

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 08 of 2024

IN THE MATTER OF:

**Arpan Maheshkumar Shah
RP, Omsri Devprocon Ltd.**

...Appellant

Versus

**Committee of Creditors
Omsri Devprocon Ltd. & Anr.**

...Respondent

Present:

For Appellant : Mr. Kinshuk Chatterjee, Advocate

For Respondent : None

O R D E R
(Hybrid Mode)

08.01.2024 This appeal has been filed by the Resolution Professional challenging the order dated 02.11.2023 by which Adjudicating Authority has dismissed the application filed by the Appellant for approval of resolution plan. The order indicates that the claims were still under verification and according to own case of the Appellant the liquidation value was obtained only on 17.04.2023, where Form-G were issued prior to that and on the same day resolution plan was approved. The Adjudicating Authority has given reasons in para 12 and 13 for not approving the resolution plan. Para 12 and 13 is as follows:

“12. It is observed that the Resolution Applicant is an individual and his financial background, net worth, experience and funding of the resolution plan has not been properly explained. The Information Memorandum, Resolution Application and Form H are not satisfactory to enable us consider the application for resolution of the company by a Resolution Plan by an individual. Even though the valuer was

appointed the Fair Value and Liquidation Value have not been arrived at by the RP for consideration of the Resolution Plan by the COC. There are huge Income Tax Arrears and the claims of many other financial creditors have not been verified and admitted before the Resolution Plan was finalised. No provision made for the Income Tax Due to be paid.

13. The RP had received an amount of Rs. 80.59 crores of claims from 9 Financial Creditors, while he has accepted only 2 Unsecured Creditors claims of Rs.4.00 crores, stating that these were under verification and there by the constitution of COC is also found to be unbalanced and the RP has not specified why they were pending. Before rejection or acceptance of such claims and without arriving at the liquidation value of the CD, the Resolution Plan of an individual receiving without proper financial exposure and net worth certification, intent to bring funds through equity/quasi equity was passed by the COC. The resolution plan has also not addressed the cause of default, a proper information memorandum was not prepared and is not feasible and viable addressing the liabilities of the corporate debtor.”

From the facts, it is clear that the Resolution Professional has not carried out the process in accordance with the procedure prescribed and Adjudicating Authority has not erred in not approving such resolution plan which was obtained without obtaining valuation of the Corporate Debtor and without even verification of the claim of several creditors, which was still under verification. The admitted dues of EPFO are Rs.98,000/-.

We thus, are of the view that the Adjudicating Authority has correctly taken the view that resolution plan cannot be approved. We thus, do not find

any infirmity in the order, it is for the resolution professional to take further steps in accordance with law. It shall be open for the resolution professional to issue fresh Form-G in accordance with law, it is further open for the appellant to make an appropriate application, if any, further extension is required in timeline of the CIRP.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

**[Mr. Arun Baroka]
Member (Technical)**

pks/nn