THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI

I.A No. 5201/2024
IN
Company Petition No. (IB) – 622/ND/2022

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF:

STATE BANK OF INDIA ....FINANCIAL CREDITOR

VERSUS

SCHON ULTRAWARES PRIVATE LIMITED ....CORPORATE DEBTOR

AND IN THE MATTER OF-
SMT. MEENA JUNEJA
(Suspended Director of M/s. Schon Ultrawares Pvt. Ltd.)
Reg. office at: 94, Neel Kamal,
Apartment, Vikaspuri, New Delhi-110018 **....APPLICANT**

VERSUS

M/s. SCHON ULTRA WARES PVT. LTD
Through its Resolution Professional
Mr. Sandeep Mahajan
Having
Its reg. office at: C2/288,
Janakpuri, New Delhi- 110001 **....RESPONDENT**

Order Pronounced on: 15.09.2025

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

SMT. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant	:	Mr. Apoorv Khator, Ms. Arpita Pande, Advs.

For the Respondent	:	Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Vanshika Agrawal, Advs.

ORDER

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant, Smt. Meena Juneja, Suspended Director of the Corporate Debtor ('CD') seeking rejection of Resolution Plan approved by the Committee of Creditors in their 12th Meeting.
2. The Applicant in the present application has prayed for the following reliefs: -
   - i. *Reject the resolution plan of successful resolution applicant approved by the Committee of Creditors in filed by resolution professional vide I.A. No. 30 of 2024;*
   - ii. *Allow the present Application and direct the Respondent/COC to consider and approve the OTS Plan given by the Ex-Management of the Corporate Debtor.*
   - iii. *Pass any further order as deemed necessary to protect the interest of the applicant and to meet the end of justice.*
3. ***Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -***
   - (i) Corporate Debtor was admitted into the Corporate Insolvency Resolution Process ("CIRP") by order dated 01.08.2023 and Mr. Sandeep Mahajan was appointed as IRP & subsequently confirmed as Resolution Professional. The CoC in its 12th meeting convened on 15.06.2024 has approved the Resolution Plan dated 13.03.2024 submitted by Mr. Subodh Gupta and Ms. Shipra Gupta, with 100% majority along with addendum dated 05.04.2024 & 12.04.2024 and Clarificatory affidavit dated 29.05.2024.
   - (ii) The Resolution Plan submitted by the Successful Resolution Applicant ('SRA') is liable to be rejected on the ground that that SRA and the

officials of the SBI, sole member of CoC acted in connivance and approved the resolution plan avoiding the bar under Section 29A. The SRA is ineligible to act as a Resolution Applicant under Section 29A(j) as they are the related parties of the Corporate Debtor.

(iii) The Corporate Debtor had executed a term sheet with the SRA on 09.06.2022 under which SRA agreed to invest 10 Cr. in consideration of 75% stake in the Corporate Debtor. SRA, in furtherance of purported term sheet, has disbursed Rs. 10 Lacs on 25.07.2022 in the loan account of Corporate Debtor maintained with SAB SBI Branch, evidencing performance on contract making it binding on both parties, being related party of Corporate Debtor. Despite knowing this, CoC has approved the Resolution Plan submitted by the SRA.

(iv) Section 5(24)(h) squarely covers the aforesaid stance. As per the Section 5(24)(h), any person on whose advice, directions or instructions, a director, or manager of the Corporate Debtor is accustomed to act is a related party. In terms of purported term sheet, the so called investment of 10 Cr., includes 6.5 Cr. to be paid to SBI towards One Time Settlement. Since, Rs. 10 Lacs were remitted by SRA in the account of SAM, SBI, the relationship stands fructified. However, in the meantime, Section 7 Petition was filed by the Applicant Bank.

(v) In terms of Section 5(24A)(f), the Corporate Debtor and its board of directors, including the SRAs, would be treated as related parties of the SRAs. Further, in view of term sheet, the Corporate Debtor and its board is bound to act on the instructions of the SRA making SRA ineligible under Section 29A(c) being connected person of the SRA.

(vi) The Resolution Plan so approved by the CoC lacks transparency concerning causes of financial distress. The Petitioner Bank through their malicious acts, deliberately attempt to ruin the financial stability of the Corporate Debtor. The Petitioner Bank filed the present petition in the midst of OTS proposal. The Account of the Corporate Debtor was also declared as NPA which is illegal as per the guidelines and policies of the RBI.

(vii) The Plan approved by the CoC proposes to disclose the identity of the board members only after approval of the Resolution Plan by the Adjudicating Authority. As per the Plan, the appointment of statutory and internal auditors will be done post approval of plan. Further, the appointment criteria or qualifications of manufacturing experts and key managerial personnel is also vague and it also failed to identify specific individuals or their qualifications. The Resolution Plan is also silent about rehiring or retention of former employees.

(viii) The Resolution Plan so approved by the CoC further fails on multiple fronts including feasibility, viability and non-compliance with liquidation value requirements. Vague financial assumptions and lack of clarity on capital infusion raise serious doubts about the viability of the plan. Further Section 31 of the code mandates that the Operational Creditors must receive at least the liquidation value. The major haircut proposed for the Operational creditors indicates non-compliance of section 31 of the Code.

(ix) The approved Resolution Plan is also silent about the personal or corporate guarantee or any additional security to assure the implementation of the financial commitments. Regulation 38 (1B) of the CIRP Regulations, 2016 mandates that resolution plan should contain provisions for the effective implementation of the plan. Failure on incorporating such adequate safeguards made the instant plan non-complied w.r.t. Code's requirements.

(x) Resolution Plan proposes Rs. 8.195 Cr. to secured financial Creditors as compared to their admitted claims of Rs. 33.07 Cr. Operational Creditors, including government dues, are also receiving significantly reduced payments. The SRA has proposed insufficient provisions for the stakeholders of Corporate Debtor. No payments were proposed to the related party creditors too, which might hinder resolution process, especially if related parties pay an essential role in the company operations.

(xi) The Applicant proposes to pay the amount Rs. 8.25 Cr. to the Secured Financial Creditor. Further, the applicant, being the suspended director of Corporate Debtor, is well capable of management and control of business, has adequate means for supervision on implementation and financial capability for reviving company & generating company. Thus, as contented above, the resolution plan submitted by the SRA should be rejected due non-compliances and proposal made by the Applicant should be considered.

4. ***Contentions asserted by the Learned Counsel appearing on behalf of the Respondent i.e., Resolution Professional in reply to the present Application.***

(i) The contention of the Applicant that the SRA is a 'related party' under section 5(24) of the Code, on account of depositing Rs. 10 Lacs in the loan account to the SBI while Applicant was in OTS Proposal cannot be relied upon. As, the SRA does not meet any of the criteria mentioned under section 5(24) and thus, cannot be treated as related party. Further, the SRA is merely an investor with an investment which never took a logical end and never happened finally. Also, the Corporate Debtor in its Balance sheet does not declare SRA as related party, thus, none of ingredients of Section 5(24)(h) were fulfilled. No supporting documents was produced by the Applicant regarding the claim of related party.

(ii) SRA being the sole beneficiary of the Resolution Plan, is the necessary and proper party to the present application. The principle of *audi alteram partem* and *ubi jus ibi remedium* signifies that, without impleading SRA, the prayers sought by the Applicant is not maintainable and fails on account of non-joinder of necessary parties.

(iii) Under Regulation 36A(11) of the CIRP Regulations, any objection to the inclusion of an applicant in the provisional list of resolution applicants must be raised within five days. The Applicant failed to challenge the eligibility of the SRA at the relevant time. It is only for the first time, the applicant has raised objection w.r.t. eligibility of SRA in terms Section 29A, post approval of Resolution Plan by the CoC on 15.06.2024. Thus, in view of the applicant's ignorance, he is estopped from raising such claim post approval of Resolution Plan.

(iv) The Applicant being a promoter and suspended board of the Corporate Debtor, cannot challenge business conduct by the CoC in their meetings. Since, application for approval of Resolution Plan bearing I.A. No. 30 of 2024 is already filed before this adjudicating authority post approval by the CoC in its 12th Meeting convened on 15.06.2024 with 100% majority, the applicant cannot challenge the Resolution Plan, as the commercial wisdom of the CoC is non-justiciable.

(v) Further, the applicant has failed to show any non-compliance under Section 30(2) of the Code in the resolution plan so approved by the CoC. It is trite law that the validity of a Resolution Plan is to be tested only against the requirements of Section 30(2). The applicant failure to point out any non-compliance under Section 30(2) rendered the present application non-maintainable. Also, the CoC in its commercial wisdom has approved the resolution plan subsequent to compliances of Section 30(2).

(vi) Present application has been filed on baseless grounds to challenge the Resolution Plan, it is merely a dilatory tactics of suspended directors. Despite having complete knowledge and there were ample opportunities to object during the CoC meetings, the applicant didn't acted upon and intended to delay and obstruct the CIRP process.

(vii) It is evident that the Applicant's true intent is to regain control of the Corporate Debtor and continuously try to engage in negotiation for a one-time settlement with the Financial Creditor. However, proposed OTS ultimately has failed. Therefore, the present application is devoid of merits and deserves to be dismissed.

Analysis and Findings

5. We have heard the Ld. Counsels for the Applicant and for the Respondent Resolution Professional and further perused the averments made in the Application, Reply filed by the Resolution Professional and written submissions presented before us. The Applicant has filed this application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking rejection of Resolution Plan along with addendums approved by Committee of Creditors ("CoC") in its 12th meeting held on 15.06.2024, primarily on the ground that SRA is a 'related party', hence ineligible to submit Resolution Plan in terms of Section 29A of the Code.
6. Ld. Counsel for the Applicant submitted that the SRA, Mr. Subodh Gupta and Ms. Shipra Gupta, are disqualified from submitting a Resolution Plan under Section 29A(j) of the Code. The Applicant has submitted that as per Section 5(24)(h) of the Code, any person on whose advice, directions or instructions, a director, or manager of the Corporate Debtor is accustomed to act is a related party. Section 5(24)(h) and Section 29A(j) of the Code are reproduced below:

"5. (24) related party*, in relation to a corporate debtor, means—*
(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;"

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

(j) <u>has a connected person not eligible under clauses (a) to (i)</u>

[Explanation. I] -- For the purposes of this clause, the expression connected person means--
(i) <u>any person who is the promoter or in the management or control of the resolution applicant; or</u>
<u>(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or</u>
<u>(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)</u>."

7. The bone of contention of the Applicant seeking rejection of resolution plan is that the SRA is ineligible to submit the Resolution Plan in terms of Section 29A as the SRA became a related party of the Corporate Debtor pursuant to

the Term Sheet dated 09.06.2022 executed between the suspended management of the Corporate Debtor and the SRA, Ms. Shipra Gupta. As per the said Term Sheet, the SRA/Investor had agreed to invest Rs. 100 million as equity and convertible shares towards an OTS with the banks, thereby acquiring 75% stake in the Corporate Debtor. Pursuant thereto, the SRA paid Rs. 10 Lakhs to SBI towards the proposed OTS of loan facilities.

8. In order to examine whether on the basis of the Non-Binding Term Sheet executed between the SRA and the Corporate Debtor, the SRA is a 'related party' of the Corporate Debtor, we may refer to the said Term Sheet dated 09.06.2022. The relevant portion of the Term Sheet is reproduced below:

> ***PRELIMINARY NON-BINDING TERM SHEET-SUBJECT TO CONTRACT***
>
> ***June 09, 2022***
>
> ***This Term Sheet is an expression of interest only and, except as expressly set forth below is not to be construed as an intention to create legal relations or a binding agreement between the parties*** *other than what is specifically mentioned herein as binding on the Company and the Existing Shareholders. Any transaction is subject to, among other things, the completion of the operational (including, but not limited to inspections by the Investors business consultants), financial, accounting and legal due diligence investigation and the results thereof being in all respects satisfactory to the Investors in its sole discretion, and in the Investors' sole determination, the absence of any material adverse change in India, financial markets, or in the financial condition, operations and/or prospects of the Company.*
>
> ***Definitions***
>
> ***Definitive Agreements****-Shall mean the Investment Agreement and any other agreement executed between the parties, to give effect to the transaction contemplated herein.*
>
> ***8. One Time Settlement or OTS***

The amount required to be infused by Investors to settle all Principal and interest obligations of Term Loans and Working Capital Limited taken by Company from State Bank of India (earlier State Bank of Travancore) from time to time over the years 2013 till date. As per current discussions, we understand that the amount is Rs. 65m

10. Investors: *Mrs. Shipra Gupta (Main Investor), Mr. Subodh Gupta, and other investors.*

15. Closing Date *: Definitive Agreements shall be executed, and financial closing s proposed to be within 45 days from the date of this Term Sheet unless such person requires to be extended to obtain any government approval and/or if otherwise agreed by the Investors in the Definitive Agreements investors as well as Existing Shareholders on a test effort basis and subject to satisfaction of both parties will try to accomplish an earlier Closing.*

34. Definitive Documents*: Execution of Definitive Documents, in an agreed form. Appropriate undertakings and warranties from the Companies and Existing Shareholders regarding the disclosures and state of affairs of the Company as submitted to the Investors during the due diligence.*

9. On bare perusal of the aforementioned terms in the Term Sheet, it is observed that the main title reads 'PRELIMINARY NON-BINDING TERM SHEET – SUBJECT TO CONTRACT' and explicitly records that it is only an expression of interest. It was only a preliminary document which discloses the intent of the parties to enter into a definitive binding agreement/contract. However, no definitive agreement as provided in clause 34 of the term Sheet was ever executed between the parties. It is further noted that although the Investor had deposited Rs. 10 Lakhs with SBI towards the proposed OTS, the said amount was refunded by the Bank prior to the filing of the main Section 7 petition and before conclusion of any transaction. Since the Term Sheet never culminated into a binding

agreement and the amount deposited was returned, the Term Sheet is only an offer and not culminated in the binding contract between the parties.

10. In respect of obligations of the parties in Non-Binding Term Sheet, we may refer to a recent judgment of Division Bench of the Karnataka High Court in **M/S. Azeem Infinite Dwelling v. M/S. Patel Engineering Ltd. (MANU/KA/1320/2024**) wherein the Karnataka High Court held that a Term Sheet cannot be considered a binding agreement if it explicitly requires the execution of a definitive agreement. The Court emphasized that unless the Term Sheet itself is intended to create binding obligations, it remains a preliminary document, contingent upon the execution of a final, definitive contract. The relevant portion of the said judgment is reproduced hereunder:

> *"10. From a reading of the Term sheet for Buyout dated 08.12.2022, it is clear that the said document is only in the nature of an offer, which is valid till Definitive agreement is entered into or for a period of 90 days from the date of execution, whichever is earlier. It is not in dispute before us that no Definitive Agreements had been entered into within a period of 60 days from the date of execution of the Term sheet for Buyout. It is also not in dispute that no amount has changed hands on the basis of the Term sheet for Buyout between the parties to the same."*

11. Recently, Delhi High Court in their judgment dated 13.05.2025 in **Oravel Stays Private Limited vs Zostel Hospitality Private Limited** (O.M.P. (COMM) 151/2021 & IA No.5479/2021) has referred to the above judgment of the Karnataka High Court and has observed as under:

> *"83. Thus, the term-sheet expressly and unequivocally states that it is 'nonbinding'. It further goes on to prescribe that only 5 clauses thereof are to be treated as binding. Had the parties intended that all the provisions of the term-sheet be made binding, there would have been no occasion to incorporate an express stipulation to the contrary.*

88. Thus, the conclusion in the impugned award to the effect that the term-sheet became a binding document by virtue of the conduct of the parties is somewhat tenuous."

Thus, mere signing of non-binding term sheet by the parties, (where it provides for execution of definitive agreement) no obligations/rights accrue on any party.

12. Since, no definitive Investment agreement (as required under the Non-Binding Term Sheet) was executed between the SRA and the Corporate Debtor, and Rs 10 lakhs deposited by the SRA with the SBI was already returned back before filing Section 7 Petition, the SRA is/was not in position to give any advice, directions or instructions to the director, partner or manager of the Corporate Debtor for doing act. Further, as held by the Karnataka High Court in **M/S. Azeem Infinite Dwelling v. M/S. Patel Engineering Ltd. (MANU/KA/1320/2024**) and Delhi High Court in **Oravel Stays Private Limited vs Zostel Hospitality Private Limited,** Non-Binding Term Sheet is merely an offer unless definitive agreement is executed between the parties. Therefore, we are of the view that mere signing Non-Binding Terem Sheet by Ms. Shipra Gupta (on behalf of Investors), SRA cannot be said to be 'related party' of the Corporate Debtor in terms of Section 5(24)(h) and therefore not ineligible to submit Resolution Plan in terms of Section 29A (j) of the IBC.

13. The Applicant has, also alleged that the Resolution plan submitted by the SRA lacks a clear, detailed financial strategy or projections, which undermines its feasibility. Section 31 requires the Adjudicating Authority to ensure that the plan is viable and capable of implementation. The Applicant has also stated that Section 31 mandates that creditors, particularly operational creditors, must receive at least the liquidation value in a resolution plan. It is further submitted by the Applicant that the steep reduction in payments to operational creditors as outlined in this plan is indicative of non-compliance with this requirement. By offering creditors

substantially less than what they would receive under liquidation, the plan is not in adherence to the liquidation value provision. It is further contended that the plan does not comply with the mandate of Section 31 of the Code and Regulation 38 of CIRP Regulations. The Applicant has however not provided any material/document to substantiate these allegations. Further, we have yet to consider and examine the merits of the Resolution Plan and to see whether Resolution Plan meets the requirements of Section 30(2) including relevant Regulations. Therefore, at this stage, when the merits of Resolution Plan have not been considered, and in absence of any material placed on record by the Applicant, no specific findings on these issues can be recorded. Needless to say, these issues shall independently be considered while considering IA No. 30 of 2024 for Approval of Resolution Plan.

14. In light of the above, the contentions made by the Applicant lacks merit and is therefore dismissed. Accordingly, IA No. 5201 of 2024 in **CP(IB) No. 622/ND/2022** is hereby **dismissed** and **disposed of.**

Let a copy of this order be served to parties.

Sd/-	Sd/-
(ANU JAGMOHAN SINGH)	**(MAHENDRA KHANDELWAL)**
MEMBER (T)	**MEMBER (J)**