NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1906 of 2024

[Arising out of the Impugned Order dated 13.08.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Jaipur Bench in CP (IB) No. 03/9/JPR/2018]

In the matter of:

Yashdeep Sharma
Suspended Director of
M/s. Maha Associated Hotels Pvt. Ltd.
R/o 6113, Sector B-8, Vasant Kunj,
New Delhi- 110070.

...Appellant

Versus

1. **Tara Chand Meenia, Resolution Professional**
For M/s. Maha Associated Hotels Pvt. Ltd.
R/o. Flat No. 206, GH 3, Sector 24,
Panchkula, Haryana - 134112

...Respondent No.1

2. **Punjab & Sind Bank,**
I.B.D., 6, Scindia House,
New Delhi - 110001
Also at:
HO SAM Vertical
1st floor, Block 3, NBCC Complex,
East Kidwai Nagar, New Delhi - 23.

...Respondent No.2

3. **Trufalir Buildwell LLP**
RZ/DS, KH No. 83/14, Mahavir Enclave,
Palam, New Delhi - 110045

...Respondent No.3

Present:

For Appellant : Mr. Suraj Prakash, Mr. Mrinal Litoria, Ms. Priyanka Solanki, Advocates.

For Respondent : Mr. Prakul Khurana, Mr. Yash Tandon, Mr. Gourav Asati, Mr. Nilmesh Sen, Advocates for RP.

Mr. Krishnendu Datta, Sr. Advocate with Mr. Tanmaya Mehta, Mr. Prabhas Bajaj, Mr. Rishav Rai, Mr. Vijeta Singh, Advocates for R-3.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 13.08.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in CP(IB) No.03/9/JPR/2018. By the impugned order, the Adjudicating Authority has approved the resolution plan of Trufalir Buildwell LLP-the Successful Resolution Applicant (**"SRA"** in short) as placed by the Resolution Professional (**"RP"** in short) in IA No. 06/JPR/2024 before it while rejecting the objections raised thereto by the Appellant vide IA No. 353 of 2024. Aggrieved by the impugned order, this appeal has been preferred by the Appellant-suspended management of the Corporate Debtor.

2. Making his submissions, Shri Suraj Prakash, the Ld. Counsel for the Appellant submitted that the RP had failed to conduct the CIRP proceedings

of the Corporate Debtor with due diligence. To substantiate their contention, it was stated that resolution plans of the Corporate Debtor as submitted by the Prospective Resolution Applicants (**"PRAs"** in short) were considered by the Committee of Creditors (**"CoC"** in short) in a manner marred by irregularities. There were clear violations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"CIRP Regulations"** in short). Stressing on the serious discrepancies and non-transparency in the procedure adopted by the RP/CoC in the process of approving the resolution plan of the SRA, it was pointed out that the RP had failed to supply in advance a copy of final and revised resolution plan both to the CoC and the suspended management. None other than the RP had a copy of the final resolution plan. It was therefore contended that the CoC had approved the resolution plan without the resolution plan in its final form being available before it and hence impermissible as held by the Hon'ble Supreme Court in the ***M.K Rajagopalan Vs Dr. Perisamy Palani Gounder (2024) 1 SCC 42.*** It was further contended that the financial proposal in respect of the final revised resolution plan of the SRA was in the form of an unsigned word document which was therefore not a valid resolution plan submission. Moreover, since the financial proposal was only screen-shared by the RP in the CoC meeting, no real and meaningful discussion could have been held on the viability and feasibility of the resolution plan. The suspended management had also not been supplied a copy of the resolution plan and valuation reports. This was clearly in contravention of the well settled law laid down by the Hon'ble Supreme Court in ***Vijay Kumar Jain Vs***

Standard Charted Bank and Ors. (2019) 20 SCC 455 that the suspended management is entitled to entitled to have a copy of the resolution plan of the PRAs to effectively participate in the CoC meetings.

3. Pointing out some of the other irregularities, it has also been submitted that the CoC had wrongfully adopted the Swiss Challenge Method. Moreover, the scoring of quantitative parameters as per the evaluation matrix was carried out by the RP and not by the CoC. Submission was pressed that that when the resolution plans received from PRAs were put up for voting in the 54th CoC meeting, RP had hastily conducted the voting on the resolution plan. It was also submitted that the liquidation value of the Corporate Debtor by the erstwhile RP was Rs 42 Cr. while the present RP showed the liquidation value as only Rs 4.8 Cr. Despite the significant difference between the estimates of the two valuers, the RP had failed to do so thereby jeopardising the mandatory process of valuation of the Corporate Debtor. Hence, CoC was compelled to accept a resolution plan for the Corporate Debtor entailing huge haircut suffered by the Secured Financial Creditor and nil payment for other creditors. It is also submitted that the resolution plan is conditional because prior consent of Rajasthan State Industrial Development and Investment Corporation Ltd. (**"RIICO"** in short) had not been taken for renewal of the lease in favour of the Corporate Debtor before the approval of the resolution plan. It was pointed out that the Hon'ble Supreme Court in the case of ***Greater Noida Industrial Development Authority Vs Prabhjit Singh Soni*** in ***Civil Appeal No. 7590-7591 of 2023*** held that though feasibility and viability of

a plan are economic decisions best left to the commercial wisdom of the CoC, but when a plan envisages use of land not owned by the Corporate Debtor but by a third party, there has to be a closer examination of the plan's feasibility. It has also been added that the RP has failed to do due diligence in respect of the source of funds to be infused by the SRA. It is also contended that the CoC had rejected the settlement proposal of the promoters which settlement proposal aimed at maximizing the value of the Corporate Debtor and exceeded the plan value of the SRA. The failure of the CoC to consider the offer of settlement of the promoters is arbitrary. It was further added that though the Appellant had filed IA No. 353 of 2024 before the Adjudicating Authority raising objections to the approval of the resolution plan filed by the RP, the Adjudicating Authority did not give any findings on the grounds raised by the Appellant in their challenge to the approval of the resolution plan.

4. Refuting the contentions of the Appellant, Shri Krishnendu Datta, Ld. Sr. Counsel for the SRA-Respondent No.3 submitted that the Appellant is disgruntled and dissatisfied as its resolution plan failed to pass muster. The Appellant had submitted his resolution plan on 26.04.2024 which plan was under consideration of the CoC until 22.05.2024 when it was rejected. Having subjected themselves to the process of submission of resolution plans and having participated as a competing party with other PRAs, it does not behove of the Appellant to assail the resolution plan of other competing parties. It was asserted that the RP had been fair and transparent in the conduct of the CIRP and made complete disclosure of all relevant information to all the relevant

stakeholders on the resolution plans of all PRAs for proper conduct of voting process. On the contrary, the Appellant had wilfully violated the CIRP Regulations while submitting their resolution plan by not depositing EMD and for not having filed any Expression of Interest which led to rejection of their resolution plan. Thus, they have no right to point fingers at the RP/CoC on the manner of conduct of CIRP. It was vehemently contended that the Appellant was only trying to derail and drag the CIRP process by raising technical pleas. The CIRP process for approval of resolution plan and the voting was run in a fair and transparent manner which had led to substantially revised offer from the anchor bidder. It was fervently contended that the Appellant being the suspended management, who had been competing with other PRAs by submitting their resolution plan, their approach and thinking in respect of CIRP of the Corporate Debtor was impacted by conflict of interest. Thus, raising questions on the bonafide of the Appellant, it was asserted that their objections to the resolution plan of the SRA was rightly overruled by the Adjudicating Authority as the suspended management could not be allowed to substitute the wisdom of the CoC in deciding on the merits of a resolution plan. It was also contended that the issue of valuation of the Corporate Debtor was not raised before the Adjudicating Authority and cannot therefore be agitated before the Appellate Tribunal. It was added that in any case this contention is misconceived as CIRP Regulation 35(1)(b) is applicable in case of variance in the estimates of registered valuers appointed by the same RP while in this case the valuation report was submitted during the tenure of the erstwhile RP. Further, on the contention of the Appellant that the resolution plan of the SRA was contingent upon

resumption of lease by RICCO, it was pointed out that this issue has been looked into by the Adjudicating Authority at para 37 of the impugned order and found that the obligation under the resolution plan of the SRA is not contingent or conditional upon continuation of occupation of the said land or resumption of lease by the RICCO. On the issue of failure of the CoC to consider the offer of settlement of the promoters, it was contended that this matter not having been raised before the Adjudicating Authority cannot be therefore be raised at this appellate stage.

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

6. The broad questions before us which require to be answered is whether there was any evidence of irregularity in the conduct of CIRP proceedings by the RP and whether the Appellant in their capacity as suspended management was prevented from effectively participating in the CoC deliberations and whether the Adjudicating Authority had erred in approving the resolution plan of the SRA. All the above issues are closely interlinked and will be dealt together.

7. It is the case of the Appellant that in their capacity as suspended management of the Corporate Debtor they had a right to participate in the CoC proceedings and were entitled to have a copy of the resolution plan of all the PRAs. However, their participation was stymied by the RP as they were denied access to a copy of the resolution plan of SRA. Buttressing their argument, the Appellant stated that they had sent an e-mail to the RP

demanding the resolution plan of the SRA. However, the RP did not share the plan prior to the commencement of voting which displays a clear intention on their part to prevent the suspended management from effectively participating in the discussion on the resolution plan. The email containing the final revised resolution plan of SRA-Respondent No. 3 was received by RP on the evening of 22.05.2024 by e-mail in the form of a word document sent as an attachment. Clauses 11(i) and 11(ii) of the RFRP required the SRA to sign each page of the submitted resolution plan which has not been done. As this document was unsigned, it was not even a valid resolution plan submission. It was also mentioned that even the CoC was not supplied copy of the plan of the PRA and that it was merely screen-shared during the CoC meeting. Further, the manner in which the resolution plan was approved in the 54th CoC meeting casts a serious doubt on the bonafide of the RP in the conduct of the CIRP. Since, the financial proposal of the plan was screen shared by the RP at the time of CoC meeting, no real discussion could be held on the feasibility and viability of the resolution plan as no member of the CoC had a copy of the final revised resolution plan. It is pointed out that while the final revised resolution plan was received at around 5 pm, the 54th CoC meeting concluded by around 6 pm which shows that the resolution plan was hastily passed by the CoC. It is therefore contended that the CoC had approved the resolution plan without the resolution plan in its final form being available before it and hence impermissible as held by the Hon'ble Supreme Court in the ***M.K Rajagopalan Vs Dr. Perisamy Palani Gounder (2024) 1 SCC 42.*** Advancing their arguments further, it has been stated that since the word

document of the resolution plan was opened in the CoC meeting, the necessary steps outlined under IBC like scrutiny of plan by RP under Section 30(2) of the IBC, evaluation of plan by RP and CoC as per evaluation matrix could not have been completed. It is also contended that the scoring on evaluation matrix which is the prerogative of the CoC was in fact done by the RP which is not in order.

8. To go to the root of the matter, we need to go into the record of deliberations of the CoC. From material placed on record, it is apparent that in the 52nd CoC meeting dated 09.05.2024, the CoC in exercise of its commercial wisdom decided to adopt the Swiss Challenge method for approval of the resolution plan wherein the consideration offered by the anchor bidder/highest bidder was to be shared with the other Resolution Applicants to give them a fair opportunity to tender their best possible offer. Thereafter, the anchor bidder was to be given a final opportunity to improve upon its offer over other highest bids received, if any during such process. This approach adopted by the CoC cannot be faulted as it is in consonance with the intent and objective of IBC to further the value maximization of the Corporate Debtor.

9. When we look at the impugned order, we find that the Adjudicating Authority has taken cognisance that the RFRP provided for the Swiss Challenge Method. For easy reference, we would like to reproduce the relevant excerpts from the impugned order as below:

> *"29. In so far as the adoption of the Swiss Challenge Method is concerned, it is relevant to mention that Clause 10(i) of the Request for*

Resolution Plan ('RFRP') categorically provided for adoption of the challenge mechanism by the CoC at its discretion. The relevant extract of the RFRP is reproduced hereunder: -

> *"The CoC may also use a challenge mechanism to enable resolution applicants to improve their plans in terms of Regulation 39(1A)(b) of the CIRP Regulations, 2016."*"

10. The contention of the Appellant that the CoC had wrongfully adopted the Swiss Challenge Method goes against the teeth of CIRP Regulation 39(1A) which allows the Swiss Challenge Method as one of the options which can be adopted by the CoC in requesting for resolution plan. It may be useful to notice Regulation 39(1A) which is as extracted below:

> *"39(1A) The resolution professional may, if envisaged in the request for resolution plan-*
>
> *(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or*
>
> *(b) use a challenge mechanism to enable resolution applicants to improve their plans."*

Thus, in terms of the above regulatory framework of IBC, we cannot read any fetters on the power of the CoC to take a decision to embark on extended challenge method. The Challenge Mechanism envisaged under Regulation 39(1A) by its nature envisages multiple rounds of challenge so as to enable Resolution Applicants to improve their Plans. Regulation 39(1A) does not prohibit CoC from negotiating with Resolution Applicants or asking Resolution Applicants to further increase the Plan value. Any such step taken by the CoC to follow the Swiss Challenge Method cannot be said to be arbitrary or in violation of any statutory provisions of the IBC. We also find that in the 53rd CoC meeting, the RP requested the COC for a discussion on Swiss Challenge method adopted and

its fairness and transparency as the same had been questioned by one of the PRAs. The CoC had noted that the process has been carried on by the RP and his team in a completely fair and transparent manner which process was also well explained to all the PRAs. The declaration of the Anchor Bidder was also made in a transparent manner and all the other PRAs were given opportunity to improve the consideration in two rounds of discussions held in the COC meeting on 09.05.2024.

11. Thus, we are of the considered opinion that this contention of the Appellant questioning Swiss Challenge method clearly lacks merit as the adoption of Swiss Challenge for value maximization was the outcome of the commercial wisdom of COC. The Adjudicating Authority has not committed any error in holding at para 30 of the impugned order that *"a perusal of the 52nd CoC Meeting reveals that the agenda qua adoption of the Swiss Challenge Method and the Anchor Bidding system were duly approved by the CoC in its commercial wisdom."*

12. This brings us to two other important allegations of irregularity in the CIRP process levelled by the Appellant. Firstly, that the resolution plan was not shared by the RP either with the CoC or the Appellant and, secondly, that scoring of quantitative parameters as per the evaluation matrix was carried out by the RP and not by the CoC. It has been stoutly contended that the suspended management was required to be supplied with a copy of the resolution plan and valuation reports as laid down by the Hon'ble Supreme Court in ***Vijay Kumar Jain*** judgement supra.

13. We now proceed to examine the contentions as outlined in the preceding paragraph. To answer this question, we need to notice how the deliberations of the CoC progressed in the 53rd and 54th meetings held on 17.05.2024 and 22.05.2024 respectively. At the outset we must add that the RP took the roll call of all the participants including the Financial Creditors and suspended directors who attended the CoC meeting. Wherever required the PRAs were also invited to the meetings and admitted for discussion with CoC members. In the given circumstances, we are not impressed by the contention of the Appellant that there was violation of the CIRP Regulations 21 and 24.

14. When we peruse the minutes of the 53rd CoC meeting, we find that all the PRAs were given a chance to submit their best proposal in terms of the Swiss Challenge method pursuant to which 2 applicants had submitted their revised plans. Thereafter, the anchor bidder-Truflair Buildwell was allowed to revise its offer. On receipt of final revised resolution plans from the PRAs, the same were put for discussion before the CoC in the first session of the 54th CoC meeting, wherein all the PRAs were invited to participate and present their respective plans. During this meeting, one of the PRAs abstained from participating while the plan of the other PRA (who decided not to revise their plan value) could not be taken up for voting as it was found to be conditional. Thereafter, the same 54th CoC in the second session, deliberated upon the revised resolution plan submitted by the anchor bidder-Truflair Buildwell. The RP apprised the members of CoC that despite being the highest bidder, Truflair Buildwell has further improved the offer by Rs 1.50 cr and cured their plan by removing the

conditional clause. Thus, clearly this is a case where the revised resolution plan of the SRA was duly considered, evaluated and approved by the CoC before the RP placed the same for the approval of the Adjudicating Authority and hence the ratio of the judgement of the Hon'ble Supreme Court in ***M.K Rajagopalan*** supra is clearly not applicable in the present factual matrix.

15. This brings us to the related contention raised by the Appellant that the RP had only screen shared the resolution plan during the 54th CoC meeting in the second session and this prevented effective discussion of the resolution plans by the CoC and the suspended management. When we look at the entire chain of events, we find that the Appellant has deliberately chosen to ignore the fact that all the PRAs were given opportunity to present their plan in the COC meeting held on 09.05.2024 and after threadbare discussion given opportunity to improve their plan value consideration. Thus, the CoC members were fully aware of the details of the plan proposals submitted by the PRAs. At this stage, all PRAs were asked to send their best possible offers in a closed envelope and password protected soft copy by 21.05.2024 for consideration of the CoC. This modality was equally applicable on all the PRAs in terms of the decision taken by the CoC. The resolution plans received from PRAs other than the anchor bidder were opened up during the first session of the 54th meeting and was displayed through shared screen during the said meeting. Thereafter the resolution plan submitted by the anchor bidder for approval of CoC was also shared on screen by the RP and then the same was thoroughly evaluated by COC. When the CoC, inspite of being the stakeholder whose interests were most critically affected, had evinced

no complaints about the fairness and transparency of the process which had been followed by the RP, we do not find much force in the contention of the Appellant that there were irregularities in the process followed by the RP.

16. Interestingly, we notice that the Appellant had not volunteered information on his own that he was also one of the Resolution Applicants. This was vociferously contended by the SRA and asserted that the Appellant could not have claimed access to the resolution plans of other PRAs as it would tantamount to breach of the confidentiality and commercial sensitivity of the plans submitted by the other PRAs. On a pointed query made by this Bench, the Appellant admitted that it had also wanted to submit a plan but their request was rejected. A closer look at the minutes of the 53rd CoC meeting shows that a password protected resolution plan was submitted belatedly by the Appellant which was not considered as they had failed to submit EOI within the prescribed timeline in Form G and also failed to submit earnest money. Thus, when the Appellant had themselves submitted password protected resolution plan without any protestation, they cannot now contend that this procedure suffered from irregularities. Furthermore, when the Appellant was callous, negligent and failed to adhere to the CIRP Regulations in the submission of their own resolution plan, it does not lie in their mouth to nit-pick on imaginary irregularities committed by the RP.

17. At this juncture, we would like to add that we have no quarrel with the proposition of law laid down by the Hon'ble Apex Court in ***Vijay Kumar Jain*** supra that the suspended management has a right to participate in the CoC

meetings and entitled to documents including resolution plan since Regulation 35 of CIRP Regulations recognises the vital interest of the suspended management in a resolution plan. This judgment of the Hon'ble Supreme Court which has been relied upon by the Appellant is however not applicable in the facts of the present case since here in light of the distinguishing fact that suspended management had also staked their claim as a Resolution Applicant. In the present case, when it is an admitted fact that the Appellant was also a competing Resolution Applicant, no copy of the resolution plan of other PRAs could have been shared in advance with the Appellant as it would have triggered conflict of interest. Even though the resolution plan of the Appellant had been rejected, since the Appellant was admittedly in the fray until 22.05.2024, it cannot be ruled out that an element of bias would arise while considering the resolution plan of another competing Resolution Applicant.

18. This brings us to the submission made by the Appellant that there was irregularity in the process on account of the scoring of quantitative parameters as per the evaluation matrix having been carried out by the RP and not by the CoC. We find this allegation also to be misleading. When we look at the proceedings of the 54th CoC meeting, we find that the RP had displayed the Evaluation Matrix through screen-sharing and the CoC assigned scores on the qualitative parameters of the compliant resolution plans based on the financial parameters and other parameters for each Resolution Plan. Though the scoring of quantitative parameters was done by RP, it was clarified by the RP that the scoring on Evaluation Matrix being the prerogative of the COC, as RP, he was

only assisting the CoC members in scoring and evaluating the Matrix. The RP had further sought views of the CoC members on the scores allotted to each Resolution Applicant. Further, in accordance with Regulation 39(3) of CIRP Regulations, the CoC evaluated the resolution plan with respect to the evaluation matrix and other parameters and recorded their views on the feasibility and viability of the Resolution Plan of the SRA which had scored 95 out of 100 on qualitative parameters of resolution plan. Reliance has been placed by the Respondents on the judgment of this Tribunal in ***PNC Infratech Limited Vs Deepak Maini in CA(AT)(Ins)No. 143 of 2020*** wherein it has been held that there is no such mechanism under the IBC that gives the right to the Unsuccessful Resolution Applicant to challenge the score granted as per the evaluation matrix prepared by the CoC and the RP. The evaluation matrix and Process Document are documents which have been issued by the CoC and the CoC is the best judge to interpret its own documents and apply it for evaluation of the plan of the Resolution Applicants. Since the RFRP document has been approved by the CoC and the RFRP document provides for the evaluation matrix, the scoring done by the RP with the approval of the CoC cannot be questioned as arbitrary or unreasonable. CoC is the best judge to decide on how the evaluation matrix contained in the RFRP can be applied. The Appellant therefore cannot go into the technical issues with regard to evaluation and score matrix which is in the exclusive domain of the CoC. This is clearly a business decision of the CoC and unless there is any clear violation of Section 30(2) of the IBC, this decision of the CoC cannot be lightly challenged.

19. Thus, to answer the first two parts of the questions delineated at para 6 above, we are of the considered view that there is no patent irregularity found in the conduct of CIRP proceedings by the RP nor any facts and circumstances placed on record which substantiate that the Appellant in their capacity as suspended management was prevented by the RP/CoC from effectively participating in the CoC deliberations.

20. This brings us to the question as to whether the Adjudicating Authority had erred in approving the resolution plan of the SRA. It is equally pertinent at this juncture to notice that the plan of SRA was put to vote and approved by the CoC with 100% voting. The Hon'ble Supreme Court in a catena of judgments has laid down that commercial wisdom of CoC has to be given paramount importance and cautioned time and again about the need of minimal interference in the commercial decision of CoC to approve the Resolution Plan. It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that the decision of the CoC's commercial wisdom is non-justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) of IBC. The Hon'ble Supreme Court has consistently held that it is not open to the Adjudicating Authority or the Appellate Authority under IBC to take into consideration any other factor other than the ones specified in Section 30(2) or Section 61(3) IBC in questioning the decision of the CoC. This position of law has been consistently reiterated by the Hon'ble Apex Court in *Essar Steel India Ltd. v. Satish Kumar*

Gupta (2020) 8 SCC 531, Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh (2020) 11 SCC 467, Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. (2021) 10 SCC 401, Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657. There are no adequate grounds shown or material placed on record by the Appellant as to how the resolution plan of the Appellant does not conform to Section 30(2) of IBC. We also do not find that sufficient ground has been made out within meaning of Section 61(3) of the IBC to interfere with the decision of the Adjudicating Authority approving the Resolution Plan of the SRA.

21. Having regard to the foregoing discussion, we are of the view that the Adjudicating Authority did not err in approving the resolution plan of the SRA. We are also of the considered view that the Adjudicating Authority did not commit any error in rejecting the interlocutory application of the Appellant objecting to the approval by the CoC of the resolution plan of the SRA. In result, the impugned order does not warrant any interference. Appeal being devoid of merit is dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 11.12.2024

Abdul/Harleen