

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 657 of 2019

[arising out of Order dated 16th April, 2019 by NCLT, Mumbai Bench, in MA 1346 of 2018 in CP No. 1554/I&BC/MB/MAH/2017]

IN THE MATTER OF:

**Encore Asset Reconstruction Company
Private Limited**

Having Its Registered Office at:
15th Floor, Eros Corporate Towers,
Nehru Place,
New Delhi 110019

...Appellant

Versus

1. Calyx Chemicals & Pharmaceuticals Limited

Through The Resolution Professional
Having Address At:
2602, Fairfield, A Wing, Lodha Luxuria, Majiwada,
Thana West, Thane-400 061

2. Ms. Charu Desai

Resolution Professional of Corporate Debtor
2602, Fairfield, A Wing, Lodha Luxuria, Majiwada,
Thana West, Thane-400 061

3. Topnotch Chemicals Private Limited

Having Its Registered Office At:
Plot No. C-116, Pawana Village,
T.T.C. Industrial Area, Thane,
Belapur Road,
Navi Mumbai- 400 072

4. Khilari Infrastructure Private Limited

Having Its Registered Office At:
101, Prabhat Centre, Sector-1A,
Belapur, Mumbai- 400 614

5. Dena Bank

Having Its Office At:
Dena Corporate Centre, C-10, G-Block Bandra
Kurla Complex, Bandra-East,
Mumbai – 400 051

...Respondents

Present:**For Appellant :****Mr. Krishnendu Datta, Mr. Abhirup Das Gupta,
Mr. Ishaan Duggal and Ms. Niharica Khanna,
Advocates****J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

In the ‘Corporate Insolvency Resolution Process’ against ‘Calyx Chemicals & Pharmaceuticals Limited’ (Corporate Debtor), the ‘resolution plan’ submitted by ‘M/s. Khilari Topnotch Consortium’ having approved by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench on 16th April, 2019, the said order is under challenge in this appeal.

2. The brief facts of the case is that on 31st August, 2018, two ‘resolution plans’ were received by the ‘Resolution Professional’, one by ‘Consortium of Khilari-Topnotch’ and other by ‘Shamrock Pharmachemi Pvt. Ltd.’. Both the plans were considered by the ‘Committee of Creditors’ in the various meetings conducted by the ‘Resolution Professional’ and pursuant to e-voting held on 26-30 October, 2018 on the revised resolution plan of Khilari-Topnotch Consortium, along with its latest commercial offer, the ‘Committee of Creditors’ approved the same by 77.08% voting share.

3. Learned counsel appearing on behalf of the Appellant submitted that the impugned order approving the ‘resolution plan’ submitted by consortium of the 3rd and 4th Respondent amounts to accepting 95.2% waiver/haircut of the dues. The assignor of the Appellant i.e. Dena Bank, recorded its dissent

against the haircut of more than 95% proposed by the ‘resolution plan’ and, therefore, abstained from voting the ‘resolution plan’. The Appellant – ‘assignee of Dena Bank’ thereafter issued numerous *e-mails* to ‘Resolution Professional’ and on 2nd May, 2019 requested for a copy of the approved resolution plan. However, it was not supplied.

4. It was submitted that the Adjudicating Authority has failed to consider that a ‘resolution plan’ compels the ‘Financial Creditors’ to take a haircut of more than 95% and thereby the asset of the ‘Corporate Debtor’ has been handed over to the ‘resolution applicant’ for meagre amount of Rs. 41.65 Lakhs which is 5% of the amount the Appellant (assignee) would have received in the event of liquidation. Therefore, according to the Appellant, the interest of the lenders has not been balanced.

5. Learned counsel for the Appellant – ‘assignee of Dena Bank’ further submitted that the Appellant is the only ‘Financial Creditor’ holding exclusive mortgage and cannot be treated at par with other ‘Financial Creditors’. Reliance has been placed on the decision of this Appellate Tribunal in **‘Binani Industries Limited vs. Bank of Baroda & Anr.’** – ‘2018 SCC OnLine NCLAT 565’ to suggest that the Appellant is not similarly situated with the other ‘Financial Creditors’.

6. From the impugned order, we find that the Adjudicating Authority noticed the admitted claim against the ‘Corporate Debtor’ and the trade payables forming part of the ‘Operational Creditors’, the detailed chart of ‘Financial Creditors’ including ‘State Bank of India’, ‘Punjab National Bank’, ‘Exim’, ‘Allahabad Bank’, ‘Jammu & Kashmir Bank’, ‘Bank of India’, ‘Canara

Bank', 'Corporation Bank', 'IDBI', 'Oriental Bank of Commerce', 'Bank of Maharashtra', 'Uco Bank' and 'SBI Global Factors' has been shown and the details of 'debt' forming part of the 'Operational Creditors' has also been noticed by the Adjudicating Authority. After taking into consideration of the aforesaid aspects including the amount payable to the 'employees', 'related parties' and the 'statutory dues' as also viability and feasibility of the 'resolution plan', the impugned order of approval has been passed by the Adjudicating Authority.

7. We find no substance in the grievances being made by the Appellant. In absence of any discrepancies or discrimination, this Appellate Tribunal is not inclined to interfere with the impugned order. The appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

New Delhi

30th August, 2019

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