

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 942 of 2019

IN THE MATTER OF:

Reliance Industries Ltd.

...Appellant

Versus

Ajay Joshi & Ors.

...Respondents

Present:

For Appellant : **Mr. Ramji Srinivasan, Senior Advocate with
Mr. Raghav Shankar, Ms. Roopali Singh, Mr. Raghav
Chadha and Ms. Sylona Mohapatra, Advocates**

For Respondents : **Mr. Praneet Das, Advocate for 3rd Respondent
Mr. Prateek Kumar, Ms. Sneha Janakiraman,
Advocates
Mr. Vaijayant Paliwal and Mr. Nikhil Mathur,
Advocate for 'Resolution Professional'
Mr. Shashank S. Mangal and Praneet Das, Advocates
for Intervenors/Shareholders**

O R D E R

18.11.2019 In the 'Corporate Insolvency Resolution Process' of 'Alok Industries Ltd.' (Corporate Debtor), the plan of the Appellant – 'Reliance Industries Limited' was approved by the 'Committee of Creditors' followed by the approval of the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench by impugned order dated 8th March, 2019 read with 26th July, 2019.

The Appellant (Resolution Applicant) in its 'Resolution Plan' made the following conditions :

“11.1.20 To the extent any amendments are notified or exemptions are granted before the Closing Date from the applicability of any laws (which are not in effect as on the date of submission of this Plan), the Resolution Applicants shall be entitled to avail the benefits of such amendments or exemptions, provided that it shall not affect the proposed treatment of any stakeholders as of the date of this Plan. Including in particular: (i) if SEBI allows corporate debtors undergoing insolvency resolution processes under the IBC, to be delisted without having to follow the requirements processes set out in the SEBI (Delisting of Equity Shares) Regulation, 2009 (subject to any conditions that SEBI may prescribe in this regard), this Plan will be deemed to have been amended to provide for delisting of the Company’s shares as part of this Plan, in accordance with the terms of such exemption as allowed by SEBI; (ii) if SEBI allows material related party transactions to be undertaken by corporate debtors as part of resolution plans and/or disposal by corporate debtors of shares in material subsidiaries and/or dealing in assets of material subsidiaries, without having to obtain shareholders’ approval in accordance with the LODR, no shareholders’ approval will be required in respect of such transactions to be entered into and/or effected by the Company pursuant to this Plan; (iii) if SEBI allows reclassification of promoters of corporate debtors without having to comply with the conditions prescribed in Regulation 31A of the LODR, and if the shares held by the promoters

upon such reclassification are permitted by SEBI to be counted towards 'minimum public shareholding' under extant regulations, the reclassification of the Existing Promoter Group proposed as part of this Plan need not comply with the requirements of Regulation 31A of the LODR and their shareholding will be treated as being part of the public shareholding of the Company; (iv) as part of implementing resolution plans under the IBC, if SEBI allows the 'minimum public shareholding' of corporate debtors to fall below 25% (Twenty Five Percent) of their issued and paid up equity share capital, then this Plan shall be deemed to have been amended to allow the Resolution Applicants to acquire shares of the Company in excess of what has been currently contemplated in the Plan, including by way of conversion of the RIL OCPS into equity shares of the Company; (v) if SEBI prescribes any time period to achieve compliance with the 'minimum public shareholding' requirement of 25% (Twenty Five Percent) of the corporate debtor's issued and paid up equity share capital, the Company shall be entitled to avail such benefit; (vi) if the RBI permits assignment to residents, of debts owed by corporate debtors to non-resident creditors, in terms of resolution plans under the IBC, then this Plan shall be deemed to be amended to the extent that the debts owed by the Company to non-resident creditors, will be assigned to the ARC Trust (without payment of additional amounts as consideration for such assignment); (vii) if any amendments are made to Section 56(2) of the

Income Tax Act, 1961 and the rules framed thereunder, to provide special dispensation with respect to determination of the fair value of shares or assets transferred to a resolution applicant pursuant to a resolution plan under the IBC, then this Plan shall be deemed to be amended to the extent that the Per Share Price shall be Re. 1(Rupee One) for transfer of shares of the Company (following invocation of pledge thereon), and for conversion of any debt to equity shares of the Company by the Resolution Applicants pursuant to this Plan’ (viii) If SEBI and/or the Ministry of Corporate Affairs permit reduction of capital of corporate debtors pursuant to resolution plans under the IBC, without having to follow the conditions and processes set out in the Companies Act, 2013 (and the rules framed thereunder) and/or any circulars issued by SEBI, the Face Value Reduction and the Promoter Capital Reduction of the Company proposed under this Plan will be effected without following such processes and conditions.”

In the Interlocutory Application Nos. 319/2019 and 320/2019 as filed by the Appellant (Successful Resolution Applicant) one of the prayer is:

“[C] This Hon’ble Tribunal may pass appropriate Orders and/or Directions allowing the successful resolution Applicants to seek concessions for delisting in accordance with applicable laws, by amending/reading the following paragraph into the Resolution Plan:

“In the event of delisting of the Corporate Debtor, the existing shareholders shall be provided an exit, at their option, subject to the condition that the share price payable on exit shall be no lesser than the price determined under regulation 35 of the Insolvency and Bankruptcy Board of India (insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority as defined under section 53 of the Code, or the specific price, if any, proposed to be paid to the promoter group or other shareholders under the Resolution Plan, whichever is higher, as envisaged under the provisions of SEBI (Delisting of Equity Shares) Regulations, 2009 (as amended).”

Thereafter the impugned order dated 26th July, 2019 was passed by the Adjudicating Authority with the following observations :

“With regard to 11.1.6 page no. 36 of the Resolution Plan, (para 28 of the order dated 08.03.2019), it is hereby clarified that approval of this bench (NCLT) in respect of Face Value Reduction and the Promoter Capital Reduction is/are dispensed with, however the applicant shall approach to the Competent Authority(s) viz. MCA and SEBI and any other competent authorities, as the case may be for necessary compliances.”

I.A. No. 320 of 2019 was partially allowed and disposed of and no specific order was passed on the other Interlocutory Application.

In the present appeal, the Appellant raised only one issue with regard to the exemption from delisting of shares on the ground that it was permitted by the 'Securities and Exchange Board of India' (**SEBI**) on 31st May, 2018. According to the Appellant it has been overlooked by the Adjudicating Authority and no specific order has been passed.

'Securities and Exchange Board of India' (SEBI) – 3rd Respondent was noticed and on appearance it has filed an affidavit. Referring to the said Affidavit, the learned counsel for the Appellant submits that there is no requirement for permission of SEBI which stands dispensed with as per regulations mentioned therein.

Such submission has been opposed by Mr. Shashank S. Mangal, learned counsel appearing on behalf of the minority shareholders/intervenors.

'SEBI' – the 3rd Respondent in its reply took the following stand :

- “5. *It is submitted that the Appellant has filed the instant appeal against the order dated 26.07.2019 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench in Interlocutory Application No. 320 of 2019 in Interlocutory Application No. 259 of 2018 in C.P. No. 48 of 2017 and is aggrieved as the said order does not issue any direction with regard to the prayer for amendment of the Resolution Plan to include a procedure to complete the delisting of equity shares.*
6. *It is submitted that the short issue which pertains to Respondent No. 3 that needs to be dealt here is the applicability of SEBI (Delisting of Equity Shares) Regulations, 2009 (for short 'Delisting Regulations) in*

the case in hand. It is submitted that vide amendment dated 31-05-2018, in SEBI (Delisting of Equity Shares Regulations, 2018, sub-regulation (3) was inserted after sub-regulation (2) of the Regulation 3, which inter-alia provides for:-

“Nothing in these regulations shall apply to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 (No. 31 of 2016), if such plan,-

- a) lays down any specific procedure to complete the delisting of such share; or*
- b) provides an exit option to the existing public shareholders at a price specified in the resolution plan:*

Provided *that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority as defined under section 53 of the Insolvency and Bankruptcy Code, 2016 (No. 31 of 2016);*

Provided further *that, if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined in terms of the above provision, the existing public shareholders shall also be provided an exit opportunity at a price*

which shall not be less than the price, by whatever name called at which such promoters or other shareholders, directly or indirectly, are provided exit:

Provided also *that, the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under section 31 of the Insolvency and Bankruptcy Code, 2016 (No. 31 of 2016)”*

The Respondent No. 3 herein submits that SEBI does not provide any exemption/ waiver from the applicability of Delisting Regulation except as provided under Regulation 3 (3) of Delisting Regulation.

7. *With respect to relief prayed by the Appellant, it is most humbly submitted that for cases under IBC, Delisting Regulations shall not apply only if delisting is in accordance with Regulation 3 (3) (including compliance with its provisions) of delisting Regulations which provided that such resolution plan must be approved under section 31 of IBC and either lays down any specific procedure to complete delisting of such shares or provides an exit option to the existing public shareholders at a price specified in the resolution plan.”*

In view of the specific plea taken by the ‘SEBI’ - 3rd Respondent, no further clarification is required. The ‘Resolution Applicant’ will act in accordance with the stand taken by the ‘SEBI’ and in accordance with law, if not yet taken.

The order dated 26th July, 2019 passed by the Adjudicating Authority (Ahmedabad Bench) stands clarified/modified to the extent above.

The Appellant is directed to comply with the plan forthwith. The appeal stands disposed of with aforesaid observations and directions in terms of the 'approved resolution plan' and clarification/modification as ordered above.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

/ns/gc