

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 642 of 2020

IN THE MATTER OF:

Panch Tatva Promoters Pvt Ltd
Through Authorised Representative
Having office at:
Unit No. 105, Vardhman Sidhant Shopping Plaza
LSC, Savita Vihar, Delhi – 110092

Appellant

Versus

- 1. GPT Steel Industries Ltd.**
(Through Resolution Professional)
Having its registered office at:
B2-402B, Marathon Innova
Off Ganpat Rao Kadam Marg
Lower Parel, Mumbai – 400013
- 2. Committee of Creditors**
GPT Steel Industries Ltd
Through its office at:
10th Floor, The Ruby, Senapati Bapat Marg
Dadar West Mumbai – 400028
- 3. G P Global Energy Pvt Ltd**
Having its registered office at:
Office No. 203, 2nd Floor, Plot No. 341
Ward No. 12/B, Banking Circle
Gandhidham Kachch, Gujarat – 370201

Also At:
804/804, ACKRUTI Star, MIDC Central Road
MIDC, Andheri (E) Mumbai – 400093

Respondents

Present:

For Appellant : Mr Krishnendu Datta, Senior Advocate with
Ms Prachi Johri and Mr Drabesh Jha, Advocates

For Respondent : Mr Tishampati Sen, Advocate for R-1.
Mr Deep Roy, Ms Nikhila Dewasthale and
Mr Rony O John, Advocate for R-2.
Mr Virendra Ganda, Sr Advocate with
Mr Raghav Kakkar, Mr Anand Sengar and
Mr Ayandeb Mitra, Advocates for R-3.

ORDER
(Through Virtual Mode)

18.08.2021: Separate Judgments are being passed with reasons recorded.

For reasons recorded by us separately, following operative order we pass:-

The Appeal is dismissed. No order as to costs. Interim order dated 29th July, 2020 will thus not survive. Adjudicating Authority is requested to urgently decide Application pending under Section 31 of the IBC.

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

[V.P. Singh]
Member (Technical)

Anjali/g

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 642 of 2020

[Arising out of Impugned Order, dated 3rd July 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in CP (IB) No. 157/NCLT/AHM/2018]

IN THE MATTER OF:

**Panch Tatva Promoters Pvt Ltd
Through Authorised Representative
Having office at:
Unit No. 105, Vardhman Sidhant Shopping Plaza
LSC, Savita Vihar, Delhi – 110092**

Appellant

Versus

- 1. GPT Steel Industries Ltd.
(Through Resolution Professional)
Having its registered office at:
B2-402B, Marathon Innova
Off Ganpat Rao Kadam Marg
Lower Parel, Mumbai – 400013**
- 2. Committee of Creditors
GPT Steel Industries Ltd
Through its office at:
10th Floor, The Ruby, Senapati Bapat Marg
Dadar West Mumbai – 400028**
- 3. G P Global Energy Pvt Ltd
Having its registered office at:
Office No. 203, 2nd Floor, Plot No. 341
Ward No. 12/B, Banking Circle
Gandhidham Kachch, Gujarat – 370201**

**Also At:
804/804, ACKRUTI Star, MIDC Central Road
MIDC, Andheri (E) Mumbai – 400093**

Respondents

Present:

**For Appellant : Mr Krishnendu Datta, Senior Advocate with
Ms Prachi Johri and Mr Drabesh Jha, Advocates**

For Respondent : Mr Tishampati Sen, Advocate for R-1.

**Mr Deep Roy, Ms Nikhila Dewasthale and
Mr Rony O John, Advocate for R-2.
Mr Virendra Ganda, Sr Advocate with
Mr Raghav Kakkar, Mr Anand Sengar and
Mr Ayandeb Mitra, Advocates for R-3.**

J U D G M E N T
(18th August, 2021)

A.I.S. Cheema, J.

I have had the privilege of going through the judgment being passed by my Learned Colleague Hon'ble Shri V.P. Singh, Member (Technical). The Hon'ble Member (Technical) has painstakingly referred to the respective cases put up by the parties and the concerned statutory provisions. Thus, I am not reproducing the same. From para 29 onwards till the operative order, the Learned Member (Technical) has recorded reasons in support of the order dismissing the Appeal. I am also of the view that the present Appeal deserves to be dismissed. However, with respect to my Learned Colleague Member, I am dismissing the Appeal for reasons which I am proceeding to record in brief as follows.

2. Very briefly stated, the record shows, that the Appellant with Respondent No.3 was prospective Resolution Applicant and the Resolution Plan tendered by the Appellant and Respondent No.3- 'G P Global Energy Pvt. Ltd.' were from time to time placed before the Committee of Creditors (CoC) and CoC discussed and considered the original and revised Plans from time to time. In the ultimate, Respondent No.3 was found to be H-1 by the CoC and the Appellant as H-2 with a caveat that the Resolution Plan put up by the

Appellant was conditional. The CoC in voting approved the Resolution Plan of Respondent No.3.

In the process, when it was taking place, Appellant rushed to the Adjudicating Authority finding faults with Respondent No.3 to claim that the Respondent No.3 (who is now ‘Successful Resolution Applicant’ approved by CoC) has in another CIRP of ‘Allied Strips Limited’ failed to implement the Resolution Plan and thus should be treated as ineligible. The Appellant claims that the Respondent No.3 had suppressed facts in that regard in the Resolution Plan which fact was required to be disclosed as per Regulations 38 (1-B) of the “Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016” (CIRP Regulations).

3. The Adjudicating Authority has, in the impugned order para 19 to 23 (part), observed and held as under:-

“19. Heard applicant, RP, COC and respondent no. 3 through their respective lawyer.

This Adjudicating Authority come to the finding that;

Firstly, the application was pre-mature as on the date of filing i.e. 04.02.2020 as the resolution professional and member of COC were negotiating with respondent no. 3 and respondent no. 3 was not even declared as successful resolution applicant as it was not put to voting as on 04.02.2020.

20. **Secondly,** It is matter of record that the instant application was filed on 04.02.2020, whereas e- voting of the resolution plan is decided to be kept open till 6:00 P.M. on February, 17 2020, however, the last date of the voting was extended on the request of the COC till 7:00 PM Feb 18, 2020, that itself shows that applicant filed the application on misconceived facts and circumstances which was not existing on the date of filing of the instant application.

21. **Thirdly,** It is also matter of record that, on the instance of RP and COC, revised resolution plan was submitted during

the 16th COC meeting held on 29.01.2020 after almost three month after submitting the 1st Resolution Plan for Corporate Debtor, further, till 16th COC meetings the applicant submitted 7 (seven) Resolution Plan and on each occasion the plan was found deficient of compliance under rule 38 of CIRP regulation, though, the applicant was duly communicated by RP and member of COC to remove the deficient and submit in compliances of Regulation 38. Not only that, plan which was submitted on Jan 29, 2020 was also conditional/ contingent in nature and the applicant had indicated in their resolution plan about **exit midway, even if, the applicant would have been declared as a successful Resolution Applicant after following the due process of bidding and evaluation by the COC.**

22. **Fourthly**, the revise resolution plan so submitted by the applicant on 09.02.2020 was also conditional in nature and the amount so offered was lesser than the amount so offered by the respondent no. 3, thus in the 17th COC meeting, which was held on 10.02.2020, the respondent no. 3 was declared as H1 bidder and the same was put to voting by the COC member, as is reflected from the minute of 17th COC meeting (**Annexure-A**). Thus the resolution plan of the applicant was/ is non-compliant of CIRP Regulation on the date of voting by COC member.
23. It is also matter of record that resolution plan of R-3 was approved by a vote of approximately 82.41% voting share of the COC members. It is to be noted that resolution plan submitted by the Resolution Applicant (s) are subject to deliberation of Commercial Wisdom of the COC and the COC are to consider the resolution plan(s), keeping in mind, to achieve, "maximisation of value of assets of the 'Corporate Debtor', as also the value of assets of the 'financial creditor' and the 'operational creditor', thereby balancing the interest of all stake holders, which is the spirit of the Code. Further, the CIRP has to be completed in time bound manner and 270 days was got over in Jan 28, 2020 itself. It is also matter of record that 22 days are excluded from CIRP on filing the application before the Adjudicating Authority. Pursuant to the such exclusion permitted by this Adjudicating Authority, the period of 270 days was expired on Feb 19, 2020.....”

4. The Adjudicating Authority then referred to the object of the Code and relevant judgments especially judgment in the matter of **“K. Sashidhar vs.**

Indian Overseas Bank and Ors. (05.02.2019 - SC) : MANU/SC/0189/2019

and concluded in Paras 25 and 26 of the impugned order, as under:-

- “25. It is also matter of record that on approval of the resolution plan by the COC member, an application under section 30 of the IB Code has already been filed before this Adjudicating Authority for sanction of plan being, numbered as IA 346 of 2020 and same is sub-judice, under such circumstances if Commercial wisdom is interfered at this stage which is the prerogative of COC as also observed by the Hon'ble Supreme Court time to time, in that event, the whole process will get frustrated and CIRP has to be started afresh, which will frustrate the very objective of the IB Code as the time is the essence of the Code.*
- 26. Under the facts and circumstances as narrated hereinabove in sequel and the finding/ conclusion drawn hereinabove, we find that instant application was not only pre-mature on the date of filing, but is also devoid of merit and hence dismissed. No cost.”*

5. I find the reasoning well founded. Before us, the Respondent No.1- Resolution Professional has filed Affidavit in reply to the Appeal and given various details on oath regarding the manner in which the CIRP progressed and as to how the various Resolution Plans, one after the other tendered by the Appellant were considered and were continuously found to be wanting and conditional. It would be appropriate to reproduce some of the paragraphs from the Affidavit. The Resolution Professional made the averments on the basis of CIRP record and developments in the meetings. The concerned paragraphs from the Affidavit dated 11th August, 2020 which need reference are:-

“10. It is pertinent to note that even after the aforesaid assistance and several reminders to the Appellant, the Resolution Plan submitted by Appellant

during the 16th CoC meeting, conducted on January 29, 2020, was conditional/ contingent in nature wherein the Appellant had indicated in their Resolution Plan about their exit midway even if the Appellant would have been declared as a Successful Resolution Applicant after following the due process of bidding and evaluation by the CoC as regards the feasibility and viability of the Resolution Plan. Such midway exit condition is not only contrary to the Code but now is a settled law held by Hon'ble Supreme Court in *M/s Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Ors.* (Civil Appeal No. 4242 of 2019). The Hon'ble Supreme Court in the said case has inter alia held that "The exit route prescribed in Section 12-A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking Sections 7, 9 and 10 of the code." Additionally, such midway exit by any Resolution Applicant, after being declared the Successful Resolution Applicant, would not only defeat the very objective of the Code, as regards revival of the Corporate Debtor and maximisation of value, but also leave the Corporate Debtor in lurch and in a helpless situation as at that stage, there could be no new Resolution Applicant and that the Corporate Debtor would then be forced into liquidation without any of its fault but only due to the callous approach of the Resolution Applicant backing out of its commitment midway.

11. It is pertinent to note that at the start of the 16th CoC meeting, the prospective resolution applicants were given an opportunity to increase their bids at the request of the CoC. Thereafter, once the highest bidder was declared, the Appellant was informed that it was not the highest bidder and was offered a chance of improving its bid. However, the Appellant in turn informed the members of the CoC that their bid should be considered as a final bid and that they are not inclined to revise their offer any further, the fact which is duly recorded in the minutes of the 16th CoC meeting. After all the rounds of inter-se bidding in which both the prospective resolution applicants participated, the other resolution applicant, i.e. Respondent no.3 was again declared as H1 bidder. Before the start of the 16th CoC meeting, the financial proposal of the Appellant was Rs.8100 lacs and that of Respondent no.3 was Rs.8411 lacs. Whereas, after the conclusion of the 16th CoC

meeting, the revised financial prpoposal of the Appellant was Rs.8400 lacs and that of Respondent no.3 was Rs.9811 lacs. Considering the same, the CoC declared Respondent no.3 as the H1 bidder.

xxx xxx xxx

15. As required under Regulation 39 (1B) of the CIRP Regulations, the Respondent no.3 has provided a detailed note on page nos. 13 to 15 of their Resolution Plan to the effect stating that neither Respondent no.3 or any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past. The Respondent no.3 had mentioned that they had sought extension of time for final payment from CoC and NCLT for reasons beyond their control. They also elaborated on the factors leading to delay in making final payment. I crave leave to refer and rely upon the Resolution Plan of Respondent no.3 as and when produced.

xxx xxx xxx

18. The Resolution Professional has sought information/ clarifications from Respondent No.3. Respondent no.3 provided further information with respect to their payment progress in the matter of Allied Strips Limited and based on such information provided by Respondent no.3, the RP and the CoC understood that Respondent no.3 has agreed to make the balance payments, in the matter of Allied Strips Limited, by February 29, 2020 and the same could be understood by the application dated December 05, 2019 filed by the Respondent no.3 with the Hon'ble Tribunal, New Delhi in the matter of Allied Strips Limited wherein Respondent no.3 has, on page 7, paragraph 16, explicitly stated that Respondent no.3 is committed to pay the balance amount regardless of the disbursement of the term loan availed by the Respondent no.3 from Bank of Baroda. I crave leave to refer and rely upon the said affidavit as and when produced. The COC at its 17th meeting held on February 10, 2020 after perusing and deliberating on the information provided by Respondent no.3 were of the view that any extension sought by Respondent No. 3 for payment of amount in case of implementation of any other Resolution Plan in case of any other Corporate Debtor does not make the Respondent No. 3 disqualified so far as Section 29A of Code is concerned.

The members of the COC, in the said 17th COC meeting, deliberated on the revised Resolution Plan submitted by the Appellant which the Appellant submitted only few hours before the start of the 17th COC meeting. Such Resolution Plan of the Appellant was also contingent/conditional in nature (being contrary to the requirement of the Bid Document / RFRP) and the Resolution Plan amount was also less than that of Resolution Plan of Respondent no.3. Due to these reasons, the COC then decided to consider and put the final resolution plan submitted by Respondent No. 3 for voting and approval of the COC members. I crave leave to refer and reply on the copy of the minutes of the 17th COC meeting held on February 10, 2020 as and when produced.

xxx

xxx

xxx

24. Since the 270 days of the CIRP of the Corporate Debtor, after granting the aforesaid exclusion by the Hon'ble NCLT, Ahmedabad, was expiring on February 19, 2020, the RP duly filed the Resolution Plan of the Respondent No.3 with Hon'ble NCLT, Ahmedabad on the last day of the 270 days i.e. February 19, 2020. Such filing of Resolution Plan was done after the Resolution Plan of Respondent no.3 being duly voted by the COC members with requisite majority and after the COC members considering the Revised Resolution Plan submitted by the Appellant on February 17, 2020 which was again conditional in nature (which being not only contrary to the requirement of the Bid Document / RFRP but also against the commercial wisdom of the COC). Thus, the Appellant has incorrectly alleged, in point 9 cc) Grounds in the Appeal, that the COC has not been given any time or opportunity to consider the plan of the Appellant."

(Emphasis supplied)

6. Going through such affidavit of the Respondent No.1- Resolution Professional, it is clear that the Appellant had multiple opportunities and the Resolution Plans filed one after the other were considered and which were found to be conditional. The CoC in 16th meeting read with the 17th meeting

and voting thereon approved the Resolution Plan of Respondent No.3. The grievance raised by the Appellant with regard to ineligibility of Respondent No.3 were also considered by the CoC with regard to the 'Allied Strips Limited' which was pointed out and CoC still took a conscious decision to accept the Resolution Plan of Respondent No.3.

7. The Appellant in making various grievances to claim that the Respondent No.3 in the matter of 'Allied Strips Limited' and in another matter relating to 'Tirupati Infrastructure Private Limited' where the Respondent No.3 was Successful Resolution Applicant has delayed the Resolutions by seeking time for implementation. Appellant is claiming that the Respondent No.3 was ineligible and Resolution Plan of Respondent No.3 could not have been placed before the CoC. Regulation 38 (1-B) reads as under:-

***"38. Mandatory contents of the resolution plan.-
.....(1-B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past."***

8. When facts of the present matter are considered, the CoC appears to have been conscious regarding the time sought by the Respondent No.3 in other matter of 'Allied Strips Limited'. In my view, Regulation 38(1-B) which is subordinate legislation will have to be read with Section 33 (3) & (4) of the IBC which reads as under:-

***"33. Initiation of liquidation.-
(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the***

concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

Emphasis supplied

9. Thus, it is job of the Adjudicating Authority to "determine" if provisions of the Resolution Plan have been contravened. Admittedly, there does not exist any order under Section 33(4) holding Respondent No.3 to have contravened provisions of the Resolution Plan in any other proceedings. Merely because in execution of the Resolution Plan application for time is under consideration with regard to other CIRP would not be sufficient at this stage to say that ineligibility has already been incurred.

10. My learned colleague has rightly referred to the judgment in the matter of **"Arcellormittal India (P) Ltd. v. Satish Kumar Gupta"** [(2019) 2SCC 1] that there is no vested right or fundamental right in the Resolution Applicant to have its Resolution Plan approved. Appellant's failure before CoC is apparent and well laid out when Affidavit of Resolution Professional is seen. The Resolution Plan of Respondent No.3 approved by CoC is already pending before the Adjudicating Authority for consideration. While issuing notice in the present Appeal, this Court had passed interim order that the Adjudicating Authority may conduct hearing in IA 346/2020 but it shall not pass any order.

As such, the orders on the Resolution Plan approved by the CoC are still pending before the Adjudicating Authority. Counsel for Respondent No.2- CoC now taking wavering stand before us in Appeal is not issue for me to decide. The same does not give strength to the Appeal of the Appellant who makes out no case for us to interfere. Whatever decision CoC has taken with regard to the Resolution Plan of Respondent No.3 will be the matter of consideration before the Adjudicating Authority in the Application pending for approval of the Resolution Plan. I do not wish to make obiter dicta statements and stress Adjudicating Authority while dealing with the Resolution Plan for approval. The Adjudicating Authority as well as this Tribunal with regard to approved Resolution Plan have to act within given sphere as has been found by the Hon'ble Supreme Court in the matter of ***"Pratap Technocrats (P) Ltd. & Ors. vs. Monitoring Committee of Reliance Infratel Limited & Anr."***- [Civil Appeal No. 676 of 2021- Judgment dated 10th August, 2021]. The Hon'ble Supreme Court in the said matter referred to its judgment in the matter of ***"K Sashidhar vs. India Overseas Bank"*** [(2019) 12 SCC 150] and judgment in the matter of ***"Committee of Creditors of Essar Steel Limited vs. Satish Kumar Gupta"*** [(2020) 8 SCC 531] observed in para 39 as under:-

"39. These decisions have laid down that the jurisdiction of the Adjudicating Authority and the Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the Adjudicating Authority or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment."

When effort was made before the Hon'ble Supreme Court to raise issue regarding guarantees of fair procedure and non-arbitrariness, the Hon'ble Supreme Court observed that IBC is a complete Code in itself and defines what is fair and equitable treatment by constituting a comprehensive framework within which the actors partake in the insolvency process. The Hon'ble Supreme Court observed that UNCITRAL, in its Legislative Guide on Insolvency Law, has succinctly prefaced its recommendations and observed in para 41 as under:-

“41.Hence, once the requirements of the IBC have been fulfilled, the Adjudicating Authority and the Appellate Authority are duty bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the Adjudicating Authority nor the Appellate Authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.”

11. We are in fact at a stage not contemplated in IBC. The approved Resolution Plan is yet not adjudicated by Adjudicating Authority. Disputes being raised by Appellant, beforehand is abuse of process. In my view, in present Appeal, I cannot make obiter dicta observations which would affect decision in the matter of 'Allied Strips Limited' with regard to whether or not Resolution Plan has been contravened. That matter is not before us and only because the Appellant makes averments with regard to Resolution Plan in the matter of 'Allied Strips Limited', I cannot make any comments with regard to other proceedings which are not before us.

12. Observations made by me in this Judgment will not come in the way of Adjudicating Authority while dealing with Resolution Plan pending for

approval before Adjudicating Authority. Similarly, they will not come in the way of adjudication of matters relating to other Resolution Plans in which Respondent No.3 is said to be Successful Resolution Applicant.

13. For the above reasons, I pass the following order:-

The Appeal is dismissed. No order as to costs.

Interim order dated 29th July, 2020 will thus not survive. Adjudicating Authority is requested to urgently decide Application pending under Section 31 of the IBC.

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

New Delhi
Anjali

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 642 of 2020

[Arising out of Impugned Order, dated 3rd July 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in CP (IB) No. 157/NCLT/AHM/2018]

IN THE MATTER OF:

**Panch Tatva Promoters Pvt Ltd
Through Authorised Representative
Having office at:
Unit No. 105, Vardhman Sidhant Shopping Plaza
LSC, Savita Vihar, Delhi – 110092**

Appellant

Versus

- 1. GPT Steel Industries Ltd.
(Through Resolution Professional)
Having its registered office at:
B2-402B, Marathon Innova
Off Ganpat Rao Kadam Marg
Lower Parel, Mumbai – 400013**
- 2. Committee of Creditors
GPT Steel Industries Ltd
Through its office at:
10th Floor, The Ruby, Senapati Bapat Marg
Dadar West Mumbai – 400028**
- 3. G P Global Energy Pvt Ltd
Having its registered office at:
Office No. 203, 2nd Floor, Plot No. 341
Ward No. 12/B, Banking Circle
Gandhidham Kachch, Gujarat – 370201**

**Also At:
804/804, ACKRUTI Star, MIDC Central Road
MIDC, Andheri (E) Mumbai – 400093**

Respondents

Present:

**For Appellant : Mr Krishnendu Datta, Sr Advocate with
Ms Prachi Johri and Mr Drabesh Jha, Advocates**

**For Respondent : Mr Tishampati Sen, Advocate for R-1.
Mr Deep Roy, Ms Nikhila Dewasthale and
Mr Rony O John, Advocate for R-2.
Mr Virendra Ganda, Sr Advocate with
Mr Raghav Kakkar, Mr Anand Sengar and
Mr Ayandeb Mitra, Advocates for R-3.**

J U D G M E N T

[Per; V. P. Singh, Member (T)]

This Appeal emanates from the Impugned Order dated 3rd July 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No. 116 of 2020 filed in CP (IB) No. 157/NCLT/AHM/2018, whereby the Adjudicating Authority has rejected the Application under Section 60(5) and 235A of the Insolvency and Bankruptcy Code, 2016 (in short '**I&B Code**'). The original status of the Parties in the Company Petition represents them in the Appeal for the sake of convenience.

Brief Facts

2. The Corporate Debtor 'G P T Steel Ltd' has been admitted into Corporate Insolvency Resolution Process vide order dated 2nd May 2019. The Respondent No.1 is the Resolution Professional (RP) for the Company/Corporate Debtor. Respondent No. 2 is the Committee of Creditors (COC) for the Corporate Debtor represented through the lead member. The Respondent No. 3 and the Appellant are both the Resolution Applicant's in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.

Appellants Contention

3. The Appellant alleges that Respondent No. 3's Resolution Plan was approved by the COC without considering the final revised Resolution Plan

submitted by the Appellant. As a result, Respondent No. 3 was declared the highest bidder (H-1 bidder).

4. The Appellant contends that Respondent No. 3 has suppressed material facts in relation to its performance in other Resolution Plans and has given a false undertaking to the COC in this regard.

5. On 2nd February 2020, the Appellant filed IA No. 116 of 2020 before the Adjudicating Authority, placing these facts on record. The said Application was heard on 13th February 2020, but the Adjudicating Authority declined to grant any interim reliefs.

6. The said IA was finally heard, but Adjudicating Authority has rejected the Application on the ground that since the voting had already taken place on this Resolution Plan of Respondent No. 3, the Adjudicating Authority now could not interfere. Despite the Application having been filed by the Appellant much before the final consideration of the Resolution Plan and voting.

7. The Appellant contends that the Adjudicating Authority has made observations that the Application is premature as of 4th February 2020. However, the fact that negotiations were going on 4th February 2020 means that the Appellant's Plan could be considered at that stage. Thus, Respondent No. 3 could be disqualified as Resolution Applicant for a series of defaults.

8. It is contended that Respondent No. 3 faces severe doubts on its credibility as the Resolution Applicant in two matters, namely, Allied Strips Ltd

and Tirupati Infra Projects Private Limited. Respondent No. 3 was declared Successful Resolution Applicant in the CIRP of the above said two Companies, but Respondent No. 3 has failed to fulfil its commitment leaving the Corporate Debtor and all other Stakeholders in the lurch.

9. The Appellant further contends that CIRP has expired on 18th February 2020. Therefore, unless appropriate orders are passed, the Appellant will be deprived of its remedy in law and a chance for the COC to consider its Resolution Plan, pending adjudication before the Adjudicating Authority.

Respondent No 1's contention

10. Respondent No. 1/Resolution Professional submits that the Appellant was already informed that the Resolution Plan submitted on 21st October 2019 was non-compliant with the Insolvency and Bankruptcy Code 2016 as it was conditional/contingent.

11. After that, the Applicant/Appellant was requested to provide the revised Resolution Plan in compliance with the Code and Regulations thereunder to complete the CIRP in a time-bound manner. However, the Applicant/Appellant submitted the revised Resolution Plan during 16th COC meetings held on 29th January 2020, i.e. almost three months after submitting the 1st Resolution Plan. Till the 16th COC meeting, the Appellant had submitted seven Resolution Plans, but all were non-compliant and conditional, and Resolution Applicant was asked to remove the deficiency. The COC members also requested the Appellant to submit an enhanced proposal compliant with the Code and Regulations. Therefore, an unconditional Resolution Plan would be acceptable

to the COC in terms of the bid document. This fact is reflected in almost all the minutes of the COC meetings starting from the 10th COC.

12. Lastly, the Appellant submitted a Resolution Plan on 29th January 2020 that was conditional and contingent. The Applicant had indicated 'about exit midway' in the Resolution Plan, even if the Applicant would have been declared Successful Resolution Applicant. This apart in 16th COC meetings, the prospective Resolution Applicants were allowed to increase their bids at the request of COC. After that, the highest bidder was declared. The Applicant was informed that it was not the highest bidder and was offered the chance to improve its Bid. However, the Applicant/Appellant reported to the members of the COC that its Bid is final and it is not inclined to revise their offer any further.

13. This fact is recorded in the Minutes of the 16th COC meeting conducted on 29th January 2020. Even after the several reminders to the Appellant, the Resolution Plan submitted by the Appellant was conditional/contingent wherein the Appellant had indicated in the Resolution Plan about their exit midway even if the Appellant could have been declared as Successful Resolution Applicant after following the due process of bidding and evaluation by the COC as regards the feasibility and viability of the Resolution Plan. Such 'midway exit condition' is contrary to the Code is now a settled law as held by Hon'ble Supreme Court in Maharashtra Seamless Ltd, (2020)11SCC 467. It is held that "the exit route prescribed in Section 12 A does not apply to the Resolution Applicant. The procedure envisaged in the said provision only

applies to Applicant's invoking Sections 7, 9 and 10 of the Code." Additionally, such midway exit by any Resolution Applicant, after being declared the Successful Resolution Applicant, could not only defeat the very objective of the Code, as regards revival of the Corporate Debtor and maximisation of value but also lead the Corporate Debtor in the lurch and a helpless situation as at that stage, there would be no new Resolution Applicant and that the Corporate Debtor would then be forced into liquidation without any of its faults but only due to the callous approach of the Resolution Applicant backing out of this commitment midway.

14. Both the prospective Resolution Applicants participated in all the bidding rounds, but Respondent No. 3 was declared as the H1 bidder.

15. It is further submitted that before the start of the 16th COC meeting, the financial proposal of the Appellant was ₹ 8100 lakhs, and Respondent No. 3's offer was ₹ 8 411 lakhs. However, after the conclusion of the 16th COC meeting, the revised financial proposal of the Appellant was ₹ 8400 lakhs, and that of Respondent No. 3 was ₹ 9811 lakhs. Considering the same, the COC declared Respondent No. 3 as the H1 bidder.

16. The Resolution Professional and the members of the COC were aware and apprised that Respondent No. 3 has sought additional time in making certain payments in the matter of 'Allied Strips Ltd', wherein Respondent No. 3 was declared as Successful Resolution Applicant.

17. After receiving the complaint from the Appellant through its mail of 1st February 2020, Respondent No. 3 was asked to provide the Resolution Professional and the Members of the COC a detailed note on Respondent No.3's selection as Successful Resolution Applicant and reasons for asking more time to make payment, as envisaged is in Resolution Plan in the matter of Allied Strips Ltd.

18. As required under Regulation 39 (1B) of the CIRP Regulations, Respondent No. 3 provided a detailed note on pages 13 to 15 to their Resolution Plan to the effect stating that neither Respondent No. 3 nor any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. It was further stated that they had sought an extension of time for final payment from COC and NCLT for reasons beyond their control. They also elaborated on the factors leading to delay in making the final payment.

19. It is further submitted that in the Resolution Plan of Respondent No. 3, there was no information/disclosure/clarifications by Respondent No. 3, in any manner whatsoever, on they being declared as Successful Resolution Applicant in the matter 'Tirupati Infra Projects Private Limited' or any delay on their part in making payments as per Resolution Plan submitted by Respondent No. 3 for Tirupati Infra Projects Limited.

20. Respondent No. 3 provided further information concerning the repayment progress in Allied Strips Ltd. Based on such information provided by Respondent No. 3, the RP and the COC understood the Respondent No. 3 has agreed to make the balance payments in the matter of Allied Strips Ltd.

21. The COC, at its 17th meeting held on 10th February 2020, after deliberating on the information provided by Respondent No. 3 were of the view that any extensions asked by Respondent No. 3 for payment of the amount, in case of implementation of any other Resolution Plan about other Corporate Debtor do not make the Respondent No. 3 disqualified so far as Section 29 A of the Code is concerned.

22. In the 17th COC meeting, the members of the COC deliberated on the revised Resolution Plan submitted by the Appellant, which the Appellant submitted only a few hours before the start of the 17th meeting. Such a Resolution Plan of the Appellant was also contingent/conditional (contrary to the requirements of the bid document /RFRP). The Resolution Plan amount was also less than Respondent No. 3. Due to these reasons, the COC then decided to submit the final Resolution Plan submitted by Respondent No.3 to vote and approve.

23. The Appellant had submitted a revised Resolution Plan on 9th February 2020, immediately before the 17th meeting of COC, which was held on 10th February 2020, to consider COC, wherein the Appellant in the Resolution Plan amount to ₹ 90 .39 crores. The COC at the 17th meeting has perused the

Appellant's revised Resolution Plan and observed that the revised Resolution Plan so submitted is also conditional. The amount so offered is lesser than the amounts provided by Respondent No. 3. Thus, after the 17th COC meetings, the COC declared Respondent No. 3 as the H1 bidder. The resolution plan submitted by Respondent No. 3 was put to voting by the COC members.

24. The e-voting on the Resolution Plan submitted by Respondent No. 3 was decided to be kept open until 6 PM on 17th February 2020. However, on the last date of the voting, few members of the COC, constituting the majority of the voting shares of the COC members, requested the Resolution Professional for extension of the voting period as they needed more time to obtain internal approval from the management for voting on the Resolution Plan submitted by Respondent No. 3. Such request of some of the COC members was duly shared with all the COC members by the Resolution Professional. The Resolution Professional received no objection about the same. Therefore, based on such request, the RP extended E-voting until 7 PM on 18th February 2020. As a result, the Resolution Plan of the Respondent No. 3 was approved by a majority of 82.41%.

25. The Appellant again submitted their further revised Resolution Plan by email on 17th February 2020 at 11:53 PM (which the RP duly shared with all the COC members at 8:20 AM on 18th February 2020). By that time, the COC had already approved the Resolution Plan of Respondent No. 3 by more than the requisite majority of 66% voting share. **However, the COC did not consider such a revised Resolution Plan of the Appellant as the same was**

again conditional, which being not only contrary to the requirements of the bid document/RFRP but also against the commercial wisdom of the COC as could be understood from the minutes of the several COC meetings of the Corporate Debtor.

26. Therefore, in the 17th COC meeting held on 10th February 2020, the COC declared Respondent No. 3 as the H1 bidder. Accordingly, the same was put to voting by the COC in its 17th meeting, which approved the Resolution Plan submitted by Respondent No. 3 by voting share of 82.41%, pending adjudication before the Adjudicating Authority.

Respondent No 3's contention

27. Respondent No. 3 has filed its reply and submitted that the Application is devoid of any substance and is made with mala fide intention, and was premature on filing. It is further submitted by Respondent No. 3 that he has not failed in the implementation of the Resolution Plan in "Allied Strips Ltd" as alleged, and it has made the payment in entirety (₹ 70.25 crores) from its resources. The remaining amount was to be paid by the Bank of Baroda. The Adjudicating Authority/Principal Bench, New Delhi, records the said fact; vide its order dated 8th August 2019. Thus, the allegations made by the Appellant are incorrect, and there is no violation of Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for the Corporate Persons) Regulations 2016.

28. We have heard the argument of the learned Counsel for the parties and perused the record.

29. **STATUTORY PROVISIONS**

38. Mandatory contents of the resolution plan.—~~[(1) The amount payable under a resolution plan—~~

~~(a) to the operational creditors shall be paid in priority over financial creditors; and~~

~~(b) to the financial creditors, who have a right to vote under sub-section (2) of Section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the Plan.]~~

~~[(1-A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]~~

~~[(1-B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the adjudicating Authority at any time in the past.]~~

~~(2) A resolution plan shall provide:~~

~~(a) the term of the Plan and its implementation schedule;~~

~~(b) the management and control of the business of the corporate debtor during its term; and~~

~~(c) adequate means for supervising its implementation.~~

75~~[(3) A resolution plan shall demonstrate that—~~

~~(a) it addresses the cause of default;~~

~~(b) it is feasible and viable;~~

~~(c) it has provisions for its effective implementation;~~

- (d) it has provisions for approvals required and the timeline for the same; and
- (e) the resolution applicant has the capability to implement the resolution plan.]

39. Approval of resolution plan.—[(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under Regulation 36-B along with—

- (a) an affidavit stating that it is eligible under Section 29-A to submit resolution plans;
- (b) [ZZ](#)[* * *]
- (c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the Applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.]

[(1-A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.]

[(2) The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:—

- (a) preferential transactions under Section 43;
- (b) undervalued transactions under Section 45;

(c) extortionate credit transactions under Section 50; and
(d) fraudulent transactions under Section 66,
and the orders, if any, of the adjudicating Authority in respect
of such transactions.]

[(3) The committee shall—

- (a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;**
- (b) record its deliberations on the feasibility and viability of each resolution plan; and**
- (c) vote on all such resolution plans simultaneously.**

(3-A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

(3-B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:

Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:

Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

Illustration.—The committee is voting on two resolution plans, namely, A and B, simultaneously. The voting outcome is as under:

Voting outcome	% of votes in favour of		Status of approval
	Plan A	Plan B	
1	55	60	No Plan is approved, as neither of the Plans received requisite votes. The committee shall vote again on Plan B, which received the higher votes, subject to the timelines under the Code.
2	70	75	Plan B is approved, as it received higher votes, which is not less than requisite votes.
3	75	75	The committee shall approve either Plan A or Plan B, as per the tie-breaker formula announced before voting.]

*[(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority **at least fifteen days before the maximum period for completion of corporate insolvency resolution process under Section 12,** along with a compliance certificate in [82](#)[Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4-A) of Regulation 36-B.].]*

(5) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting

a resolution plan to the participants and the resolution applicant.

[(5-A) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formulae, as the case may be, for payment of debts under such resolution plan:

Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;]

(6) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

(8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.

[(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of Section 31, may apply to the adjudicating Authority for directions.]

40. Extension of the corporate insolvency resolution process period.—(1) The committee may instruct the resolution professional to make an application to the Adjudicating Authority under Section 12 to extend the insolvency resolution process period.

(2) The resolution professional shall, on receiving an instruction from the committee under this regulation, make an application to the Adjudicating Authority for such extension.

[40-B. Filing of Forms.—(1) The insolvency professional, interim resolution professional or resolution professional, as the case may be, shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each Form, in the table below—

TABLE

Form No. (1)	Period covered and scope (2)	To be filed by (3)	Timeline (4)
CIRP 5	From Issue of RFRP till completion of CIRP: This includes updated list of claimants; updated CoC; details of the resolution applicants;	RP	Within seven days of the approval or rejection of the resolution plan under Section 31 or issue of liquidation order under Section 33,

<p>details of resolution plans received;</p> <p>details of approval or rejection of resolution plans by CoC;</p> <p>application filed with AA for approval of resolution plan;</p> <p>details of resolution plan approved by the AA;</p> <p>initiation of liquidation, if applicable; expenses incurred on or by RP;</p> <p>appointment of professionals and the terms of appointment; relationship of the RP with the CD, Financial Creditors, and Professionals;</p> <p>support services taken from IPE; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.</p>	<p>as the case may be, by the AA.</p>
--	---------------------------------------

[29-A. Persons not eligible to be resolution applicant.]—A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

- (a) is an undischarged insolvent;
- (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) ⁶⁵[at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) ⁶⁶[or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

⁶⁷[*Provided further that nothing in this clause shall apply to a resolution applicant where such Applicant is a financial entity and is not a related party to the corporate debtor.*

Explanation I.—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares ⁶⁸[or completion of such transactions as may be prescribed,] prior to the insolvency commencement date.

Explanation II.—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such

person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;]

[(d) has been convicted for any offence punishable with imprisonment—

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;]

(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

[Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;]

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which

an order has been made by the Adjudicating Authority under this Code:

[71](#)[Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or Plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;]

(h) has executed [72](#)[a guarantee] in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code [73](#)[and such guarantee has been invoked by the creditor and remains unpaid in full or part];

(i) [74](#)[is] subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation[[I](#)].—For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

[Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such Applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares [77](#)[or completion of such transactions as may be prescribed,] prior to the insolvency commencement date;]

[Explanation II.—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the

meaning assigned to them in Regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.]

30. Submission of resolution plan.—(1) A resolution applicant may submit a resolution plan ⁷⁹along with an affidavit stating that he is eligible under Section 29-A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ⁸⁰[payment] of other debts of the corporate debtor;

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
- (ii) where an appeal has been preferred under Section 61 or Section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]
- (c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation.—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

[(4) The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under Section 29-A and may require the resolution professional to invite a fresh

resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of Section 29-A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of Section 29-A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of Section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.]

[Provided also that the eligibility criteria in Section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) *The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the Applicant is considered:*

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

31. Approval of resolution plan.—

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, ⁸⁷[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan:

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(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.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary

approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in Section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

Discussion in findings

30. Based on the facts of the case, it is undisputed that CIRP commenced against the Corporate Debtor 'GPT Steel Industries Limited' on 2nd May 2019. During CIRP, the Appellant first submitted its Resolution Plan and EMD of rupees one crore on 1st October 2019.

31. After that, on 1st February 2020 Appellant wrote a letter to the RP informing him about disqualification and lack of credibility of R-3, alleging that R-3 had defaulted in implementing other Resolution Plans. Moreover, the Appellant has filed a copy of the order passed by the Adjudicating Authority in the case of Allied Strips. Since CIRP expired on 19th February 2020, the Appellant filed an Appeal against the order dated 18th April 2020 for the failure of Adjudicating Authority to exercise jurisdiction. By its order dated 19th February 2020, this Appellate Tribunal directed the Adjudicating Authority to pass a reasoned order first deciding the Application of the Appellant by

considering the same in the right earnest and then approving or rejecting the Resolution Plan.

32. The Appellant contends that Respondent No.3 has failed to fulfil its commitments in the matter of Allied strips. It has accepted that it has been unable to get the requisite funding from the Bank of Baroda, and therefore payments could not be made. The Appellant further contends that the failure to secure financing of the Resolution Plan highlights the incapacity of Respondent No. 3 in fulfilling its promise. It is further claimed that R- 3 suppressed material information about the non-implementation of its Plan of Tirupati Infrastructure Private Limited.

33. It is pertinent to mention that delay in implementation of Resolution Plan cannot be considered the same as failure in implementing the Plan. The ineligibility as specified under Regulation 38 (1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 establishes the ineligibility in clear terms by stating that "the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past."

34. Therefore, delay in implementation of the Resolution Plan cannot be considered as a ground for ineligibility of the Resolution Applicant.

35. It is also important to point out Resolution Professional, in its reply, has stated that Respondent No. 3, in the Resolution Plan states that it belongs to

the GP Global Group, a global trading conglomerate, headquartered at Fujairah free-trade zone, UAE, with diverse trading portfolio, ranging from Oil and Gases along with many important commodities including Agro, metals and ore mineral, coal and others, with annual global turnover of more than 5.5 billion USD, is expanding its network in the country and has undertaken manufacturing and trading activities in the steel industry in particular as part of its expansion. Respondent No. 3 has also set out in the Resolution Plan that its other group entities are involved in various business activities, including the steel sector. **The members of the COC factored the aforesaid background of Respondent No. 3, as set out in the Resolution Plan for the Corporate Debtor so submitted by Respondent No. 3 while considering it as a Successful Resolution Applicant.**

36. Therefore, it is clear that the COC deliberated Respondent No. 3's eligibility and thereafter, considering the statement of Respondent No. 3, took a conscious commercial decision in accepting its Resolution Plan. Moreover, judicial notice may be taken of the prevailing situation the entire world is facing on account of the Covid 19 pandemic. Therefore, if there is some delay in implementing the Plan, it cannot be considered a failure in implementing the Resolution Plan, thereby making the Resolution Applicant ineligible for submission of the Resolution Plan under Regulation 38 (1B) of the CIRP Regulations.

37. The learned Counsel for the Appellant emphasised the reply and written submissions of Respondent No. 2, i.e. Committee of Creditors.

38. Respondent No. 2, in its reply and written submission, has stated that;

a. *"The respondent number 3 belongs to the GP global group with Gulf petroleum FZC ("parent company"), an entity incorporated under the laws of UAE, being the parent company of the respondent number 3. **The COC submits that it is a well-known fact that the parent company of respondent number 3 are under severe financial stress. Further, it has been widely reported that the covert 19 pandemics has adversely affected respondent number 3 and the parent company. It is essential to highlight that the parent company has extended a corporate guarantee which serves as one of the primary sources of funding for the proposed acquisition by respondent number 3.***

b. *The Appellant had been participating in the corporate insolvency resolution process of the corporate debtor, and further, the COC of the corporate debtor received the revised resolution plan of the Appellant on 18th February 2020, having an enhanced value, which was also better than that offered by respondent number 3. However, since the voting process for the resolution plan of the corporate debtor had already commenced, COC was unable to consider the revised resolution plan submitted by the Appellant. Further, it is hereby acknowledged that the revised resolution plan submitted by the Appellant was within the prescribed insolvency resolution period of 270 days. However, the COC hereby submits that since corporate insolvency resolution process was scheduled to be completed on 19th February, 2020, the COC did not have sufficient opportunity to consider that the specific details of the revised resolution plan submitted by the Appellant. The*

Appellant has been before the Adjudicating Authority prior to the Respondent number 3 being approved by the corporate debtor.

c. The COC submits that should this Hon'ble Appellate Tribunal granted additional time for the completion of the corporate insolvency resolution of the corporate debtor, then the COC would be in a position to evaluate the proposal submitted by the Appellant and could finalise a resolution plan that would serve to maximise the commercial interest of all the stakeholders of the corporate debtor. The COC submits itself to guidance and direction is before the Hon'ble appellate tribunal.

d. The COC submits that it is committed to ensuring the maximisation of the interests of the corporate debtor. However, it is pertinent to highlight that there has already been a delay of almost 13 months since the resolution plan of respondent number 3 was placed before the COC for their approval and over four months from the last hearing before this Adjudicating Authority.

e. The COC humbly submits that time is the essence the provision of corporate insolvency resolution of the corporate debtor, such that the interest of all the stakeholders is maximised."

(verbatim copy)

39. In the instant case, the COC has approved the Resolution Plan, pending adjudication before the Adjudicating Authority u/s 31 of the Insolvency and Bankruptcy Code 2016. After approval of the Resolution Plan by the COC Affidavit is filed on behalf of the COC wherein it is stated that since the Corporate Insolvency Resolution Process was scheduled to be completed on

19th February 2020, the COC did not have sufficient opportunity to consider the specific details of the revised Resolution Plan submitted by the Appellant. Therefore, if further additional time for completion of the Corporate Insolvency Resolution Process of the Corporate Debtor is provided, then the COC would be in a position to review both the Resolution Plans submitted by the Appellant and Respondent No. 3 and under its commercial wisdom, then finalise the Resolution Plan that would serve to maximise the commercial interests of the Corporate Debtor.

40. It is essential to mention that the validity of the actions of the CoC depends on the approval by the requisite percentage of voting share in support of that action. Section 28 of the Insolvency and Bankruptcy Code 2016 provides the required percentage of vote share for approval by the Committee of Creditors. For example, approval of Resolution Plan under Section 30 (4) mandates 66% of the voting share of the Financial Creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in Sub-section (1) of Section 53, including the priority in value of the security interest of a secured creditor and such other requirements as may be prescribed by the Board. In addition, proviso to Sub-section (4) of Section 30 provides that COC shall not approve the Resolution Plan where the Resolution Applicant is ineligible under Section 29 A of the Code.

41. It is pertinent to mention that the third proviso to Sub-section (4) to Section 30 further provides that nothing in the second proviso shall be

construed as an extension of the period under the proviso to Sub-section (3) of Section 12. The Corporate Insolvency Resolution Process shall be completed within the period specified in the said section. Further, second proviso to Sub-section (4) provides that where the Resolution Applicant referred to in the first proviso is ineligible under Sub-clause (c) of Section 29 A, the Resolution Applicant shall be allowed by the COC such period, not exceeding 30 days, to make payment of overdue amounts under the proviso to Clause (c) of Section 29 A.

42. Thus it is clear that in case of ineligibility of Resolution Applicant under proviso to Clause (c) of Section 29 A the Insolvency and Bankruptcy Code, the COC is entitled to grant 30 days to make payment of overdue amounts. Still, these 30 days shall not be construed as an extension of the period for the proviso to Sub-section 3 of Section 12 for completion of CIRP.

43. It is pertinent to mention that neither Insolvency and Bankruptcy Code 2016 nor the Regulations made thereunder empowers the COC to get a second chance to review earlier approval and additional time for another Resolution Plan. In the instant case, the time limit for completion of the Insolvency Resolution Process as provided under Section 12 of the Code has already expired. Proviso to Sub-section (3) of Section 12 provides that extension of the period of CIRP under this section shall not be granted more than once. In this case, the extended period has also expired after the first extension. Therefore, the question of further seeking an extension or granting time does not arise.

44. It is pertinent to mention that Mr S. K. Jha, authorised representative of the COC, has filed the Affidavit dated 6th October 2020 on behalf of COC stating that if further additional time for completion of Corporate Insolvency Resolution Process of the Corporate Debtor is given, then COC would be in a position to review both the Resolution Plan submitted by the Appellant and Respondent No. 3. In its commercial wisdom, it would finalise the Resolution Plan that would serve to maximise the commercial interest of the Corporate Debtor.

45. Hon'ble Supreme Court in case of ***Arcelormittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1 : 2018 SCC OnLine SC 1733 at page 87 has held;***

*"82. Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such Plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time-limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the adjudicating Authority could be entertained **as there is no vested right or fundamental right in the resolution applicant to have its resolution***

plan approved, and as no adjudication has yet taken place."

(Emphasis supplied)

46. Based on the above case law, it is clear that the Unsuccessful Resolution Applicant has no vested right or fundamental right to have its Resolution Plan approved since no adjudication has yet taken place.

47. The submission of Mr S.K. Jha, on behalf of the COC, is without any approval of the Committee of Creditors. Any individual member cannot submit any proposal for and on behalf of the Committee of Creditors without its approval. Therefore, submission by Mr S K Jha, in the capacity of an authorised representative of COC, cannot be treated as valid for want of approval by the Committee of Creditors. In the instant case after approval of the Resolution Plan, COC is a non-existent body. Therefore, any submission on behalf of COC in the capacity of an authorised representative cannot be treated as valid submission of COC.

48. In fact, after the approval of the Resolution Plan by the COC, pending adjudication before Adjudicating Authority, the COC cannot be permitted to take a U-turn from its earlier stand and reverse the decision already taken by it. Indeed, COC exercises its commercial wisdom in approval of the Resolution Plan. However, once the COC completes the exercise of approval of the Resolution Plan, the role of COC comes to an end.

49. Since the statutory time limit for completion of the Corporate Insolvency Resolution Process has already expired, the COC cannot seek additional time

to complete the Corporate Insolvency Resolution Process and review its decision after approval of the Resolution Plan. The position of law is clear that once the Resolution Plan has been approved by COC and it is pending adjudication u/s Section 31 before the Adjudicating Authority, the COC does not contain any power to review its earlier decision to approve the Resolution Plan.

50. It is made clear that that the Appellant's Plan was conditional and is rejected by COC. Therefore, the Appellant has no right to insist that its Plan should be accepted. Under its commercial wisdom, COC has accepted the Resolution Plan of Respondent No. 3 with open eyes regarding developments in the matter of Allied Strips. The decision of COC in approving the Resolution Plan was its commercial decision which needs no interference. Therefore, the Appellant has no locus to question the commercial decision.

51. For the reasons discussed above, the Appeal is not maintainable. Once COC accepts the Resolution Plan, the Adjudicating Authority may consider if it is to be accepted or rejected. The Appellant has no right to stall the proceeding for the approval of the Resolution Plan by challenging commercial decisions of the COC. However, it is to be taken into consideration that the statute is to be workable.

52. Based on the above discussion, we believe that the Appeals sans merit and deserve to be dismissed.

ORDER

The Appeal is dismissed. No order as to costs.

Interim order dated 29th July, 2020 will thus not survive. Adjudicating Authority is requested to urgently decide Application pending under Section 31 of the Insolvency and Bankruptcy Code, 2016.

[V. P. Singh]
Member (Technical)

NEW DELHI
18th August, 2021

pks