
(2024) 10 NCLAT CK 1188

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Appeal (AT) (Insolvency) No. 1045 & 1046 of 2024

Vinay Goel and Consortium Members

APPELLANT

Vs

Nibula Print and Pack Pvt. Ltd. & Ors.

RESPONDENT

Date of Decision : 18-10-2024

Acts Referred:

Citation : (2024) 10 NCLAT CK 1188

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

Bench : Division Bench

Advocate : Pritha Srikumar , Neha M., Sajeve Deora, Niti Jain, Harimohana N. , Shivam Nandan Sharma

Final Decision : Allowed

Judgement

18.10.2024 : Heard Learned Counsels appearing for the Appellant, HDFC Bank – Respondent No. 5, Resolution Professional and Liquidator.

2. This Appeal has been filed against an Order dated 22.04.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II), by which Order, I.A. No. 1512 of 2019 filed by the Resolution Professional for the approval of Resolution Plan has been rejected.

3. Brief facts necessary to be noticed for deciding the Appeal are:

i. The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor commenced on 11.12.2018.

ii. In pursuance of 'Form-G' issued by the Resolution Professional (RP), Resolution Plans were submitted.

iii. Appellant consortium has submitted the Resolution Plan.

iv. In the 15th Meeting of the Committee of Creditors (CoC) held on 08.11.2019 as per the voting 77.91% votes the Plan was approved. The HDFC Bank holding

20.74% voting shares voted against the Resolution Plan.

v. RP filed I.A. 1512/2019 seeking approval of the Resolution Plan.

vi. Dissenting Financial Creditor, HDFC Bank filed an Application I.A. 1684/2019 before the Adjudicating Authority objecting to I.A. 1512/2019 and seeking rejection of the Resolution Plan.

vii. The Adjudicating Authority in Paragraph 26 has noted the objections raised by the HDFC Bank. Para 26 of the Order is as follows:

"26. Now, we would like to examine another objection raised by the Applicant/HDFC Bank regarding its entitlement of amount in terms of Section 30(2) of IBC, 2016. As per the HDFC Bank, its minimum entitlement as Dissenting Financial Creditor (DFC) is computed by the RP at Rs. 1.61 Crore, which is based on the amount receivable by it under Section 53(1) of IBC by applying deeming fiction, if CD goes into the Liquidation. Per Contra, as per RP, the Liquidation value of DFC is Rs. 20 Lakhs only, which is the minimum Liquidation value of the Security Interest held by the HDFC Bank."

viii. After considering the submissions of the Parties, Adjudicating Authority came to the conclusion that Resolution Plan is in violation of Section 30(2)(b) of the IBC which finding has been returned in Para 37.

ix. Aggrieved by the Order of the Adjudicating Authority rejecting the Resolution Plan this Appeal has been filed by the Successful Resolution Applicant (SRA).

4. At the very outset, Learned Counsel appearing for the HDFC on instructions received from the Bank submits that HDFC Bank is withdrawing its objection to the Resolution Plan and they have no objection in approving

5. Learned Counsel for the RP has submitted that under the Resolution Plan, the HDFC are getting more amount than one which they were entitled as per Section 30(2)(b) which is the reason that HDFC has now taken the stand that the Plan be approved.

6. In view of the above, specially the statement made on behalf of the Counsel for the HDFC that on instructions that they are withdrawing their objection to the Resolution Plan, we see no reason to enter into different issues raised in the Appeal.

7. The main ground for rejection of the Plan was objection by HDFC Bank, which objection no more surviving, we are of the view that the Resolution Plan deserves to be approved.

8. We thus set aside the Order passed by the Adjudicating Authority dated 22.04.2024, allow the I.A. 1512/2019. Objections of the HDFC in I.A. 1684/2019 stands withdrawn and the Plan stands approved.

9. Let consequential Order be passed by the Adjudicating Authority consequent to approval of Plan within a period of 60 days after the Order of this

Tribunal is placed before the Adjudicating Authority.

The Appeal is disposed of accordingly.

In view of the Order passed in Comp. App. (AT) (Ins.) No. 1045 & 1046 of 2024, no Orders are required in Comp. App. (AT) (Ins.) No. 1347 of 2024.

Learned Counsel for the Liquidator submits that Liquidator has incurred certain fee and expenses. It is open for the Liquidator to make an appropriate Application before the Adjudicating Authority by making such Prayers as may be advised in accordance with law.