

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 503 of 2021

IN THE MATTER OF:

Bank of Maharashtra

...Appellant.

Versus

Videocon Industries Ltd. & Ors.

...Respondents

**For Appellant: Mr. Ranjit Kumar and Garima Prashad,
Sr. Advocates with Mr. Chaitanya Nikte,
Mr. Ayush Negi, Mr. Prasad Sarvankar,
Mr. Sumedh Ruikar, Ms. Sneha Bhunge,
Mr. Raj V K Vprmai, Mr. Abhinav Agarwal,
Mr. Anuj Malhotra, Mr. Karan Valecha,
Mr. Sanjay Vashishtha, Advocates.**

**For Respondents: Mr. Abhinav Vasisht, Sr. Advocate with
Mr. Anoop Rawat, Mr. Saurav Panda,
Mr. Vajiayant Paliwal, Mr. Zeeshan Khan,
Mr. Moulshree Shukla, Mr. Prabh Simran Kaur,
Advocates for R-1 to R-13.
Mr. Bishwajit Dubey and Mr. Madhav Kanoria,
Advocates for CoC, R-14.
Mr. Diwakar Maheshwari and Ms. Shreyas E.,
Advocates for R-15 (SRA)**

WITH

Company Appeal (AT) (Ins.) No. 505 of 2021

IN THE MATTER OF:

IFCI Ltd.

...Appellant.

Versus

Videocon Industries Ltd. & Ors.

...Respondents

**For Appellant: Mr. Krishnendu Datta, Sr. Advocate with
Mr. Tanuj Sud, Mr. Rajeev Aggarwal,
Mr. Ajay Kumar, Harshita Alhuwalia and
Mr. Parth Bhatia, Adocates.**

**For Respondents: Mr. Abhinav Vasisht, Sr. Advocate with
Mr. Anoop Rawat, Mr. Saurav Panda,
Mr. Vajiayant Paliwal, Mr. Zeeshan Khan,
Mr. Moulshree Shukla, Mr. Prabh Simran Kaur,
Advocates for R-1 to R-13.
Mr. Bishwajit Dubey and Mr. Madhav Kanoria,
Advocates for CoC, R-14.
Mr. Diwakar Maheshwari and Ms. Shreyas E.,
Advocates for R-15 (SRA)**

ORDER
(Virtual Mode)

19.07.2021 Heard.

2. Both these Appeals are challenging Impugned Order dated 08th June, 2021 passed by the Adjudicating Authority (NCLT, Mumbai Bench, Court No. – II) in I.A. 196/2021 in CP(IB) 02/MB/C-II/2018 & 12 other Company Petitions. 13 Group of Companies (as Videocon Group)-Corporate Debtors which were undergoing a consolidated CIRP. By the Impugned Order Resolution Plan has been approved.

3. The Learned Sr. Counsel in Company Appeal (AT) (Ins.) No. 503 of 2021 has referred to the contents of the Impugned Order and from the Appeal referred to various documents to show that there is non-compliance of Section 30(2)(b) of IBC. The Appellant is dissenting Financial Creditor who as per law could not have been paid less than the Liquidation Value. The Learned Sr. Counsel painstakingly referred to different documents to show as to how what is proposed to be paid is less than the Liquidation Value. It is further stated that what is proposed to be paid is also only part in cash and major part is in the form of NCDs. The question has been raised whether instead of paying cash, NCDs could be issued. Learned Sr. Counsel pointed out that although the Resolution Plan provided that NCDs would be issued the Adjudicating Authority in Paragraph 24 of the Impugned Order directed payment of cash which would be changing the Resolution Plan as approved and it could not have been done without sending back the matter to CoC.

4. Learned Sr. Counsel has further pointed out the Paragraph 9 of the Impugned Order to show that there was also a breach of confidentiality clause

with regard to the Liquidation Value and although the Adjudicating Authority noticed the same the Resolution Plan still came to be approved which should not have been done as the Liquidation Value and Resolution Plan Value were surprisingly very close.

5. The Learned Sr. Counsel appearing on behalf of the Appellant in Company Appeal (AT) (Ins.) No. 505 of 2021 is also supporting the Learned Sr. Counsel for the Appellant in Company Appeal (AT) (Ins.) No. 503 of 2021 and it is stated that the Resolution Plan provided (See Page 33) a haircut of almost 90 to 96 %. The Plan provided meagre amount of Rs. 2900 Crores for admitting liability of Rs. 65,000 Crores and the waiver itself was Rs. 62,100 crores whereby public money has been lost and the Financial Creditor have been settled for merely 5 to 10%. It is argued that no upfront payment let alone to the extent to meet compliance of Section 30 read with Section 53 are provided; that Non-Convertible Debentures have been adopted as modality to pay/discharge Appellant's debt.

For such and other reasons and grounds raised in the Appeal filed by IFCI Ltd. Learned Counsel is finding fault with the Impugned Order.

6. Against this, the Learned Counsel for the Successful Resolution Applicant (SRA in short) and the Resolution Professional are supporting the Impugned Orders passed and they are pointing out that the Resolution Plan itself had provisions that the payments would be in compliance with Section 30(2)(b) and other provisions of IBC and it is stated that although the NCDs were stated in the Resolution Plan, as directed by the Adjudicating Authority the payment can be by way of cash.

7. We are on the stage of issuing notice.

8. Issue Notice in both Appeals.
9. Parties represented through Counsel dispense formal Notice.
10. Prima facie perusal of the record shows that Liquidation Value is stated to be Rs. 2568.13 Crores (Appeal Page 337). The Impugned order in Paragraph 4 (Page 64 while referring to Financial Outlay under the Resolution Plan at page 66) referred to the payment proposed under the Resolution Plan and manner of payment proposed under the Resolution Plan by the Successful Resolution Applicant to Financial Creditors as under:

“

Sr. No.	Nature of payment /Class of Creditors	Total amount/claim amount verified and admitted	Payments proposed under the Resolution Plan	Manner of payment proposed
1.
2.	Financial Creditors	Rs. 61,773 Crores	Rs. 200 Crores + Rs. 2700 Crores worth of NCD's (carrying a coupon of 6.65%) + Cash Balances available + 8% Equity Shares	Upfront Payment of INR 200 Crores, out of which INR 2 Crores shall form part of the litigation corpus. Issuance of NCDs of the aggregate face value of Rs. 2700 crore. NCDs will be redeemable in 5 instalments – the first instalment of Rs. 200 crores will become due 25 months from the Closing Date, the second instalment of Rs. 625 crores will be due 3 years from the Closing Date, the third instalment of INR 625 crores shall be due 4 years from Closing Date, the fourth instalment of INR 625 crore would become due 5 years from Closing Date and the fifth instalment of INR 625 crore would become due 6 years from Closing Date. The outstanding NCDs shall carry a coupon of 6.65 % annually payable. Subsequent to payment of CIRP costs, cash balances available on

				the Plan Effective Date shall accrue to the financial creditors. Post implementation of the Resolution Plan, the financial creditors (except the dissenting financial creditors) will receive 8% of equity holding in VII, on a post money fully diluted basis.
3.

”

11. The Adjudicating Authority in Paragraphs 5 and 6 of the Impugned Order has observed as under:

“OBSERVATIONS OF THE ADJUDICATING AUTHORITY

5. *As per the CoC approved Resolution Plan, Assenting Secured Financial Creditors would get only 4.89%, Dissenting Secured Financial Creditors would get only 4.56%, Assenting Unsecured Financial Creditors would get only very meagre amount of 0.62%, Dissenting Unsecured Financial Creditors would get “NIL/ZERO” amount and Operational Creditors would also get a very meagre amount of only 0.72%. Out of total claim amount of Rupees 71,433.75 Crores, claims admitted are for Rs. 64,838.63 Crores and the plan is approved for an amount of only Rs. 2962.02 Crores which is only 4.15% of the total outstanding claim amount and the total hair cut to all the creditors is 95.85 %. Therefore, the Successful Resolution Applicant is paying almost nothing and 99.28% hair cut is provided for Operational Creditors (Hair cut or Tonsure, Total Shave). During the Course of hearing it is also submitted that voluminous number of Operational Creditors are also MSME and if they are paid only 0.72% of their admitted claim amount, in the near future many of these Operational Creditors may have to face Insolvency Proceedings which may be inevitable, therefore this Adjudicating Authority suggests, requests both CoC and the Successful Resolution Applicant to increase the pay-out amount to these Operational Creditors especially MSMEs as this is the First Group Consolidation Resolution Plan of 13 companies having large number of MSMEs.*

6. *Further it is also observed that by just paying only Rs. 262 Crores (8.84% of total plan value) (Cash balance available with the Corporate Debtors is approx. .. Rs. 200 Crores) the Successful Resolution Applicant will get possession of all the 13 Corporate Debtors to run these units and the first payment of Rs. 200 Crores as part redemption amount of NCDs will be paid within 25 months from*

the closing date and the balance amount of RS. 6,25,00,00,000/- each is spread over in four instalments starting from 3rd year onwards up to sixth year from the closing date and the interest rate for the NCDs is also a nominal of only 6.65 % P.A. payable annually. It may also be noted that at the time of granting loan, restructuring, approving the resolution plan with such a huge hair cut also the financial institutions, Committee of Creditors consisting 35 members exercised their Commercial Wisdom. Since this is the Commercial Wisdom of the COC and as per the various judgements of the Hon'ble Supreme Court and by following the judicial precedents, discipline the Adjudicating Authority approves the resolution plan of the Successful Resolution Applicant with a suggestion, request to both CoC and the Successful Resolution Applicant to increase the pay-out amount to these Operational Creditors especially MSMEs."

(Emphasis Supplied)

12. Further in paragraphs 9 and 10, it was observed by the Adjudicating Authority as under:

"9. The registered valuers have valued the assets of the 13 companies situated throughout the country and the 13 companies have varied business interests, products, segments viz oil and gas assets, Consumer Electronics and Home Appliances such as manufacturing Air Conditioners, Refrigerators, LED/LCD TVs, Washing Machines, Air Coolers, providing Telecom Services, digital solutions, Real Estate, Electronic Retail Chain, Owner of Two Premium Brands etc. Surprisingly the Resolution Applicant also valued all the assets and liabilities of all the 13 companies and arrived at almost the same value of the registered valuers. As per the CIRP Regulations the Liquidation Value and Fair Market Value is kept as confidential and informed to the COC Members only at the time of finalizing the resolution plan and even in the present case the resolution bids are opened in the 15th COC Meeting held on 02.09.2020 wherein Liquidation Value and Fair Market Value was informed to the members of COC. Therefore, even if the confidentiality clause is in existence, in view of the facts and circumstances as discussed above a doubt arises upon the confidentiality clause being in real time use therefore, we request the IBBI to examine this issue in depth so to ensure the confidentiality clause is followed unscrupulously, without any compromise in letter and spirit by all the concerned parties, entities connected in the CIRP. If not IBBI can frame appropriate regulations, safeguards there by the maximization of value of the assets of the Corporate Debtor (s) would further increase which in turn

will benefit all the stakeholders. Since IBC is a nascent code we feel “this type of input may be useful to the IBBI as well as to the Government to frame appropriate Regulations, Rules, etc.

10. It is also observed as a sample from the 10,11,12 CoC minutes, members of CoC attended is 26,26 & 28 respectively whereas the Applicant as Chair and the Applicant’s Authorized Representative from Deloitte Touche Thmastsu India LLP were 22,20 & 20 representatives respectively in addition to the Applicant’s Legal Counsel. Such a large number of Authorized Representative for the Applicant indicates either he is not fully prepared or monitory benefit (fees) to these Representatives. Therefore, we request IBBI to examine this issue as well and appropriate guidelines may be issued.”

(Emphasis Supplied)

13. It is argued that it is matter of concern that the Corporate Debtors in the consolidated proceedings had cash of Rs. 200 Crores and the SRA would bring in just 262 Crores and from that also first payment of Rs. 200 Crores will be brought in 25 Months. Beyond Rs. 262 Crores the rest was being brought in only by way of NCDs to be paid in six years.

14. Considering the observations of the Adjudicating Authority and the submissions made by the Learned Sr. Counsel for Appellants in both these Appeals and the grounds raised in these Appeals, and considering the exceptional facts of present matter the Impugned Order is stayed till the next date and status quo ante as before passing of the Impugned Order is directed to be maintained. Resolution Professional will continue to manage the Corporate Debtors as per provisions of IBC till the next date.

15. Respondents in both these Appeals to file Reply-Affidavits within two weeks. Rejoinder, if any, may be filed within a week, thereafter. Parties to file brief ‘Written-Submissions’ not more than three pages and ‘Copies of Judgments’ which they want to refer or rely on, within three weeks.

16. List both these Appeals 'For Admission (After Notice)' hearing on **07th September, 2021.**

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Basant B./gc.