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Pratap Technocrats (P) Ltd. & Ors.Vs Monitoring Committee of Reliance Infratel Ltd. & Anr.
Company Appeal (AT) (Insolvency) No. 1134 of 2020 (NCLAT)
Date of order: 04 January 2021

Operational Creditors being different from the Financial Creditors not entitled to the same treatment. They are entitled to receive a minimum payment being not less than liquidation value which does not apply to Financial Creditors.

Facts of the case: -

Appellants 'Operational Creditors' of the Corporate Debtor (CD) i.e., Reliance Infratel Ltd. aggrieved with the impugned order passed by the Adjudicating Authority by virtue whereof Resolution Plan in respect of CD submitted by the Resolution Applicant came to be approved. The impugned order was assailed primarily on the ground that the Appellants were kept unaware of the CIRP with no details provided by the Resolution Professional as regards disbursement of fund towards their claims and that their claims have not received a fair and equitable treatment.

NCLAT observations: -

The Hon'ble NCLAT based on the facts observed that the Appellants admittedly filed their claims during CIRP proceedings, and their claims have been partly admitted. On the face of the factual position, it is of no avail on their part to allege being excluded from CIRP proceedings. The Tribunal held that it is well settled that equitable treatment can be claimed only by similarly situated creditors. Operational Creditors stand at a different footing as compared to Financial Creditors and Secured Creditors. Operational Creditors are entitled to receive a minimum payment being not less than liquidation value, which does not apply to Financial Creditors.

Further, it was observed by the Tribunal that the distribution mechanism adopted in this case not only conformable to the mechanism envisaged under Section 53 of the I&B Code but also according priority in upfront payment to Operational Creditors. The appeal was dismissed by the Tribunal.





M/s Neesa Infrastructure Ltd. Vs. State Bank of India & Ors.
Company Appeal (AT)(Insolvency) No. 946 of 2020 (NCLAT)
Date of Order: 23 December, 2020

The IBC being a special legislation cannot be used as a tool to one's advantage and other's disadvantage.

Facts of the case: -

The Adjudicating Authority rejected the Application of the appellant filed under Section 10 of Insolvency and Bankruptcy Code, 2016. One of the Promoters of the Appellant filed the Application before the Adjudicating Authority seeking initiation of CIRP in respect of Appellant Company under Section 10 for the reason that the Appellant Company was unable to meet its day-to-day financial requirements and unable to pay the debt due to Financial Creditors as well as Operational Creditor.

NCLAT observation: -

NCLAT perused the application under section 10 of IBC filed by the appellant before the Adjudicating Authority and observed that the appellant had not approached the Adjudicating Authority with a bonafide intention. It is well-settled law that for filing application under section 10 A Special Resolution of the shareholders of the Corporate Debtor or the Resolution passed by at least 3/4th of the total number of partners of the Corporate Debtor, as the case may be, required approving the filing of the application. In this case, the Appellant filed the application without any resolution.

Further, the Tribunal observed that the application was filed with the intention only to get it admitted and followed by an imposition of Moratorium to stall all proceeding initiated by Financial Creditors.

In conclusion, the Tribunal dismissed the appeal with a note that IBC being a special legislation cannot be used as a tool to one's advantage and other's disadvantage.

