

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.776 of 2023**

**IN THE MATTER OF:**

**Simbhaoli Sugars Ltd.**

**...Appellant**

**Versus**

**Pramod Kumar Sharma  
Resolution Professional of  
Uniworld Sugars Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Rachit Batra and Mr. Nikhil Singh Raman,  
Advocates.**

**For Respondents: Mr. Abhijeet Sinha, Mr. Nilotpall Shyam, Mr.  
Saikat Sarkar and Mr. Mohd. Nazim Khan,  
Advocates for R-1 (RP).**

**Mr. Mahesh Agrawal, Mr. Ankur Saighal and Mr.  
Shivam Shukal, Advocates for R-3 (SRA).**

**ORDER**

**28.07.2023:** Heard learned counsel for the Appellant as well as learned counsel appearing for the Resolution Professional and Successful Resolution Applicant. This Appeal has been filed against order dated 20.03.2023 passed by the Adjudicating Authority approving Resolution Plan at second round. Appellant before us is the Promoter and Shareholder of the Corporate Debtor. In the earlier round of the CIRP, the plan was approved by the Adjudicating Authority vide its order dated 17.03.2021. Challenging the said order the present Appellant as well as one Operational Creditor have filed Appeals in this Tribunal being Company Appeal (AT) (Ins.) No. 741 of 2021 and 422 of 2021. Both the Appeals were heard and decided by this Tribunal and by its judgment and order dated 12.04.2022 this Tribunal took the view that third

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valuation report which was obtained was uncalled for and the liquidation value of the Corporate Debtor ought to have been taken on the average of two valuation report which were earlier obtained. This Tribunal disposed of the Appeals and in Para 44, 45, 46 and 47 following was held:

*“44. After careful consideration of the rival submissions of the parties and the record and as per detailed discussion and analysis, we are of the view that the third valuation report of fair and liquidation should be discarded as it is not in accordance with the stipulated provision and procedure in the CIRP Regulations, and moreover the wide variance of the liquidation value of the third valuation report from the first two valuation reports also necessitates discarding of the third valuation report. Therefore, the average liquidation value of first two valuations viz. Rs. 123.66 crores should be the liquidation value on which various payments in the resolution plan should be based upon.*

*45. It is noted that the successful resolution plan was approved by the Adjudicating Authority on 17.3.2021 and it is now more than a year since the SRA has stepped in the shoes of the corporate debtor and has taken up implementation of the resolution plan. Hence it would serve the interests of the creditors and stakeholders in a fair and just manner if the SRA revises the payments to be given to stakeholders and creditors resolution plan in the light of the liquidation value of Rs. 123.66 crores and puts it up to the CoC for consideration and necessary approvals.*

46. We, therefore, set aside the impugned order and the resolution plan only to the extent it relates to allocation of payments to the stakeholders and creditors and direct that the revision of payments and subsequent approval of the revised resolution plan should be completed within a period of two months from the date of this judgment.

47. We may also add that the pending applications, namely CA Nos. 235/2018, 236/2018 and 237/2018 and any other application which pertains to recovery of amounts and which could not be properly considered and adjudicated upon, should also be disposed of, preferably in the next two months, and any monies accrued in the kitty of the corporate debtor should be taken as adding to the liquidation value of the corporate debtor and to be utilized for payments to the creditors and stakeholders.”

2. Subsequent to the order of this Tribunal, the Resolution Applicant revised the payments to the different stakeholders and same was placed before the Committee of Creditors. The Committee of Creditors approved the revised payments in its meeting dated 11.05.2022. The revised payments were approved by the Committee of Creditor with 100% vote share. The Resolution Professional filed an application for approval of the plan before the Adjudicating Authority, on which application the order impugned dated 20.03.2023 has been passed by the Adjudicating Authority approving the Resolution Plan.

3. Learned counsel for the Appellant challenging the order dated 20.03.2023 submits that the approval of the Resolution Plan is not in accordance with law. He submits that the payments to the Operational Creditors have decreased in the revised payments proposal. He further submits that Regulation 29 of the Insolvency and Bankruptcy Board of India. (Liquidation Process) Regulations, 2016 has not been followed. He submits that the object of the I&B Code is maximisation and when the average liquidation value to be taken was Rs.123.66 Crores, the increase of only Rs.3 Crores in the plan value cannot be said to be in accordance with law and cannot be said to be in line of the order passed by this Appellate Tribunal.

4. Learned counsel for the Resolution Professional refuting the submissions of learned counsel for the Appellant contends that the only limited scope which was left by the order dated 12.04.2022 was redistribution of the payments by taking liquidation value of Rs.123.66 Crores and following the said liquidation value, the plan value which was earlier Rs.53 Crores was enhanced to Rs.56 Crores. He further submits that the Rs.56 Crores was the payment which was envisaged under the plan whereas the total fund which is required to put by Successful Resolution Applicant runs to Rs.173 Crores. It is submitted that the Operational Creditor – ED&F Man, who has objected, has recorded his no objection, which is captured in Para 14 of the impugned order. It is submitted that the fact that the Operational Creditors amount pay-out has been little less is inconsequential since the liquidation value of the Operational Creditor is nil and the amount of Rs.1.57 Crores which is proposed to be paid is by the Successful Resolution Applicant, although the

liquidation value is nil. It is submitted that the Appellant who is a Shareholder and Promoter has been creating obstructions in successful resolution of insolvency of the Corporate Debtor. There are not merits in the Appeal and it deserves to be dismissed.

5. Learned counsel for the Successful Resolution Applicant has adopted the arguments advanced by learned counsel for the Resolution Professional.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. The direction of this Tribunal dated 12.04.2022, as extracted above, indicate that the Resolution Plan was set aside only to the extent it relates to allocation of payment to stakeholders and creditors and directed that revision of payments and subsequent approval of the revised resolution plan was to be completed within a period of two months. Subsequent to order of this Tribunal, the revised proposal for distribution was placed before the Committee of Creditors which came to be approved on 11.05.2022. The revised plan which has been approved indicate that payments to workmen and employees has been increased as well as payment to Financial Creditors. There is little decrease in payment to Operational Creditors, earlier Rs.1.69 Crores were allocated which is now at Rs.1.57 Crores (which has been actually paid).

8. It is now well settled that distribution to the creditors in accordance with provisions of Section 30(2) is in the discretion of the Committee of

Creditors and with regard to distribution the scope of judicial review by the Adjudicating Authority and this Tribunal is very little. From the facts brought on the record it does appear that liquidation value of the Operational Creditors is nil. When payment of Rs.1.57 Crore has been proposed in the plan, we cannot say that there is violation of any provisions of law especially Section 30(2) of the Code.

9. Learned counsel for the Appellant also raised certain contentions with regard to order passed by the Adjudicating Authority by which preferential applications were closed. When the said order closing the applications filed under Section 43, 44 is not subject matter of this Appeal no observation need to be made with regard to said determination by the Adjudicating Authority. It has been noted by the Adjudicating Authority in Para 19 that applications I.A. Nos. 235/18 and 236/18 have already been disposed of and there is no addition of further value to the Corporate Debtor. Insofar as submission of learned counsel for the Appellant with regard to Regulation 29 of the Insolvency and Bankruptcy Board of India. (Liquidation Process) Regulations, 2016 has not been followed, Regulation 29 provides as follows:

***“29. Mutual credits and set-off.*** - *Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.”*

10. The present is a case where the Corporate Debtor is not being liquidated rather resolution plan has been approved as per the Insolvency and Bankruptcy Board of India. (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. We are of the view that there is no applicability of Regulation 29 while approving the resolution plan. We, thus, are of the view that such submission of the Appellant cannot be appreciated. In view of the above discussion, we do not find any infirmity in the impugned order of the Adjudicating Authority approving the Resolution Plan. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

*Archana/nn*