

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

**Company Appeal (AT) (Insolvency) No. 643 of 2021 &**  
**I.A. No.1700 of 2021**

(Arising out of Order dated 22.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I in I.A. 2081/2020 in CP (IB) No.2205/MB/2019)

**IN THE MATTER OF:**

Association of aggrieved Workmen  
of Jet Airways (India) Limited  
Represented by Mr. Pankaj Masand, President,  
IA-54B, Ashok Vihar, Phase-1,  
New Delhi – 110052.

.... Appellant

Vs

1. Jet Airways (India) Ltd.,  
Represented by Shri Ashish Chhawchharia  
Resolution Professional,  
Global One, 3<sup>rd</sup> Floor, 252,  
LBS Marg, Kurla (West),  
Mumbai – 400 070.
2. Committee of Creditors led by  
State Bank of India,  
Stressed Assets Management Branch-II,  
Raheja Chambers, Ground Floor,  
Wing-B, Free Pass Journal Marg,  
Nariman Point, Mumbai,  
Maharashtra-400021.
3. Shri Ashish Chhawchharia  
Resolution Professional of Corporate Debtor,  
Global One, 3<sup>rd</sup> Floor, 252,  
LBS Marg, Kurla (West),  
Mumbai – 400 070.
4. The Consortium of Mr. Murari Lal  
Jalan & Mr. Florian Fritsch,  
16<sup>th</sup> Floor, Tower II,  
Indiabulls Finance Centre, S B Marg,  
Elphinstone (W), Mumbai – 400 013.

.... Respondents

**Present:**

**For Appellant:** Mr. Nikhil Nayyar, Sr. Advocate with Ms. S. Manjula Devi, Advocate  
Dr. KS Ravichandran (CS)

**For Respondents:** Mr. Arun Kathpalia, Sr. Advocate with Mr. Malhar Zatakia, Mr. Nishant Upadhyay, Mr. Madhur Arora, Mr. Dhiraj Kumar Totala and Ms. Tanya Chib, Advocates (R-1, 3)

Ms. Isha Malik, Ms. Niharika Shukla and Mr. Raunak Dhillon, Advocates (R-2)

Ms. Pooja Mahajan, Mr. Aashish Vats, Mr. Arveera Sharma, and Ms. Mahima Singh, Advocates (R-4)

**With**

**Company Appeal (AT) (Insolvency) No. 915 of 2021**

(Arising out of Order dated 22.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I in CP (IB) No.2205/MB/2019)

**IN THE MATTER OF:**

1. Rohit Sharma  
A 106, Sea Show CGHS, Plot  
No.14, Sector 19B, Dwarka,  
Delhi 110075.

2. Arun Sharma  
5C Voora Villa, Bhakti Vedanta  
Road, Off ECR, Akkrai,  
Injmabakkam, Chennai 600115.

3. Vikram Malhotra,  
T-23/20 DLF City Phase 3,  
Gurugram 122002 Haryana.

4. Harpreet Singh  
A 404, Versova Breeze CHSL,  
3<sup>rd</sup> Cross Lane, Lokhandwala  
Complex, Andheri (West),  
Mumbai 400053.

5. Aswin Fernandes  
401, Crystal Tower, Military Road,  
Marol, Andheri East,  
Mumbai 400059.

6. Biju Anto Fernandes  
A1704, Serenity, Raheja  
Reflections, Thakur Village,  
Kandivali East, Mumbai 400101.

7. Gajanan Achyut Nene  
B/10, Konark Kinara Society,  
Kalyani Nagar, Pune 411006.

8. Sreemukundan V  
M304, Vaishnavi Ratanam, S.M.  
Road, Jalahalli, T. Dasarahalli,  
Bangalore 560057

9. Hari Sharan Sinha  
B-403, Oberoi Park View, Thakur  
Village, Kandivali, East,  
Mumbai-400101.

10. Zerxix Hoshang Mirz  
Q-2, Bharucha Baug, S.V. Road,  
Andheri (West), Mumbai 400058.

11. Subodh Narendra Sumbh  
D 23 Seema Apts. Plot No. 7 Sector  
11, Dwarka New Delhi 110075.

12. Rakesh Bhatia  
B-204, Gokul Apartment, Plot  
No.5B, Sector 11, Dwarka, New  
Delhi – 110075.

13. Joseph K George  
C 101 Serenity Raheja Reflections  
Thakur Village Kandivali East  
Mumbai 400101

14. Bikram Kishor Dash  
1103 B Wing Satellite Royale Film  
City Road Goregaon East Mumbai  
400063.

15. Jeyam Gopinath  
FG Block 24, Jains Alpine  
Meadows, Temple Town Road,  
Chromepet, Chennai 600044.

16. STM Sasikumar  
Plot No.75, Door No.12, Sabari  
Nagar, 1<sup>st</sup> Cross Street, Porur,  
Chennai 600116.

17. M P Sajumon  
Villa 3, “Maledathu”, Orchidwoods  
Layout, Brookefields, Kundalahalli,  
Bangalore-560037.

18. Naga Venkata Rama Chandra  
Rao Majesty  
Plot No.6, Sahaj Enclave  
Ramachandra Colony,  
Manapakkam, Chennai 600125.

19. Anil Thomas Menezes  
42, Sea Queen Apartments, Opp  
Sea Princess Hotel, Juhu Tara  
Road, Juhu, Mumbai 400049.

20. Sameer Vibhakar Buch  
E/205, Orchid Suburbia, New Link  
Road, Opp Vora Castle, Kandivali  
West, Mumbai 400067.

21. Eugene D’ Costa  
Evershine Enclave, Sundaram  
Bldg. B/303, Mira Road East,  
Thane 401107.

22. Chandan Chettri  
68C, Dr. G S Bose Road, Picnic  
Garden, Kolkata – 700039.

23. Rohit Bhasin  
Flat C 2003, Raheja Reflections,  
Thakur Village, Kandivali East,  
Mumbai 400101.

24. Brajesh Singh Sirohi  
A603, Rohan Jharoka,  
Kempapura, Yemalur, Bangalore  
560037

25. Vadivel Loganathan  
Raja Garden, Plot No. 12, Varghese Avenue, Maruthupandiyar St., Chitlapakkam, Chennai – 600064, Tamil Nadu.
26. Nitin Surve  
1306, Pearl Residency, JP Road, Azad Nagar, Andheri West, Mumbai 400053.
27. Jamal Syed  
Karan C, Vishal Nagar, Mith Chowki, Madh Marve Road, Mumbai 400064.
28. Leo Jude Alvares  
11A Adithi, 2 Mugalivakkam Main Road Porur, Chennai 600116.
29. Sudipto Sur  
E-202 Lok Society, Mayur Vihar-1, New Delhi 110091
30. Srikanthan K S  
Plot No.64, Utopia, Tarabanahalli, Chikkajala Post, Bengaluru 562157
31. Amitabh Sinha  
Flat 1101, Dheeraj Valley Tower, Mohan Gokhle Rd., Nr Sai Baba Complex, Goregoan East, Mumbai 400063
32. Rajendra Kumar  
B-2007, Oberoi Splendor, JVLR Andheri (East), Mumbai-400060.
33. Gaurav Kashyap  
U-27/3, First Floor, DLF City Phase-3, Gurgaon-122002, Haryana.
34. Sahukara Prakash  
D202, Ramky Towers, Gachibowli, Hyderabad – 500032, Telangana.
35. Ayikomath Balagopal  
203/Pinewood, Raheja Willows, Akruli Road, Lokhandwala Township, Kandivali East, Mumbai-400101.
36. Vinay Pradhan  
Room No. 303, Hotel Airport Palace, Behind RGIA Police Station, Shamshabad, Hyderabad 501218.
37. Narsinga Vivekananda Rao  
1202 Radha Krishna, Radha Residency, Siddharth Nagar, Borivali (E) Mumbai 400066.
38. Subbarayudu Daggubati  
C/504, D2 Serenity, Raheja Reflections, Thakur Village, Kandivali East, Mumbai-400101.
39. Venkata Vinayaka Sista  
Flat No.504, Building No.1, Sanskruti Complex, Opp. St. Lawrence School, Kandivali East Mumbai 400101.
40. Sanjay Subramanian  
A-604, Gokul Plaza, Thakur Complex, Kandivali (E), Mumbai 400101.
41. Shobhit Arora  
220, Aravali Apartment, Alaknanda, New Delhi-110019.
42. Bhagat Singh Tomar  
223, Plot 6A, CGHS, Sector 23, Dwarka, Delhi 110078.

43. Shamsunder R Deshkulkarni  
B4/401, Ascent Residency,  
Sarvoday Nagar, Jogeshwari East,  
Mumbai – 40006.

.... Appellants

Vs

1. Monitoring Committee through  
Mr. Ashish Chhawchharia,  
Jet Airways (India) Limited  
Global One, 3<sup>rd</sup> Floor, 252, LBS Marg,  
Kurla (West), Mumbai – 400070.
2. Successful Resolution Applicant  
Consortium of Mr. Murari Lal Jalan  
Mr. Florian Fritsch,  
9/3 Basant Bihar, Kanke Road,  
Ranchi (Jharkhand) 835217.
3. Shri Ashish Chhawchharia  
Resolution Professional for  
Jet Airways (India) Limited,  
Global One, 3<sup>rd</sup> Floor, 252, LBS Marg,  
Kurla (West), Mumbai – 400070.

.... Respondents

**Present:**

**For Appellants: Ms. Niddhi Khanna and Mr. Vinamra  
Kopariha, Advocates.**

**For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Mr.  
Rohan Rajadhyaksha, Mr. Parimal Kashyap,  
Mr. Dhiraj Kumar Totala, Mr. Nishant  
Upadhyay and Ms. Tanya Chib, Advocates  
(R-1, 3)**

**Ms. Isha Malik, Ms. Niharika Shukla and Mr.  
Raunak Dhillon, Advocates (R-2)**

**Ms. Pooja Mahajan, Mr. Aashish Vats, Mr.  
Arveera Sharma, and Ms. Mahima Singh,  
Advocates (R-4)**

## J U D G M E N T

### ASHOK BHUSHAN, J.

We have heard learned Counsel for the parties on 10.01.2022 on the limited question whether the Appellant(s)/ Applicant is entitled to be given a copy of Resolution Plan or any part of the Resolution Plan in the Appeal. In the Application for interim relief, the Appellant had prayed for a direction to Respondent No.3 - Resolution Professional to produce records that is Resolution Plan and its annexures with full set of documents relating to Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.

2. We have heard learned Senior Counsel for the Appellant Shri Nikhil Nayyar, Shri Arun Kathpalia, learned Senior Counsel for Respondent Nos. 1 and 3 and Ms. Pooja Mahajan, learned Counsel for Successful Resolution Applicant and learned Counsel appearing for Committee of Creditors.

3. The only question to be considered and answered at this stage is as to whether the Appellant who has filed Appeal against the order of the Adjudicating Authority dated 22<sup>nd</sup> June, 2021 approving the Resolution Plan submitted by Respondent No.4 is entitled for a copy of Resolution Plan or any part of it in these proceedings.

4. The Appellant is an association of aggrieved workmen of the Jet Airways (India) Ltd. The workmen of Jet Airways (India) Ltd. were Operational Creditors, who have filed their claim before the Resolution

Professional. The Resolution Plan allocated workmen and employees an amount of Rs.52 Crores. This Appeal has been filed by the Appellant challenging the order of the Adjudicating Authority approving the Resolution Plan on several grounds as contained in the grounds stated in paragraph 9 of the Memo of Appeal.

5. Learned Senior Counsel for the Appellant submits that confidentiality in the CIRP proceeding as mentioned in Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') is very limited and where confidentiality is required to be maintained, the Code and Regulation clearly provides for them. The limited circumstances that confidentiality is provided for is at the stage of CIRP, and the rationale for the provisions are to – (i) enable maximization of bids; and (ii) prevent competitors from posing as applicants to surreptitiously use information for their own gain. In terms of Section 31(3)(b) of the Code, once the Plan is approved, the RP is obligated to forwards the entire records of the CIRP along with the Resolution Plan to Insolvency and Bankruptcy Board of India (Board) to be recorded in its database. Thus, clearly, the information is not meant to be confidential after the CIRP has concluded. It is submitted that in the impugned order, there is no discussion of compliance of Section 30, sub-section (2) and Regulation 37 and 38 and to effectively support the grounds taken in the Appeal, the Appellant is entitled for copy of Resolution Plan.

6. Learned Counsel appearing for Respondent No.4, Ms. Pooja Mahajan has refuted the submissions of the learned Counsel for the Appellant. It is

submitted that Resolution Plan is a confidential document and contains confidential information about the Corporate Debtor and the Successful Resolution Applicant, which are not available in the public domain. No information or material of the Resolution Plan can be disclosed in part or in whole to any person without the prior consent of the Resolution Applicant. Further, the requirement of law is to share copy of the Resolution Plan only with the Members and participants in the Committee of Creditors (CoC). The Appellant Association being not entitled to participate in the CoC cannot claim copy of Resolution Plan. She further submits that various other workmen/ employees' associations have filed applications before Adjudicating Authority praying for copy of the Resolution Plan, which was rejected by Adjudicating Authority on 22<sup>nd</sup> February, 2021. It is only the participants of the CoC meeting, who are entitled to receive all agenda documents etc. and apart from the participants, no one is entitled to receive Resolution Plan. Referring to Regulation 39(5A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (hereinafter referred to as 'Process Regulation 2016), she submits that it contains legislative intendment that only the principle or formulae for payment of debts under the Resolution Plan has to be communicated to the claimants. The Corporate Debtor being listed company, it has complied with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 disclosing the financial proposal and treatment of stakeholders of the Corporate Debtor under the Resolution Plan. Section 31(3)(b) of the Code,



which requires Resolution Professional to share all records and Resolution Plan with Board, who is Regulator for Insolvency Professional, is only for record keeping and not as a public document or for publishing on its website. Reference to Section 196(1)(i) of the Code has been made which provides that Board can publish such information, data, research studies and other information as may be specified by Regulations. There is no Regulation requiring the Board to publish any approved Resolution Plan. When an aggrieved person has challenged the order of the Adjudicating Authority approving the Resolution Plan as for example in the present case, the Appellant – Operational Creditor has a limited interest to the extent of satisfaction of their claims in compliance of Section 30, sub-section (2) sub-clause (b) of the Code. Their role cannot be enlarged by involving them to scrutinize the deliberations or the contents of the entire Resolution Plan. In the present case, there being more than 20,000 Operational Creditors and numerous members (shareholders), the intent of the Code could not have been to allow such creditors, members and stakeholders, a right to review the entire Resolution Plan at the Appeal stage. Merely because Board is a Public Authority, it does not mean that all information provided to Board including confidential information is a public document. Even the right to information under the Right to Information Act, 2005 is not absolute and is subject to certain limitations. Proper forum to adjudicate the applicability of RTI Act, is the competent Authority under the RTI Act and therefore, the same cannot be adjudicated by this Tribunal. The Resolution Plan as approved includes five-year business plan and cash

projections from the business as calculated and projected by the Successful Resolution Applicant for the revival of the Corporate Debtor. The business plan and financial plan of the Successful Resolution Applicant is a strictly confidential document and any disclosure of the same to any person including the Operational Creditors of the Corporate Debtor would lead the passing of such confidential data to the competitors of the Corporate Debtor and the Successful Resolution Applicant, which could be detrimental to the business and revival of the Corporate Debtor by the Successful Resolution Applicant.

7. Shri Arun Kathpalia, learned Senior Counsel appearing for Resolution Professional also supported the submissions of learned Counsel for the Successful Resolution Applicant. He further submits that details regarding claim allowed to the workmen and employees have already been communicated to the claimants and if directed, Resolution Professional shall provide relevant part of the Resolution Plan dealing the claim of the workmen and employees only.

8. We have considered the submissions of the learned Counsel for the parties. The learned Counsel for the parties also referred and relied on judgments of the Hon'ble Supreme Court and this Tribunal, which we shall consider while considering the detailed submissions.

9. We have heard learned Counsel for the parties and have perused the record.

10. We first need to notice the scheme of the Code and the Regulations framed thereunder regarding the confidentiality of certain information and reports including the Resolution Plan in the CIRP proceedings. After the public announcement for initiation of Corporate Insolvency Resolution Process, the Interim Resolution Professional is to collect all information relating to the assets, finances and operations of the Corporate Debtor for determining the financial position of the Corporate Debtor; receive and collate all the claims submitted by the creditors; constitute a Committee of Creditors; and to perform other functions as enumerated in Section 18 of the Code. After appointment of Resolution Professional, he has to conduct the Corporate Insolvency Resolution Process including conducting of the meeting of the Committee of Creditors. Section 24 of the IB code deals with meeting of Committee of Creditors and requires Resolution Professional to give notice of each meeting to the Committee of Creditors. Section 24(3) (a), (b) and (c) is as under:

*“24(3) The resolution professional shall give notice of each meeting of the committee of creditors to-*

*(a) members of 1 [committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];*

*(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;*

*(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.”*

11. Section 29 deals with ‘Preparation of information memorandum’.  
Section 29, sub-section (2) provides:

*“(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-*

*(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;*

*(b) to protect any intellectual property of the corporate debtor it may have access to; and*

*(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.*

*Explanation. – For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.”*

12. Section 29, sub-section 2 sub-clause (a) provides that Resolution Applicant is to comply with provisions of law for the time being in force relating to confidentiality and insider trading and further the Resolution Applicant not to share relevant information with third parties unless clauses (a) and (b) of sub-section (2) of Section 29 are complied with.

13. After Resolution Plan is submitted the same is to be scrutinized by Resolution Professional and Resolution Professional is to examine each Resolution Plan and when Resolution Professional is satisfied that it complies with the requirements as laid down in Section 30, sub-section (2), he shall present it to the Committee of Creditors for approval. Sub-section (6) of Section 30 further provides that Resolution Professional shall submit the Resolution Plan as approved by the Committee of Creditors to the Adjudicating Authority. Section 31, sub-section (3), which deals with 'Approval of resolution plan' further provides:

*“(3) After the order of approval under sub-section (1), -*

*(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*

*(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”*

14. We may also notice few Regulations of Process Regulation 2016, which are relevant for the present controversy. Regulation 35, sub-regulation (3) provides that Resolution Professional and registered valuers shall maintain confidentiality of the 'fair value' and the 'liquidation value'. Regulation 21 deals with 'Contents of the notice for meeting' of Committee of Creditors. Regulation 21, sub-regulation (3) provides that along with notice copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting shall be sent.

15. Certain provisions of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2016 also need to be noticed. The First Schedule, which deals with 'Code of Conduct for Insolvency Professionals' in Item No.21 under the heading 'Confidentiality' provides as follows:

***“Confidentiality.***

*21. An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law.”*

16. From the above, it is clear that an Insolvency Professional must ensure that confidentiality of the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law.

17. Since Section 24 of the IB Code read with Regulation 21 (3) (iii) of Process Regulation 2016, makes it clear that all Members, who were to participate in the meeting of the Committee of Creditors had to be provided copies of all relevant documents. Thus, the entitlement of copy of documents during the CIRP is for only those who are to participate in CIRP. As per Section 24 of the Code, Operational Creditors or their representatives, if the amount of their aggregate dues is not less than 10% of the debt, are also entitled for notice of meeting of Committee of Creditors. Thus, the category of creditors including the Members of the suspended Board of Directors or the partners of the corporate persons, who are entitled to participate in the meeting of the Committee of Creditors are entitled to receive copies of all documents.

18. Hon'ble Apex Court had occasion to consider these provisions of Code and the Regulations in context of right to have access to Resolution Plan by erstwhile/ suspended Board of Directors of the Corporate Debtor in **(2019) 20 SCC 455 – Vijay Kumar Jain vs. Standard Chartered Bank and Ors.** The Hon'ble Supreme Court held that Members of suspended Board are entitled to participate in the meeting of Committee of Creditors.

They are also entitled to be given a copy of Resolution Plan before such meetings are held. In paragraph 16 of the judgment, following has been laid down:

*“16. This statutory scheme, therefore, makes it clear that though the erstwhile Board of Directors are not members of the Committee of Creditors, yet, they have a right to participate in each and every meeting held by the Committee of Creditors, and also have a right to discuss along with members of the Committee of Creditors all resolution plans that are presented at such meetings under Section 25(2)(i). It cannot be gainsaid that operational creditors, who may participate in such meetings but have no right to vote, are vitally interested in such resolution plans, and must be furnished copies of such plans beforehand if they are to participate effectively in the meeting of the Committee of Creditors. This is for the reason that under Section 30(2)(b), repayment of their debts is an important part of the resolution plan qua them on which they must comment. So the first important thing to notice is that even though persons such as operational creditors have no right to vote but are only participants in meetings of the Committee of Creditors, yet, they would certainly have a*



*right to be given a copy of the resolution plans before such meetings are held so that they may effectively comment on the same to safeguard their interest.”*

19. The Appellant before us being not entitled to participate in the meeting of Committee of Creditors, they during the CIRP were not entitled for copy of Resolution Plan. As noted above, the Resolution Plan has been approved by the Committee of Creditors and was filed by the Resolution Professional before the Adjudicating Authority, which resulted ultimately in approval of the Resolution Plan by order dated 22<sup>nd</sup> June, 2021. The learned Counsel for the Respondents as well as the Appellant have referred to the judgment of this Tribunal in ***Committee of Creditors of Meenakshi Energy Ltd. vs. Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P Ltd.*** in ***Company Appeal (AT) (CH) (Insolvency) No. 166 of 2021*** decided on 25.10.2021. Paragraph 111 of the judgment has been referred to, which deals with confidentiality of the Plan in following manner:

*“111. In fact, the ‘Resolution Plan’ furnished by one or the other ‘Resolution Applicant’ is a ‘confidential’ one and it cannot be disclosed to any ‘Competing’ ‘Resolution Applicant’ nor any view can be taken or objection can be asked for from other ‘Resolution Applicants’ in regard to one or the other ‘Resolution Plan’. It cannot be lost sight of that the conduct of ‘Resolution Professional’ is*

*important in deciding whether he is guilty of 'Misfeasance' or 'Fraud' or any other 'Serious Irregularity' in the preparation of 'Resolution Plan'. As a matter of fact, the 'Resolution Plan' 'is confidential in nature'. No wonder, the Resolution Professional is to act in an expeditious fashion. In short, an 'Insolvency Professional' is to perform his duties by facing challenges that he come across during CIRP."*

20. The above proposition laid down by this Tribunal clearly states that Resolution Plan furnished by one or other Resolution Applicant is a confidential one and cannot be disclosed to any competing Resolution Applicant. The Resolution Plan has been held to be confidential in nature. The above observations were in reference to CIRP proceeding and this Tribunal in the above case had no occasion to consider the situation where Appellant who is aggrieved by the order of the Adjudicating Authority of approving the Resolution Plan is claiming the copy of the Resolution Plan. The judgment of the Hon'ble Supreme Court in Vijay Kumar Jain (supra) as noticed above was also the judgment dealing with entitlement of Resolution Plan during the CIRP proceeding. The question which has arisen in the present proceeding is as to whether the Resolution Plan after it being approved by the Adjudicating Authority, still continues to be a confidential document, so as to deny access to any of the claimants. In this

context, we need to notice NCLT Rules, 2016. Part XIV of the Rules deals with 'Inspection of Record'. Rule 114, which is relevant in the present case provides as follows:

***“114. Inspection of the records.- (1) The parties to any case or their authorised representative may be allowed to inspect the record of the case by making an application in writing to the Registrar and by paying the fee prescribed thereof.***

*(2) Subject to such terms and conditions as may be directed by the President by a general or special order, a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.*

21. Sub-rule (1) of Rule 114 provides that parties to any case or their authorised representative may be allowed to inspect the record of the case. Sub-rule (2) of Rule 114 provides that a person, who is not a party to the proceeding, may also be allowed to inspect the proceeding after obtaining the permission of Registrar in writing. When inspection is given to the parties or any person, who is not a party with the permission of Registrar to inspect the record, the record to be inspected shall obviously contains the Resolution Plan submitted by Resolution Professional to the Adjudicating Authority. When Resolution Plan is submitted to the

Adjudicating Authority with an Application to accept the Plan, the Application as well as Plan is on the record of the case or proceeding and then right to inspection is granted statutorily, we do not accept the submission of learned Counsel for the Respondents that Resolution Plan still remains confidential documents after it is made part of the record or proceeding of the Adjudicating Authority.

22. When inspection is permitted of record of the Adjudicating Authority, obviously inspection can very well be made of the Resolution Plan, which is part of the proceedings before the Adjudicating Authority. Section 117 of the NCLT Rules, 2016 deals with 'Mode of inspection'. Sub-rule (3) of Rule 117 provides that note of any record can also be taken in pencil by a person inspecting the record.

23. Our above conclusion also fully finds support by provision of Section 31, sub-section (3) of IB Code, which provides that Resolution Professional after approval of Resolution Plan shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

24. Learned Counsel for Respondent No.4 in the context of Section 31, sub-section (3) submits that records are forwarded to the Board not for publication and limited purpose of the Board is to publish such information, data, research studies and other information as may be

specified by Regulations. Reference has been made to Section 196(1)(i) of the IB Code, which is to the following effect:

*“196(1)(i) publish such information, data, research studies and other information as may be specified by regulations;”*

25. Section 196, sub-section (1) deals with ‘Powers and functions of the Board’. Sub-clause (h) of sub-section (1) empowers the Board to *“call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities”*. The power of the Board is thus also to call for any record from the Insolvency Professional, which may also include the Resolution Plan. Sub-clause (k) further empowers the Board to collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases. We, thus, are of the view that sending of the records by the Resolution Professional to Board as contemplated by Section 31 sub-section (3) is not only for proper data research studies only and the records and information can be recorded in its database and also can be published. The above scheme of the Code also indicates that after Resolution Plan is submitted to the Adjudicating Authority and it is approved by the Adjudicating Authority, it no longer remains a confidential document, so as to preclude Regulator and other persons from access the said document.

26. We thus do not accept the submission of learned Counsel for Respondent No.4 that Resolution Plan even after approval, is a confidential document and cannot be disclosed to a claimant.

27. There is one more reason due to which we are of the view that the Appellant who has challenged a Resolution Plan in this Tribunal is entitled to know the contents of the Resolution Plan to effectively prosecute his Appeal. We may refer to Section 61, sub-section (3) of the Code in this context, which is to the following effect:

*“61 (3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely: –*

*(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*

*(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;*

*(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*

*(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or*

*(v) the resolution plan does not comply with any other criteria specified by the Board.”*

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.

29. Now coming back to the facts of the present case, as submitted by the learned Counsel for the Respondent No.4 that there are more than 20,000 Operational Creditors apart from Financial Creditors and other stakeholders. We have noticed above that before the Adjudicating Authority, Applications were filed by several Applicants including National Aviators' Guild, Jet Aircraft Maintenance Engineers Welfare Association, Bhartiya Kamgar Sena, Jet Airways Cabin Crew Association etc. before the

Adjudicating Authority praying for copy of Resolution Plan, which Application was rejected by detailed order dated 22<sup>nd</sup> February, 2021. We, thus, are not inclined to issue a direction to provide entire Resolution Plan to the Appellant herein. We however, are fully satisfied that the Appellant is entitled for the relevant part of the Resolution Plan relating to the claim of the workmen and employees. We, thus, direct that part of Resolution Plan which deals with claim of workmen and employees should be provided to the Appellant by Successful Resolution Applicant – Respondent No.4 within a period of three weeks from today. The prayer made by Appellant/Applicant for the copy of Resolution Plan is decided accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Dr. Ashok Kumar Mishra]  
Member (Technical)**

**NEW DELHI**

**20<sup>th</sup> January, 2022**

Ash/NN