(2025) 03 NCLAT CK 0682

In the National Company Law Appellate Tribunal

Case No : Company Appeal (AT) (Insolvency) No. 198 of 2025?Company Appeal (AT) (Insolvency) No. 1203 of 2024

Anjanee Kumar Lakhotia Vs IDBI Bank Limited? & Anr.

Date of Decision : 18-03-2025

Acts Referred:
Insolvency and Bankruptcy Code 2016 — Section 30, 32, 53

Citation : (2025) 03 NCLAT CK 0682

Hon'ble Judges : Ashok Bhushan, Chairperson;Barun Mitra, Member (T);Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Anusuya Salwan , Rachit Wadhwa, Krishnendu Datta, Santosh Kumar Ray, Ishaan Roy Chaudhury, Zeba Khan , Niharika Sharma Abhijeet Sinha, Shweta Dubey, Kanishka Prasad , Auritro Mukherjee

Final Decision : Dismissed

Judgement

ASHOK BHUSHAN, J.

This appeal by a Successful Resolution Applicant (SRA) has been filed challenging the order dated 20.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court II, Kolkata) in I.A. (IB) (Liq.) No. 29/2024 in C.P. (IB) No.170/2017.

2. Facts necessary to be noticed for deciding this appeal are:

i. Corporate Insolvency Resolution Process (CIRP) against the corporate debtor MBL Infrastructures Limited commenced on 30.03.2017.

ii. Resolution plan was submitted by the appellant, which came to be approved by Committee of Creditors (CoC) with 78.50% vote.

iii. The resolution plan was approved by Adjudicating Authority on 18.04.2018. After certain litigation with regard to resolution plan ultimately the Hon’ble Supreme Court vide its order dated 05.09.2023 dismissed the appeal filed by the IDBI Bank/Respondent No. 1 and affirmed the approval of the resolution plan.

iv. The Respondent Nos. 1 to 5 were dissenting financial creditor who did not vote in favour of the approval of resolution plan.

v. Towards the implementation of the plan, letter was written to the IDBI Bank on 22.08.2024, informing about the remittance of amount in priority before payment to the assenting financial creditor.

vi. The dissenting financial creditors aggrieved by action of the SRA in not correctly implementing the resolution plan filed an I.A. No.29/2024, pleading that dissenting financial creditor were entitled to receive their full payment before any recovery is made by the assenting financial creditor.

vii. The application filed by dissenting financial creditor were opposed by learned counsel appearing for the SRA.

viii. Adjudicating Authority after hearing both the parties had allowed the application by the impugned order dated 20.12.2024. Adjudicating Authority directed that the dissenting financial creditor be paid before any payment is made to the assenting financial creditor.

ix. Aggrieved by the said order, the SRA has filed this appeal.

3. We have heard Ms. Anusuya Salwan counsel appearing for the appellant. Learned Sr. counsel, Mr. Krishnendu Datta has appeared for Respondent Nos. 1 to 5. Learned Sr. counsel, Mr. Abhijeet Sinha has appeared for Respondent No. 6, the State Bank of India (SBI).

4. Learned counsel for the appellant in support of the appeal submits that under the resolution plan, the payment to the financial creditor is spread into 10 years instalments. The plan having been approved payment to all financial creditors, including assenting and dissenting financial creditor has to be made as per the same schedule. The only entitlement of dissenting financial creditor is that they are entitled to receive the payment in priority. SRA has made the payment to the dissenting financial creditor prior in time to making payment of any instalment to the assenting financial creditor. Assenting financial creditors are receiving the payment in two instalments within 10 years which is captured in the resolution plan. The dissenting financial creditor is also entitled to receive payment in the same schedule, however, in priority with the assenting financial creditor. The corporate debtor was EPC Company executing government infrastructure contracts and required facilities for bidding of new projects. The dissenting financial creditors are not providing any facility and it is the only the assenting financial creditors who are providing facilities. It is submitted that resolution plan does not provide for any upfront payment to any creditors, including assenting and dissenting. The claim of the dissenting financial creditor that they should be paid entire amount as upfront is not reflected in the resolution plan. Learned counsel has relied on the judgment of this Tribunal in the matter of 'Puro Natural Sugars JV' Vs. 'Shree Warana Sahakari Bank Ltd. & Ors.' In Comp. App. (AT) (Ins.) No. 661–663/2023 decided on 24.11.2023, where this Tribunal has held

dissenting financial creditor is required by law the payment which is in priority over the financial creditor who voted in favour of the plan "be it upfront payment or payment by instalment". It is submitted that Adjudicating Authority has committed an error in not correctly interpreting the clauses of resolution plan. Clause 21 of the resolution plan, which has been relied by the Adjudicating Authority does not provide that entire payment to the dissenting financial creditor has to be paid upfront. The impugned order is against the intent, rational and the content of the resolution plan. Corporate debtor requires good working capital facilities for its operation and immediate full payment of entire liquidation value to the dissenting financial creditor will cost liquidity constraints. It is prayed that order impugned be set aside.

5. Learned Counsel appearing for the dissenting financial creditor submits that Adjudicating Authority has rightly allowed the application filed by the dissenting financial creditor. It is submitted that the assenting financial creditors are being paid their 100% percent of exposure although within 10 years, but dissenting financial creditors has dissented since they did not agree for receiving the payment in 10 years. Hence, they dissented it so that they may receive the liquidation value before payment is made to the assenting financial creditors. The plan never contemplated that dissenting financial creditor shall also be paid in the instalments. The assenting financial creditor is getting recovery of their 100% percent of exposure, whereas, IDBI Bank is receiving only less than 15% of the exposure. If the payment of the said 15% is allowed to be spread in 10 years, the dissenting financial creditor shall suffer inseparable loss. They decided to dissent so that they may receive the liquidation value immediately. Clause 21 of the resolution plan is clear that liquidation value of dissenting financial creditor will be made before any recovery are made by the financial creditors who voted in favour of the resolution plan. Thus, the plan clearly contemplated that dissenting financial creditor will receive their liquidation value before any recoveries are made. Thus, before any recovery is permitted to made to assenting financial creditor, entire liquidation value is to be paid by to the dissenting financial creditor. Learned counsel for the dissenting financial creditor submits that no grounds have been made to interfere with the impugned order and the appeal deserves to be dismissed.

6. Learned counsel appearing for the SBI submits that resolution plan is in nature of restructuring of the debt for payment of restructured dues for period of 10 years. SBI being lead Bank and assenting financial creditor has approved the resolution plan. Interpretation sought to be put by dissenting financial creditor shall create an impediment in the implementation of the resolution plan.

7. We have considered the submissions of the counsel for the parties and perused the record.

8. There is no dispute of the fact between the parties that the resolution plan was approved with vote share of 78.50%. The Respondent Nos. 1 to 5 are the dissenting financial creditor whose voting share have been noted in paragraph 5

of the impugned order, which is as follows:

“5. The respondent No. 1 was the promoter of the corporate debtor and also stood as personal guarantor for credit facilities availed by the corporate debtor. In the 12th meeting held by the Committee of Creditors of the corporate debtor, on 21.12.2017, resolution plan submitted by the respondents was put up for voting and the same was approved with 78.5% of the votes casted in favour of the plan.

However, the following creditors did not consent to the approval of the resolution plan and accordingly, they became dissenting financial creditors (DFC)

1. IDBI Bank Limited: voting share of 6.56%

2. Bank of Baroda: voting share of 4.01%

3. Indian Bank: voting share of 6.10%

4. Bank of India: voting share of 3.20%

5. Punjab National Bank: voting share 1.98%

Copy of the approved resolution plan has been annexed as Annexure "A2" of the application.”

9. Para 9 of the impugned order captures the repayment in 39 instalments in terms of the percentage mentioned therein, which para 9 is as follows:

“9. According to the applicant, the repayment in 39 total instalments in terms of the percentage mentioned therein would apply to assenting financial creditors and not to dissenting financial creditors who will have to be paid in priority over the assenting financial creditors. The table which contains repayment schedule has been extracted and reproduced hereinbelow:

March

June

September

December

2024

-

-

0.125%

0.125%

2025

0.125%

0.125%

0.250%

0.250%

2026

0.250%

0.250%

0.250%

0.250%

2027

0.250%

0.250%

0.250%

0.250%

2028

0.250%

0.250%

0.500%

0.500%

2029

0.500%

0.500%

1.500%

1.500%

2030

1.500%

1.500%

3.125%

3.125%

Since Respondent 1 is refusing to pay in full to the Applicants before any payment could be made to the assenting Financial Creditors this application seeking reliefs mentioned in Paragraph No. 3 above."

10. Applicant's (dissenting financial creditors) case has been captured by Adjudicating Authority in paragraph 10, whereas, the IDBI Bank's case is that as per the share of liquidation, it will be receiving 14.27 Crore and if the said payment is computed as assenting lenders, he would be receiving 95.5 Crore. Learned counsel for the dissenting financial creditor has submitted that the dissenting financial creditor has not approved the plan only with object and intent of receiving the liquidation value prior to any amount paid to the assenting financial creditor. The Clause 21 of the resolution plan which has been considered by the Adjudicating Authority and has been extracted in para 38 of the judgment is as follows:

"38. To examine this, it is appropriate to reproduce clause 21 of the resolution plan which reads as under:

"21. On the basis of the valuation report, the liquidation value due to secured financial creditors works out to be Rs. 269.90 crs and after providing for resolution cost, the value comes to Rs. 267.40 crs. In case of liquidation of the company, the outstanding BG of Rs. 236.36 crs will be invoked. Also, the clients will not pay their outstanding amounts, security or withheld amounts. In case of unsecured financial creditors, the share in the liquidation value works out to be Nil.

The liquidation value due to dissenting financial creditors, if any, will be made (in proportion to the liquidation value arrived as above) before any recoveries are made by the Financial Creditors who voted in favour of the resolution plan."

11. The expression used in Clause 21:

The liquidation value due to dissenting financial creditors, if any, will be made (in proportion to the liquidation value arrived as above) before any recoveries are made by the Financial Creditors who voted in favour of the resolution plan."

12. The plan thus clearly contemplated that the liquidation value to the dissenting financial creditor shall be made over before any recovery are made by the financial creditor who voted in favour of the resolution plan.

13. What is the true import and interpretation to Clause 21 is a question to be answered in this appeal. The Adjudicating Authority has noticed the case of the applicant that, had the dissenting financial creditor are paid as assenting financial creditor they will be also entitled to receive amount mentioned in paragraph 10 last column, for example, IDBI Bank will be receiving 95.5 Crore if the payment is made as assenting financial creditors, whereas, liquidation value receivable by virtue of Section 30(2)(b) is only 14.27 Crore. In event, the submission of the appellant is accepted, there will be no difference in payments made to the assenting financial creditor and dissenting financial creditor, i.e., all will be receiving the 100% dues in 10 years period. Dissenting financial creditor, relying on Clause 21 of the plan dissented in accepting the amount in 10 years

period and agreed to receive the liquidation value before any recoveries are made to the assenting financial creditor. Adjudicating Authority after noticing the relevant clause and considering the submissions has interpreted Clause 21 in paragraph 44 and 45 in the following words:

“44. Clause 21 clearly contemplates payment to the dissenting financial creditors before any recoveries are made by financial creditors who voted in favour of the resolution plan. "Ld. Counsel for respondents vehemently argued that the words "in proportion to the liquidation value" arrived in the clause 21 of the Resolution Plan means that the "proportionate value in instalments".

45. We are of the view of the view that "in proportion to the liquidation value mentioned in this clause would only mean the liquidation value applicable to dissenting financial creditors as contemplated under Section 30(2)(b)(ii). The words "before any recoveries are made by the financial creditors who voted in favour of the resolution plan" makes it abundantly clear that before any sum could be paid to the assenting financial creditors, the dissenting financial creditors will have to be paid in priority.”

14. Adjudicating Authority has rightly taken the view that approved resolution plan is binding on all stakeholders including assenting and dissenting and SRA also. The judgment of this Tribunal in ‘Puro Natural Sugars JV’ (Supra), which has been relied by the appellant has also been noticed and considered by the Adjudicating Authority. In the above case, appeals were filed challenging the Order of the Adjudicating Authority rejecting the resolution plan and the orders passed in the other connected IAs. The objection to the plan was raised by the dissenting financial creditors. Question No. II which was framed in the above appeal is noted in paragraph 11 (II), which is as follows:

“11. The two principal questions, which have arisen for consideration in these Appeal(s) are to the following effect:

(II) Whether the payment, which have been proposed to the dissenting Financial Creditors in the Resolution Plan, is contrary to the provisions of Section 30, sub-section (2) and CIRP Regulations?”

15. This Tribunal considered and answered Question No. II, after noticing the provisions of Section 32 and Regulation 38(1B) of CIRP Regulations has made following observation in paragraph 19:

“19. According to the scheme of the IBC, the payment to which a Financial Creditor, who does not vote in favour of the Resolution Plan is entitled for payment in accordance with sub-section (1) of Section 53, in the event of liquidation of the Corporate Debtor and further dissenting Financial Creditor has to be paid in priority to the Financial Creditors who vote in favour of such Resolution Plan. The submission advanced on behalf of learned Counsel for Respondent Nos.1 and 2 that dissenting Financial Creditors are entitled to upfront payment is not in line with the statutory scheme as contained in the IBC and the CIRP Regulations. There is no provision which can be pointed out, which requires Successful Resolution Applicant to make upfront payment to the dissenting Financial Creditors. What is required by law is the payment "in priority over the Financial Creditors who voted in favour of the plan". When we look into the relevant clauses of the Resolution Plan, i.e., Clause C-3(V), which dealt with dissenting Financial Creditors, the clauses clearly provided for payment to dissenting Financial Creditor in priority, since the payment in favour of the dissenting Financial Creditor has to be made prior to payment to the assenting creditors, be it upfront payment or payment by installments. The submission of the learned Counsel for Respondent Nos.1 and 2 that they were entitled for upfront payment and provision of not providing upfront payment violates the provision of IBC and CIRP Regulations cannot be accepted. The provisions of Resolution Plan in C-3(V) providing for payment to dissenting Financial Creditors are not in contravention of any provisions of Section 30, sub-section (2) or CIRP Regulations. We, however, have already noticed the clarification made by the Successful Resolution Applicant before the Adjudicating Authority that entire payment to the dissenting Financial Creditors shall be paid upfront within 90 days from the date of approval of the Plan. The learned Counsel appearing for Successful Resolution Applicant has also made same submission before us that entire payment to the dissenting Financial Creditor shall be made upfront within 90 days, which clarification was given before the Adjudicating Authority also. The Successful Resolution Applicant having himself come out to make entire payment to the dissenting Financial Creditor within 90 days, we are of the view that there can be no question of any contravention of provisions of IBC as well as CIRP Regulations with regard to payment to dissenting Financial Creditors."

16. Submission was raised in the above case by dissenting financial creditor that they are entitled for upfront payment, which submission was considered and rejected. What was held by this Tribunal that since the payment in favour of the dissenting financial creditor has to be made prior to assenting financial creditor be it upfront payment or payment by instalments. The present is a case where Clause 21 of the plan itself contemplates mechanism of payment to the assenting financial creditor and dissenting financial creditor. Liquidation value of dissenting financial creditor is provided to be paid prior to any recovery are made by assenting financial creditor, hence there is no indication in the resolution plan that the dissenting financial creditor has to be paid as per instalment i.e., for period of 10 years. The decision by dissenting financial creditor not to approve the plan was on the premise that they were not agreeable to receive the 100% payment of their claim within 10 years period rather they were satisfied to receive only lesser amount i.e., 15% in case of IDBI as liquidation value before any payment is made to the assenting financial creditor. Judgment of this Tribunal in 'Puro Natural Sugars JV' (Supra), does not come to the aid of the appellant in the facts of the present case where payment to dissenting financial creditor is clearly contemplated in Clause 21 of the resolution plan as noted above and considered by the Adjudicating Authority.

17. We, thus of the view that the Adjudicating Authority has passed the impugned order after correctly interpreting Clause 21 of the resolution plan and no error has been committed by the Adjudicating Authority in directing for payment to the dissenting financial creditor prior to any recoveries are made by assenting financial creditor.

There is no merit in the appeal. Appeal dismissed.

