

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1904 of 2025

[Arising out of the Common Order dated 07.11.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench in New Delhi, Bench-II in IA No. 52 of 2025 in CP(IB) No. 692/ND/2024)]

IN THE MATTER OF:

Mr. Sandeep Lucky, SRA

Proprietor of Sandeep Enterprises
R/o A-105, TDI Ourania Apartments,
Sector 53, Wazirabad, Gurugram,
Haryana- 1220033

...Appellant

Versus

1. Sh. Rajeev Lochan, RP

Resolution Professional of Ritzy
Chemicals Pvt. Ltd.
IBBI Registration No.
IBBI/IPA-002/ IPN00606/2018-2019/1185,
R/o 243, 1st Floor, AGCR Enclave, New Delhi,
National Capital Territory of Delhi - 110092

...Respondent No.1

2. Varsha

D/o Late MK Malhotra
R/o B-342, New Friends Colony,
New Delhi-110025

...Respondent No.2

3. Ritzy Chemicals Pvt. Ltd.

Through its Suspended Director/
Authorised Representative
R/o DTj-132, First Floor, DLF
Tower-B, District Centre,
Jasola, New Delhi-110025

...Respondent No.3

Present:

For Appellant : Mr. Yellop Singh, Adv.

For Respondent : Mr. Shivam Gautam, RP/R1
Mr. Pulkit Deora, Adv. for R2

With

Company Appeal (AT) (Insolvency) No. 3 of 2026

IN THE MATTER OF:

Mr. Parminder Singh Bhullar, Erstwhile RP

E-10/313, Mangal Puri Gali,
Ghanupur Road, Khandwala, Near Water Tank,
Amritsar, Punjab-143104.

...Appellant

Versus

Ritzzy Chemical Private Limited

(Rajeev Lochan, RP)
Address: 243, 1st Floor, AGCR Enclave, New Delhi,
National Capital Territory of Delhi - 110092

...Respondent

Present:

For Appellant : Mr. Kinshuk Chatterjee, Adv.

For Respondent : Mr. Shivam Gautam, RP/R1

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

[Per: Arun Baroka, Member (Technical)]

This is an Appeal to set aside the Impugned Order of National Company Law Tribunal, Mumbai Bench in New Delhi, Bench-II in IA No. 52 of 2025 in CP(IB) No. 692/ND/2024 dated 07.11.2025. As per the impugned order, the Adjudicating Authority has rejected the Resolution Plan submitted by the Appellant / Successful Resolution Applicant (SRA) which was approved by the Committee of Creditors (CoC) with 100% voting share. Further this order removes the resolution professional and also directs re-run of the Corporate Insolvency Resolution Process (CIRP), and mandates that the restarted CIRP be completed within a period of 120 days, failing which the Corporate Debtor shall stand deemed liquidated. The relevant portion of the Impugned Order is as follows:

“27. It may be so that the plan value being less than liquidation value alone may not be a ground to reject the resolution plan. However, we cannot turn blind to the fact that the Resolution Plan value could only be

10% of the liquidation value of the CD. It hardly needs to be emphasized that in CIRP, the role of the CoC is that of a protagonist, who takes the key decisions in its commercial wisdom and also takes the consequences thereof. It cannot be gainsaid that the decisions of CoC must reflect the fact that it has taken into account the maximization of the value of the assets of the CD, and that the interest of all the stakeholders has been adequately balanced. The Hon'ble NCLAT could also view in *Padmanabhan Venkatesh vs. Shri V. Venkatachalam & Ors.* (Company Appeal (AT) (Insolvency) No. 128 of 2019), that the Resolution Plan must ensure not only maximisation of value of the assets of the Corporate Debtor as also the value of the Financial Creditors and the Operational Creditors thereby balancing the interest of the stakeholders. However, we are also unable to appreciate the non-application of mind of the CoC when the PUF application were not put before it and the resolution plan could still be approved. We have noted our dissatisfaction in our order dated 25.08.2025 regarding filing of applications u/s 43 and 66 of IBC after approval of the Resolution Plan.

28. In the totality of the facts and circumstances, particularly the plan being in violation of Regulation 36(4A) and Regulation 38(2) of the IBBI (CIRP) Regulations, we reject the application filed for approval of Resolution Plan. As the RP could not show due diligence in conducting the process and could not comply with the provisions of Regulation 35(A)(1) & (2) of CIRP Regulations, 2016, and could prefer avoidance applications after approval of resolution plan, we deem it just and proper to replace him with Mr. Rajeev Lochan having IBBI Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885, mobile no.-9818034467 and e-mail csrajeevlochan@gmail.com. Mr. Rajeev Lochan, RP would prepare fresh Information Memorandum and would issue fresh Form-G, inviting expression of interest, after disclosing all required information therein correctly and properly. He would ensure that the CIRP is completed within 120 days from the date of uploading of this order. If process is not completed within given time, the CD would be deemed as liquidated and

the newly appointed RP would perform all such functions as are incumbent upon liquidator in terms of the provisions of Sections 35 to 41 of IBC, 2016 and IBBI (Liquidation Process) Regulations, 2016. The application stands disposed of.”

2. The main ground taken by the Appellant- SRA is that commercial wisdom of the CoC is non-justiciable and the Adjudicating Authority cannot sit in appeal over decisions taken by the CoC in exercise of such commercial wisdom. It relies on various judgments of Hon’ble Supreme Court namely in **K. Sashidhar v. Indian Overseas Bank, Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, 'Pioneer Engineering Industries v. Anjali Capfin Pvt. Ltd.'** NCLAT, New Delhi and **'Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., Civil Appeal Nos. 2943-2944 of 2020.**

3. The Appellant- SRA claims that avoidance applications are independent statutory proceedings, which survive beyond the CIRP and do not affect the validity or approval of a resolution plan. The Appellant cannot be punished for the lapses of the RP in filing such applications.

4. The Appellant- SRA claims that the findings that the resolution plan is vitiated because the RP filed avoidance applications after approval of the resolution plan and that the sharing mechanism (50% by SRA and 50% by Creditors) for PUFER recoveries is impermissible. Such a legal position was clarified in the case of **'Ebix Singapore v. Committee of Creditors of Educomp Solutions Ltd.**

5. We have heard both sides and also perused the material placed on record.

6. We find that an initial assessment was made by the RP that there is a case for avoidance transaction and for that reason transaction auditor needs to be appointed. This was discussed in the CoC meeting and a transaction auditor was also appointed. But simultaneously the CIRP proceedings were also going on and the resolution plans received were placed before the CoC. The resolution plan of the appellant namely Sandeep Lucky was approved by the CoC and it was also approved that the SRA will pursue the avoidance and PUFEE transactions. The recoveries made will be shared between the creditors and the SRA in the ratio of 50:50 between them.

7. The Advocate on behalf of the CoC took us through the minutes of the CoC meetings. It was noticed that there is a discussion about the transaction auditor's report but the contents and the total amount quantified with respect to the transaction audit was not noted in the minutes. We find from the records that the transaction auditor had identified preferential transaction under Section 43 of the Code to the extent of Rs. 6,62,81,286/- (about Rs. 6.62 crores) and fraudulent transactions under Section 66 of the Code to the extent of Rs.76,46,06,352/- (about Rs.76.46 Crores) totaling about Rs. 83 Crores.

8. We also note from the minutes of 9th CoC meeting dated 06.08.2025 that an item relating to treatment of avoidance transactions in the resolution plan has been taken up as an agenda item. And a decision has been taken to share the recoveries made in the ratio of 50% to the creditors as per waterfall

mechanism under Section 53 of the Code and 50% to the resolution applicant (@ page 312 of Appeal paper book). We find detailed discussions about avoidance transactions in the resolution plan from page 309 to 313, but we do not find any discussions with respect to the report of the transaction auditor and what action was to be taken by the Resolution Professional.

9. Even though during the pendency of the CIRP proceedings, the RP had the time and obligation to file avoidance and PUFÉ applications, yet it was decided in the CoC meeting that such applications will be left to the SRA to pursue. The Adjudicating Authority has noted the conduct of the proceedings and has given a detailed finding that RP should have apprised about the pendency of such applications under Section 43 and 66 of the Code. A detailed reasoning has been given at para 25 and 26, @ page 105 which is extracted as below:

“25. Indubitably, as it is apparent from the Form-H, the value of the plan as also the amount distributed to the stakeholders is not such as should have been. The fair value of the CD is Rs. 11,25,34,343/-, liquidation value is Rs.10,87,34,343/- and total realisable amount under the plan as also the amount admitted by the RP of Financial Creditors is Rs. 1,15,00,000/- only against the amount claimed i.e., Rs. 30,97,39,092/-, which is resulting into a huge reduction of haircut of 90%.

26. Under Section 25(2)(j) of the Code the RP is responsible to file applications for regarding avoidance of transaction, in terms of Chapter III of the Code. As per Regulation 35A (1) of the CIRP Regulations, on or before 75th day of CIRP, RP shall form an opinion whether the CD has subjected any transactions under Section 43, 45, 49, 50 & 66, and in terms of Regulation 35A (2) of the CIRP Regulations, on or before 115th day of CIRP, RP shall make a determination on such transactions and would also inform

IBBI. Further as per Regulation 35A (3) of the CIRP Regulations, on or before 135th day of CIRP, RP shall make an application to AA for appropriate relief and order. Notably, as per Regulation 39(2) of the CIRP Regulations, the RP should submit all the resolution plans along with details of all transactions under Section 43, 45, 49, 50 and 66 of the Code observed, found, or determined by him. RP need to mention details of application filed/pending or orders obtained in Form H (Compliance Certificate) along with submission of Resolution Plan before NCLT. Moreover, in terms of section 20(2)(a) of the I&B Code the IRP/RP has the authority to appoint transactional and forensic auditor to investigate the avoidance transactions as may be necessary. However, it is noted from the facts and submission made in the application that the RP/Applicant could prefer applications under Section 43 & 66 of the Code viz. IAs No. 4113/ND/2025 and 4116/ND/2025, only after approval of the resolution plan by the CoC and it is a matter of concern as to how the resolution plan could be put to vote for approval and it approved, when the CoC is not apprised about the pendency of such applications. However, it is noted that the Addendum to the Resolution Plan provides that the proceed/outcome of aforementioned applications would be utilised by the SRA for the business of the CD and the SRA would pursue the avoidance application after the implementation of the Resolution Plan at its own cost and share the recoveries made in the ratio of 50% to the creditors under Section 53 of the Code and remaining 50% would be given to the SRA himself. Indubitably, it creates an impression that the beneficiary of the recoveries/outcome of the PUFE application would be SRA apart from creditors which is in contravention to the provisions of Section 36(3)(f) of the Code, as in terms of the said clause, any asset or their value recovered through proceedings for avoidance transaction in accordance with Chapter III of the IBC constitute asset of the CD. Such asset could be utilised to clear the dues of the creditors. It would not be out of context to note that it was only the SRA who could know about the avoidable transactions and could be benefited with such information. All other bidders/PRA were deprived of such information. It is

also noted that in Form H, the RP could mention liquidation value against fair value and fair value against liquidation value. Besides, the part of the amount of the Performance Security viz. Rs. 25 Lacs could be provided only after approval of the Resolution Plan by CoC. As can be seen from Regulation 36(4A), the Performance Security has to be submitted with Resolution Plan. If the provision for providing the security is such that part of the security amount can be paid after approval of resolution plan, then non-serious bidders can come forward to submit the plans and after approval of the same, they may avoid the responsibility to implement it. Thus, the process of CIRP could not be conducted by the RP in a transparent and fair manner. The lapse can be looked at, clothed with a fact that the value of plan submitted by SRA is much less than that of liquidation value. Could the avoidance transactions be mentioned in the IM, the other bidders could possibly submit better plans.”

10. From the plain reading of above findings, we do not find any infirmity in the conclusions of the Adjudicating Authority.

11. We also observe that the RP has brought on record the compliance report of the Impugned Order and informs us that it has published Form-G (Expression of Interest) on 05.12.2025 and has received one EoI wherein the last date of submission of the resolution plan was 18.02.2026. It has requested that a decision may be taken by the Appellate Authority on merits and in accordance with law.

12. In related Company Appeal (AT) (Insolvency) No. 3 of 2026, we find that the Erstwhile RP has sought to set aside the portion of the Impugned Order from paras 25 to 28 in which the Adjudicating Authority has made adverse remarks against the Resolution Professional with respect to the conduct of CIRP proceedings (@ page 24). We have separately heard the erstwhile RP and

also perused the impugned order. It is the claim of the erstwhile RP that he was fighting against the strict time lines prescribed under the Code and for that reason wanted to decide the resolution plan. He brought to our notice that by around 05.03.2025, the erstwhile RP brought to the notice of the 2nd CoC meeting that he is of the view that there are some avoidance transactions for which a transaction audit needs to be conducted and accordingly in the 4th CoC meeting on 10.04.2025 transaction auditor was appointed. The transaction auditor submitted its report on 14.07.2025. Thereafter on 15.07.2025 the erstwhile RP sought the reply of the suspended director and gave them one month. The erstwhile RP received the reply only on 19.08.2025 and on 20.08.2025, he filed the application under Section 43 and Section 66 of the Code. Since the CIRP was time bound, therefore on 06.08.2025 the resolution plan was approved along with the addendum which provided for the treatment of the recoveries. The erstwhile RP did its best to ensure that CIRP proceedings are completed in time.

13. We note that the order of the Adjudicating Authority is self-speaking as noted by us earlier herein. Apart from other issues, we note that the Adjudicating Authority has also observed that the RP had not taken the full amount of Rs.1 (one) Crore as performance security under Regulation 36(4A). The erstwhile RP claims that Rs.25 lakhs was received at the time of submission of EoI and later on Rs. 50 lakhs was received along with the resolution plan and after the resolution plan on 13.08.2025, Rs. 25 lakhs was received within 7 days. The erstwhile RP claims that the Appellant had conducted the CIRP diligently and strictly in accordance with the statutory time lines under the Code and with due deference to the commercial wisdom

of the CoC. The erstwhile RP also claims that the Adjudicating Authority has exceeded its limited jurisdiction under Section 30(2), 30(4) and 31(1) of the Code by rejecting a resolution plan that fully complied with the statutory requirements and had been duly approved by the CoC, thereby rendering the impugned findings unsustainable. In the light of the various non-compliances as noted by the Adjudicating Authority, we don't find the justification provided by the Adjudicating Authority by the RP to be satisfactory.

Order

14. We have carefully gone through the submissions of the erstwhile RP, SRA and also perused the material placed on record and do not find any grounds to interfere with the findings of the Adjudicating Authority as we find that the whole CIRP process has not been conducted in a transparent and fair manner and violates the provisions of the Code and related Regulations. We accordingly dismiss both the Appeals. All related IAs are also disposed of. No orders as to costs. We further direct that the conduct of the RP be investigated by IBBI.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
April 24, 2026.

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