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**(2023) 04 NCLT CK 0004**

**In the National Company Law Tribunal**

**Case No : I.A./351/2023 In CP(IB)No. 979/(MB)/2020**

**Oceanic Technical Services Vs Ajay Joshi ?**

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**Date of Decision : 13-04-2023**

**Acts Referred:**

Insolvency and Bankruptcy Code, 2016 — Section 31, 60(5)  
Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 — Regulation 21

**Citation : (2023) 04 NCLT CK 0004**

**Hon'ble Judges :** Kuldip Kumar Kareer, Member (J); Shyam Babu Gautam, Member (T)

**Bench :** Division Bench

**Advocate :** Shadab S. Jan, Mufaddal Paperwala, Deep Roy, Prajjwal Tiwari

**Final Decision :** Disposed Of

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## **Judgement**

1. It is an Interlocutory Application 351/2023 filed by Oceanic Technical Services (Operational Creditor of Corporate Debtor) under section 60(5) of IBC, 2016 against Ajay Joshi, RP of Indian Steel Corporation Ltd., seeking an order to direct the Resolution Professional to share a copy of Resolution Plan approved by the Committee of Creditors and a copy of IA/1562/2022 filed under Section 31 of IBC, 2016 for approval of Resolution Plan. Further, the Applicant has not pressed for Prayer (b) and (c) of this Application, which is duly recorded in order dated 31.01.2023 of this Tribunal. Therefore, this Bench is not dealing with the prayer (b) and (c) of the present interlocutory application.

2. On perusal of the Interlocutory Application, it reveals that the Applicant is engaged in the business of supplying labour and technical services and is an operational creditor of the Corporate Debtor. The Applicant is a stakeholder (being an operational creditor) in the insolvency resolution process including any resolution plan that may be approved by the Committee of Creditors ("CoC"). The Applicant has submitted that the present Application is being preferred by him on account of failure of the Resolution professional to discharge his duties in good faith and as per the provisions laid down under the Code and the Rules contained therein.

This Tribunal vide an order dated 06.10.2021, initiated Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor and appointed the Respondent as a Interim Resolution Professional, that was later on confirmed as Resolution Professional by the CoC. Accordingly, the Respondent on 08.10.2021, made a public announcement inviting claims from creditors of the Corporate Debtor. Pursuant to the same, the Applicant being an operational creditor of the Corporate Debtor on 18.12.2021, submitted its claim for Rs 83,15,459/- (INR Eighty-Three Lakh Fifteen Thousand Four Hundred and Fifty-Nine Only).

Thereafter, the Respondent after due verification accepted the claim of the operational creditor to an extent of Rs. 74,18,431/-(INR Seventy-Four Lakh Eighteen Thousand Four Hundred and Thirty-One Only) and was admitted as operational creditor of the Corporate Debtor. Further, the Respondent on 20.12.2021, invited expression of interest from eligible prospective resolution applicants and pursuant thereto, the CoC has approved one of the resolution plan submitted by one of the prospective resolution applicants and has filed an Interlocutor Application seeking approval of the same from this Bench.

3. The Applicant has time and again requested the Respondent to provide a copy of the approved resolution plan by the CoC but the Respondent has failed to provide a copy of the same to the Applicant on the grounds of it being a confidential document and the same could not be revealed at this stage. In relation to this, the Applicant has submitted that the Applicant (being an operational creditor) is a stakeholder of the Corporate Debtor and would be bound by any plan which may be approved by this Tribunal. Therefore, the refusal by the Respondent in providing a copy of the approved resolution plan is wrongful, and tends to prejudice the rights of the Applicant. The Applicant has further submitted that he is entitled to receive a copy of the resolution plan in order to ascertain whether the rights and entitlements of the Applicant (as an operational creditor) have been safeguarded, and that the interest of the Applicant (as an operational creditor) has been balanced by the CoC.

In such circumstances, the Applicant has preferred the present Application before this Tribunal seeking a copy of the approved resolution plan submitted by the Respondent before this Hon'ble Tribunal and to share a copy of the Interlocutory Application.

4. In response to this IA, the Respondent has filed a reply and has submitted that the RP under Regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and under any applicable law has an unfettered and a continuous obligation to maintain the confidentiality of the information relating to the insolvency resolution process which includes the contents of the resolution plan, and this obligation has not been struck down or diluted by any court of law.

The Respondent submits that on 23.11.2022, while this Tribunal was hearing the plan approval application filed by the respondent, the Applicant prayed to direct

the Respondent to provide a copy of the resolution plan, after which he was made aware of the treatment proposed for the operational creditors of the Corporate Debtor in the resolution plan. Dissatisfied with the treatment proposed, the Applicant sought leave to file an Affidavit in this regard. Subsequently, the Applicant again mentioned the matter to this Tribunal on a different date, while this Bench was hearing a different application with regards to the Corporate Debtor, and informed the Bench that the registry is not allowing the Applicant to file the affidavit and was then advised by this Bench to file a proper application in this regard. The Respondent submits that he is not aware whether the Applicant has filed any application whatsoever in this regard, and that this application is nothing but a malicious attempt to delay the resolution plan approval process. Even after being aware of the treatment proposed for the operational creditors and instead of filing an application in this regard as suggested by this Bench, the Applicant by mentioning and filing of the Application, the Applicant is indulging in clever tactics to delay the process and therefore the Respondent prays that this application ought to be summarily rejected.

5. The Respondent relied on the Para 28 of the judgement in "Association of Aggrieved Workmen of Jet Airways (India) Limited vs Jet Airways (India) Limited" which states -

"It is true that the Resolution Plan even though it is not a confidential document after its approval, cannot be made available to each and to anyone who has no genuine claim or interest in the process. On various grounds the access to Resolution Plan even if it is not a confidential document, after approval can be denied in proper and appropriate cases."

Accordingly, the Respondent submitted that the resolution plan having not yet been approved by this Tribunal, is still a confidential document, resolution plan or its portions thereof need not be circulated to anyone who asks for it. Nonetheless, in case, the Adjudicating Authority so directs the Respondent, he can at best share the relevant portion of the resolution plan with the Applicant.

6. After hearing both the parties and on perusal of the IA/351/2023 including other material on record, we are of the considered view that the precedent as laid down by the Hon'ble National Company Law Appellate Tribunal in "Association of Aggrieved Workmen of Jet Airways (India) Limited vs Jet Airways (India) Limited" that the resolution plan was not a confidential document, only after approval of the plan by the NCLT which is not the case in the present matter, as approval of the resolution plan by this bench is still pending. Moreover, the Applicant has been made aware of the treatment proposed for the operational creditors of the Corporate Debtor in the resolution plan. In such situation, this Tribunal cannot direct the RP to give a copy of the approved resolution plan submitted by the Respondent before this Tribunal and/or to share a copy of the Interlocutory Application/1562/2022 with the Applicant. In view of the same, we are of the considered opinion that a complete set of Resolution

Plan cannot be allowed to be shared with the Applicant. However, this bench directs the Resolution Professional to share a copy of the relevant portion (treatment proposed for the operational creditors) of the Plan with the Applicant. In view of the above terms, the application is allowed and disposed of.