

Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

23rd April, 2023

Subject: Judgment¹ dated 11th April 2023 of National Company Law Appellate Tribunal, New Delhi in the matter of Kanoria Chemical & Industries Ltd. Vs. Vijendra Kumar Jain, erstwhile Resolution Professional, Transparent Energy System Pvt. Ltd., & Ors. CA (AT)(Ins.) No. 618 of 2021 & I.A. No. 1647 of 2021

I. Brief Background

Post initiation of CIRP of CD, the Appellant/OC filed its claim along with KYC documents with the RP. Thereafter, the OC did not get any information about his admitted claim from the Resolution Professional (RP), despite repeated communications made to him. However, RP informed the OC about the approval of the resolution plan by AA *inter alia* the portion relevant to the OC's claim. OC challenged the resolution plan approved by the AA as the OC's claim in respect of the arbitral award passed in its favour, has not been considered in accordance of with the provision in section 30(2)(b) of the Code. It was also agitated that successful resolution applicant (SRA) was ineligible under section 29A of the Code to submit the resolution plan.

II. Issues

- (i) Whether OC's claim in respect of its arbitral award was appropriately considered in the resolution plan submitted by the SRA as per law?
- (ii) Whether the SRA being part of the Board of Directors of the CD, were eligible to submit a resolution plan as per section 29A of the Code?
- (iii) Whether the RP failed to communicate the admitted claim amount to the OC during the CIRP and resolution plan?

III. Observations of NCLAT:

- (i) Equitable treatment should be meted out to financial and operational creditors in the CIRP of a company. In the facts of the case, OC did not deserve 'zero' payment since the arbitration award by the competent Court was neither quashed, stayed or varied. Further, there was no contrary order against the award, and therefore his claim should have been appropriately admitted by the RP and considered for payment in the approved resolution plan. The OC should be paid an amount equal to the amount permissible to the operational creditor receiving maximum percentage of payment against admitted

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claim, from among all the various categories of operational creditors in the resolution plan.

- (ii) As regards the eligibility of SRA to submit the resolution plan, NCLAT observed that section 240A prescribes that the provision of clauses (c) and (h) of section 29A shall not apply to resolution applicant in respect of CIRP of any MSME, admittedly the CD being MSME. As such, there is no disqualification or ineligibility attached to any member of the previous management of the CD to act SRA.
- (iii) NCLAT has further observed that the RP was required to be more alert in responding to various emails of the OC on the admitted claim amount. It held that the RP should have brought the SRA's objectionable comments on the arbitration award, to the notice of CoC and AA.

Owing to the SRA's differential treatment on OC's claim, NCLAT directed SRA to pay the OC a sum of Rs.1 lakh being the cost of litigation.