

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

**Company Appeal (AT) (Insolvency) No. 1182 of 2023
& I.A. No.4088 of 2023**

IN THE MATTER OF:

Diwakar Sharma

...Appellant

Versus

**Anand Sonbhadra
Resolution Professional of
Shubhkamna Buildtech Pvt. Ltd.**

...Respondent

Present:

For Appellant: Mr. Mrinal Harsh Vardhan and Mr. Yougender Singh, Advocates.

For Respondent: Mr. Abhishek Anand, Mr. Nipun Gautam, Mr. Mohak Sharma, Mr. Sikhar Tiwari, Mr. Sajal Jain and Ms. Parveen Kaur Kapoor, Advocates.

ORDER

05.10.2023: Heard learned counsel for the Appellant as well as learned counsel appearing for the Resolution Professional. This Appeal has been filed against order passed by the Adjudicating Authority dated 24.04.2023 rejecting I.A. No. 2116 of 2023.

2. The I.A. was filed by the Appellant who claim to be Ex-Director of the Corporate Debtor and who has resigned in February, 2014 and resignation was uploaded on ROC on 20.01.2016. CIRP against the Corporate Debtor - Shubhkamna Buildtech Pvt. Ltd. commenced on 26.11.2018 and the Resolution Plan was approved by the Adjudicating Authority on 12.09.2022. Learned counsel for the Appellant submits that the Appellant was also a shareholder of the Corporate Debtor.

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3. The application has been rejected by the Adjudicating Authority observing that Appellant was not part of the Suspended Board of Directors and the judgment which was relied by the Appellant in **“Association of Aggrieved Workmen of Jet Airways (India) Ltd. vs. Jet Airways (India) Ltd. & Ors., Company Appeal (AT) (Ins.) No. 643 of 2021 & I.A. No. 1700 of 2021”** does not help the Appellant in the present case.

3. Learned counsel for the Resolution Professional submits that the Resolution Plan has been approved in the year 2022 and against which no appeal was filed within limitation and the Appellant now indirectly wants to attack the CIRP process and he wants a copy of the Resolution Plan when all the process is complete.

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

5. In the application which was filed by the Appellant being I.A. No. 2116 of 2023 following prayers were made:

“PRAYER

In view of the above, the Petitioners/Applicants, therefore, prays that this Hon'ble Court may kindly be pleased to:

- a. Pass an appropriate order directing the resolution professional to clarify as to as to whether the shareholding of Shubhkamana Buildtech Private Limited in two companies*

namely Rudra Buildwell Projects Private Limited and JSS Buildcon Private Limited has been taken into consideration while assessing the assets and liabilities of the Corporate Debtor.

- b. Pass an appropriate order directing the resolution professional to provide the copy of resolution plan approved by the Hon'ble NCLT. along with the information memorandum.*

Pass any other/further order(s) as this Hon'ble Court may deem just in view of the circumstances of the present case.”

6. When we looked into the two prayers made by the Appellant, first prayer is with regard to seeking clarification from the Resolution professional as to whether the shareholding of Shubhkamana Buildtech Private Limited in two companies namely Rudra Buildwell Projects Private Limited and JSS Buildcon Private Limited has been taken into consideration while assessing the assets and liabilities of the Corporate Debtor. The Information Memorandum must have been prepared in the CIRP and Form G was issued for Resolution Plan including details of the assets. We are of the view that at this stage no relief can be granted on the prayer as made in the application.

7. Now coming to the second prayer, Appellant has prayed for providing a copy of the Resolution plan approved by the Adjudicating Authority. Suffice it to say that the Appellant was not part of the CIRP process. He himself submitted that in 2014 he resigned as Director. In so far as his submission

that he is shareholder of the Corporate Debtor, Resolution Plan having been approved what are the rights of different stakeholders is subject matter of the plan.

8. Learned counsel for the Appellant has placed much reliance on Para 28 of judgment of this Appellate Tribunal in **“Association of Aggrieved Workmen of Jet Airways (India) Ltd. vs. Jet Airways (India) Ltd. & Ors., Company Appeal (AT) (Ins.) No. 643 of 2021 & I.A. No. 1700 of 2021”**, which is to the following effect:

“28. When the right to Appeal on the ground enumerated in sub-section (3) of Section 61 is provided, unless the Appellant is aware of the contents of the Resolution Plan, how he will be able to satisfy the Appellate Court that the grounds enumerated in sub-section (3) of Section 61 are made out in reference to approval of the Resolution Plan. The provision of Section 61, sub-section (3) reaffirms our view that after approval of the Resolution Plan, Resolution Plan does not remain a confidential document, so as to deny its perusal to a claimant, who is aggrieved by the Plan and has come up on the Appeal. We, thus, are of the view that Resolution Plan after its approval by the Adjudicating Authority is no more a confidential document, so as to deny access to even a claimant. It is true that the Resolution Plan even though it is not a confidential document after its approval, cannot be made available to each and to anyone who has no genuine claim or interest in the process. On various grounds the access to Resolution Plan even if it is not

a confidential document, after approval can be denied in proper and appropriate cases.”

9. The above observation was made in the above case with regard to claim of the workmen who wanted copy of the Resolution Plan after its approval. In the above case this Tribunal held that after approval of the plan they were entitled to access the Resolution Plan and Resolution Professional was directed to provide relevant portion of the Resolution Plan which was relevant for the workmen. The said judgment cannot come to the aid of the Appellant in the present case who was not stakeholder in the CIRP process.

10. We are of the view that entire CIRP process being over where Resolution Plan has been approved in 2022, at this stage, any direction on the prayers made by the Appellant in the application are uncalled for and unnecessary. We are of the view that the Adjudicating Authority did not commit any error in rejecting the application filed by the Appellant. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

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