

NCLAT NIXES GAIL'S PLEA AGAINST ALOK INDS. RESOLUTION

New Delhi, Oct. 4: The National Company Law Appellate Tribunal (NCLAT) on Monday dismissed the petition filed by Gail India Ltd challenging the insolvency resolution plan of Alok Industries, which has now been taken over by a consortium of Reliance Industries and JM Financial Asset Reconstruction Co Ltd. The state-run firm challenged the orders of the Ahmedabad bench of the NCLT, which had on March 8, 2019, approved the resolution plan, in which all operational creditors of Alok Industries having dues of less than Rs 3 lakh got 100 per cent payment, while those with dues over Rs 3 lakh got nil payment.

Gail India, which had a gas sale agreement and a claim of Rs 506.42 crore, moved the NCLAT terming the entire resolution plan as "unreasonably and arbitrary" as it fails to treat equals as equal.

But a two-member NCLAT bench has dismissed the Gail's plea and upheld the orders passed by the NCLT observing that classification of operational creditors is allowed under the IBC. —PTI

NCLAT dismisses GAIL's plea against Alok Industries' resolution

PRESS TRUST OF INDIA

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The state-run firm challenged the orders of the Ahmedabad bench of the National Company Law Tribunal (NCLT), which had on March 8, 2019, approved the resolu-

tion plan, in which all operational creditors of Alok Industries having dues less than ₹3 lakh got 100 per cent payment, while those with dues were over ₹3 lakh got nil payment.

'Unreasonable, arbitrary'

Gail India, which had a gas sale agreement and a claim of ₹506.42 crore, moved the appellate tribunal terming the entire resolution plan as "unreasonable and arbitrary" as it fails to treat equals as equal.

However, a two-member bench of the NCLAT has dis-



missed the Gail's plea and upheld the orders passed by NCLT observing that classification of operational creditors is allowed under the scheme.

In fact, Gail's claim pertains to a supposed obligation to pay for goods, even where, these were not made use of as "take or pay obligation".

During the proceedings, NCLAT was informed that the re-liquified natural gas was not utilised by Alok Industries subsequent to January 2014. Alok Industries had a total admitted claims of ₹30,706.68 crore and as per the NCLT approved resolution, the total financial outlay of the approved bid amount was ₹6,252 crore. The financial creditors had got ₹5,052 crore.

'Commercial wisdom'

On behalf of respondents, which includes former resolution professionals of Alok

Industries, RIL and JM Financial Asset Reconstruction, it was submitted that the supremacy of the committee of creditors and their 'Commercial Wisdom' is not to be challenged.

Moreover, NCLT has no jurisdiction to gauge the said 'Commercial Wisdom' of the lenders.

Former RP of the company informed the appellate tribunal the average liquidation value of Alok Industries was ₹4,433 crore and the total financial outlay in terms of the Resolution Plan was ₹6,252 crore.

NCLAT dismisses GAIL's plea against Alok Industries' resolution plan

THE NATIONAL COMPANY Law Appellate Tribunal (NCLAT) on Monday dismissed GAIL India's plea challenging the NCLT's March 8, 2019, order that approved the insolvency resolution plan of Alok Industries, which has now been taken over by a consortium of Reliance Industries and JM Financial Asset Reconstruction.

As per the approved plan, all operational creditors of Alok Industries having dues less than ₹3 lakh got 100% payment, while those with dues over ₹3 lakh got nil payment. GAIL had a claim of ₹506.42 crore. It had contested the approval, terming the plan "unreasonable" and "arbitrary" as it fails to treat equals as equal and it also omits to provide any reasonable justification for such discrimination against the operational creditors having dues over ₹3 lakh.

A two-member bench of the NCLAT, however, did not find any merit in GAIL's plea. "Looking at from any angle, the impugned order dated 08.03.2019 passed by the adjudicating authority (National Company Law Tribunal), Ahmedabad bench in dismissing the application does not suffer from any material irregularity or patent illegality in the eye of law. Resultantly, the instant appeal sans merits," the bench, headed by acting chairperson M Venugopal, said.

Moreover, Gail India has also commenced arbitration proceedings regarding its claim emanating from the gas sale agreement, with Alok Industries, NCLAT observed.

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