

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Insolvency) No. 61 of 2021

In

IA Nos. 136, 137, 138, 477 & 478 of 2022

[Arising out of Impugned Order dated 07th May, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in IA Nos. 606 & 697 of 2020 in CP (IB) No.43/7/HDB/2018]

IN THE MATTER OF:

- 1. N.V. Rama Raju S/o N. Appala Raju
R/o Plot No. 75, MLA & MP Colony
Road No. 10-C, Jubilee Hills
Hyderabad – 500033****...Appellant No.1**

- 2. N. Indira W/o N.V. Rama Raju
R/o Plot No. 75, MLA & MP Colony
Road No. 10-C, Jubilee Hills
Hyderabad – 500033****...Appellant No.2**

- 3. M/s Jalavihar Entertainment
Private Limited
Having its registered office at:
22/9, Necklace Road,
Hyderabad – 500063
Represented by its Managing Director,
N.V. Rama Raju, R/o Hyderabad****...Appellant No.3**

- 4. North East Infrastructure Private Limited
Having its registered office at:
55-14-87, APSEB Colony, Seethammadhara,
Vishakhapatnam – 530013
Andhra Pradesh Aditya Nadimpalli,
R/o Hyderabad****...Appellant No.4**

Versus

- 1. Rajkumar Ralhan, Resolution Professional
of Leo Meridian Infrastructure Projects
and Hotels Limited
Flat No. 801, Towers 01, Kalypso Court,
Jaypee Greens Wish Town**

**Sector 128, Noida,
Uttar Pradesh – 201304.**

...Respondent No.1

- 2. The Committee of Creditors of Leo Meridian
Infrastructure Projects and Hotels Limited
Represented by Resolution Professional
Flat No. 801, Towers 01, Kalypso Court,
Jaypee Greens Wish Town,
Sector 128, Noida, Uttar Pradesh – 201304.**

...Respondent No.2

Present:

For Appellant : Mr. Avinash Krishnan Ravi, Advocate

**For Respondent : Mr. Satish Parasaran, Senior Advocate for R1
Mr. Krishna Grandhi, Advocate for R1
Mr. S. Satyanarayanan, Advocate for R2 / CoC**

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

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The Present Appeal is filed against the Impugned Order dated 07.05.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in IA Nos. 606 & 697 of 2020 in CP (IB) No. 43/7/HDB/2018, whereby the Adjudicating Authority rejected I.A. 606 of 2020 consequently disposed of I.A. 697 of 2020.

Brief Facts:

Appellant's Submissions:

2. The Learned Counsel for the Appellant submitted that the erstwhile Andhra Bank (presently Union Bank of India) filed Section 7 Application seeking initiation of CIRP against the Corporate Debtor i.e. M/s Leo Meridian

Infrastructure Projects Ltd. The Adjudicating Authority admitted the Application and initiated CIRP on 09.04.2019. The Resolution Professional invited Expression of Interest (EOI) from prospective Resolution Applicants and one Sh. D.V. Satyanarayana alone submitted Resolution Plan however, the CoC refused the said plan on the ground of ill net-worth. The RP again invited EOI. The Appellants on 02.03.2020 submitted EOI with all necessary documents and deposited processing fee of Rs.15 lakhs. On 14.04.2020 the Appellants as consortium submitted Resolution Plan enclosing bank guarantee for Rs.1 crore issued by State Bank of India, Vishakhapatnam. However, the CoC extended time till 27.04.2020 and advised the Applicants to revise the plans in case if they want to. The Appellants strongly protested the said decision vide e-mail dated 18.04.2020. The RP vide his e-mail dated 28.04.2020 informed the Appellants that the plans will be opened in the presence of CoC members on 29.04.2020 and requested to participate. The plans have been opened in the presence of CoC and the contents and financial figures of plan were known to all members who attended the virtual meeting of CoC dated 29.04.2020. However, no decision was taken by the CoC on the plan submitted by the Appellants. Further time was extended till 04.05.2020 for submission of Resolution Plan, whilst the Appellants again raised their serious concerns with the RP stating that their plan was opened on 29.04.2020 and the financial figures and terms comprises of Resolution Plan is no longer confidential as the said plan was opened in virtual meeting.

3. It is submitted that the RP by his e-mail dated 02.05.2020 admitted regarding opening the plans of the Appellants, however, stated that the Tribunal passed order in I.A. No. 299 of 2020 filed by Sh. D.V. Satyanarayana restrained them to take any decisions on the plans, since the Tribunal has extended time limit till 04.05.2020 to submit plans. The RP advised the Appellants to submit revised plan, if any, vide his e-mail dated 02.05.2020.

4. The Appellant No.1 participated in virtual meeting held on 16.05.2020, 19.05.2020, 26.05.2020, 04.06.2020 and 18.06.2020 and addressed the queries raised by CoC members. The RP increased the CIRP cost from 9.06 crores to 17.15 crores on the ground that the other RA Sh. D.V. Satyanarayana is agreed to increase the CIRP cost. The Appellants requested the RP to leave the decision to the CoC to decide the enhancement of CIRP cost.

5. The Appellants filed I.A. No. 498 of 2020 seeking directions to the RP and CoC to receive their Resolution Plan for revival of Corporate Debtor. While so, the RP vide e-mail dated 01.07.2020 informed that in 24th CoC held on 01.07.2020 the members evaluated the Resolution Plan of the Appellants and as per evaluation matrix the Appellants have been declared as H-1 bidder. The officials of CoC negotiated with the Appellants to increase financial offer in the plan and the Appellants have increased their financial offer in plan significantly and communicated the same vide their e-mail dated 09.07.2020.

6. It is submitted that the RP vide e-mail dated 20.07.2020 insisted the Appellants to engage services of monitoring agency at the cost of Resolution Applicant to assist the monitoring committee which is not part of terms and conditions of RFRP. Subsequently, the RP orally informed to engage PWC as monitoring agency with a package of Rs.30 lakhs per annum, but these Appellants refused the same on the ground that the said condition is not part of RFRP. Having not accepted the demands to increase CIRP cost and engaging PWC as monitoring agency, the RP started humiliating these Appellants on one or the other grounds. The Appellants did not visualise the wrongful intention of the RP.

7. It is submitted that the RP vide his mail dated 13.08.2020 informed that CoC meeting was held on 12.08.2020 and decided to consider all Resolution Plans which comply with the code and the Regulations. It is submitted that the RP travelled beyond the scope of IBC and IBBI Regulations of erstwhile and amended regulation dated 07.08.2020 and also in disobedience of orders passed in I.A. No. 299 of 2020 invited final compliant Resolution Plan from these Appellants and also from Sh. D.V. Satyanarayana with changes if any, in the financial proposal and directed to submit the same by 15.08.2020.

8. It is submitted that inviting final compliant Resolution Plan on the pretext of IBBI amended Regulation is the decision of the RP. The minutes of CoC meeting held on 12.08.2020 would prove the same, if it was brought on

record of this Tribunal. It is submitted that due to lockdown, Covid-19 pandemic the CoC meeting conducted from 24.03.2020 till the date by the RP were held virtually. Other than CoC members third party aides of RP have participated through virtual mode only. The financial offer and the terms comprise in the plan submitted by the Appellants are no longer confidential and these Appellants are in knowledge that the RP has shared the contents of their plan to another Resolution Applicant.

9. In the above circumstances, the Appellants filed I.A. No.606 of 2020 praying reliefs as stated in the application. The RP misconstrued amended Regulation 39(3) issued by IBBI dated 07.08.2020 showing the same as pretext and throwing the blame on CoC. The said amended Regulation would not direct or empower RP or CoC to call for final compliant Resolution Plan once the CoC concluded the negotiations on Resolution Plans. The RP contested the I.A. by filing reply.

10. The Appellants filed I.A. No. 650 of 2020 seeking a direction from the Tribunal to place all Resolution Plan received as on 01.07.2020. The stand of the Appellant is that the amendment to the Regulation is prospective effect. It is submitted that the IBBI Regulation would only speak to place all the Resolution Plan evaluated as per evaluation matrix for voting and amended regulation and further speaks to record the feasibility and viability of all Resolution Plans while exercising voting rights by CoC.

11. It is submitted that during the course of hearing the RP submitted that in pursuant to his e-mail dated 13.08.2020 another Resolution Applicant Sh. D.V. Satyanarayana submitted revised Resolution Plan on 15.08.2020. The RP further states that the financial figures quoted in revised plan submitted by Sh. D.V. Satyanarayana is very near to the financial offer quoted by the Appellants in their plan and Sh. D.V. Satyanarayana only reduced the time lines for implementation of Resolution Plan and stated that the plans are being confidential shall not be placed on record before the Adjudicating Authority. In view of the plan submitted by Sh. D.V. Satyanarayana the Appellants sensed that the RP would have revealed the financial figures as mentioned in the plan by the Appellants to Sh. D.V. Satyanarayana, the Appellants prayed the Adjudicating Authority to direct the CoC not to conduct voting rights on plans till disposal of I.A. No. 606 and 650 of 2020. The Adjudicating Authority passed interim direction to RP and CoC not to conduct voting till 04.09.2020.

12. It is submitted that the Applicant in I.A. No. 697 of 2020 filed annexures along with memo seeking relief to take the same on record. From page 4 and 5 of the said papers i.e. e-mail correspondence exchange between RP and Sh. D.V. Satyanarayana clearly speaks that Sh. D.V. Satyanarayana submitted in-complete revised Resolution Plan on 15.08.2020 and on the suggestion of the RP submitted amended revised Resolution Plan on 21.08.2020 and this fact was suppressed by the RP during the proceedings held on 27.08.2020.

From Page No.4 it clearly indicates that Sh. D.V. Satyanarayana is still not having net-worth and depending on his investors to prove his net-worth. It is to be noted that the earlier plan submitted by Sh. D.V. Satyanarayana was rejected by the very same CoC on the ground of ill net-worth, despite knowing the same the RP accommodated Sh. D.V. Satyanarayana to submit revised plan by 15.08.2020 and updated revised Resolution Plan by 21.08.20220 in contrary to his stand taken in I.A. No. 299 and 498 of 2020. The RP suppressed all these facts and misled the Adjudicating Authority for wrongful gains.

13. It is submitted that the CIRP commenced on 09.04.2019 and the RP consumed more than 485 days as on 15.08.2020 for conducting CIRP of the Corporate Debtor without any fruitful results. The intentions of the RP is to protract the litigation with an intention to derail the CIRP for wrongful gains.

14. It is submitted that the Learned Adjudicating Authority failed to record the averments and facts raised by the Appellants in I.A. No.606 of 2020 and passed the order mechanically without touching the reliefs sought therein. The Adjudicating Authority ought to have appreciated the fact that the CoC has evaluated all the Resolution Plans as per evaluation matrix and confirm these Appellants as H-1 bidder on 01.07.2020 and thereafter, the RP and CoC negotiated further with these Appellants in terms to increase financial offer in the plan.

15. The Learned Adjudicating Authority ought to have recorded the CoC has evaluated the Resolution Plan as per evaluation matrix by 04.08.20220 and reserved the same for conducting voting rights as such the said amendment dated 07.08.2020 Regulation 39(3) IBBI Regulations will not have any bearing on the Resolution plans received till 04.08.2020. the Adjudicating Authority ought to have called for minutes of meeting of CoC held on 12.08.2020 for proper adjudication of I.A. No. 606 of 2020.

16. It is submitted that the efforts put forth by the Appellants is to revive the Corporate Debtor which is the primary object of IBC in order to maximise the asset value of the company and also to secure the interest of all the creditors under the plan.

17. In view of the above reasons the Learned Counsel prayed this Bench to allow the Appeal by setting aside the impugned order dated 07.05.2021 and pass the consequential reliefs.

Respondent's Submissions:

18. Sh. Satish Parasaran Learned Senior Counsel appearing for the Respondent No.1 submitted that the Appeal is not maintainable either in law or on facts. It is submitted that thrust of the Appellants on the applicability of the amendment to Regulation 39 of IBBI Regulations, 2016 to the ongoing CIRP of the Corporate Debtor, where the Resolution Plans are yet to be put for voting. The case of the Appellants is that the amended regulations would have prospective effect and ought not to be applied retrospectively. The issue

raised by the Appellants is squarely covered by the decision of the Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. Civil Appeal No. 3396 of 2020. The Adjudicating Authority rightly placed reliance on the above decision and dismissed the Application No. 606 of 2020.

19. The Appellants resorted to putting forth an entirely new case by pleading several new facts that did not form part of the original disputes or the pleadings before the Adjudicating Authority and consequently raising fresh grounds of challenge at the appellate stage. The Appellants have shifted the focus from the CoC to blaming the RP in the present Appeal. The Appellants have proceeded to make unwarranted personal attacks on this Respondent by levelling serious personal allegations against the RP, casting aspersions on his integrity and the credibility of the manner in which the CIRP is being conducted.

20. The Learned Senior Counsel submitted that the Appellants have raised the following pleadings in the Appeal for the first time.

21. The argument of the Appellants now taken a contrary stand that prospective applicability are retrospectivity of the amended Regulation 39 is not in question and that the only issue for determination is whether the RP or CoC can call for final compliant plan after having declared the Appellants as H-1 bidder. The Appellants in I.A. No. 606/2020 stated that the CoC had

proceeded to call for final compliant plans contrary to law. However, the Appellants now taken different stand shifting the blame on the RP with regard to calling for final compliant plan.

22. The Appellants have raised numerous personal allegations against this Respondent. The Respondent submits that it is a trite position of law of that an Appellant cannot urge new facts in the present Appeal or set up a new case in Appeal or raise a new issue, that are not supported by pleadings or evidence on record. Hence on this ground the Appeal is to be dismissed in limine.

23. It is submitted that this Respondent acted in a fair and transparent manner and within the mandate of code. The present Appeal has been preferred in total disregard of the precedents laid down by the Hon'ble Supreme Court and in the teeth of the provisions of the I&B Code including Regulation 39. Further the Appellants approached this Tribunal with an ulterior motive to derail the CIRP of the Corporate Debtor.

24. It is submitted that the amendment relates to the voting on the Resolution Plans by the CoC and since the voting in the present case was yet to be conducted, the interpretation that the Regulation applied to ongoing CIRP was considered in a bonafide manner so as to seek compliance with the amendment. In terms of sub-section (3) of Section 30 of the Code, the Respondent Resolution Professional was obliged to place all the plans before the CoC when they were found confirming to the conditions referred to in sub-

section (2) of Section 30 and thereafter it was for the CoC to consider the plan and to vote upon the same. The CoC would then approved only one plan in their commercial wisdom and there is no bar either under Regulation 39 or Section 30 of the Code, to call for a final compliant.

25. The Appellants were given equal opportunity and treatment as well by being invited to submit their Resolution Plan, if they choose to do so through e-mails dated 01.08.2020, 04.08.2020 and finally on 13.08.2020.

26. It is submitted that the Respondent has acted strictly in conformity with the provisions of the I&B Code and the Regulations. The Resolution Plan of the Appellant was not construed as approved by the CoC under Section 30 of IBC and these Appellants were declared H-1 bidder for the sole purpose of conducting negotiations and discussion on financial proposals by the CoC. The Appellants did not acquire any vested right to demand of voting by CoC only on their Resolution Plan. The plan of the Appellant was placed thrice by the RP in CoC meetings, the CoC in their commercial wisdom made certain observations and sought certain changes to the Resolution Plan of H-1 bidder.

27. It is reiterated that the IBBI had notified amendment to the Regulations (amendment) dated 07.08.2020 which effectively brought an amendment to the Regulation 39 by interalia imposing a requirement to vote on all compliant Resolution Plans simultaneously. It was decided in the 28th CoC meeting held on 12.08.2020 to consider all compliant resolution plans for voting by CoC

members in compliance with amendment to Regulation 39 of CIRP Regulation. However, no voting took place.

28. The conduct of RP and the CoC in applying the amendment to the CIRP of the Corporate Debtor was done in a just and bonafide manner by giving equal opportunity to all the eligible shortlisted Resolution Applicants including the Appellants.

29. In view of the reasons as stated above the Learned Counsel prayed this Tribunal to dismiss the Appeal.

Respondent No. 2 Submissions

30. Sh. Sathiyarayanan Learned Counsel appearing for this Respondent submitted that the Appeal is misconceived and is on wrong footing and preferred in total disregard to provisions IBC.

31. The Corporate Debtor had availed credit facilities from banks under different consortium arrangements. Due to non-servicing of interests and instalments, the account was classified as NPA on 31.01.2012. The Section 7 filed by erstwhile Andhra Bank came to be admitted on 09.04.2019. It is submitted that the total 3 plans were received, out of which only 2 plans were compiled as per the provisions of RFRP i.e. Jalavihar Entertainment Pvt. Ltd. and Sh. D.V. Satyanarayana. The CoC advised to improve the offer and ensure modification in certain conditions as suggested by CoC. All the lenders accept UBI declared M/s Jalavihar the 3rd Appellant herein as H-1. After detailed

discussion it was decided to take voting of the respective CoC members regarding declaration of H-1 bidder from 2 existing plans submitted or to open the new Resolution Plan received by RP on 30.06.2020. The H-1 bidder increased consolidated amount for FC's and CIRP cost Rs. 142 cores and submitted revised Resolution Plan by increasing only Rs.4 crore in the 25th CoC held on 04.07.2020. The CoC suggested the H-1 bidder to improve the Resolution Plan amount and also to modify various clauses and conditions proposed by the bidder. The conditions have not been removed in the plan by the H-1, the CoC shall not consider the plan for voting in terms of commercial viability and feasibility which is a statutory mandate prior to approval of the Resolution Plan.

32. It is submitted that the RP and his counsel apprised CoC on the latest amendments introduced by IBBI dated 07.08.2020 to the Code and the Regulations 39(3) which mandates that the CoC members shall vote on all the compliant Resolution Plans received during the CIR process and the Resolution Plan which is approved with prescribed voting percent will be considered as approved by CoC. Since the CoC is yet to vote on the plan, the aforementioned amendment would be applicable to the CIRP of Corporate Debtor. Accordingly, it was decided to give an opportunity to both the Resolution Applicants i.e. 3rd Appellant and Sh. D.V. Satyanarayana to submit their final compliant resolution plans vide letter dated 15.08.2020 and the same was intimated to the RA's by the RP through mail on 12.08.2020.

33. The Appellant challenged the decision of CoC in giving an opportunity to both RA's in view of the amendment to IBBI Regulations dated 07.08.2020 by filing I.A. No. 606 of 2020 before the Adjudicating Authority. The Adjudicating Authority vide order dated 27.08.2020 was pleased to grant interim stay on the voting proposal. Hence, the voting could not be initiated in view of the interim.

34. In view of the reasons as stated above the Learned Counsel prayed this Bench to dismiss the Appeal.

Analysis / Appraisal:

35. Heard, the Learned Counsel appeared for the respective parties perused the pleadings, documents and relevant citations relied upon by them. After hearing and analysing the pleadings, the moot point for consideration is whether the order passed by the Adjudicating Authority dated 07.05.2021 in I.A. No.606 of 2020 in CP No.43 of 2018 (Impugned Order) is justified or called any interference.

36. The Appellants have filed the above I.A. No. 606 of 2020 under Section 60(5) of the I&B Code, 2016 before the Adjudicating Authority seeking a direction to the CoC not to consider any Resolution Plan other than the plan submitted by the Appellants herein.

37. The reason for seeking such a direction by the Appellants are that the Resolution Plan as submitted by them was considered by the CoC and their

plan has been declared as H1 bidder. Before advertizing to the point/issue, the brief facts are essential to arrive at such finding.

38. It is an admitted fact that the CIRP proceedings has been initiated against the Corporate Debtor i.e. Leo Meridian Infrastructure Projects and Hotels Limited by the Adjudicating Authority (NCLT, Hyderabad) vide its order dated 09.04.2019 and appointed IRP and imposed the moratorium. The RP invited EoI from prospective Resolution Applicants. One Mr. D.V. Satyanarayana submitted Resolution Plan. However, the CoC members have rejected the said Resolution Plan on the ground of not meeting the requirements.

39. The Appellants as consortium submitted its EoI on 02.03.2020 with all necessary documents and the RP gave access to VDR and also shared Information Memorandum, RFRP (Request for Resolution Plan). The consortium of Appellant also enclosed bank guarantee of Rs. 1,00,00,000/- (Rupees one crore). The CoC Members extended time to submit Resolution Plan till 27.04.2020, however, the Appellants strongly protested the said decision of CoC vide e-mail dated 18.04.2020 (Annexure-5). It is seen that the Resolution Plan opened on 29.04.2020, a representative of the Appellant was present in the said meeting however, the contents of the plan were not known. The RP vide its e-mail dated 02.05.2020 addressed to the Appellants, whereby it is stated that the CoC had previously set the deadline to submit plans for the Corporate Debtor as 27.04.2020, however, as per the directions passed in

I.A. No. 299 of 2020 by the Learned NCLT, the last date for submission of plan extended by 04.05.2020. We perused the order passed by the Adjudicating Authority in I.A. No. 299 of 2020 dated 29.04.2020. The said I.A. filed by Mr. D.V. Satyanarayana seeking direction to the CoC for extending the time to receive the Resolution Plan from him by another two weeks due to lockdown. The Adjudicating Authority in its order dated 29.04.2020 at page 78 of the Appeal paper book observed as under:

“Here is the case where the CoC once rejected the resolution plan filed by the Applicant. In other words, the CoC has not approved the Resolution Plan given by the Applicant. the Applicant did not take steps for re-submitting the resolution plan as on date, even though fresh plans were called. The information was also sent to the Applicant as per Regulations for submitting any revised resolution plan. The last date for submitting resolution plan was 27.04.2020. However, Applicant has not submitted any resolution plan by 27.04.2020, but on the other hand, Applicant moved this Application on the very same date seeking extension of time for submitting the resolution plan.

Considering the submissions made by the Counsel for Applicant and also hearing the Counsel for Resolution Professional and considering the existing circumstances due to lockdown, I feel some time to be given to the Applicant to submit the Resolution Plan, if any, by 04.05.2020. In the meantime, the CoC to examine the other resolution plans already received but final decision to be taken after 04.05.2020, in case, if any plan is submitted by the Applicant herein by 04.05.2020. To make it

clear final decision to be taken on the resolution plans after 04.05.2020.

This Application is accordingly disposed of.”

40. From the above order of the Adjudicating Authority, three aspects emerges i.e.:

- (i) Mr. D.V. Satyanarayana’s plan was already rejected by the CoC and the said Applicant did not take any steps for re-submitting the plan, even though fresh plans were called and the last date for submitting the plan was 27.04.2020.
- (ii) The Adjudicating Authority extended time to submit plan by the Applicant, if any, by 04.05.2020.
- (iii) The final decision to be taken on the Resolution Plans only after 04.05.2020.
- (iv) No further extension was granted by any authority for submission of plan.

41. The above order of the Adjudicating Authority attained finality no challenge made by the any of the parties. Further from the order, it is clear that no fresh plans to be invited in view of no further extension was granted by the Adjudicating Authority, who is the competent authority.

42. It is seen from the mail dated 05.05.2020 from the IRP that the plan of the Appellant would be opened on 05.05.2020 and requested the Appellant’s representative to be present in the CoC meeting from 12 to 12:30 p.m.

43. While matter stood thus, some of the prospective Resolution Applicants filed an application being I.A. No. 498 of 2020 in the above CP seeking a direction from the Bench to consider the Resolution Plan submitted by them vide e-mail dated 30.06.2020. The Adjudicating Authority after considering the Application filed by the aforesaid Applicants dismissed the said I.A. on 27.08.2020 by observing that the Resolution Plans received after due date cannot be considered. From the order it emerges that the plan of the Applicants in I.A. No. 498 of 2020 already rejected by the CoC and the IRP informed the Applicants vide e-mail reply dated 02.07.2020. The Adjudicating Authority in the order also observed that the CoC in its 24th Meeting dated 01.07.2020 declared the Appellant as H1 bidder. However, there is no challenge to this order dated 27.08.2020 and the Applicants in I.A. No. 498 of 2020 foreclosed their rights.

44. It is an admitted fact that the Appellants have been declared as H1 bidder and the same has been informed to the Appellants by e-mail from the Respondent (RP) (Annexure-XII). The contents of the letter read as *“after evaluation of the Resolution Plan submitted by you vide e-mail dated 08.06.2020 by the CoC Members as per as per approved evaluation matrix and as per the provisions of approved RFRP document, we are pleased to inform you that you have been declared as highest bidder (H1) in 24th CoC Meeting of Leo Meridian Infrastructure Projects and Hotels Limited.”* The RP also admitted in its reply dated 22.11.2021 whereby it is admitted that the Appellant was

declared H1 bidder and also stated that the Appellant modified the Resolution Plan based on CoC suggestions.

45. However, in the said letter, it is also stated that the said Resolution Plan will be voted separately and invited the Appellant to attend the 24th CoC meeting at 3:45 P.M. through WebEx. The Appellant also submitted revised Resolution Plan on 09.07.2020. The RP addressed a letter to the Appellant dated 20.07.2020 stating that the Appellant may be participated for the negotiations with the officials of the CoC members. Thus, it is clear that the Resolution plan of the Appellant is under consideration.

46. This Tribunal intend to make a note on the aspect of declaring the prospective Resolution Applicant as H1 bidder is on the basis of evaluation of the plan submitted by the prospective Resolution Applicant. The RP after his appointment shall publish the brief particulars of the invitation for Expression of Interest (EoI) in Form-G in accordance with Regulation 36A of CIRP Regulations, 2016. Further, the RP shall issue RFRP (Request for Resolution Plans) in accordance with Regulation 36(B) of CIRP Regulations, 2016, the information memorandum, evaluation matrix and a request for resolution plans within 5 days of the date of issue of the provisional list. The prospective resolution Applicant shall submit the Resolution Plan in accordance with Section 30 of the Code. The Resolution Professional shall examine each Resolution Plan received by him to confirm that that each Resolution Plan contained the conditions stipulated under sub-section (2)(a)

to (f) of Section 30 of the Code. After receipt of the plan, the RP shall present to the Committee of Creditors for its approval such Resolution Plan which confirm the conditions. Thereafter, the CoC may approve a Resolution Plan by vote of not less than 75% of voting share of the Financial Creditor after considering its feasibility and viability as per sub-section (4) of Section 30 of the Code. While so, the CoC after evaluation of plans submitted by the PRAs, the CoC will take a call on the plan with regard to its feasibility and viability after evaluation matrix. While doing so, the CoC declares one of the Prospective Resolution Applicant as H1 bidder on the basis of the evolution matrix to be done by the team of expert of the CoC. In the present case, also the CoC in its 24th Meeting declared the Appellant as H1 bidder and the same has been confirmed by the RP vide his e-mail to the Appellant and also admitted the said facts in the reply filed by him. Therefore, this Tribunal makes a point that declaring the Resolution Applicant as H1 bidder has substantial bearing over all the other plans. However, the approval of the said plan is the next step to be followed by the CoC in accordance with sub-section (4) of Section 30 of the I&B Code, 2016.

47. While matter stood thus, the RP vide its e-mail dated 13.08.2020 addressed to the Appellant and the others concerned stating as under:

“Dear Sir,

As you may be aware, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

(Fourth Amendment) Regulations, 2020 came into effect on 7th August, 2020.

In light of the same, the Committee of Creditors (“CoC”) of Leo Meridian Infrastructure Projects and Hotels Limited (“Corporate Debtor”). In the meeting held on Aug 12, 2020, have decided to consider all resolution plans which comply with the requirements of the Code and the regulations made thereunder, for the purposes of voting (to determine on the acceptance of rejection of said plans).

In view of the above, I am writing to request you to send in your “final” complaint resolution plan to us no later than midnight of August 15, 2020. You may take this opportunity to revise the financial proposal. If you choose to do so. However, in the interest of moving forward with the process quickly, we ask that you provide 2 versions of the final resolution plan - one “clean” version that can be presented to the CoC for voting, and another “marked up” version that shows the changes in “track mode” between the latest final resolution plan and the most recent version of the resolution plan as submitted by you earlier.

This is also a reminder to please incorporate the changes suggested by us in our emails from Aug 1, 2020 i.e.”

48. The RP in the above communication/letter relied upon the amendment to the Regulations came into effect on 07.08.2018 and in view thereof the CoC in its meeting held on 12.08.2020 decided to consider all Resolution Plans which comply with the requirements of the Code and the Regulations for the purpose of voting. Further the RP requested the applicants to send final compliant resolution plans by 15.08.2020.

49. Though the RP relied upon the CoC meeting held on 12.08.2020, however the minutes thereof has not been furnished for perusal the deliberations in the said meeting and the resolution/decision passed/taken by the CoC. The RP miserably failed to file the said minutes of CoC dated 12.08.2020 for reasons better known to him. Having not made available the said minutes of CoC held on 12.08.2020, this Tribunal shall not take into cognizance of the same. Coming to the amendment to the Regulations as stated by the Respondent RP, this Tribunal intend to look in to the said Regulation later part, of this judgment.

Deliberation on crucial letter dated 13.08.2020 and its impact;

50. Whilst aggrieved by the said letter dated 13.08.2020, the Appellant filed the I.A. No. 650 of 2020 before the Adjudicating Authority seeking a direction to set aside the meeting of the CoC dated 12.08.2020 whereby the RP in its letter dated 13.08.2020 invited final complaint resolution plan after declaring the Appellants as H1 bidder. The Adjudicating Authority passed an interim order dated 27.08.2020 directing the CoC and the RP not to put for voting the plans till 04.09.2020. It is submitted that as per the letter dated 13.08.2020 the last date mentioned for submitting the final compliant resolution plan was on or before 15.08.2020, however, one Mr. D.V. Satyanarayana filed resolution plan on 21.08.2020 i.e. much later to the date as mentioned by the RP.

51. In this context, this Tribunal intent to make a note that Mr. D.V. Satyanarayana's plan was once rejected by the CoC and the same has been

recorded by the Adjudicating Authority in its order dated 29.04.2020 in I.A. No. 299 of 2020. Having rejected the plan on the ground of ill net-worth, accepting the plan by the RP on 21.08.2020 would give suspicious. Be that as it may, this Tribunal will deal with the amendment to the Regulations as contended by the Respondents to decide whether the said amendment is applicable to the facts of the present case or not?

52. The contention of the Appellants is that the 4th Applicant namely P. Vasudeva Reddy in I.A. No. 498 of 2020 which was filed before the Learned Adjudicating Authority seeking a direction to consider their plan to be considered by the CoC is concerned, the Adjudicating Authority dismissed the said I.A. vide order dated 27.08.2020 specifically holding that the Resolution Plan received after due date and placing them before the CoC is held to be illegal and CoC was not authorised to approve the arbitrary and illegal conduct of CIRP. The Appellants further contended that despite the above rejection of their Resolution Plan by the CoC, the 4th Applicant in hat I.A namely P. Vasudeva Reddy is submitting the plan through another Resolution Applicant by giving Power of Attorney, taking the advantage of the letter of the RP dated 13.08.2020. It is also contended that the RP contravening the provision of law by misinterpreting the regulations and misguiding the CoC to his advantage.

53. It is also seen that the Appellants have filed I.A. No. 1059 of 2020 in I.A. No. 657 of 2020 in CP No. 43 of 2018 before the Adjudicating Authority

praying the Authority to direct the Resolution Professional to produce the minutes of meeting of CoC members held from 05.05.2020 to 13.10.2020 and more particularly the minutes of CoC meeting held on 12.08.2020 for scrutiny of the Tribunal. Despite the above application with a specific prayer, the Respondent failed to file the minutes of CoC dated 12.08.2020.

54. Be that as it may, the Respondent / RP vide his letter dated 13.08.2020 calling for final compliant Resolution Plan on the basis of the decision of the CoC members dated 12.08.2020, however, the said minutes cannot withhold for the reasons best known to him. Any document being relied upon by the party must be supplied to the respective parties and the same cannot be withhold on the ground of confidentiality. Not providing the document / minutes would certainly prejudice the rights of the parties. Therefore, the said conduct on the part of the RP is highly deprecated.

Now we deal with the provision of law:

55. The amendment to Regulation 39(3) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016. The said Regulation has been substituted vide notification dated 07.08.2020 w.e.f. 07.08.2020. The amendment thus read as under:

“[(3) The committee shall –

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

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

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

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

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

56. The amendment is effective from 07.08.2020 and the initiation of CIRP of the Corporate Debtor was 09.04.2019 and as per the record the Appellant submitted its plan on 02.03.2020 and the RP informed vide its letter dated 18.04.2020 that the CoC had extended to submit the Resolution Plan till 27.04.2020, however, Mr. D.V. Satyanarayana filed an I.A. bearing No. 299 of 2020 before the Adjudicating Authority and the Adjudicating Authority extended the time till 04.05.2020. From the sequence of events, it is clear that the date extended to submit the resolution plans till 04.05.2020 and the said order had attained finality and no challenge was made to the said order. While so, the amendment is w.e.f. 07.08.2020.

57. As per the amendment to the above Regulation i.e. sub-regulation (3) (a), the Resolutions Plans shall be evaluated as per evaluation matrix under sub-regulation (2) of Regulation 39. Further, the committee shall vote on all

such Resolution Plans simultaneously. However, as per sub-regulation (1) of Regulation 39, the prospective Resolution Applicant in the final list may submit a Resolution Plan or plans prepared in accordance with the Code and these regulations, meaning thereby the time prescribed for submission of plans in the Regulation and the Code shall be followed scrupulously. The substantial provision is made under Section 30 of the Code for submissions of Resolution Plan. The amendment to the above Regulation is only with regard to the plans which have already received as per the date fixed and within the time extended by the Competent Authority. Even though the amendment speaks about vote on all such resolution plan simultaneously is to be inconsonance with the plans received within the time, but cannot ask for submission of new plans under the guise of above amendment and there is no ambiguity in the above amendment to regulations. The RP tried to misinterpreted the above amendment to call for fresh/final compliant resolution plan. Further, the stand of the RP is that he has apprised the CoC on the above amendments dated 07.08.2020 and stated that the CoC was agreed that the aforementioned amendment applicable to the Corporate Debtor and decided to consider all complaint Resolution Plans for voting by CoC members, pursuant to the said amendment. As this Tribunal took a serious note that the Respondent/RP did not produce the minutes of the CoC meeting dated 12.08.2020 even before this Tribunal for perusal. Even otherwise, the Respondent/RP cannot take a decision on its own by pretending that the CoC had taken a decision to call for compliant resolution

plans. In the reply affidavit filed by the RP vide Diary No. 887 dated 22.11.2021 in para 11, it is stated that *“it was decided to consider all compliant resolution plans for voting by CoC members pursuant to amendment in the Regulations dated 07.08.2020.”* However, the RP vide his letter dated 13.08.2020 addressed to all concerned at para 3 stated as *“in view of the above, I am writing to request you to send in ever “final” compliant resolution plan to us no later than midnight of August 15, 2020”*. The wording used in the letter and in the reply is completely different. In view of discrepancy in using the words i.e. “final complaint resolution plan” and “all compliant resolution plans”, the crucial document i.e. the minutes of CoC dated 12.08.2020 was essential, to be looked into. However, as indicated above the Respondent /RP miserably failed to file the said minutes. In absence of the same, its existence itself is doubtful.

58. The 1st Respondent/RP in his notes of submissions filed vide Diary No. 92 dated 13.07.2021 at para 10 stated as under:

“Further, the RPs action under the direction of and in-consultation with CoC of inviting final compliant resolution plan from the eligible resolution applicants, including the Appellants herein, for the purpose of putting the plans to vote simultaneously, is strictly in accordance with law.”

From the above submissions, it is clear case that the RP intend to invite fresh resolution plans under the guise of final compliant resolution plan is

in our view highly misinterpreting the amendment to the regulations and it is act of contemptuous.

59. Hence, this Tribunal also draws adverse inference against the RP. The amendment does not give the powers to call for fresh resolution plans as intended by the 1st Respondent/RP under the guise of final compliant resolution plan as stated by the Respondent/RP in his e-mail dated 13.08.2020.

60. This Tribunal makes it clear that the amendment to the Regulation 39(3) of the IBBI Regulations, 2016 as referred above is gave the powers to the committee to evaluate resolution plans received as per evaluation matrix i.e. RFRP and deliberate on the feasibility and viability and vote on all such resolution plans simultaneously, does not mean for calling fresh plans. The evaluation matrix has been provided under Regulation 36-B of IBBI Regulations, 2016 and the Regulations in this regard along with the substantial provision of law have to be read harmoniously.

61. As discussed, (supra) Regulation 39 deal with approval of Resolution Plan. As per sub-regulation (1-B) of Regulation 39 of IBBI (Regulations for Corporate Persons), 2016, the committee shall not consider any resolution plan (a) received after the time as specified by the committee under Regulation 36-B or (b) received from a person who does not appear in the final list of prospective resolution applicants or (c) does not comply with the provisions of

sub-section (2) of Section 30 and sub-regulation (1). Therefore, the amendment does not give any scope for calling fresh Resolution Plans even after the time specified by the committee. Therefore, the 1st Respondent /RP completely misinterpreted the Regulations and appears to have been misguided the CoC members. The said act of the RP is in contravention of the above regulations.

62. Further, taking a note of the judgment of this Tribunal in Dwarkadhish Sakhar Karkhana Ltd. & Ors. Vs. Pankaj Joshi & Ors. reported in Manu/NL/0240/2021 dated 28.06.2021. This Tribunal held that at para 35 as under:

“The CoC, while reviewing its earlier decision has not assigned any good reason for revisiting their earlier decision. It seems that the CoC have taken the decision in the influence and misguidance of Pankaj Joshi.” (For clarification in that case Pankaj Joshi was the RP).

Further at para 36 this Tribunal has held that; *“the CoC in the shelter of maximization of value of asset, cannot be permitted to take any decision at any point of time in the name of commercial wisdom”.*

63. Further, this Tribunal in the matter of Amit Gupta Vs. Yogesh Gupta in CA (AT) (Ins) No. 903 of 2019 dated 20.12.2019 at para 16 held as under:

“16. Under Section 25(2)(h), the Resolution Professional is required to invite prospective Resolution Applicants who fulfil such criteria as may be laid down by him with the approval of

Committee of Creditors having regard to be complexity and scale of operations of the business of the Corporate Debtor and such other conditions as may be specified by the Board, to submit a Resolution Plan or plans. This was done by the Resolution Professional as can be seen from Annexure A-3. The invitation was issued with last date and time fixed as 12 o'clock noon of 18th August, 2018. Regulation 36-A of "the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016" ('Regulations' – in short) deals with invitation for expression of interest. Clause – 6 of Regulation 36-A provides that "The expression of interest received after the time specified in the invitation under Clause (b) of the sub-regulation (3) shall be rejected." Although the Resolution Professional in his Affidavit before Adjudicating Authority mentioned the time of receipt of e-mail dated 18th August, 2018 (Annexure A-9) from the Appellant at 11:50:58 hours, the document filed by the Appellant himself shows that it was received/sent after 12 o'clock. In terms of Clause – 6 of Regulation 36-A, even if such e-mail was to be categorized as an expression of interest, it would require to be rejected."

Finding

64. The Learned Adjudicating Authority misinterpreted the Regulations 39(3) of the I&B Code, 2016 and not properly understood the judgment of the Hon'ble Supreme Court in M/s Jaypee Kensington Boulevard Apartments Welfare Associations & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 20202. The Hon'ble Supreme Court in the aforesaid judgment held that the said amendment of sub-regulation (3) of Regulation 39 of CIRP

Regulations insertion of sub-regulation (3A) and (3B) thereto, could only be visualised as clarificatory in nature and in any case even before amendment there had not been any prohibition in putting two or more confirming Resolution Plans to vote simultaneously. The Hon'ble Supreme Court also clarified the intent of the amendment to the Regulations and the Hon'ble Supreme Court also did not hold that as per the amended regulation a fresh/final compliant resolution plans shall be called beyond the time stipulated under the Code. Further, this Tribunal is of the view that the amendment is only to consider the feasibility, viability of each plan and not to call fresh resolution plans (decided by RP) under the guise of final compliant resolution plan.

65. Therefore, this Tribunal hold that the order passed by the Adjudicating Authority dated 07.05.2021 is per se illegal and without application of mind and also not in conformity with the provisions of law. The Adjudicating Authority miserably failed even to call for, the purported CoC minutes dated 12.08.2020 for proper adjudication of I.A. No. 606 of 2020.

66. After analysing the facts and law this Tribunal comes to a resultant conclusion that the Appellant has made out a prima facie case to be interfered with the order passed by the Adjudicating Authority.

Conclusion

67. Viewed in that perspective, this Tribunal pass the following directions:

- a) The impugned order dated 07.05.2021 passed in I.A. No. 606 of 2020 in C.P. No.43 of 2018 is set aside consequently the e-mail/letter dated 13.08.2021 of the RP is illegal and non-est.
- b) In view of setting aside the letter dated 13.08.2021, this Tribunal directs the CoC to consider the plans submitted prior to 12.08.2020 and proceed in accordance with law.

68. With the aforesaid directions the Appeal is allowed. No orders as to costs. The interim order passed by this Tribunal dated 23.06.2021 made absolute. The applications if any pending stand closed.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

16th August, 2022

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