

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1158 of 2022

(Arising out of Order dated 06.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmadabad Special Bench {Court – II} in IA No./851/AHM/NCLT/2020 in CP(IB) No./127/AHM/NCLT/2017)

IN THE MATTER OF:

Express Resorts and Hotels Limited
Express Hotel Building
R.C. Dutt Road, Baroda,
Vadodara-390 007. Gujarat.

.... Appellant

Vs

1. Amit Jain,
Resolution Professional,
Neesa Leisure Limited
Building No. 10, Tower-B,
8th Floor, DLF Cyber City Phase-II
Gurgaon-122022.
2. State Bank of India,
Stressed Asset Management Branch,
2nd Floor, “Paramsidhi Complex”,
Opp. V.S. Hospital, Ellisbridge,
Ahmedabad 380006.
3. Corporation Bank
Navrangpura Branch,
Near Navrangpura Post Office,
Ahmedabad-380009.
4. Asset Reconstruction Company (India) Limited,
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai – 400 028.
5. Oriental Bank of Commerce,
Corporate Office, Plot No.5,
Institutional Area, Sector 32,
Gurugram, Haryana – 122 001.
6. Paisalo Digital Limited
101, CSC, Pocket 52, CR Park,
Near Police Station,
New Delhi 110019.
7. IFCI Limited,
61, Nehru Place, New Delhi 110 019.

8. Syndicate Bank
Plot No.22, 23 and 24, GIDC Sector 25,
Gandhinagar, Gujarat.
 9. Small Industrial Development Bank of India
Recovery Cell, Ahmedabad Regional Office,
Navjivan Amrit Jayariti Bhavan,
1st Floor, Navjivan P.O. Ahmedabad.
 10. Bank of India
Ahmedabad Large Corporate Branch,
2nd Floor, Bank of India Building,
Bhadra, Ahmedabad 380 001.
 11. Edelweiss Asset Reconstruction Company Limited
Edelweiss House, Off CST Road,
Kalina, Mumbai – 400 098.
 12. Asset Care & Reconstruction Enterprises Limited,
2nd Floor, Mohadev Building,
13, Tolstoy Marg,
New Delhi 110 001.
 13. Saraswat Co Operative Bank Limited
Zonal Office (Gujarat Zone),
Unit No. 10 & 11, Shivalik Yash,
Opp. Shastrinagar BRTS Bus Stand,
Naranpura, Ahmedabad 380 013.
 14. Bhupendra Singh Rajput,
A 309, ATMA House Opp. Old RBI,
Ashram Road, Ahmedabad 380 009.
 15. HT Media Limited
18-20, Kasturba Gandhi Marg,
New Delhi – 110001.
 16. Ex-Directors of the Suspended Board
of Management of Neesa Leisure Limited
Building No.10, Tower-B,
8th Floor, DLF Cyber City Phase-II,
Gurgaon-122022.
- Respondents

Present:

For Appellant: **Mr. Ramji Srinivasan, Sr. Advocate, Mr. Abhijeet Sinha, Mr. Raheel Patel, Mr. Himanshu Satija, Ms. Shruti Pandey, Mr. Harsh Saxena, Advocates.**

For Respondent: **Mohd. Shahan Ulla and Mr. Varun Kalra, Advocates for R-1.**

Mr. Neeraj Malhotra, Sr. Advocate, Mr. R.P. Agrawal, Ms. Vidhisha Haritwal, Mr. Nimish Kumar, Advocates for CoC/R-4, 7, 9 & 12.

Mr. Karan Valecha, Advocate for SANKALP (Intervenor).

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Successful Resolution Applicant has been filed challenging the order dated 06.09.2022 passed by the National Company Law Tribunal, Ahmadabad Special Bench (Court-II) rejecting IA No./851/AHM/NCLT/2020 filed by the Resolution Professional for approval of Resolution Plan.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) The Adjudicating Authority vide order dated 26.04.2019 initiated Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor – Neesa Leisure Limited.
- (ii) The Resolution Professional (“**RP**”) on 12.03.2020 issued request for submission of the Resolution Plan for the Corporate Debtor.

The RP filed an IA No. 304 of 2020 praying for exclusion of time period from completion of the CIRP, which was allowed by the Adjudicating Authority vide order dated 09.07.2020, excluding total period of 146 days. July 20, 2020 was the last date for submission of Resolution Plan.

- (iii) On 07.08.2020, an order was passed by the Adjudicating Authority for submitting of Resolution Plan till 18.08.2020 subject to condition that in event of failure to file the Plan or withdrawal from filing of the Plan, a cost of Rs.5,00,000/- is to be paid by the proposed Resolution Applicant to the Committee of Creditors (“**CoC**”) as against the CIRP cost.

On 20.08.2020, another order was passed by Adjudicating Authority, directing to consider another Resolution Plan of Pacifica (India) Project Pvt. Ltd.

- (iv) In the CoC Meeting held on September 2, 2020, certain discussions took place with regard to four Resolution Plans, which were received in the process.

In the 13th CoC Meeting held on September 24,2020, it was noted that Plan received from Alchemist ARC Consortium has been withdrawn.

The 14th CoC Meeting was held on 19.10.2020, where discussions with regard to Plans received from the Resolution Applicants were held and after detailed deliberations, it was decided to put all the Resolution Plans for voting. All details including the manner of voting were decided in the Minutes. The voting on the Resolution Plans took place post completion of 14th CoC Meeting and e-voting was conducted on 27th October, 2020 from 03:00 PM till 08:00 PM and as per voting result, the Resolution Plan of the Appellant was approved by

majority of 67.85%. The Resolution Plan of Pacifica (India) Project Pvt. Ltd. and Kundan Group were not approved.

- (v) On 07.11.2020, the RP issued Letter of Intent to the Appellant. On 09.11.2020, the Adjudicating Authority granted three weeks' time to the RP for filing the Resolution Plan. On 13.11.2020, Performance Bank Guarantee was submitted by the Appellant. The RP, thereafter filed an IA No./851/AHM/NCLT/2020 before the Adjudicating Authority, within the time allowed by the Adjudicating Authority for approval of the Plan.
- (vi) The Application of the RP, IA No./851/AHM/NCLT/2020 came before the Adjudicating Authority on 13.01.2021, when the State Bank of India, Corporation Bank, Small Industries Development Bank and Asset Care & Reconstruction Enterprise Limited submitted that they do not wish to file reply to the Application. The Adjudicating Authority, however, granted one weeks' time to the Suspended Management to file reply to the Application. The order was reserved by the Adjudicating Authority on 04.2.2021 after hearing the parties. However, order could not be delivered and ultimately after hearing the parties, the Adjudicating Authority has passed the impugned order on 06.09.2022, rejecting the IA No./851/AHM/NCLT/2020.

- (vii) The Adjudicating Authority by the impugned order sent back the Resolution Plan before the CoC for its reconsideration and further allowed those Resolution Applicants, who had approached the Adjudicating Authority to submit the Resolution Plan. The Adjudicating Authority fixed 22.09.2022 for submission of EMD and the Resolution Applicants were required to submit the Resolution Plan by 10.10.2022.
- (vii) Aggrieved by the impugned order, this Appeal has been filed by the Successful Resolution Applicant.

3. We have heard Shri Ramji Srinivasan, learned Senior Counsel appearing for the Appellant; Shri Neeraj Malhotra, learned Senior Counsel appearing for CoC/Respondent Nos.4, 7, 9, & 12. Mr. Karan Valecha, learned Counsel for Intervenor and Mr. Mohd. Sahan Ulla, Advocate appearing for Resolution Professional.

4. Shri Ramji Srinivasan, learned Senior Counsel for the Appellant submits that Adjudicating Authority committed error in remitting the Resolution Plan for reconsideration before the CoC, whereas CoC has already approved the Resolution Plan and an Application by RP by IA No./851/AHM/NCLT/2020 was already filed and pending for approval. It is submitted that when initially the Application No.851 came for consideration before the Adjudicating Authority, the majority of Members of the CoC clearly submitted that they do not wish to file any reply to the Application and it was the Suspended Management, who was granted time to file reply. The CoC, during the pendency of the Application for approval

of the Resolution Plan cannot have a change of heart and cannot be permitted to contend before the Adjudicating Authority that Resolution Plan be sent back for reconsideration, since they are in receipt of some better offers as compared to the offer, which has earlier been approved by the Adjudicating Authority. It is submitted that Resolution Plan approved by the CoC is *inter se*, binding between the CoC and the Successful Resolution Applicant and the Plan having become final, the CoC cannot be allowed to ask for reconsideration. The Adjudicating Authority has without there being a valid reason, refused to approve the Plan and remitted the Plan for reconsideration, which is not in accordance with the scheme of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) and CIRP Regulations. It is submitted that IBC proceedings are to be completed within a timeline and when within the timeline, a Plan is approved and submitted before the Adjudicating Authority for approval, it is not open either to CoC or any other Applicant, who did not participate in the resolution process, to claim that he is ready to offer a higher amount. Permitting any such intervention is against the scheme of the IBC.

5. Shri Ramji Srinivisan relying on judgment of the Hon’ble Supreme Court in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Anr – (2021) SCC OnLine 707*** submitted that Hon’ble Supreme Court has laid down that Resolution Plan approved by the CoC is binding on the CoC and CoC cannot be allowed to take any different stand before the Adjudicating Authority, when Application for approving the Plan has already been filed at the instance of

CoC comes for consideration. The view taken by the Adjudicating Authority is clearly contrary to the judgment of the Hon'ble Supreme Court. The learned Counsel for the Appellant has also relied on few other judgments of this Tribunal in support of his submission, which shall be referred to while considering the submissions in detail.

6. The learned Counsel for the RP submitted that from the very beginning the RP has complied the provisions of the IBC and presented the Resolution Plan to the CoC, which approved the same. Subsequently, other prospective Resolution Applicants like GSEC and Sankalp filed IAs before the NCLT. An email sent by ACRE – Respondent No.4 and IFCI – Respondent No.7 pointing out that proposals contained in the Application filed by GSEC appeared to be better and would result in maximization of value of Corporate Debtor. The Union Bank of India has also sent an email dated 05.03.2021, expressing the same view. The emails also indicated that in view of the normalcy being restored, the business/ leisure travel is on up-swing, which indicate renewed interest in the CIRP of the Corporate Debtor. The RP further submitted that in pursuance of the impugned order, Respondent No.1 has reached out the respective bidders and has received earnest money from seven participants. The RP has further stated that more than 1200 days has passed since the commencement of the CIRP.

7. Shri Neeraj Malhotra, learned Senior Counsel appearing for some of the Financial Creditors submitted that the CoC has approved the Plan of the Appellant during the period when Covid-19 was prevalent and during

which period Hotel business was adversely affected. After March 2021, the Hotel business has picked up a pace and several Applicants have made higher offer before the Adjudicating Authority, which required to be considered for the purpose of maximization of the value of the Corporate Debtor. The CoC has expressed its consent before the Adjudicating Authority that CoC is willing to reconsider the Resolution Plan as well as the Resolution Plans of certain other Applicants, who have shown interest. Shri Malhotra, replying to the judgment of the Hon'ble Supreme Court relied by the Appellant in ***Ebix Singapore Private Limited*** submits that in the facts of the said case the Hon'ble Supreme Court was considering a case where Resolution Applicant wanted to withdraw from the Plan, whereas present is a case where CoC itself is in favour of reconsideration of the Plan. It is submitted that other cases relied on by the Counsel for the Appellant of this Tribunal are cases where this Tribunal held that Adjudicating Authority cannot pass an order directing an unwilling CoC to reconsider the Resolution Plan. When CoC is willing to consider the Resolution Plan, there can be no objection in reconsideration. The object of IBC is maximization of the value of the Corporate Debtor and in the situation of the present case, which relates to the Hotel business, the Adjudicating Authority has rightly issued a direction to reconsider the Plan. Shri Malhotra has also relied on the judgment of this Tribunal in ***Bank of Maharashtra vs. Videocon Industries Ltd. & Ors. – Company Appeal (AT) (Ins.) Nos. 503, 505, 529, 545 and 650 of 2021*** decided on 05.01.2022. He submits that judgment of this Tribunal, which returned

the Plan for reconsideration before the CoC has also been approved by the Hon'ble Supreme Court.

8. Shri Ramji Srinivasan in his rejoinder reply to the judgment of the Hon'ble Supreme Court in **Videocon Industries Ltd.** submits that the said judgment was delivered by this Tribunal where Plan was held to be non-compliance of Section 30, sub-section (2) and on which facts, the Adjudicating Authority has full jurisdiction to remit the Plan. The judgment of **Videocon Industries Ltd.** has no application in the facts of the present case.

9. We have considered the submission of learned Counsel for the parties and have perused the records.

10. While noticing the facts of the case, we have noted that 20.07.2020 was the last date for submission of Resolution Plan. The Appellant filed an Application before the Adjudicating Authority seeking permission to file a Resolution Plan. The Adjudicating Authority passed an order on 07.08.2020 permitting the Plan to be submitted on or before 18.08.2020. It is useful to extract the following part of the order, by which permission was granted to file the Plan, which is as follows:

“it is submitted by the Applicant that due to lockdown in COVID-19 pandemic and subsequent restrictions in some places, Applicant could not able to visit the places where the property(s) of the Respondent are situated. Consequent upon which, the Applicant could not able to file his Resolution Plan in time. Hence, learned lawyer for the Applicant is seeking some extension as well as praying for direction upon the RP to submit the Resolution

Plan before CoC. To which, learned lawyer appearing for the RP has objected. However, for the ends of justice, the prayer of the proposed Resolution Applicant is partially allowed. He is also allowed to submit proposed Resolution Plan on or before 18.08.2020, without fail. In the event of failure to file the Resolution Plan or withdrawal from filing of the plan, a cost of Rs.5,00,000/- is to be paid by the proposed Resolution Applicant to the COC as against the CIRP cost. As the CIRP has already been completed and subsequently lockdown period has also exempted. Moreover, the submission of filing of the date of Resolution Plan has already been expired.

Accordingly the instant application is disposed of.”

11. Another Applicant has approached the Adjudicating Authority and Adjudicating Authority permitted M/s Pacifica (India) Project Pvt. Ltd. to submit the Plan by an order dated 20.08.2020. As noted above, Resolution Plans were deliberated in the 14th CoC Meeting held on 19.10.2020. The Plans were also deliberated in 12th and 13th CoC Meeting as noted above. It is relevant to notice that prior to approval of Resolution Plan, against the order passed by the Adjudicating Authority, Appeals were filed in this Tribunal. The Company Appeal (AT) (Ins.) Nos.793 and 794 of 2020 was filed by existing Resolution Applicant to the order dated 07.08.2020, which Appeals were disposed of on 14.09.2020 by passing the following order:

“14.09.2020: *After hearing learned counsels for the parties in both the appeals, we find that Committee of Creditors has yet to examine the Resolution Plans and take a decision. Issue raised in Company Appeal (AT)*

(Insolvency) No. 794 of 2020 that two plans including that of the Appellant had been opened by the Committee of Creditors and discussed on 4th August, 2020, that is well before the impugned orders dated 7th August, 2020 and 20th August, 2020 came to be passed by Adjudicating Authority, have adversely impacted the Corporate Insolvency Resolution Process in the context of the bidding process being fair and transparent, can be raised before the Adjudicating Authority at the stage of consideration of the approval of Resolution Plan as approved by the Committee of Creditors. In our considered opinion and also having regard to the fact that no application under Section 60(5) of I&B Code emanating from the Appellant is pending consideration before the Adjudicating Authority, it would be appropriate to dispose of these appeals giving liberty to the Appellant to raise objection in regard to fairness and transparency of the bidding process and non-adherence to the Statutory Provisions, Rules and Regulations. We order accordingly. With these observations, the appeals are disposed of.”

12. Another Appeal was filed by Suspended Director, being Company Appeal (AT) (Ins.) No.806 of 2020 where Suspended Director claimed that he is eligible to submit the Plan. This Tribunal disposed of the Appeal on 15.10.2020, referring to the order passed in Company Appeal (AT) (Ins.) Nos.793 of 2020 (supra) leaving all objections to be raised before the Adjudicating Authority.

13. It is to be noted that aforesaid two orders were passed before the Resolution Plans received in the resolution process were yet to be

considered and decided. As noted above, in 14th CoC Meeting the same were considered and approved consequent to e-voting by requisite majority. The Adjudicating Authority in the impugned order has relied on the judgment of the Hon'ble Supreme Court in **Bank of Maharashtra vs. Videocon Industries Ltd. & Ors.** (supra) while noticing that this Tribunal has held that Adjudicating Authority is competent to send back Resolution Plan to the CoC for reconsideration. The judgment of **Videocon Industries Ltd.** (supra) has been relied before us also by learned Counsel for the Respondent. This Tribunal in the above case had occasion to consider challenge to order of Adjudicating Authority where Adjudicating Authority has approved the Resolution Plan submitted by the Resolution Applicant. Learned Counsel for the Appellant has referred to and relied on paragraph 50 of the judgment where this Tribunal has recorded its conclusion that Section 30, sub-section 2, clause (b) of the IBC has not been complied and the approval of the Resolution Plan is not in accordance with Section 31 of the Code. In paragraph 50, following has been laid down:

“50. In view of the above stated analysis of facts and law, we have come to the conclusion that Section 30 (2)(b) of the Code has not been complied with and hence, the approval of the Resolution Plan is not in accordance with Section 31 of the Code. Accordingly, the approval of Resolution Plan by the CoC as well as Adjudicating Authority is set aside and the matter is remitted back to CoC for completion of the process relating to CIRP in accordance with the provisions of the Code. All IAs stands disposed of.

Appeal CA(AT) (Ins) No. 650 of 2021 dismissed whereas Appeal CA(AT) (Ins) No. 503, 505, 529, & 545 of 2021 allowed as indicated above. No order as to costs.”

14. The above judgment of this Tribunal has also been affirmed by the Hon’ble Supreme Court while dismissing the Civil Appeal on 28.02.2022. The reason, which is reflected from the judgment in **Videocon Industries Ltd.’s** case is that the Plan was not in accordance with Section 30, sub-section (2), clause (b). There can be no dispute to the proposition that if a Plan is not in accordance with Section 30, sub-section (2), clause (b), the Adjudicating Authority as well as this Tribunal has ample jurisdiction to interfere with the Plan. The Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors. – (2020) 8 SCC 531** has laid down following:

“73.This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has

been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters...”

15. There can be no two opinions about the jurisdiction of Adjudicating Authority and this Tribunal that if the Plan is in violation of any of the provisions of Section 30, sub-section (2), both have ample jurisdiction to interfere with.

16. We may now notice the judgment of the Hon’ble Supreme Court in ***Ebix Singapore*** (supra), which has been heavily relied on by the learned Counsel for the Appellant and the same was tried to be distinguished by the learned Counsel for the Respondent. ***Ebix Singapore*** was a case where Hon’ble Supreme Court had occasion to consider the provisions of the IBC in context of a case where after approval of the Resolution Plan by the Committee of Creditors, Successful Resolution Applicant sought to withdraw from the Plan on the ground that due to pandemic (COVID-19) there has been substantial change in the facts situation and he is entitled to withdraw from the Plan. In the above reference, the Hon’ble Supreme Court had occasion to consider the scheme of the IBC and consequence of the approval of the Plan by the CoC. The Hon’ble Supreme Court in the above case has categorically held that after approval of the Resolution Plan by the CoC, the same is binding between CoC and the Successful Resolution Applicant. We need to notice observation of the Hon’ble Supreme Court and the law laid down in the ***Ebix Singapore***, which is

reflected in different paragraphs of the judgment. In paragraph 115 the Hon'ble Supreme Court clearly held that Resolution Plan even prior to the approval of the Adjudicating Authority, is binding *inter se* the CoC and the Successful Resolution Applicant. In paragraph 115, following has been observed:

“115. *While the above observations were made in the context of a scheme that has been sanctioned by the court, the resolution plan even prior to the approval of the adjudicating authority is binding inter se the CoC and the successful resolution applicant. The resolution plan cannot be construed purely as a “contract” governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the adjudicating authority. Even at that stage, its binding effects are produced by IBC framework. The BLRC Report mentions that “[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors” [3.3.1, The Report of the Bankruptcy Law Reforms Committee, Vol. I : Rationale and Design (November 2015), p. 13, available at <https://ibbi.gov.in/BLRCReportVol1_04112015.pdf> last accessed 20-8-2021.] . The BLRC Report also mentions that, “the RP submits a binding agreement to the adjudicator before the default maximum date” [Id, p. 92.] . We have further discussed the statutory scheme of IBC in Sections I and J of this judgment to establish that a resolution plan is binding inter se the CoC and the successful resolution applicant. Thus, the ability of the resolution plan to bind those who have not consented to*

it, by way of a statutory procedure, indicates that it is not a typical contract.”

In paragraph 162, following has been observed:

*“**162.** The BLRC Report has relied on the Uncitral Guide while designing IBC [3.3.1, The Report of the Bankruptcy Law Reforms Committee, Vol. 1 : Rationale and Design (November 2015), available at <https://ibbi.gov.in/BLRCReportVol1_04112015.pdf> last accessed 20-8-2021.] and it is a critical tool for ascertaining legislative choice and intent. Parliament has not introduced an explicit provision under IBC for allowing any amendment of the resolution plan after approval of creditors, let alone a power to withdraw the resolution plan at that stage. At the same time, the corporate debtor and the CoC have been empowered to withdraw from the CIRP. If it intended to permit parties to amend the resolution plan after submission to the adjudicating authority, based on its specific terms of the resolution plan, it would have adopted the critical safeguards highlighted by the UNCITRAL.”*

Further, in paragraph 166, the Hon’ble Supreme Court has again emphasized on the binding nature of the Resolution Plan. In paragraph 166, following was laid down:

*“**166.** The binding nature, as between the CoC and the successful resolution applicant, of the resolution plan submitted for approval by the adjudicating authority is further evidenced from the fact that the CoC issues an LoI to a successful resolution applicant stating that it has been selected as the successful resolution applicant and*

its plan would be submitted to the adjudicating authority for its approval. The successful resolution applicant is typically required to accept the LoI unconditionally and submit a PBG. Sequentially, the issuance of an LoI is followed by its unconditional acceptance by the successful resolution applicant. In Amtek Auto [Amtek Auto Ltd. (CoC) v. Dinkar T. Venkatasubramanian, (2021) 4 SCC 457 : (2021) 2 SCC (Civ) 622] , this Court thwarted a similar attempt by a successful resolution applicant who had relied on certain open-ended clauses in its resolution plan to seek a direction compelling the CoC to negotiate a modification to its resolution plan. The resolution plan had been approved by the adjudicating authority and the resolution applicant's IA was not entertained. The resolution applicant had then sought to challenge the approval of the resolution plan under Section 61(3) IBC by seeking the same relief. This Court rejected the claim and observed that : (SCC p. 475, para 30)

“30. ... To assert that there was any scope for negotiations and discussions after the approval of the resolution plan by the CoC would be plainly contrary to the terms of IBC.””

In paragraph 167, the Hon'ble Supreme Court has again held that negotiations between the resolution applicant and the CoC are brought to an end after the CoC's approval and only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30, sub-section (2) of the IBC. Following has been held by the Hon'ble Supreme Court in paragraph 167:

“167IBC does not envisage a dichotomy in the binding character of the resolution plan in relation to a resolution applicant between the stage of approval by the CoC and the approval of the adjudicating authority. The binding nature of a resolution plan on a resolution applicant, who is the proponent of the plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the resolution applicant. The negotiations between the resolution applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the adjudicating authority, which has a limited jurisdiction to confirm or deny the legal validity of the resolution plan in terms of Section 30(2) IBC. If the requirements of Section 30(2) are satisfied, the adjudicating authority shall confirm the plan approved by the CoC under Section 31(1) IBC.”

Again in paragraph 171, the Hon'ble Supreme Court held that power of withdrawal or modification after submission of a CoC approved Plan, will have the effect of disturbing the statutory timelines and delaying the CIRP. Following observations have been made in paragraph 171:

“171.The recognition of a power of withdrawal or modification after submission of a CoC-approved resolution plan, by judicial interpretation, will have the effect of disturbing the statutory timelines and delaying the CIRP, leading to a depletion in the value of the assets of a corporate debtor in the event of a potential liquidation. Hence, it is best left to the wisdom of the legislature, based on the experiences gained from the working of the enactment, to decide whether the option

of modification or withdrawal at the behest of the resolution applicant should be permitted after submission to the adjudicating authority; if so, the conditions and the safeguards subject to which it can be allowed and the statutory procedure to be adopted for its exercise.”

17. When we look into the reasons given by the Adjudicating Authority for passing the impugned order, it is clear that the Adjudicating Authority has relied on the pleas taken up by several Applicants and the CoC that due to pandemic (COVID-19) large number of Applicants could not come forward to give a good offer and after pandemic, now large number of Applicants have now approached the Adjudicating Authority, showing their willingness to submit a Plan for higher value. The CoC has also expressed its no objection for receiving and entertaining the Applicants. We may look into the reasons given by the Adjudicating Authority in paragraph 12, which are to the following effect:

“12. In the present case, the CoC in its commercial wisdom with more than 90% of voting share has come up with a strong request which was the application filed in IA 154/2021 and heard while considering this application, for sending back the approved resolution plan to enable CoC to reconsider it along with the offers made by other interested/prospective resolution applicants with a view to maximise the value of the assets of the Corporate Debtor for taking care of the interests of all the stakeholders. Therefore keeping in view the ratio of decisions as cited above and also the unprecedented impact on the Hotel Industry during the

pandemic, when EOI, were invited and the plan was approved during the said pandemic period, we send back the present resolution plan, which is placed before us for our approval, to the CoC for its reconsideration as requested by CoC and allow it to consider resolution plans of those applicants too who have approached this Adjudicating Authority by filing various IAs in this matter, and/or have submitted their EOIs or shown willingness to submit plan for higher value as per their pending application before us, including unsuccessful resolution applicants, if any. All such interested applicants, who still wish to file their resolution plans should deposit prescribed EMD by 22.09.2022 and submit resolution plans thereof on or before 10.10.2022. The RP should place these plans before the CoC for its reconsideration as per the procedure prescribed under the Code. The CoC by using its commercial wisdom for maximising the value of assets of the corporate debtor for benefitting all stakeholders shall consider all plans. The entire exercise of reconsideration/voting/approval should be completed by 10.11.2022. The CIRP period is extended accordingly till 15.11.2022.

In view of a Resolution Plan being sent back to CoC for reconsideration along with other interested Resolution Applicants including those who have also sought permission to submit their plans by filing various applications, which are pending consideration, we have not heard the present resolution plan on merits and for compliances. The application is disposed of without considering the prayers made therein with the aforesaid directions to be complied or adhered to, for better possibility/prospects of a resolution of Corporate Debtor

and maximization of value of assets of Corporate Debtor.”

18. The question whether the CIRP which was finalized during the Covid-19, is liable to be discarded on the spacious ground that Plan was approved during the Covid-19 period, has to be answered in negative. Before the Hon'ble Supreme Court in ***Ebix Singapore***, the Successful Resolution Applicant under the Resolution Plan wanted to withdraw from the Plan and has also raised the plea on the basis of Covid-19. The Hon'ble Supreme Court noted the aforesaid submission, but held that although Covid-19 had significant impact on the business of the Corporate Debtor, but the legislative intent of the statute cannot be overridden by the Court. The said facts were noticed in paragraph 220, which is to the following effect:

“220. This Court is cognizant that the extraordinary circumstance of the Covid-19 Pandemic would have had a significant impact on the businesses of corporate debtors and upon successful resolution applicants whose plans may not have been sanctioned by the adjudicating authority in time, for myriad reasons. But the legislative intent of the statute cannot be overridden by the Court to render outcomes that can have grave economic implications which will impact the viability of IBC.”

19. The learned Counsel for the Appellant has also relied on judgment of this Tribunal in ***Company Appeal (AT) (CH) (Ins.) No.172 of 2021 – Alok Kailash Saksena vs. Associate Décor Ltd. & Ors.*** where Adjudicating Authority has remitted the matter back to the CoC to consider a belated

Resolution Plan submitted by Respondent Nos.6 to 8 therein. This Tribunal in paragraphs 38 and 40 laid down following:

“38. This ‘Tribunal’ does not find any justification in passing the above impugned order when an application is pending for considering before the same ‘Adjudicating Authority’ for approval of resolution plan. When an application is filed before the ‘Adjudicating Authority’ seeking approval of Resolution Plan, meaning thereby the resolution process with respect to ‘Corporate Debtor’ is in advance stage by overcoming the engrossing process as enshrined under the I&B Code from the date of initiation of ‘CIRP’ against the Corporate Debtor till the approval of Resolution Plan. The resolution process in respect of Corporate Debtor is in the final stage, at such point of time directing the Appellant to consider a plan submitted by the Respondents No. 6 to 8 on 27.05.2020 and after completion of ‘CIRP’ period and the said Respondents are nowhere in the zone of consideration in entire CIRP process, amounting to reopening of the CIR process of the ‘Corporate Debtor’ and the said direction also frustrates the resolution process of the ‘Corporate Debtor’, which is a time bound.

40. It is apt to note that the once Resolution Plan is approved by the ‘CoC’ with requisite voting share i.e. 66%, in the present case, the ‘CoC’ voted with 100% voting share in approving the Resolution Plan and the same is binding and irrevocable as between the ‘CoC’ and the ‘Successful Resolution Applicant’ as held by the Hon’ble Supreme Court in Ebix Singapore Pvt. Ltd. Vs. Committee of Creditors of Educomp Solutions Ltd. reported in (2021) SCC Online SC 707 at para 246 held as under:

“246. In the present framework, even if an impermissible understanding of equity is imported through the route of residual powers or the terms of the Resolution Plan are interpreted in a manner that enables the appellants’ desired course of action, it is wholly unclear on whether a withdrawal of a CoC-approved Resolution Plan at a later stage of the process would result in the Adjudicating Authority directing mandatory liquidation of the Corporate Debtor. Pertinently, this direction has been otherwise provided in Section 33(1)(b) of the IBC when an Adjudicating Authority rejects a Resolution Plan under Section 31. In this context, we hold that the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority. A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations. In the case of Kundan Care, since both, the Resolution Applicant and the CoC, have requested for modification of the Resolution Plan because of the uncertainty over the PPA, cleared by the ruling

of this Court in Gujarat Urja (supra), a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2.”

20. It is relevant to notice that the above judgment of this Tribunal came to be affirmed by Hon’ble Supreme Court by order dated 25.11.2022 passed in Civil Appeal Nos. 8318-8320 of 2022.

21. To the similar effect is another judgment of this Tribunal in ***Kalinga Allied Industries Pvt. Ltd. vs. Committee of Creditors & Anr. – Company Appeal (AT) (Ins.) No.689 of 2021*** where reliance of the Hon’ble Supreme Court in ***Ebix Singapore*** has been placed. This Tribunal rejected the submission that higher value offer is to be considered. It was held that after completion of process and lapse of the CIRP period, there was no occasion to reconsider the Plan. In the above case, CoC itself has filed an Application praying for direction to the RP to call a meeting of CoC to consider a Resolution Plan of several entities and sought for additional time to consider their Plans. The Appeal was allowed and the order granting said permission was set aside.

22. The learned Counsel for the Respondent submitted that when the CoC itself is ready to consider any further offer, which has been received subsequent to approval of the Resolution Plan in the interest of the maximization of the value of the Corporate Debtor, which is the object of IBC, Adjudicating Authority did not commit any error in giving an opportunity to consider such offers.

23. The IBC and the CIRP Regulations provide a tight scheme and timeline for completion of entire process. In the present case, we have noticed that CIRP period had come to an end and by order dated 09.07.2020 an extension was granted by the Adjudicating Authority of 146 days. The extended period was also come to an end in October 2020. The CIRP period had come to an end and by an order passed on 09.11.2020, the Adjudicating Authority granted three weeks' time for filing of Resolution Plan before it. The period of CIRP was over long ago and Adjudicating Authority after about two years, subsequent of completion of CIRP period cannot direct the CIRP process to begin again by providing for inviting applications for fresh Resolution Plan.

24. The maximisation of value of the Corporate Debtor is admittedly an object of the CIRP, but the said maximisation has to be achieved within the timeline provided in the scheme.

25. The present is not a case where in the process, which was completed by approval of the Resolution Plan by the CoC any breach has been committed. When after following the provisions of the Code and Regulations, the Resolution Plan has been approved by the Adjudicating Authority, the said approval by the CoC has to be respected and cannot be interfered with in exercise of judicial review by the Adjudicating Authority. More so, when there is no such ground that the Plan approved, violates any of the provisions of Section 30, sub-section (2). The object of IBC is to revive the Corporate Debtor and put it again on the track. When a Resolution Plan, has been approved after due deliberations, in exercise of

commercial wisdom of the CoC, it has to be accepted that Corporate Debtor was decided to be revived by the Resolution Plan. The mere fact that certain other offers have been received after the approval of the Resolution Plan, CoC cannot have a change of heart and start clamoring before the Adjudicating Authority that they have no objection to sending back the Resolution Plan for reconsideration. This will be permitting an unending process, since by passing of time situation keeps on changing. After coming to know about the financial offer in a Plan, which has been approved by the CoC, any subsequent offer by any entity, who did not participate in the process earlier, cannot be entertained.

26. The CoC being satisfied that financial offer given by the Applicant is satisfactory, exercise their commercial wisdom, even CoC cannot be allowed to change its view, since it is bound by its own decision taken in approving the Resolution Plan. Present is not a case where the CoC is pointing out any breach of procedure or manifest error in their approval of the Resolution Plan, which may be a ground to be pressed before the Adjudicating Authority. The CoC after full consideration has approved the Plan and the financial offer made by the Applicant in the Plan. In the name of receiving higher offer, subsequently, CoC cannot turn around and pray to the Adjudicating Authority to send the Plan back for consideration. The present case itself is an example that adopting such course by the CoC and Adjudicating Authority, enormous delay shall take place, which is not in the interest of CIRP, nor in the interest of Corporate Debtor. The Corporate Debtor has to be revived with speed and in timelines, which has been

prescribed in the CIRP. Once, the said object is achieved, the same shall not be allowed to frustrate on the grounds, which have been raised before the Adjudicating Authority in the present case. We may notice that in this Appeal, an interim order was passed on 21.09.2022, staying the further process in pursuance of the impugned order dated 06.09.2022, which order is still continued.

27. In the result of the foregoing discussion, we are satisfied that Adjudicating Authority has committed error in passing the impugned order. The impugned order is set aside. The matter is remitted to the Adjudicating Authority to pass fresh order on IA No./851/AHM/NCLT/2020 filed by the RP for the approval of the Resolution Plan. The Plan being pending since 2020, we direct the Adjudicating Authority to pass a final order on IA No./851/AHM/NCLT/2020 within a period of three months from the date the copy of this order is produced. Appeal is allowed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

9th February, 2023

Ashwani