

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 788 of 2019

[arising out of Order dated 24th July, 2019 by NCLT, Mumbai Bench, in M.A. Nos 1721/2019, 1428/2019, 1746/2019 & 1816 of 2019 in CP (IB) No(s). 1371 & 1372 (MB) /2017]

In the matter of :

DBS Bank Ltd., Singapore

12, Marina Boulevard, Marina Bay
Financial Centre Tower 3,
Singapore 018982

... Appellant

Versus

1. **Mr. Shailendra Ajmera,**
the Resolution Professional of
Ruchi Soya Industries Limited
Ernst & Young LLP,
3rd Floor, Worldmark 1,
IGI Airport, Hospitality District,
Aerocity, New Delhi.

2. **Committee of Creditors**
Through IDBI Bank
IDBI Tower, WTC Complex,
Cuffe Parade,
Mumbai – 400 005.

...Respondents

Present:

For Appellant :

**Mr. Arun Kathpalia, Senior Advocate with
Ms. Anindita Roy Chowdhury, Mr. Raghav Chadha
Ms. Neeraj Balakrishnan and Mr. Eklavya Dwivedi,
Advocates**

Respondents:

**Mr. Raunak Dhillon and Mr. Ananya Dhar
Choudhary, Advocates for 1st Respondent**

Mr. Krishnan Venugopal, Senior Advocate with

Mr. Uday Rathore, Mr. Nakul Sachdeva and Mr. Aakarshan Sahay, Advocates for 'Committee of Creditors'

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the 'Corporate Insolvency Resolution Process' of 'Ruchi Soya Industries Limited', the 'Committee of Creditors' by majority decision approved the 'Resolution Plan' submitted by 'Patanjali Ayurved Limited'. When the matter was placed before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, the Adjudicating Authority by impugned order dated 24th July, 2019 taking into consideration the relevant facts and that the plan is in accordance with Section 30(2) approved the 'Resolution Plan'.

2. Learned counsel for the Appellant submitted that the 'Resolution Plan' submitted by 'Patanjali Ayurveda Limited' envisaged the payment of Rs. 4134 Crores to the 'Financial Creditors' including the Appellant against admitted claim of Rs. 8398 Crores approximately. The Appellant extended financial debt to the 'Corporate Debtor' amounting to USD50 Million (Rs.243 Crores approximately), secured as a sole first charge on fixed assets of the 'Corporate Debtor' at Baran, Guna, Daloda, Gadarwara, Mumbai and Kandla. The claim of the Appellant as admitted by the 'Resolution Professional is Rs. 242.96 Crores.

3. The Appellant's high value security interest would actually cover around 90% of the Appellant's exposure on enforcement of security. Accordingly, the appellant requested the 2nd Respondent, the 'Committee of

Creditors' take into account the value of its security interests while considering distribution of proceeds from the 'Resolution Plan'. However, on 23rd April, 2019, the 'Committee of Creditors' arbitrarily and capriciously approved *pari passu* distribution of the proceeds ignoring the law and the Appellant's concerns. Thereafter, at the meeting on 26th April, 2019, the Appellant voted against the approval of the 'Resolution Plan' submitted by the 'Patanjali Ayurveda Limited'. It was submitted that Section 6 of the 'Insolvency and Bankruptcy Code (Amendment) Act, 2019, which has come into effect since 16th August, 2019 amends Section 30(2) of the Code and reads as follows:

30. Submission of resolution Plan. –

(1)

(2) *The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –*

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall 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, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.”

4. According to the Appellant as it has voted against the ‘Resolution Plan’, and in terms of amended sub-Section (2)(b)(ii) of Section 30, it is entitled to minimum amount as payable in the event of ‘Liquidation’ of the ‘Corporate Debtor’, which will be close to 90% of its exposure. It is also submitted that distribution has not been made giving priority of payment amongst the creditors in terms of sub-section (1) of Section 53. The ‘dissenting secured creditor’ has not been provided the amount in terms of sub-Section (2)(b)(ii) of Section 30.

5. Learned counsel appearing on behalf of the ‘Committee of Creditors’ submitted that the plan of ‘Patanjali Ayurveda Limited’ having found to be

feasible and viable was approved by ‘Committee of Creditors’ with 96.95% share of voting on 30th April, 2019. Eventually it was approved by the Adjudicating Authority on 24th July, 2019. The ‘Resolution Plan’ was duly approved by the ‘Committee of Creditors’ in its commercial wisdom. So far as amendment to Section 30(2) of the ‘I&B Code’ is concerned, the learned counsel for the ‘Committee of Creditors’ relied on ‘Explanation 2’ below to Section 30(2)(b), which reads as under:

“Explanation 2. – For the Purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of the corporate debtor–

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]”*

6. From the aforesaid explanation, it is clear that the amendment to Section 30(2)(b) is applicable only in cases –

- (a) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
- (b) where an appeal has been preferred under section 61 or Section 62 or such an appeal is not time barred under any provision of law for time being in force against the approval or rejection of a resolution plan by the Adjudicating Authority; or
- (c) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of the 'Resolution Plan'.

7. In the present case the Appellant has not challenged the approval of the 'Resolution Plan' but has challenged the approval of the distribution made therein. This is also evident from paragraph 6 of the Miscellaneous Application which has preferred by the Appellant – 'DBS Bank Ltd., Singapore' before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai and reads as follows:

“The Applicant is not challenging the resolution plan. The Applicant is only challenging the decision of the CoC as to distribution of the payout under the plan inter-se between the financial creditors of the corporate debtor (pursuant to implementation of the plan). This Hon'ble Tribunal is empowered to review this issue, to determine if it is compliant with law.”

As the Appellant is not challenging the 'Resolution Plan', the question of applicability of amended Section 30(2) does not arise.

8. The manner in which the amount is to be distributed has been prescribed under amended sub-section (4) of Section 30, is as under:

“30 (4) The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29-A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29-A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29-A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section:]

[Provided also that the eligibility criteria in section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall (Ord. 6 of 2019) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.(Ord. 6 of 2019).]”

9. Amended sub-Section (4) of Section 30 came into force since 16th August, 2019. It has not been given retrospective effect but is prospective. Therefore, if the distribution is to be made by the ‘Committee of Creditors’, it

is not necessary to follow the amended sub-section (4) of Section 30, though it was open to the 'Committee of Creditors' to follow the same principle. Therefore, the distribution cannot be alleged to be in violation of the amended sub-section (4) of Section 30.

As per amended Section 30(2)(b)(ii), the distribution is to be made in the manner as prescribed under Section 53(1) giving preference to the secured creditor. However, even at that stage no discrimination can be made between two similarly situated 'secured creditor'.

10. If the 'Financial Creditor' do not accept the 'feasibility' and 'viability' of the plan and holds that the 'resolution plan' is discriminatory or against the provision of law, it has right to dissent during the voting and can be treated as a 'dissenting financial creditor'. However, no 'Financial Creditor' including a 'secured creditor' can dissent on the ground that if it dissents against the 'resolution plan', inspite of plan being feasible and viable and in accordance with Section 30(2), just to get the more amount than the other 'secured creditor' such 'dissenting secured financial creditor' cannot take advantage of amended Section 30(2)(b)(ii). Therefore, a 'secured creditor' cannot claim preference over the other 'secured creditor' at the stage of distribution out of the 'resolution plan' on the ground of 'dissenting' or 'assenting', 'secured financial creditor' otherwise the distribution would be held to be arbitrary and discriminatory. Section 30(2)(b)(ii) cannot be interpreted in a manner to give advantage to a 'dissenting secured financial creditor'. In fact Section 30(2)(b)(ii) has been amended only to ensure that 'dissenting financial creditor' should not get anything 'less than liquidation value' but not for 'getting maximum of the secured assets'.

11. In view of the aforesaid finding, no interference is called for against the impugned order dated 24th July, 2019. The appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

New Delhi

18th November, 2019

//ns//