



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

Case-Snippets

Volume 04 | Number 08

(February 26, 2021)

IN THE MATTER OF JET AIRWAYS INDIA LTD.

IA No. 1862, 2125, 2248 & 2449/MB/2020 in CP (IB) No.2205/MB/2019 (NCLT, MUMBAI)

DATE OF ORDER: FEBRUARY 22, 2021

The role of the Operational Creditors in CIRP is very limited and is essentially confined to the satisfaction of their claims, says Mumbai Bench of NCLT while rejecting the demands of various workers' unions of Jet Airways for a copy of the Resolution Plan.

Facts of the Case: -

Five Workers' Unions of Jet Airways i.e., National Aviators' Guild, Jet Aircraft Maintenance Engineers Welfare Association, Bhartiya Kamgar Sena, Jet Airways Cabin Crew Association, and All India Jet Airways Officers & Staff Association and the Corporate Debtor (Jet Airways India Ltd.) through different petitions had demanded the AA to order the Resolution Professional Mr. Ashish Chhawchharia and CoC to provide them a copy of the Resolution Plan and to permit the Applicant to participate in the hearings and proceedings to be held by the AA in Tribunal for approval (or otherwise) of the Resolution Plan.

NCLT Observations: -

All the Applications have analogous prayers and heard together. It was asserted by the Applicants that the approval or otherwise of the Resolution Plan would entail some civil consequences for them. Therefore, the Applicants who are affected thereby i.e., they have a right to be heard in the matter. For the said purpose they are entitled to a copy of the Resolution Plan which would enable them to place their views / opinions on the Resolution Plan.

The Resolution Professional argued that the Resolution Plan is a confidential document containing sensitive information. It could only be presented to the CoC. The parties / entities in these Applications being not members of the CoC, would thus be not entitled to the copy of the Resolution Plan nor would be eligible to a peek into it. Besides several judgements of the Supreme Court, the AA also cited the Joint Parliamentary Committee Report on Insolvency and Bankruptcy Code of 2016.



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“Whereas operational creditor has right to make application for initiation of corporate insolvency resolution process, operational creditors like workmen, employees, suppliers have not been given any representation in the committee of creditors...While appreciating that the operational creditors are important stakeholders in a company, the Committee took note of the rationale of not including operational creditors in the committee of creditors as indicated in notes on Clause 21.... Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern...Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern. Similarly, financial creditors who are also operational creditors will be given representation on the committee of creditors only to the extent of their financial debts”.

Order: The role of the Operational Creditors in the Resolution Process is very limited and is essentially confined to the satisfaction of their claims. Taking the facts of the case at hand and the law as it stands today into consideration, we are of the humble view that the Applicants cannot be found entitled to a copy of the Resolution Plan or any portion thereof.

They would also not be eligible to be heard or intervene during the process of consideration of the Resolution Plan by this Authority. The payments as to their wages and gratuity and other terminal benefits shall be in accordance with the law and in terms of the Resolution Plan guided by the provisions under the Code. Applicants accordingly are not entitled to any relief in the present Applications.

Case Review: *All Appeals Dismissed*



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**NAND KISHORE VISHNUPANT DESHPANDE (RP) VS. TRIKESH TRADELINK PRIVATE LIMITED AND ORS.
IA 1245 OF 2020 IN CP 2556/MB/2019 (NCLT, MUMBAI)
DATE OF ORDER: 19TH FEBRUARY 2021**

Promoters/ Directors of the Corporate Debtor are bound to payback such contributions to the assets of the Corporate Debtor equivalent to the sums, in respect of benefits wrongfully availed by from the Corporate Debtor.

Facts of the Case: -

This case is related to Section 66 of the IBC, 2016. The Resolution Professional for Royal Refinery Pvt. Ltd detected some benefits wrongfully availed by erstwhile directors from the Corporate Debtor (CD). Accordingly, the AA was urged to order the concerned parties to refund the same to the CD.

NCLT Observations: -

The Respondent No.1 (Promoter of the CD) submitted that due to financial difficulties and loss in the company and that there no business in the company since Covid-19 pandemic, the Respondent no.1 is unable to pay the outstanding dues. The R1 further submits that these transactions do not fall under section 66 of the Code as these are the honest and official in nature. The R1 further submits that the allegations raised by the Applicant are based on assumption and presumption only.

The Respondent No.2 & 3 (Suspended Directors of the CD) further stated that there were no fraudulent or wrongful trading carried out. As a matter of general practice in bullion market, money is advanced to parties against purchase of bullion/gold which is subject to be adjusted against future gold. Respondents No. 4&5 (the auditors) also denied the charges.

This bench is of considered view that monies were transferred to the Respondent No.1 and it remained payable by them in the ledger accounts as admitted by the Respondent No.1 in his reply. The Respondent No.1 is directed to refund Rs. 15,63,34,077/- immediately forthwith.

Case Review: - *This IA is partly allowed and disposed of.*