

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 442 of 2018

IN THE MATTER OF:

Vijay Kumar Jain

...Appellant

Versus

**Standard Chartered Bank Ltd.
& Ors.**

...Respondents

Present:

For Appellant : **Mr. Amit Sibal, Senior Advocate assisted by
Mr. Arvind Kumar Gupta, Advocate**

For 3rd Respondent : **Mr. Nakul Sachdeva, Advocate for (CoC)**

For 4th Respondent: **Mr. Ramji Srinivasan, Senior Advocate assisted by
Mr. Raunak Dhillon, Mr. Karan Khanna and Ms.
Ananya Dhar Choudhury, Advocates (R.P.)**

ORDER

09.08.2018 This appeal has been preferred by Director of 'Ruchi Soya Industries Limited ('Corporate Debtor') with the grievance that the 'Committee of Creditors' have not provided (suspended) Board of Directors with the copies of the 'resolution plans' for their comments. Reliance has been placed on Regulations 19 and 21 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2. It is submitted that the approved 'resolution plans' is binding in nature on the members (shareholders) and other stakeholders in terms of Section 31 of the I&B Code, therefore, it was the duty on the part of the 'Committee of

Creditors' to provide the 'resolution plans' to the members of the (suspended) Board of Directors.

3. Mr. Ramji Srinivasan, learned Senior Counsel appearing on behalf of the respondent opposed the prayer and submitted that the 'resolution plans' are confidential document and cannot be disclosed or provide to any person including the members of (suspended) Board of Directors or the 'Operational Creditor' or other 'resolution applicant'.

4. We have heard learned counsel for the parties and perused the record.

Section 24 of the I&B Code relates to meeting of 'Committee of Creditors'. In terms of clause (b) of sub-section(3) of Section 24 the 'resolution professional' is required to give notice of each meeting of the 'Committee of Creditors' to the members of the (suspended) 'Board of Directors' or the 'partners of the corporate persons', as the case may be.

5. The aforesaid provision fell for consideration before this Appellate Tribunal in "***M/s. ANG Industries Ltd. vs. Shah Brothers Ispat Pvt. Ltd. & Anr. in Company Appeal (AT) (Insolvency) No. 109 of 2018***" wherein by judgment dated 24th May, 2018, while disposed of the matter the Appellate Tribunal noticed the report of the 'Joint Parliamentary Committee', gist of which has been reflected at paragraph 8, as quoted below:

"8. From the report of 'Joint Parliamentary Committee' following fact emerges:-

- (a) *The committee had been composed of members of creditors (financial) who have capability to assess the commercial viability of the 'Corporate Debtor' and who are willing to modify the terms of debt contract in negotiation between the creditors and the 'Corporate Debtor'. The Committee of Creditors can modify the terms of debt contract only by negotiation between the creditors and the 'Corporate Debtor' that means 'Board of Directors'. That is the reason that the 'Board of Directors' have been also allowed to attend the meeting though they have no voting right.*
- (b) *'Operational Creditors' are not able to decide the commercial viability of the 'Corporate Debtor' nor they can take risk of restructuring their debt in order to make the 'Corporate Debtor' a going concern.*
- However, as the 'Operational Creditors' have right to trigger Corporate Insolvency Resolution Process (u/s 9) the Committee was of the view that their presence is also required to 'present their views/concerns' on important issues.*

(c) *According to the ‘Joint Parliamentary Committee’ the important issues and the views/concerns as may be raised by those who are present are required to be taken into account by the Committee of Creditors while finalizing the resolution plans.”*

6. The aforesaid provisions have also been noticed by this Appellate Tribunal in **“Rajputana Properties Pvt. Ltd. vs. Ultra Tech Cement Ltd. & Ors.** in I.A. No. 594 of 2018 in Company Appeal (At)(Insolvency) No. 188 of 2018” on 15th May, 2018 while disposing of I.A. In the said case this Appellate Tribunal observed as follows:

9. *As per Section 30(2), the Resolution Professional is required to examine whether resolution plan confirm the provisions as mentioned therein but he cannot disclose it to any other person including Resolution Applicant(s), who has submitted the resolution plan. According to us, the resolution plan submitted by one or other Resolution Applicant being confidential cannot be disclosed to any competitor Resolution Applicant nor any opinion can be taken or objection can be called for*

from other Resolution Applicants with regard to one or other resolution plan.

11. *From Section 24(3) it is clear that the Resolution Professional is not only required to give notice of the meeting to ‘the members of Committee of Creditors’ but also to the members of (suspended) Board of Directors or partners of the corporate person as the case may be. The ‘Operational Creditors’ or their representatives are also to be informed to attend the meeting of Committee of Creditors, if the amount of the aggregate dues is not less than ten per cent of the debt. Section 24(4) shows that the Directors, Partners, Representatives of Operational Creditors may attend the meeting of Committee of Creditors but have no right to vote in such meeting. The meeting of the Committee of Creditors is required to be conducted in such a manner as may be specified by the Board.*
12. *As per Section 30(5), the Resolution Applicants can attend the meeting of Committee of Creditors in which the resolution plans of the Resolution Applicants are considered.*

13. *If Section 24 is read with Section 30, it is clear that the following persons are to take part in the meeting of Committee of Creditors at the time of approval of one or other resolution plan.*
- (a) members of Committee of Creditors;*
 - (b) members of the (suspended) Board of Directors or the Partners of the corporate persons;*
 - (c) Operational Creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt [Clause (a), (b), (c) of Section 24(3)]; and*
 - (d) Resolution Applicant(s) when resolution plan of such applicant(s) are placed for consideration [Section 30(5)].*
14. *The members of the ‘Committee of Creditors’ have voting right but others who attend the meeting as noticed above including the Board of Directors, Partners, Operational Creditor(s) and the Resolution Applicant(s) have no voting right.”*

7. From the aforesaid provisions, it is clear that though the (suspended) Board of Directors have been allowed to attend the meeting in which their 'resolution plans' are considered, this Appellate Tribunal did not allow the 'resolution plan' to be handed over to the (suspended) Board of Director or to the 'Operational Creditor' or to other competitors 'resolution applicants' who will attend the meeting. On the other hand, this Appellate Tribunal held that the 'resolution plans' being confidential it cannot be handed over to any other person including the competitor 'resolution applicants'.

8. Regulation 19 relates to 'notice for meeting of the committee', which is as follow:

"19 Notice for meetings of the committee -

1. Subject to this Regulation, a meeting of the

committee shall be called by giving not less than seven days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.

(2) The committee may reduce the notice period from seven days to such other period of not less than twenty four hours, as it deems fit."

9. The contents of the notice for meeting has been provided in Regulation 21, which includes the venue of meeting, time and date of meeting etc. Clause (3) of Regulation 21 stipulates the matter to be contained an agenda of the meeting and the document which are required to be discussed and the issues to be voted upon in the meeting, reads as follows:

“21 Contents of the notice for meeting –

(3) The notice of the meeting shall –

(a) contain an agenda of the meeting with the following –

(i) a list of the matters to be discussed at the meeting;

(ii) a list of the issues to be voted upon at the meeting; and

(iii) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting; and

(b) state that a vote of the members of the committee shall not be taken at the meeting unless all members are present at such meeting.”

From the aforesaid provisions, it is clear that the 'resolution professional' in its notice required to provide copies of all documents relevant to the matters to be discussed and issues to be voted upon at meeting.

10. According to the learned counsel for the appellant list of matter which should be discussed includes the 'resolution plans' submitted by one or another 'resolution applicants'. However, inclusion of issues for discussion does not mean that all the 'resolution plans' are to be forwarded along with the notice to the Board of Directors or to the other participants, including the competitors and 'resolution applicants' whoever will also not attend the meeting. The 'Board of Directors' or Representative of 'Operational Creditors' or the 'Resolution Applicants' having no voting right, it is not required to be forwarded to them, though they may act in terms of decision in "*Rajputana Properties Pvt. Ltd. (Supra)*".

11. From the report of the Joint Parliamentary Committee it is clear that the 'Committee of Creditors' can modify the terms of 'debt' contract only by negotiations between the 'creditors' and the 'corporate debtor' i.e. the 'Board of Directors'. Therefore, for the purpose for modifications/terms of 'contract' between the 'creditors' and 'corporate debtor', the 'Board of Directors' are to be taken into confidence.

12. The Board of Directors cannot decide the viability and feasibility of a 'Resolution Plan' nor is competent to restructure their debt in order to make the 'Corporate Debtor' as a going concern. It only in the domain of the 'committee of creditors' who are expert in the field to decide the viability, feasibility and

financial matrix of one or other 'resolution plan' by majority share of voting rights.

13. However, if the 'Committee of Creditors' are still negotiating the matter with the 'resolution applicants' in such case the representative of the Board of Director may give its suggestions.

14. For the reasons aforesaid, we do not inclined to grant relief as sought for. The appeal is disposed with the observations aforesaid. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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