

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 1187 of 2019
[arising out of Order dated 27th September, 2019 by NCLT, Kolkata Bench,
Kolkata in C.P. (IB) No. 61/KB/2018]

IN THE MATTER OF:

Stressed Assets Stabilization Fund (SASF) ...Appellant

Versus

Bijay Murmura,
Resolution Professional & Ors. **...Respondents**

Present:

For Appellant : **Mr. Ajay Gaggar, Mr. G. Shankaranarayan, Ms. D. Adhikari and Ms. Vineeta Rathore, Advocates**

**For Respondents : Mr. Anand Varma and Ms. Vanshika Gupta,
Advocates for R-1**

Mr. Anil Agarwalla, Mr. Abhijeet Sinha and Ms. Neha Sharma, Advocates for R-5

Mr. Dinkar Singh, Advocate for CoC

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by ‘Stressed Assets Stabilization Fund’ (Financial Creditor) against the order dated 27th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata. Number of applications preferred under Section 60(5) of ‘the Insolvency and Bankruptcy Code, 2016’ (for short, ‘the **I&B Code**’) have been disposed of including the application preferred by the Appellant and

‘resolution plan’ submitted by ‘Fort Gloster Industries Limited’ has been approved. The ‘Corporate Insolvency Resolution Process’ was initiated against ‘Fort Gloster Industries Ltd.’ (Corporate Debtor). In the insolvency process, the resolution plan submitted by the ‘Gloster Limited’ (resolution applicant) was approved by the ‘Committee of Creditors’ in its meeting held on 24th April, 2019. The ‘Resolution Professional’ thereafter filed the approved ‘resolution plan’ before the Adjudicating Authority for approval under Section 31 of the I&B Code. At that stage number of persons including the Appellant raised objection by filing application under Section 60(5) of the ‘I&B Code’. The applications filed by the Appellant have been rejected and the plan submitted by the ‘Fort Gloster Industries Ltd.’ has been approved.

2. According to the learned counsel for the Appellant, a resolution plan ought to confirm the requirements of Section 30(2) and ensure that it is equitable and non-discriminatory amongst classes of creditors. However, the aforesaid procedure has not been followed by the Adjudicating Authority and the ‘resolution plan’ which do not confirm requirements of Section 30(2) and discriminates amongst the class of creditors has been approved.

3. It was submitted that no distinction has been made between a first charge holder and others amongst the secured creditors. It allows the entire security to be valued and extinguished to provide for the payment of the debts of the Financial Creditors who had second holder or no charge on that security and offers no benefits to the Financial Creditor who had effectively relinquished the security.

4. It was further submitted that the decision of the National Company Law Tribunal, Mumbai Bench in ‘*Charu Desai, Axis Bank vs. Formation Textiles*

LLC’ applies but chooses to overlook the said judgment without reasons. The Adjudicating Authority admits that the ‘I&B Code’ is silent on the aspect of the First Charge of the ‘Financial Creditors and others.

5. Learned counsel for the Appellant submitted that the plan allows to ignore mandate of Section 48 of the Transfer of Property Act, 1882 which will apply by virtue of Section 30(2) of the I&B Code, thereby allowing for a preference to be granted to the First Charge holder over the security of others.

6. Learned counsel appearing on behalf of the ‘Resolution Professional’ submitted that the Appellant cannot challenge the equitable treatment as made under the resolution plan and provided to all ‘secured financial creditors’ who form a distinct class within the financial creditors. Reliance has been placed on sub-section (4) of Section 30 to suggest that the ‘secured creditors’ having made class by itself, no distinction made on the basis of First Charge.

7. A chart of distribution of amounts to ‘Financial Creditors’ as made by ‘Committee of Creditors’ have been placed as follows:

“FORT GLOSTER INDUSTRIES LIMITED

**CHART SHOWING DISTRIBUTION OF AMOUNTS TO FINANCIAL
CREDITORS
ON BEHALF OF RESOLUTION PROFESSIONAL/ RESPONDENT NO. 1**

The amount provided for the Financial Creditors under the Resolution Plan is as under:

(Amount in INR Crores)

Sl. No.	Secured Financial Creditors	Claim Amount Filed	Claim Amount Admitted	Voting Percentage in CoC (%)	Settlement Amount offered under Resolution Plan based on Voting Percentage in CoC
1.	Stressed Assets Stabilization Fund	165.88	165.88	26.79	17.15
2.	Punjab National Bank	138.49	138.49	22.37	14.32
3.	Pegasus Asset Reconstruction Pvt. Ltd.	275.77	275.77	44.53	28.51
4.	Andhra Bank	39.10	39.10	6.31	4.04
	Sub-Total	619.24	619.24	100	64.02
5.	WBIDC	No Claim Filed with RP			0.18
	TOTAL				64.20

Note: The average liquidation value of the assets of the Corporate Debtor has arrived at INR 36.32 Crores”

8. It was submitted by the Resolution Professional that the Appellant claiming to be the assignee of IDBI Bank and the Adjudicating Authority has noticed that the searches made in the website of the Registrar of Companies do not reveal that any so called First Charge of the IDBI Bank or the appellant has not shown any document of the First Charge in favour of the IDBI and, therefore, cannot seek preferential treatment amongst other similarly situated ‘secured creditors’.

9. It was further submitted that the Appellant dissented in the meeting of the ‘Committee of Creditors’ and because of dissent cannot claim preferential treatment than the other ‘secured creditors’.

10. Similar plea has been taken by the 5th Respondent - 'successful resolution applicant'.

11. Learned counsel for the Resolution Professional relied on the decision of the Hon'ble Supreme Court in '**Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.**' dated 15th November, 2019 wherein Hon'ble Supreme Court held that the 'I&B Code' recognises secured and unsecured financial creditors and equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured or financial or operational creditors.

12. In '*Committee of Creditors of Essar Steel India Limited (Supra)*', the Hon'ble Supreme Court further held that with regard to distribution method, the National Company Law Tribunal or National Company Law Appellate Tribunal cannot go beyond the commercial wisdom of the 'Committee of Creditors'. This Appellate Tribunal has also held that the commercial wisdom is a subject matter of the 'Financial Creditor (Commercial Creditors)', which cannot be decided by the Adjudicating Authority (National Company Law Tribunal) or the Appellate Tribunal (National Company Law Appellate Tribunal).

13. In the present case, there is nothing on record to suggest that the Appellant is a First Charge holder of the assets of the 'Corporate Debtor'. Further, as per the decision of the Hon'ble Supreme Court in '**Committee of Creditors of Essar Steel India Limited**' (*Supra*), the equitable treatment is to be accorded to each creditor depending upon the class to which it belongs i.e. 'secured' or 'unsecured', 'financial creditor' or 'operational creditor'.

14. The Appellant has failed to show that any of the provisions of Section 30(2) has been violated or there is any material irregularity in the corporate insolvency resolution process period. The question of giving benefit to First Charge holder does not arise both on the question of facts and law. The Appellant cannot derive any benefit from Sections 40 or 48 of the Transfer of the Property Act, 1882.

As the Appellant has failed to make out any ground under sub-section (3) of Section 61 of the I&B Code, no relief can be granted. The appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

New Delhi

19th December, 2019

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