priyata Chakraborty, Advocates for Respondent Nos. 1 & 3** **Mr. Avishek Guha, Advocate and Mr. Arun Gupta, RP for R-4**

O R D E R

19.09.2022 Heard learned Counsel for the Appellant and learned Counsel for the Respondents.

2. This appeal has been filed against order dated 08.03.2022 passed by National Company Law Tribunal, Kolkata Bench-1, Kolkata in I.A.(IB) No. 207/KB/2019; I.A. (IB) No. 280/KB/2019 and I.A.(IB) No. 1010/KB/2019 in CP(IB) No. 363/KB/2017.

3. The Appellant before us is Successful Resolution Applicant whose Resolution Plan with regard to Corporate Debtor, Divya Jyoti Sponge Iron Private Limited, was approved by Committee of Creditors as well as by order of Adjudicating Authority dated 13.03.2018. After the approval of the Plan, Resolution Applicant implemented the Plan. However, three Applicants, who

were Operational Creditors, filed Interlocutory Applications claiming that the distribution to them, under the Plan, was not in accordance with the Resolution Plan and the Applicants made following prayers in the Application:

> *"1.1. The Applicants in the three I.A. are seeking the following reliefs:*
>
> a. *The said applications be allowed and the section 74(3) of the Insolvency and Bankruptcy Code, 2016 be invoked against the Respondent No. 1 who is the Corporate Debtor and other related parties responsible for being negligent in non-implementation of the resolution plan approved and passed.*
>
> b. *The Respondent No. 1 and its related parties be punished as per provision for non-implementation of the resolution plan and neglecting to pay off the dues of a verified creditor within the stipulated time period mentioned in the resolution plan.*
>
> c. *The Applicants who are verified creditors which falls under the category of trade payable be cleared off with immediate effect with hefty interest be levied against the Respondents."*

4. Adjudicating Authority heard parties/Applicants as well as Successful Resolution Applicant and allowed the Applications and directed the Resolution Applicant to make the payment as per Resolution Plan submitted i.e., 47.49% of the total amount i.e., Rs. 3,15,86,607/- within 10 days. The Resolution Applicant since submitted before Adjudicating Authority that they are willing to make payment hence, they were relieved from Section 74(3) of the Code. Resolution Applicant aggrieved by the order has filed this Appeal. Shri Gaurav Mitra, learned Counsel for the Appellant contended that the Resolution

Plan itself contemplated that there shall be hair-cut of 96.83% to the Operational Creditors. Hence, by taking hair-cut of 96.83%, the amount was distributed to the three Applicants. Learned Counsel for the Appellant has referred to the clauses of the Resolution Plan which has been brought on record at page 52 of the Paper Book. Shri Mitra has referred to clause 11(c) of the Resolution Plan which deals with the Operational Creditor reads as follows:

> 11. Debt Profile of DJSIPL:
>
> a) ..
>
> b) ..
>
> c) Operational Creditors:
>
> In addition to the above debt profile, as per the provisional financial statements for the period ended on 23rd August, 2017, the Company has the outstanding dues payable to its Suppliers, Statutory Authorities and other creditors, which qualify as operational debt of DJSIPL. The outstanding status of Operational Creditors is as under:
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> *[Rs. In crores]*

1.	*Trade payables*	*47.43*
2.	*Electricity Dues to DVC & WBSE Distribution Co. Ltd.*	*8.27*
3.	*Statutory Dues*	*0.47*

> *^ Out of the total trade payables of Rs. 47.43 Crores, claims received and admitted by the Resolution Professional tantamount to Rs. 3.16 crores.*

- *We have been provided with a copy of the minutes between the officials of DVC and the Corporate Debtor based on which they have stated that the balance as on 30.11.2017 was Rs. 16.54 cores. However, they have not filed their claim with the Resolution Professional.*

He has also referred to clause 13(5) which is reproduced hereunder:

…

"5. Payment to Operational Creditors is proposed to settle as below, which is more than the amount payable to them in the event of liquidation of the Company.

- *Rs. 1.50 crores to be paid upfront towards trade creditors against total outstanding of Rs. 47.43 crores i.e. reduction of 96.83%.*
- *The company further proposes to pay the dues outstanding towards Statutory Authorities in full as and when due- Rs. 0.47 crores.*
- *As per the books of accounts and information memorandum received by the Resolution Professional, the amount of electricity dues stand at Rs. 8.27 crores. However, we have now been provided with a copy of the minutes between the officials of DVC and the Corporate Debtor based on which they have stated that their balance as on 30.11.2017 was Rs. 16.54 crores. However, they have not yet filed their claim with the Resolution Professional. Hence, it is proposed to address the Electricity Dues to DVC and WESEDCL in accordance with mutually accepted terms with them for the smooth running of the unit.*

  Note: The above payments would be subject to Due Diligence/Forensic/Investigative Audit and final verification from the books of accounts and confirmation by the resolution professional."

Learned Counsel has also referred clause 1.3 which deals with the payment of Operational Creditor.

5. Learned Counsel for the Respondents submits that the Resolution Professional has admitted the claims of all the three Operational Creditors to the extent of Rs. 3,15,86,607/-. Hence the amount of Rs. 1.5 Crores which was allocated to the Operational Creditors, were required to be distributed to all the Operational Creditors.

6. Mr. Mitra, learned Counsel for the Appellant, in his Rejoinder submits that Rs. 1.5 Crores was to be distributed with hair-cut of 96.83%, which is also referred to in different paragraphs in the Plan as noted above and the balance amount has to be taken care of any future claims of the Operational Creditors out of the trade payable amount of Rs. 46.43 Crores and to cater any future eventuality where further Operational Creditors come, the payment have been made to the Applicants.

7. We have considered the submissions of the parties and perused the records. Paragraph 1.3 which deals payments to Operational Creditors.

> *1.3 Payment to Operational Creditors:*
>
> *As per the details tabulated below, the Company has outstanding dues of Rs. 56.17 Crores as on 23rd August, 2017 payable towards old outstanding dues to creditors against supplies of goods and services and other current liabilities.*

[Rs. In crores]

1.	*Trade payables*	*47.43*
2.	*Electricity Dues to DVC & WBSE Distribution Co. Ltd.*	*8.27*

3.	*Statutory Dues*	*0.47*

Trade Payable:

It is proposed to pay Rs. 1.50 crores to all trade payable in full and final settlement of their claims which tantamount to a waiver of 52.51% of the claims received and 96.83% of the outstanding as per provisional financials as on 23.08.2017. This payment would be subject to Due Diligence/Forensic/Investigative Audit and final verification from the books of accounts and confirmation by the resolution professional. Any pressing creditors would be paid in the normal course of business out of the regular operations of the Company. Verified creditors are proposed to be paid within 6 (six) months from the date of approval Resolution Plan.

Electricity Dues:

According to the provisional financials of DJSIPL as on 23.08.2017 provided by the Resolution Professional, total dues outstanding from DVC and WBSE Distribution Co. Ltd. (WBSEDCL) was Rs. 8.27 Crores. However, we have now been provided with a copy of the minutes between the officials of DVC and the Corporate Debtor based on which they have stated that their balance as on 30.11.2017 was Rs. 16.54 Crores. However, they have not yet filed their claim with the Resolution Professional. Hence, it is proposed to address the electricity Dues to DVC and WBSEDCL in accordance with mutually accepted terms with them for the smooth running of the unit. Further, we propose waiver of all interest, penal and other charges levied till the cut-off date. Moreover, we propose to pay the settled amount within the Plan Period of 2 (Two) years.

Statutory Dues:

According to the provisional financials of DJSIPL as on 23.08.2017 provided, total dues outstanding from all State and Central Statutory Bodies i.e., Central Excise, WBVAT, income Tax, GST etc. was Rs. 0.47 cores. We propose to pay the same in full. However, any demand *issued by such State or Central Statutory Bodies over and above the said amount of Rs. 0.47 cores shall stand extinguished."*

8. There is no dispute between the parties that total trade payable is Rs. 46.43 crores. However, the claim of the Operational Creditors, which were filed before the Resolution Professional and which was admitted, was about Rs. 3.16 Crores.

9. All the Applicants, who filed their claims before the Adjudicating Authority, were those Operational Creditors whose claim for Rs. 3.16 Crores were admitted by Resolution Professional.

10. The submission of the learned Counsel for the Appellant that distribution of Rs. 1.5 Cores has to be done taking care of hair-cut of 96.83% does not appeal to us. Trade payable of Rs. 47.43 Crores are trade payable, which are reflected on the date of initiation of CIRP. Further, the claim was filed only for Rs. 3.16 Crores. The payment to the Operational Creditors were to be made as per admitted claims by the Resolution Professional. Rs. 1.5 Crores which was allocated for payment to the Operational Creditors has to be distributed between the Operational Creditors, whose claim was accepted.

11. It is due to the above reason in paragraph 1.3 quoted above, the figure of waiver of 52.51% has occurred and this 52.51% is with regard to the admitted claims of Operational Creditors. Submission of the learned Counsel for the Appellant that rest of the amount by taking hair-cut of 96.83% has to be reserved for statutory creditors, whose claim may come subsequently cannot be accepted.

12. Learned Counsel for the Respondents has rightly placed reliance on the judgment of Hon'ble Supreme Court (2021) 9 SCC 657 in the matter of "***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***", paragraph 102.1 of which reads as under:

> *"102.1 That once the resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.*

13. Resolution Plan has dealt only the claims which were before the Resolution Professional and Resolution Plan has not dealt with any future claim of the Operational Creditors which may come subsequently after the approval of Plan. We do not file any substance in the submissions of the learned Counsel for the Appellant that amount has to be withheld out of Rs. 1.5 Crores to take future statutory creditors. We thus do not find any error in the order of the Adjudicating Authority directing payment by Appellant by taking hair-cut of 52.51%. The Adjudicating Authority has rightly directed for making balance payment to the Applicants who are Respondents before us.

14. Learned Counsel for the Appellant submits that pursuant to the interim order dated 27.05.2022, the Appellant has deposited the amount.

15. In view of the aforesaid, we dismiss the Appeal. The amount deposited by the Appellant in pursuance of the aforesaid order is permitted to be withdrawn by the Appellants., The Appellants may make the payment of balance amount to the Respondents as per the impugned order within two weeks from today.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member(Judicial)

(Barun Mitra)
Member(Technical)

Akc/Nn.