

A NTPC LTD. (SIMHADRI PROJECT)

v.

RAJIV CHAKRABORTY

(Civil Appeal No. 2798 of 2020)

B NOVEMBER 16, 2020

**[A. M. KHANWILKAR, B. R. GAVAI AND
HRISHIKESH ROY, JJ.]**

Insolvency and Bankruptcy Code, 2016:

C *Corporate Insolvency Resolution Process – Information*
Memorandum – Prepared by Resolution Professional – Appellant-
creditor’s name was put in the ‘List of Other Creditors’ and was not
reflected in ‘Claims of Operational Creditors’ – Appellant’s claim
that its name should have been reflected in ‘Claims of Operational
D *Creditors’ – Held: Since the claim of the appellant is still pending*
adjudication before the Arbitrator, it has rightly been described in
the memorandum as other creditors claim – The purpose of
Information Memorandum is only to provide relevant information
regarding financial position of the Company – It does not decide
the claim – The Resolution Professional has no authority to accept
E *or disallow the claims – Appellant’s claim would not get extinguished*
unless it is adjudicated upon by a competent forum or by operation
of law – Appellant can take recourse to appropriate remedy, if it is
aggrieved with the final resolution plan – Matter disposed of.

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2798
of 2020.

From the Judgment and Order dated 02.06.2020 of the National
Company Law Appellate Tribunal, New Delhi in Company Appeal (AT)
(INSOLVENCY) No. 493 of 2020.

G Tushar Mehta, SG, Adarsh Tripathi and Gaurav, Advs. for the
Appellant.

C.U. Singh, Sr. Adv., Ms. Vanita Bhargava, Ajay Bhargava,
Siddharth Srivastava, Mohit Kishore, Ms. Warmika Trehan and Shivank
Diddi, Advs. for the Respondent.

H

The following Order of the Court was passed :

A

ORDER

We have heard learned counsel for the parties.

The limited issue in this appeal is about the claim of the appellant not being reflected under the heading 'Claims of Operational Creditors' in the Information Memorandum prepared by the Resolution Professional.

B

The Adjudicating Authority and the Appellate Tribunal have taken a view that the appellant's claim is already noted in Information Memorandum under the title, 'List of Other Creditor Claims (excluding Related Party Claims and Employees and Workmen Claims) as on 17th July, 2019'. No grievance has been made by the appellant that the figure noted therein is incorrect.

C

According to the appellant, the claim amount should have been reflected under the heading 'Claims of Operational Creditors'. We do not agree with this submission.

D

It is not in dispute that the claim of the appellant is still pending adjudication before the Arbitrator and it has been, therefore, rightly described in the memorandum as other creditor claims (claims under adjudication).

The purpose of memorandum is only to provide relevant information regarding the financial position of the company in question. It is not about deciding the claim or disregarding the claim amount, if it exists in law. The Resolution Professional has no authority/power to accept or disallow the claims. The appellant's claim would not get extinguished unless it is adjudicated upon by a competent forum or by operation of law.

E

F

Suffice it to observe that the claim of the appellant has been taken note of in the information memorandum and does not get extinguished as such; but it will be subject to adjudication by the Arbitrator. Since it is part of the memorandum, it is obvious that the resolution applicant would take the same into account while submitting his proposal, due notice whereof will be taken by the committee of creditors as well, and dealt with appropriately in the final resolution plan.

G

In the event, the appellant has any grievance about the nature or manner of provision made in the final resolution plan qua its claim; and if

H

- A aggrieved with the final resolution plan, may take recourse to appropriate remedy as per law.

All contentions available to the appellant in that regard are left open while once again making it clear that the claim of the appellant has not been treated as extinguished.

- B In view of the above, the civil appeal is disposed of.

As the appeal is disposed of, the interim order passed earlier stands vacated.

- C As a result of which, we expect the concerned authorities to expedite the process of resolution.

Pending applications, if any, stand disposed of.

Kalpana K. Tripathy

Appeal disposed of.