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INSOLVENCY & BANKRUPTCY

# ADJUDICATING AUTHORITY HAS NO JURISDICTION TO MODIFY A RESOLUTION PLAN: NCLAT

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[National Company Law Appellate Tribunal \(NCLAT\)](#), Principal Bench, New Delhi, comprising of Justice Rakesh Kumar Member and Dr. Ashok Kumar Mishra in *Mathuraprasad C Pandey & Ors. v Partiv Parikh & Anr.*<sup>1</sup>, vide Judgement dated 14.12.2022 observed that the Adjudicating Authority under the [Insolvency & Bankruptcy Code](#), 2016 (**Code**) can either approve or reject the Resolution Plan, but has no discretion to make alterations or modifications to the Resolution Plan.

## Facts

A Resolution Plan was submitted by Mathuraprasad C Pandey and two others, who were the promoters of the Corporate Debtor, as the Corporate Debtor fell under the category of a Micro, Small and Medium Enterprise (**MSME**).

The Resolution Plan was duly approved by the Committee of Creditor (**CoC**) and was placed before the Adjudicating Authority- the National Company Law Tribunal (**NCLT**), Ahmedabad Bench, for approval.

The NCLT while approving the Resolution Plan in its Order dated 28.01.2021 (**Impugned Order**) under paragraph 15, modified the Resolution Plan to clarify that if any member of the Resolution Applicant has entered into or stood as a guarantor in their individual capacity, they shall not be covered by the immunity given under the Resolution Plan.

The present Appeal was filed by the Resolution Applicant challenging the validity of paragraph 15 in the Impugned Order.

## Contention of the Appellant:

The Appellants argued that NCLT has committed an error by modifying the Resolution Plan. The Appellants relied on the judgment of the Hon'ble Supreme Court in *K Sashidhar v Indian Overseas Bank*<sup>2</sup> to argue that the approval of the Resolution Plan by the CoC is a decision that falls within the commercial wisdom of the CoC and therefore the Adjudicating Authority does not have any jurisdiction to modify or alter the conditions of the Resolution Plan. The Appellants contended that the Adjudicating Authority may only examine the Resolution Plan on the limited grounds as envisaged under Section 31 of the Code, and thereafter either approve or reject it.

## Findings of the NCLAT

The NCLAT, in agreement with the views of the Appellant, observed that the Adjudicating Authority is obligated to approve a Resolution Plan if it is found compliant of the requirements stipulated under sub-section (2) of Section 30 of the Code. The NCLAT held as follows:

*"22. ...if a resolution plan is submitted before the Adjudicating Authority which is in compliance with sub-section (1) of Section 31 as well as in consonance with the provisions of Section 30 of the Code such resolution plan has to be approved by the Adjudicating Authority since in Section 31 word "shall" has been incorporated with proviso that the Adjudicating Authority must be satisfied that the resolution plan has provisions for its effective implementation."*

The NCLAT also observed that the Code does not provide for any provision that empowers Adjudicating Authority to alter or modify the resolution plan and held that in the present case the NCLT had clearly exceeded its jurisdiction.

The NCLAT concluded by stating that the modification mentioned in paragraph 15 of the Impugned Order will not be given effect to and accordingly allowed the appeal.

<sup>1</sup> Company Appeal (AT) (Ins) No. 201/2021 and 266/2021

<sup>2</sup> Civil Appeal No. 10673 of 2018