

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 526 of 2018

IN THE MATTER OF:

Central Bank of India

...Appellant

Vs

**Resolution Professional
Of the Sirpur Paper Mills Ltd. & Ors.**

....Respondents

Present:

**For Appellant: Mr. Abhishek Sharma and Ms. Ashly Cherian,
Advocates.**

**For Respondents: Mr. R. S. Sachdeva and Mr. Rajendra Benival,
Advocates for RP.
Ms. Misha and Mr. Shantanu Chaturvedi,
Advocates for Successful Resolution Applicant.**

ORDER

12.09.2018: This appeal has been preferred by 'Central Bank of India', one of the 'Financial Creditor' against order dated 19th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad on the ground that the Resolution Plan approved by the Adjudicating Authority is against the provisions of Regulation 38(1)(c) of 'The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short 'IBBI (IRPCP), Regulation') as the dissenting financial creditors have been provided with equal amount with those 'Financial Creditors' who has agreed with the Resolution Plan.

2. Learned counsel appearing on behalf of the Successful Resolution Applicant submits that the Successful Resolution Applicant has treated all the Financial Creditors equally at the same level and no discrimination has been made. It is further submitted that provisions have been made for upfront payment and 20 years' time granted for redemption of the preferential shares. Otherwise, no longer time has been suggested for payment of the dues of the creditors.

3. Having heard learned counsel for the Appellant and learned counsel appearing on behalf of the Successful Resolution Applicant, we are of the view that no discrimination can be made between the 'Financial Creditors' in the Resolution Plan on the ground that one has dissented and voted against the Resolution Plan or the other has supported and voted in favour of the Resolution Plan.

4. The right to dissent has been provided under sub-section (4) of Section 30 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code'); a creditor who has dissented cannot be unsuited on the ground that he has dissented and eligible only for liquidation value. The question of grant of liquidation value to any of the Creditor does not arise cannot be applied at the stage of 'Corporate Insolvency Resolution Process' while submitting the Resolution Plan, as Section 53 is applicable only at the stage of Liquidation.

5. Regulation 38(1) of 'IBBI (IRPCP), Regulation' deals with mandatory contents of the resolution plans, relevant of which reads as follows:-

"38. Mandatory contents of the resolution plan. –

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;"

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

6. The sub-clause (b) of Regulation 38(1) mandates making provision to pay liquidation value to the 'Operational Creditors' and sub-clause (c) of Regulation 38(1) which mandates making provision to pay liquidation value to the 'dissenting Financial Creditors' and to provide different amount for payment to the 'Financial Creditors' who voted in favour of such Resolution Plan, cannot be held to be valid.

7. Section 240 of I&B Code relates to power of Board to make regulations. Sub-section (1) of Section 240 reads as follows:-

“240. Power to make regulations. – (1) The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code.”

8. From the aforesaid provisions of I&B Code it is clear that the Board may make regulation but it should be consistent with the I&B Code and rules made therein (by Central Government) to carry out the provisions of the Code. Therefore, we hold that the provisions made by the Board cannot override the provisions of I&B Code nor it can be inconsistent with the Code.

9. Clause (b) and (c) of Regulation 38(1) being inconsistent with the provisions of I&B Code, and the legislators having not made any discrimination between the same set of group such as 'Financial Creditor' or 'Operational

Creditor', Board by its Regulation cannot mandate that the Resolution Plan should provide liquidation value to the 'Operational Creditors' (clause (b) of regulation 38(1)) or liquidation value to the dissenting Financial Creditors (clause (c) of regulation 38(1)). Such regulation being against Section 240(1) cannot be taken into consideration and any Resolution Plan which provides liquidation value to the 'Operational Creditor(s)' or liquidation value to the dissenting 'Financial Creditor(s)' in view of clause (b) and (c) of Regulation 38(1), without any other reason to discriminate between two set of creditors similarly situated such as 'Financial Creditors' or the 'Operational Creditors' cannot be approved being illegal.

10. In the present case, as the Successful Resolution Applicant has treated all the 'Financial Creditors' equally at the same level and made no discrimination, it cannot be interfered on the ground that it is in violation of Regulation 38(1)(c).

11. Admittedly, the Central Bank of India is also a Financial Creditor who is equally situated with other 'Financial Creditors' who are co-members of the Committee of Creditors. Therefore, the Central Bank of India cannot discriminate with those members who dissented with the Resolution Plan and on the ground that they have not agreed with the Central Bank of India.

12. We again make it clear that the Board has not been delegated with the power under I&B Code including Section 240 of I&B Code to decide as to what amount is to be paid to the 'Financial Creditor' or 'Operational Creditor' including the liquidation value, therefore, they should not pass any mandatory regulation forcing the Resolution Applicant(s) to discriminate between equals.

13. It is also made clear that the provisions such as Section 53 of I&B Code, except for the purpose of finding out minimum amount to be noticed, as provided under Section 30(2)(b), cannot be relied upon at the stage of 'Corporate Insolvency Resolution Process', though it is open to the Board to issue guidelines as to how Section 53 is to be followed during the liquidation.

14. The appeal is dismissed with aforesaid observations. However, in the facts and circumstances there shall be no orders as to costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

am/gc