

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

Company Appeal (AT) (Insolvency) No. 853 of 2023

[Arising out of the Impugned Order dated 20.04.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Jaipur Bench in IA No.100/JPR/2020 in CP No. (IB)- 44/9/JPR/20194/9/JPR/2019]

In the matter of:

M/S RAJPUTANA CONSTRUCTIONS PVT. LTD

A company incorporated under Companies Act 1956
Through its Director and Authorised Representative,
Mr. Ravindra Tambi
Address: 13, Parivahan Marg,
Civil, Lines, Jaipur, Rajasthan- 302001

...Appellant

Versus

1. M/S RAJASTHAN LAND HOLDINGS LIMITED

A company incorporated under Companies Act 1956
Through its Director
Address: R/o 1st Floor, LIC Jeevan Nidhi Building,
Ambedkar Circle, Bhawani Singh Marg, Jaipur,
Rajasthan- 302021

...Respondent No.1

2. ANURADHA GUPTA

Erstwhile Resolution Professional of
M/s Rajasthan Land Holdings Limited
Address: E-194, Ambabari, Vidhyadhar Nagar,
Jaipur, Rajasthan-302039

...Respondent No.2

3. IL&FS TRANSPORTATION NETWORKS LIMITED

A company incorporated under Companies Act 1956
Through its Director
Address: The IL&FS Financial Centre, Plot C-22,
G Block, Bandra Kurla Complex, Bandra East,
Mumbai- 400051

...Respondent No.3

4. HI-LINE BUILDCON INDIA PRIVATE LIMITED

A company incorporated under Companies Act 1956
Through its Director
Address: 13, Parivahan Marg, Civil, Lines,
Jaipur, Rajasthan- 302001

...Respondent No.4

5. BHANDARI & CO.

Through its Authorised Representative
Address: P-7, Tilak Marg, C-Scheme, Jaipur,
Rajasthan-302001

...Respondent No.5

Present:

For Appellant : Mr. Kshitij Mittal, Mr. Abhyuday Singh, Advocates.

For Respondent : Mr. Rishabh Parikh, Ms. Niyati Kohli, Advocates for R-1.
Mr. Raunak Dhillon, Ms. Isha Malik, Mr. Nihaad Dewan,
Mr. Anchit Jasuja, Mr. Vikash Kumar Jha, Advocates for R-3 (ITNL).

WITH
Company Appeal (AT) (Insolvency) No. 785 of 2023

[Arising out of the Impugned Order dated 20.04.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Jaipur Bench in IA No.100/JPR/2020 & CP No. (IB)- 44/9/JPR/2019]

In the matter of:

ANURADHA GUPTA,
ERSTWHILE RP OF
M/s. Rajasthan Land Holdings Limited,
R/O E-194, Amba Bari, Jaipur-302039,
Rajasthan

...Appellant

Versus

1. M/S. RAJPUTANA CONSTRUCTIONS PVT. LTD.,
R/o 13, Parivahan Marg, Civil Lines,
Jaipur, Rajasthan- 302001.

...Respondent No.1

2. M/S. HI LINE BUILDCON (INDIA) PVT. LTD.,
R/o 13, Parivahan Marg, Civil Lines,
Jaipur, Rajasthan- 302001.

...Respondent No.2

3. M/s S. BHANDARI & CO.,
R/o P-7, Tilak Marg, C Scheme,
Jaipur-302005

...Respondent No.3

4. IL&FS TRANSPORTATION NETWORKS LIMITED,
R/o THE IL&FS Financial Centre, Plot C-22,
G Block, Bandra, Kurla Complex, Bandra East,
Mumbai-400051

...Respondent No.4

Present:

For Appellant : Mr. Yash Tandon, Advocate.

For Respondent : Mr. Rishabh Parikh, Ms. Niyati Kohli, Advocates.

Mr. Raunak Dhillon, Ms. Isha Malik, Mr. Nihaad Dewan,
Mr. Anchit Jasuja, Mr. Vikash Kumar Jha, Advocates for R-
4 (ITNL).

J U D G M E N T **(Hybrid Mode)**

Per: Barun Mitra, Member (Technical)

The present set of two appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellants arises out of a common Order dated 20.04.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in IA No. 100/JPR/2020 in CP No. (IB)- 44/9/JPR/2019. By the impugned order, the Adjudicating Authority has terminated the Corporate Insolvency Resolution Process (**"CIRP"** in short) of the Corporate Debtor and reduced the fees and remuneration payable to the erstwhile Resolution Professional (**"RP"** in short). Aggrieved by the impugned order, Company Appeal No. 853 of 2023 has been preferred by the Operational Creditor and Company Appeal No. 785 of 2023 has been filed by the RP.

2. Coming to the factual matrix of both the cases at hand, the sequence of events and facts which are relevant for deciding the two appeals are as outlined below:

- The Corporate Debtor-M/s Rajasthan Land Holdings Ltd. (**"RLHL"** in short) was a wholly owned subsidiary of M/s Road Infrastructure Development Company of Rajasthan (**"RIDCOR"** in short) which was a JV

between IL&FS Transportation Networks Ltd. (**"ITNL"** in short) and the Government of Rajasthan. ITNL had bought the shareholding of the Corporate Debtor from RIDCOR in 2016 which was purportedly transferred to a subsidiary of IL&FS Company Pario Developers Pvt. Ltd. (**"Pario"** in short) vide Share Purchase Agreement dated 30.06.2017.

- The Corporate Debtor was admitted into the rigours of Corporate Insolvency Resolution Process (**"CIRP"** in short) on 24.09.2019 basis a Section 9 petition filed by the Operational Creditor-M/s Rajputana Constructions Pvt. Ltd. (**"RCPL"** in short).
- The RP constituted the Committee of Creditors (**"CoC"** in short) on 24.10.2019. The CoC comprised only of three Operational Creditors of which the RCPL had a vote share of 89.54% with an admitted claim of Rs 23,97,086/- only. The other two Operational Creditors on the CoC were M/s. HI Line Buildcon Pvt. Ltd. and S. Bhandari & Co. with a claim of Rs 2,20,876/- and Rs 59,000/- respectively. The aggregate admitted claim of the three Operational Creditors was Rs 26,76,962/-.
- The first CoC meeting held on 24.10.2019 had fixed the fee of the RP at Rs 1,00,000/- per month which was later increased to Rs 2,00,000/- per month following a decision taken in the fourth CoC meeting held on 20.03.2020. Subsequently on 11.11.2021, the Adjudicating Authority put a cap on the fees of the RP at Rs 1,00,000/- per month.
- ITNL had preferred a claim of Rs 181 Cr. on 24.12.2019 which was treated as "related-party" financial debt by the RP. The ITNL filed IA No. 100 of 2020 on 02.03.2020 before the Adjudicating Authority challenging the

decision of the RP to classify them as a “related-party” in their quest for a seat on CoC.

- On 05.08.2020, the Adjudicating Authority stayed the continuation of CIRP by its interim order on IA No. 100 of 2020 which stay continued until 16.03.2021.
- On 16.03.2021, the Adjudicating Authority had directed the CIRP of the Corporate Debtor to continue under the guidance of Justice (Retd.) D.K. Jain as he was looking after the CIRP process of IL&FS group entity. However as Justice (Retd.) D.K. Jain recused from the said proposal on 24.04.2021, ITNL filed IA No. 374 of 2021 seeking restoration of IA No. 100 of 2020.
- On 26.07.2021, RP filed IA No. 197 of 2021 under Section 66 and 67 of the IBC with regard to fraudulent transaction by the ITNL.
- On 11.11.2021, the Adjudicating Authority capped the fees of RP to Rs 1,00,000/- per month and sought justification for enhanced fees of Rs 2,00,000/- per month.
- On 29.08.2022, IA 100 of 2020 of the ITNL was restored by the Adjudicating Authority.
- On 08.12.2022, the Adjudicating Authority directed the parties to explore the possibility of amicable settlement and on 16.01.2023 directed the RP to convene a meeting of the CoC along with the ITNL for this purpose. RCPL did not attend the meeting of the CoC convened for this purpose. In compliance of the order of 16.01.2023, the RP had convened a meeting of CoC on 23.01.2023 which had to be deferred due to absence of quorum.

The Adjudicating Authority on 24.01.2023 again directed CoC meeting to

be held on 25.01.2023. The meeting on 25.01.2023 also could not be convened because Appellant had requested for rescheduling of the meeting on the grounds of personal exigency. The seventh CoC meeting was eventually convened on 01.02.2023. During the seventh CoC meeting held on 01.02.2023, the RCPL objected to the proposal of the ITNL despite the offer of the three Operational Creditors in CoC being paid 100% of their dues. Since the RCPL with 89.54% vote share had objected, the RP concluded that the settlement offer will not be considered by the CoC and that the offer of ITNL stood rejected.

- On 20.04.2023, the Adjudicating Authority passed the impugned order terminating the CIRP after noting the malafide conduct of the CoC. The impugned order, inter-alia, reduced the fees of the RP to Rs 50,000/- per month after noting that RP had continued with CIRP when there was no need for conducting the CIRP.
- Aggrieved with the impugned order, the two appeals have been filed. Company Appeal No. 853 of 2023 has been filed by the RCPL assailing the impugned order on the grounds that CIRP of the Corporate Debtor had been erroneously terminated. Company Appeal No. 785 of 2023 has been filed by the erstwhile RP seeking expunction of alleged unwarranted remarks contained in the impugned order on the conduct and performance of RP as well as for reduction of their fees.

3. Since the facts and issues are closely intertwined, we would like to consider dealing with both the appeals together. Further, since the contentions of the Corporate Debtor and ITNL largely overlap, we would like to capture their

submissions conjointly. Similarly, we would like to club together the submissions made on behalf of RCPL, RP and the two other members of CoC.

4. Making their submissions, the Ld. Counsel for RCPL and RP assailing the impugned order contended that RCPL had validly initiated Section 9 application against the Corporate Debtor for an outstanding operational debt of Rs 23.97 lakhs which debt was never disputed by the Corporate Debtor. It is contended by RCPL that even when a notice had been issued by them on 11.01.2019 prior to filing of the Section 9 application seeking payment of the outstanding amount, the Corporate Debtor did not come forward offering to make good the outstanding payment. Post the filing of Section 9 application also, the Corporate Debtor did not make any expression of their intent, willingness or ability to repay the operational debt before the Adjudicating Authority. As regards the role of ITNL, it has been submitted by RCPL that after the admission of the Section 9 application, the ITNL which was a group company of IL&FS submitted a claim of Rs 181.34 Cr. before the RP on 20.12.2019 towards the loan given by it to the Corporate Debtor. The RP acting fairly and transparently had admitted the claim of ITNL as Financial Creditor but did not admit them into the CoC by holding them to be a “related-party”, which fact was also communicated to ITNL on 06.02.2020. ITNL however filed IA No. 100 of 2020 disputing their ‘related-party’ status thus stalling resolution efforts of the Corporate Debtor for over three years. It is thus asserted that though the Corporate Debtor was admitted into CIRP on 24.09.2019, the CIRP proceedings dragged on for many long years not on their insistence but because of ITNL which was trying to position itself on the CoC by filing a claim of Rs 181.34 Cr. It was emphatically asserted that at the stage when the claim of ITNL was admitted, the cash balance lying with the

Corporate Debtor was insufficient to meet the ITNLs claim of Rs 181.61 Cr. coupled with the claims of the three Operational Creditors. It was contended by RCPL that as a member of CoC it was responsible for overseeing the interest of all creditors as well as the interest of the Corporate Debtor. Hence, it could not have utilized the funds of the Corporate Debtor for serving its own interests of clearing its own dues from the account of Corporate Debtor which was already under moratorium. It was therefore misconceived on the part of the Adjudicating Authority to hold that the RP and CoC had not taken steps to refund the claims admitted by RP in respect of CoC. Assailing the impugned order, it was contended that the Adjudicating Authority had not only erroneously terminated the CIRP of the Corporate Debtor but also wrongly attributed malafide intent on them. It was also asserted by the RP that on having unearthed certain fraudulent transactions between ITNL, Corporate Debtor and a third party, namely, Kaleidoscope Developers Pvt. Ltd. they filed IA No 197 of 2021 on 26.07.2021 under Sections 66 and 67 of IBC for fraudulent transaction.

5. The Ld. Counsel for the RP further submitted that that the RP cannot be held responsible for prolongation of the CIRP. The delay was caused because ITNL kept on litigating for having a seat in the CoC for which purpose it had filed IA No. 100 of 2020. It was contended that ITNL was the controlling and related party of the Corporate Debtor. It was controlling the Corporate Debtor through Pario under a Share Purchase Agreement besides the fact that key managerial persons of ITNL were also serving as directors of the Corporate Debtor. Since the ITNL was a related party in terms of Section 5(24) of IBC, they were not entitled to claim a seat in the CoC in terms of Section 21 of the IBC. Yet the ITNL had continued to pursue their IA for securing a seat in the CoC. Countering the

contention that the RP did not take adequate steps to repay the admitted claims, it was submitted that the bank account had merely 3 Cr. at the time of CIRP initiation. Though this amount had later increased to Rs 7 Cr., this sum still fell short of the admitted claim of Rs 181 Cr. of the Operational Creditors and ITNL. Hence, when the CoC and RP was faced with a claim amount which far exceeded the amount available in the account of the Corporate Debtor, it could not have paid off only the Operational Creditors. Further, since no proposal for any settlement or withdrawal under Section 12-A was received from the suspended management of the Corporate Debtor, the RP was bound by moratorium and could not have suo moto paid off the Operational Creditors while ignoring the financial debt of more than Rs 181 Cr. claimed by ITNL. On the issue of their fees and remuneration, it was submitted that remuneration of Rs 1,00,000/- per month had been confirmed by the CoC in their first meeting held on 24.10.2020. However, as the claim amount of the creditors touched a figure of more than Rs 181 Cr., the CoC in its fourth meeting held on 20.03.2020 agreed to enhance the remuneration of the RP from Rs 1,00,000/- to Rs 2,00,000/- per month. It was further contended that Regulation 34-B of the CIRP Regulations prescribed minimum fees of Rs 2,00,000/- per month for RP under Schedule-II and hence their claim for the same fees was justifiable. Though the RP was performing his duties diligently throughout the CIRP process including keeping the Corporate Debtor as a going concern even when CIRP was put on hold, the reduction in fees to Rs 50,000/- per month by the Adjudicating Authority is reflective of punitive action on the RP which has caused prejudice to the reputation of the RP. It was vehemently contended that certain unwarranted and unsubstantiated

observations have been made against the RP by the Adjudicating Authority which deserved to be expunged.

6. Refuting the contentions of the CoC and the RP, it has been submitted by Corporate Debtor and ITNL that the CoC and RP had colluded to continue on with the CIRP of the Corporate Debtor for a period of four and half years at a time when the Corporate Debtor had ample funds right from the point of inception of CIRP to repay the meagre outstanding debt of the CoC members amounting Rs 26.76 lakhs. It was contended that the Adjudicating Authority had correctly noticed that RCPL and two other Operational Creditors had been offered repayment of the entire dues in the seventh CoC meeting, however, RCPL instead of taking its dues from the RP misused its dominant position in the CoC to insist on continuing with the CIRP of the Corporate Debtor. There are no convincing grounds offered by RCPL as to why they were unwilling to accept the 100% of due payable to it. It therefore becomes clear that RCPL has been harbouring some ulterior and oblique motive to carry on the CIRP proceedings. The refusal on the part of the Operational Creditors to accept their entire operational debt shows that they were not interested in the insolvency resolution of the Corporate Debtor but wanted to subject the Corporate Debtor to CIRP proceedings clearly with some other hidden agenda. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. Vs UoI (2019) 4 SCC 17*** in support of their contention that if the CoC arbitrarily rejects a just settlement, the Adjudicating Authority as well as the Appellate Authority can always set aside such decision. As regards the conduct of CIRP by the RP it was pointed out that as against the debt of CoC of Rs 26 lakhs, the fees of RP was disproportionately high as it far exceeded the total admitted debt of the CoC.

CIRP was continued despite CIRP costs touching Rs 73 lakhs which was thrice the size of the total admitted debt of CoC which all goes to show that the RP had continued the CIRP in collusion with CoC to ensure higher billings. The RP had thus continued the CIRP for a period of four and a half years with hefty fees and inflated CIRP costs. On the conduct of the RP, it was asserted that instead of putting a lid on the ongoing CIRP process by paying off the three Operational Creditors who were the only members of the CoC, the RP in collusion with the CoC had meaninglessly lingered on with the CIRP proceedings and in the process incurred an exorbitant expenditure of Rs 73.31 lakhs towards CIRP cost.

7. We have duly considered the arguments advanced by the Learned Counsel for all the parties and perused the records carefully.

8. The short question which is required to be answered is whether the decision of the CoC to decline the proposal for acceptance of their admitted dues and close the CIRP proceedings is justified and whether the purported role of the RP in dragging on with the CIRP proceedings and in the process incurring an exorbitant expenditure towards CIRP cost was arbitrary and unsustainable.

9. It is the case of the CoC and RP that on the recusal of Justice (Retd) D.K. Jain from conducting the insolvency of the Corporate Debtor, it was the ITNL which had once again sought revival of IA 100 of 2020 which led to prolongation of the CIRP proceedings. The IA No. 100 of 2020 was revived on 29.08.2022 and the matter was heard on several occasions. Thus, the conduct of insolvency resolution proceedings of the Corporate Debtor was delayed by almost three to four years because of ITNL unabatedly litigating for their inclusion in the CoC. Thus, when the delay was neither on account of the RP or the CoC, the finding of Adjudicating Authority imputing malafide motives on the RP and the CoC for

unnecessarily stretching on with CIRP was contrary to the fact on record and therefore unsustainable. Furthermore, once the CoC had refused to accept the settlement proposed by ITNL, the Adjudicating Authority could not have reviewed the business decision of the CoC and superimposed a settlement on the CoC. It has been contended that the Adjudicating Authority had rejected the reasoning given by the CoC in rejecting the settlement offer merely by recording a cryptic observation that the objections were irrelevant without proper substantiation. It was asserted that the Adjudicating Authority could not have substituted their own wisdom for the commercial wisdom of the CoC.

10. When we look at the sequence of events, we notice that ITNL had staked a claim of Rs 181 Cr. on 24.12.2019 which was treated as “related-party” financial debt by the RP. The ITNL thereafter filed IA No. 100 of 2020 on 02.03.2020 before the Adjudicating Authority challenging the decision of the RP to classify them as a “related-party”. Consequent upon filing IA No. 100 of 2020 by ITNL, the Adjudicating Authority on 05.08.2020 had passed interim order directing the RP not to proceed with the CIRP of the Corporate Debtor. In its subsequent order dated 16.03.2021, the Adjudicating Authority observed that the RP had proceeded with the resolution with the Corporate Debtor overlooking some of the major developments that were happening with respect to group insolvency process of IL&FS and its group companies under Section 241 and 242 of the Companies Act. Keeping in view that the present matter also fell under the Group Resolution Approach as had been approved by this Appellate Tribunal, the Adjudicating Authority directed that the resolution of the present Corporate Debtor be carried out under the supervision of Justice (Retd.) D.K. Jain. The Adjudicating Authority had also directed the RP to forward all

records/documents relating to the conduct of the resolution process of the Corporate Debtor to Justice (Retd.) D.K. Jain. Pursuant to the recusal of Justice (Retd.) D.K. Jain vide letter dated 24.04.2021 in handling the resolution process of the Corporate Debtor, the ITNL once again sought revival of IA No. 100/2020 which was restored on 29.08.2022.

11. When the matter was being heard by the Adjudicating Authority with regard to IA No. 100/2020, the ITNL had submitted a proposal that if the entire claims of the Operational Creditors was settled and the Operational Creditors filed an application for withdrawal of CIRP, in that eventuality, ITNL would also not claim any amount against the Corporate Debtor. While the proceedings in respect of IA No. 100 of 2020 had commenced, it was noticed by the Adjudicating Authority that a substantial amount of approximately Rs 7 Cr. was lying in the account of the Corporate Debtor which was far in excess of the aggregate claim of Rs 26.76 lakhs of the three Operational Creditors who constituted the CoC. The Adjudicating Authority, therefore, directed the RP twice on 16.01.2023 and 24.01.2023 to convene a meeting of the CoC in which all members of CoC as well as ITNL would remain present wherein if the claim of the three Operational Creditors could be settled, an appropriate application for withdrawal of IA No. 100 of 2024 would be filed by ITNL. The order of the Adjudicating Authority on 16.01.2023 also recorded the submission made by ITNL that if the claim of the Operational Creditors was settled and the application for withdrawal of the Section 9 application was filed by the Appellant, ITNL would not claim any amount in the CIRP.

12. In pursuance of the order of the Adjudicating Authority on 16.01.2023 and 24.01.2023 two meetings of the CoC were scheduled on 23.01.2023 and 25.01.2023 but could not be held. Eventually the CoC met on 01.02.2023. During this seventh CoC meeting, RCPL conveyed that they would like to refrain from accepting this offer of ITNL. The objections were primarily on the grounds that that the unilateral settlement proposal of ITNL was without the approval and permission from Justice (Retd.) D.K. Jain; that ITNL was not an aggrieved party and did not have locus to offer a settlement; that by way of this unlawful settlement ITNL was seeking closure of the CIRP; the proposal of ITNL was based on utilization of the amount lying in the bank account of the Corporate Debtor which was violative of Section 14 of the IBC; that the Corporate Debtor had indulged in fraudulent and suspicious circular transactions with various related entity of IL&FS group which was under investigation; that ITNL did not follow the process of Section 12-A of IBC in offering the settlement proposal and that IA No. 100 of 2020 had been filed to delay the CIRP of the Corporate Debtor thereby burdening the Corporate Debtor with hefty CIRP expenses besides diminishing the assets of Corporate Debtor. Since the RCPL which had a voting share of 89.54% had specifically refrained from the settlement offer, the RP took the view that there was no point to conduct voting on the proposal of ITNL.

13. From the deliberations of the seventh CoC meeting, it becomes clear that RCPL has only raised doubts and questions on ITNL's locus and standing with respect to the settlement proposal but cleverly skirted to address the more relevant and pertinent question as to why the Operational Creditors were unwilling to claim their dues when it was being fully repaid. When sufficient fund was already available with the Corporate Debtor to liquidate the debt of the

Corporate Debtor, we see no cogent reasons offered by the Operational Creditors in declining to accept their entire admitted claim and closing the CIRP. We find that the Adjudicating Authority has relied on the judgment of Hon'ble Supreme Court in the matter of ***E.S. Krishnamurthy Vs Bharath Hi-Tech Builders (P) Ltd. (2022) 3 SCC 161*** wherein it has been clearly held that ultimate purpose of IBC is to facilitate insolvency resolution so as to put the Corporate Debtor back on its feet so as to ensure revival and continuance of the Corporate Debtor. The relevant excerpts of the impugned order are as reproduced hereunder:

“21. It has been time and again held in various judgments that the primary focus of IBC is to ensure revival and continuance of the Corporate Debtor. The Code is a beneficial legislation which aims to put the Corporate Debtor back on its feet and not a mere recovery legislation. The Hon'ble Supreme Court in the matter of E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd., (2022) 3 SCC 161 has held the following:

“35. Undoubtedly, settlements have to be encouraged because the ultimate purpose of IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of IBC is to facilitate insolvency resolution “in a time-bound manner” for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders.”

14. The Adjudicating Authority after having noticed that the Corporate Debtor had sufficient capital/liquidity to meet its debt, went ahead and observed that the CoC and RP should not have gone forward with the CIRP of the Corporate Debtor. The Corporate Debtor had cash balance of Rs 3,68,22,145.11/- on the CIRP admission date which was sufficient to settle the operational debt raised by the Operational Creditor. Further significant resolution proceeds had also been received by the Corporate Debtor in the CIRP of a sister entity of the Corporate Debtor namely Flamingo Landbase Pvt Ltd which was also initiated

and controlled by the RCPL. At a time when there was Rs 7 Cr. in the bank account of the Corporate Debtor while the total claim of the Operational Creditors was merely Rs. 26 lakhs, there was no reason for continuing on with the CIRP proceeding. When 100% of the admitted debt of the CoC was being satisfied and yet not being accepted by CoC members, we find that the Adjudicating Authority had not committed any mistake in inferring that there was some other hidden motive on the part of the Operational Creditors to continue with the CIRP.

15. The Adjudicating Authority has also rightly adverted attention to inherent powers of the Adjudicating Authority as conferred under Rule 11 of NCLT Rules, 2016 whereby inherent powers can be exercised by the Adjudicating Authority to make orders for meeting the ends of justice to prevent abuse of the process of the tribunal. At this stage it may be useful to notice that the Adjudicating Authority has passed a well-reasoned, comprehensive and detailed impugned order which is as reproduced below:

“25. We find no reason why the Operational Creditors have not claimed their dues. It is a clear case of some hidden motives and misuse of IBC and apparently gives rise to the suspicion of understanding among certain parties to continue the CIRP for some oblique purpose and till the amount lying in the account of the CD is exhausted as the CoC is not bearing the CIRP expenses.

26. It is apposite to refer to Rule 11 of NCLT Rules, 2016 in the present matter.

“11. Inherent Powers.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

28. Section 60(5) gives power to this forum to exercise residuary jurisdiction in matters pertaining to the CIRP of the Corporate Debtor. Moreover, the Hon’ble Supreme Court in the matter of Vallal RCK v. Siva Industries &

Holdings Ltd., (2022) 9 SCC 803 has while relying on the judgment of Swiss Ribbons (P) Ltd. Vs. Union of India; (2019) 4 SCC 17 observed the following:

“20. It could thus be seen that this Court has found that if the CoC arbitrarily rejects a just settlement and/or withdrawal claim, the learned NCLT and thereafter the learned NCLAT can always set aside such decision under the provisions of IBC.

24. When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules.”

29. The CoC members and the Operational Creditor namely, M/s Rajputana Constructions Pvt Ltd. holding 90% of voting share, present in court were asked to clarify the reason for not accepting their dues to be paid immediately. No satisfactory reply was received on their behalf and procedural issues with regard to the filing of the application for withdrawal of CIRP were raised. The reasons given by the Operational Creditor for not accepting the claim does not hold any practical logical ground. In the circumstances as outlined, the question of fine analysis of any question of related parties becomes redundant.

30. It is pertinent to mention that an Application was filed under Section 9 of the Code by the same Operational Creditor namely, M/s Rajputana Constructions Pvt Ltd. against M/s Flamingo Landbase Pvt Ltd., which is a related party to this Corporate Debtor. A credit of Rs 3.29 crore was received by the Corporate Debtor herein namely, M/s Rajasthan Land Holdings Ltd., from the leftover amount of the Resolution Plan of M/s Flamingo Landbase Pvt Ltd., on the same day, in petition numbered as CP No.(IB)-45/9/JPR/2019 i.e. the next number of this petition and the present Operational Creditor was holding almost 100% of voting right in the CoC of M/s Flamingo Landbase Pvt. Ltd. with a claim amount of appx Rs 1.07 crore. In that case also the land was available and this OC has got its full amount. This fact was only revealed when the clarification during hearing was sought regarding the increase of the cash available in the CD's account during CIRP proceedings by around Rs 3.3 Crores. Now this OC here is not taking its dues here from the RP perhaps with intention to orchestrate and go for resolution, or sell the property, as per its decision

since it is holding approx. 90% of voting in CoC. This intent of the OC appears to be malicious.”

16. It is well settled that IBC is a beneficial legislation intending to bring back the Corporate Debtor on its feet without letting the value of the assets of the Corporate Debtor suffer a beating. Hence CIRP proceedings against the Corporate Debtor, when pursued coercively or mindlessly, it becomes violative of the quintessential spirit of the insolvency resolution framework. In the present facts of the case, when the Corporate Debtor had sufficient finances in its kitty and was indubitably in a position to wipe off and repay the operational debt qua the three Operational Creditors who are the only members of the CoC and full liability was proposed to be discharged, there seems to have been no rational basis for the Operational Creditors to decline from accepting their outstanding dues. What comes to notice is stubborn reluctance on the part of CoC members to accept the repayment of the operational debt, making it clear that the three Operational Creditors who constituted the CoC were trying to scuttle the resolution of the Corporate Debtor and more interested in pushing the Corporate Debtor into insolvency rather than salvaging the Corporate Debtor from the perils of corporate death. The RCPL with majority stake in the CoC has been trying to take undue advantage of the situation and was being actuated by some other ulterior and dubious motives which had nothing to do with insolvency resolution. This amounts to misuse and abuse of the provisions of IBC. Based on the totality of circumstances, we are convinced that the intent behind continuing of the CIRP proceedings by the Operational Creditor was clearly for reasons other than insolvency resolution.

17. This now brings us to the second related question whether the RP was working in collusion with RCPL and CoC in dragging on with the CIRP proceedings and in the process charging hefty fees and ballooning the CIRP costs.

18. It is the case of the RP that it had no role to play in the delay with regard to the CIRP proceedings of the Corporate Debtor. It was submitted that ITNL had been litigating for a seat on the CoC for more than three years without ever making a proposal to withdraw its claim. Only when ITNL realised that it would not be able to manage a place in the CoC that it floated a proposal relating to withdrawal of its claim and termination of CIRP by paying off the Operational Creditors. In any case the RP could not have proposed for any settlement between the parties as that was not the mandate of the RP under IBC. Moreover, when a Section 66 application was pending against ITNL wherein serious allegations had been raised against ITNL to be a conspirator in the fraudulent and circular transactions duly backed by a report from Independent Transaction Auditors, the settlement offer of ITNL could not have been accepted. It was further emphasised that as RP, she performed all statutory duties, obligations and compliance towards the proper management of the Corporate Debtor. Summarising the various efforts undertaken by the RP in person and through other professionals appointed during the CIRP period, it was pointed out that they had secured income tax refund of Rs 91.92 lakhs for AY 2018-19 and Rs 6.34 lakhs for AY 2015-16 which helped in increasing the bank balance of the Corporate Debtor from Rs 3 cr to Rs 7 cr approximately. The RP took several other steps including contesting the tax assessment of the Corporate Debtor, pursuing the recovery of Rs 48 Cr in fraudulent transactions, work towards

reviving struck-off subsidiaries under Section 248 of the Companies Act besides protecting the assets of the Corporate Debtor from legal proceedings. All these tasks were carried out inspite of non-cooperation from the Corporate Debtor which compelled the RP to file IA Nos. 38 of 2020 and 359 of 2020 under Section 19 of the IBC. The RP has been filing all minutes of meetings and timely progress reports of CIRP to the Adjudicating Authority.

19. Per contra, ITNL has contended that the RP had conducted CIRP in a malafide manner in collusion with CoC members. It is contended that the Adjudicating Authority had correctly arrived at their categorical finding on the malicious conduct of the RP and failure on her part to have performed the duties in a diligent manner. The RP did not inform the Adjudicating Authority that Corporate Debtor has sufficient funds to discharge the admitted claims of the CoC. There was no reason for continuation of CIRP of the Corporate Debtor by the RP when there was sufficient cash balance. It was contended that during the entire three and half years of CIRP proceedings from 24.09.2019 till 20.04.2023, only seven CoC meetings were held. Further listing out the non-compliance and failure to discharge duties by the RP, it was stated that the RP had failed to file annual returns of the Corporate Debtor with RoC for FY 2018-19 to FY 2022-23. It had also failed to prepare and approve the financial statements of the Corporate Debtor for FY 2018-23 which all amounted to violation of Sections 92, 134 and 137 of the Companies Act, 2013. The RP had also failed to hold AGM of the Corporate Debtor during the CIRP; failed to file income tax returns since 2018-19 and to undertake routine compliances such as filing Form DPT-3 and MSME Forms. The RP had also failed to comply with GST compliances in due time.

20. We do not feel it necessary to delve into the rival submissions made with regard to the nitty-gritty of obligations discharged by the RP in the CIRP proceedings. What needs to be seen is whether the RP who is supposed to run the Corporate Debtor as a prudent business person by preserving the all-round interests of all stakeholders lived up to that role appropriately without any arbitrary personal gain. It is an undisputed fact that for an admitted debt of Rs 26 lakhs, the CIRP was allowed to drag on for a four and half years. In contrast to a paltry sum of Rs 26 lakhs of admitted debt, the CIRP cost had inflated to Rs 73 lakhs which was three times the admitted debt of the CoC which on the face of it shows that the Corporate Debtor was burdened with unnecessary and exorbitant expenditure. The CIRP cost had clearly mounted on account of the fees of the RP which was increased from Rs 1,00,000/- to Rs 2,00,000/- per month in the fourth CoC meeting held on 20.03.2020. We also find that the RP had continued to charge fees even when the CIRP had remained stayed from 05.08.2020 to 16.03.2021. The Adjudicating Authority had also relied on the judgment of this Tribunal in ***Indus Ind Bank Ltd. Vs Rajendra K Bhuta in CA(AT)(Ins.) No. 177 of 2022*** wherein it was held that the fee of RP cannot be charged for the duration of a stay on CIRP. We are also inclined to agree with the Adjudicating Authority that the RP had unlawfully charged fees of Rs 7,09,090/- for CIRP stay period from 05.08.2020 to 16.03.2021 which was a period of 7 months and 11 days. This misconduct of the RP is also validated by the fact that the RP had himself filed IA No. 129 of 2021 before the Adjudicating Authority seeking exclusion of the stay period of 7 month and 11 days for the purpose of computation of the duration of CIRP. That being the case, submission of bill for fees by the RP could not have been raised for this period when CIRP stood stayed.

It is also been contended by ITNL that Schedule-II which was added to CIRP Regulation 34(B) was applicable to fee of RP for CIRP which was initiated after 01.10.2022 while in the present case the CIRP was initiated on 24.09.2019, hence no reliance could have been placed on Schedule-II of the CIRP Regulations. Seen together it lends force to the contention that the RP has continued the CIRP of the Corporate Debtor just to ensure higher billing inspite of sufficient capital/liquidity being available with the Corporate Debtor to meet its debts. While reducing the remuneration payable to the RP to Rs 50,000/- per month from 24.01.2019 to 19.04.2023, the Adjudicating Authority had done so after noting that there was no need for CIRP of the Corporate Debtor to continue since the Corporate Debtor had sufficient funds to discharge the admitted claim of the CoC. We are of the considered view that the impugned order had not committed any infirmity in directing that RP was to receive only remuneration of Rs 50,000/- per month totalling Rs 21.45 lakhs besides directing the refund of the excess amount of remuneration paid to the RP.

21. Besides the fact that CIRP cost have far exceeded the admitted debt of CoC, in the present case, the entire CIRP expenses was being met by utilising the funds of Corporate Debtor without reimbursement by the CoC which was not in conformity with the terms of Regulation 33 and 34 of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. It is anomalous and paradoxical that while the CoC was paying the CIRP cost from the resources of the Corporate Debtor, it was reluctant to accept the payment from the Corporate Debtor towards the admitted dues. Hence the order of the Adjudicating Authority is a well-reasoned order directing the CoC members to pay the CIRP cost proportionately. This does lend credence to the contention of the Respondents

that there was a calculated strategy on the part of the RCPL as the dominant member of the CoC to retain control over the Corporate Debtor. The Adjudicating Authority has rightly noted that the CIRP was being misused to benefit private interest at the cost of the Corporate Debtor. As the admitted dues of the Operational Creditors when squared off against the liability of proportionate CIRP costs to be borne by the CoC, a balance amount had become recoverable from the CoC and no dues in respect of the admitted claim of the CoC members survived, we are also of the view that the Adjudicating Authority has rightly terminated the CIRP of the Corporate Debtor.

22. In view of the reasons stated above, we find no good grounds to interfere with the impugned order. We find both the Appeals to be devoid of merit. The Appeals are dismissed with no costs.

**[Justice Ashok Bhushan]
Chairperson**

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

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

**Place: New Delhi
Date: 16.05.2025**

Abdul/ Harleen