

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1558 of 2023
&
I.A. No. 5563, 5596 of 2023

IN THE MATTER OF:

Roshan Lal Mittal & Ors.

...Appellants

Versus

Rishabh Jain & Ors.

...Respondents

Present:

For Appellant : Mr. Saurabh Kalia, Mr. Karan Kaushal and Mr. Kartik Kaushal, Advocates

For Respondent : Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Jasleen Singh Sandha, Advocate for Erstwhile RP

O R D E R
(Hybrid Mode)

07.12.2023 This is an application seeking condonation of delay of 13 days in filing the appeal. Learned Counsel for the Appellant submits that Appellant were medically indisposed due to which the delay was caused. Delay in filing the Appeal is condoned.

Heard Learned Counsel for the Appellant and Learned Counsel appearing for the Resolution Professional. This appeal has been filed against the order dated 23.08.2023 by which order Adjudicating Authority has approved the Resolution Plan and allowed the I.A. No. 659 of 2023 filed by the Resolution Professional. The Appellant before us are personal guarantors of the Corporate Debtor challenging the approval of Resolution Plan.

Learned Counsel for the Appellant had expressly referred to Clause 7.1 of the Resolution Plan, which is as follows:

“7.1 Basis of Resolution Plan

The Resolution Plan is based on the “Information Memorandum” and other details available from Resolution Professional and information taken Public Domain.

ACQUISITION PLAN

Resolution Applicant has widely explored the corporate debtor through visits at Project sites, Information received from Resolution Professional and from own sources. Based on its study, resolution applicant has proposed the acquisition of corporate debtor in following manner:

PRA shall take over all the on-going projects of the corporate debtor and shall complete the same with the support of Resolution Professional. Pursuant to due diligence done by RA and the assessment of RP & her team, risk of BG invocation is minimal still, RA shall undertake to take the liability of uncrystallised BG's up to an amount of 1 crore only the proposed resolution plan.

The RA shall acquire all the assets of the corporate debtor. Major assets that shall be acquired is detailed as below:

GST INPUT/CASH LEDGER BALANCE AND INCOME TAX REFUND

Pursuant to the information provided by the Resolution Professional, income tax refund as on CIRP date has been received by RP and utilized during CIRP. Similarly, GST input balance is being utilized during CRIP also. We understand that the corporate debtor is a going concern and therefore GST input and income tax refund are dynamic figures and keep on changing during CIRP. The RA, therefore proposes to acquire all the GST Input including GST cash ledger balance and income tax refund amount under the proposed resolution plan.

FIXED ASSETS (INCLUDING PLANT & MACHINERY):

Pursuant to enclosed provisional balance sheet of corporate debtor as on CIRP date the book value of the plant & machinery (including all fixed assets) is as follows:

<i>Particulars</i>	<i>Net Block As on 07.10.2019</i>	<i>Net Block As on 31.10.2019</i>
<i>Air conditioners</i>	<i>2,42,239</i>	<i>2,48,381</i>
<i>Cars/vehicles</i>	<i>62,83,056</i>	<i>11,67,272</i>
<i>Computers & Software</i>	<i>10,68,776</i>	<i>66,09,931</i>
<i>Commercial vehicle</i>	<i>1,43,40,959</i>	<i>1,52,38,085</i>
<i>Furniture & Fixture</i>	<i>6,58,463</i>	<i>9,24,769</i>
<i>Office equipments</i>	<i>16,70,134</i>	<i>17,12,744</i>
<i>Plants & Machinery</i>	<i>2,83,34,304</i>	<i>7,31,00,779</i>
<i>Lab Instrument</i>	<i>2,86,492</i>	<i>7,28,874</i>
<i>Shuttering plates</i>	<i>7,46,65,007</i>	<i>9,15,34,742</i>
<i>Temporary structure</i>		
<i>Total</i>	<i>12,75,49,431</i>	<i>66,09,931</i>

...”

Learned Counsel for the Appellants submit that SRA has taken liability of Rs.1 crore only of uncrystallised claim. It is submitted that on the effective date, there should be crystallised amount and no liability can be fastened on the Appellant and the SRA could not have only taken liability of only 1 crore.

We have considered the submissions of Learned Counsel for the Appellant and perused the record.

The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon’ble Supreme Court in the matter of “*Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321*), that by approval of resolution plan the guarantees are not ipso facto discharged. The resolution applicant has taken liability of only one crore, the other

liabilities of the personal guarantors are not discharged. We do not find any ground to interfere with the approval resolution plan within meaning of Section 61. We do not find any such ground on which we can interfere with the order of the Adjudicating Authority approving the Resolution Plan. There is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

[Mr. Arun Baroka]
Member (Technical)

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