

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 737 of 2022**

[Arising out of Order dated 13.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench in I.A. No. 31/2021 in C.P. (IB) No.325/ALD/2019]

**IN THE MATTER OF:**

**Nikunj Udhyog**

A unit of Surbikha Steels Pvt. ltd.  
Through Nikunj Daga, Director  
Office at:  
7/18, Kalkaji Extension  
New Delhi – 110 019,  
Delhi, India

**...Appellant**

**Versus**

**1. Mr. Anshul Gupta**

Resolution Professional of  
Rathi Graphics Technologies Ltd.),  
Flat No. 1501, Tower 4,  
Spring Grove Tower  
Lokhandwala Township,  
Kandivali East  
Mumbai – 400 101.

**2. Committee of Creditors of  
Rathi Graphics Technologies Ltd.**

Through State Bank of India

**...Respondents**

**Present:**

**For Appellant: Mr. Ramji Srinivasan Sr. Advocate with Mr. Raghav Dembla, Advocate.**

**For Respondents: Mr. Abhijeet Sinha, Mr. Milan Singh Negi and Mr. Nikhil Kumar, Advocates for R-1.**

**Mr. Kunal Tandon, Ms. Richa Sandilya and Ms. Hiti Sharma, Advocates for R-2.**

**With**

*Cont'd.../*

**Company Appeal (AT) (Insolvency) No. 999 of 2022**

[Arising out of Order dated 13.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench in I.A. No. 31/2021 and I.A. No. 293/2020 in C.P. (IB) No.325/ALD/2019]

**IN THE MATTER OF:**

**Anshul Gupta**

(Resolution Professional of  
Rathi Graphic Technologies Ltd.),  
Flat No. 1501, Tower No.4,  
Spring Grove Towers  
Lokhandwala Township,  
Kandivali East  
Mumbai – 400 101.

**...Appellant**

**Versus**

**1. Giriraj Coated Fab Pvt. Ltd.**

441, Bhera Enclave  
New Delhi – 110087.

**2. Committee of Creditors of Rathi Graphic Technologies Ltd.**

Represented through State Bank of India  
(Single Largest Member) Through AGM CLO 2  
SBI Samb I, 12<sup>th</sup> Floor,  
Jawahar Vyapar Bhawan  
Tolstoy Marg,  
New Delhi – 110 001.

**3. Nikunj Udhog**

(A unit of Surbikha Steels Pvt. Ltd. Represented through  
its Director Sh. Nikunj Daga)  
7/18, Kalkaji Extension  
New Delhi – 110 019.

**...Respondents**

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Mr. Milan Singh Negi and Mr. Nikhil Kumar, Advocates.**

**For Respondents: Mr. Ramji Srinivasan Sr. Advocate with Mr. Raghav Dembla, Advocate for Respondent No.3 (SRA).**

## **J U D G M E N T**

### **ASHOK BHUSHAN, J.**

These two appeals have been filed against the same order dated 13.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench by which order I.A. No. 31/2021 filed by the Resolution Professional for approval of Resolution Plan has been rejected and I.A. No. 293/2020 filed by the Respondent No.1 - Giriraj Coated Fab Pvt. Ltd. has been disposed of holding that the Applicant - Giriraj Coated Fab Pvt. Ltd be given opportunity afresh to participate in the process of submission of Resolution Plan. Aggrieved by the order both the Resolution Professional and the Successful Resolution Applicant whose Resolution Plan was approved by the CoC have come up in these Appeals. Brief facts of the case necessary to be noticed for deciding these Appeals are:

- (i) Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor – Rathi Graphic Technologies Ltd. was initiated by the Adjudicating Authority vide order dated 03.02.2020.
- (ii) The IRP made public announcement on 31.02.2020 inviting claims.
- (iii) The Appellant - Anshul Gupta was appointed as Resolution Professional in the first meeting of the Committee of Creditors (CoC).

- (iv) The Resolution Professional published Form G on 24.08.2020 in response to which Prospective Resolution Applicants submitted their Expression of Interests. Last date of submission was extended to 02.11.2020 after approval of the CoC.
- (v) In response to Expression of Interest, the Resolution Professional received two Resolution Plans; one from - Giriraj Coated Fab Pvt. Ltd. (Respondent No.1 in Company Appeal (AT) (Ins.) No. 999 of 2022) and Nikunj Udyog (Appellant in Company Appeal (AT) (Ins.) No. 737 of 2022).
- (vi) On 02.11.2020, both the plans were opened before the CoC which were placed in the 5<sup>th</sup> CoC meeting held on 05.11.2020 wherein the CoC discussed and deliberated on the Resolution Plans.
- (vii) 6<sup>th</sup> meeting of the CoC was held on 07.11.2020 in which both the Prospective Resolution Applicants were invited to present their respective plans. The Prospective Resolution Applicants presented their plans and discussed the same with the CoC. After due deliberation and discussion it was decided that the Prospective Resolution Applicants shall improve the offers in their respective resolution plans and submit the final plan by 10.11.2020 at 6:00 PM.
- (viii) 7<sup>th</sup> CoC meeting was held on 12.11.2020 where Revised Resolution Plans submitted by both the Prospective Resolution

Applicants were opened, discussed and deliberated. After negotiation the Prospective Resolution Applicants were requested to submit their Revised Resolution Plans latest by 12.11.2020 at 7:00 PM which were then to put to the voting before the CoC from 15.11.2020 at 12:00 PM to 19.11.2020 at 12:00 PM.

- (ix) By 12.11.2020, it was only Nikunj Udyog who submitted Revised Resolution Plan, the Revised Resolution Plan was not submitted by Giriraj Coated Fab Pvt. Ltd. on 12.11.2020.
- (x) It was on 15.11.2020, the Giriraj Coated Fab Pvt. Ltd. submitted its Revised Plan with the Resolution Professional through email which was forwarded by the Resolution Professional to the CoC. Majority of the CoC Members decided to not consider the said Revised Resolution Plan. The voting was to close on 19.11.2020 at 6:00 PM, which was requested to be extended by members of the CoC.
- (xi) Extension was considered in 8<sup>th</sup> CoC meeting dated 20.11.2020. The CoC deliberated on the issue if the Resolution Plan received after the last date i.e. 12.11.2020 at 7:00 PM could be considered. It was decided unanimously that the Resolution Professional shall seek a legal opinion. It was further decided that if the legal opinion opines that CoC can consider the Resolution Plan submitted only within the prescribed timelines, then the Resolution Professional shall

continue the voting on the Resolution Plan submitted on or before 12.11.2020. The CoC also resolved to extend the CIRP time period by 30 days. The Resolution Professional obtained legal opinion, whereby, the CoC was advised to go ahead with the Resolution Plan received on or before 12.11.2020.

- (xii) The voting was conducted till the period 15.11.2020 to 15.12.2020 and the Resolution Plan of Nikunj Udyog was approved with 100% voting share of the CoC.
- (xiii) In pursuance of the approval of Resolution Plan, an LOI was issued to the Successful Resolution Applicant i.e. Nikunj Udyog on 17.12.2020.
- (xiv) On 25.11.2020, the Respondent No. 1 - Giriraj Coated Fab Pvt. Ltd. filed an application being I.A. No. 293 of 2020 before the Adjudicating Authority seeking direction against the Resolution Professional and the CoC for consideration of its Revised Resolution Plan submitted on 15.11.2020.
- (xv) The Resolution Professional filed an I.A. No. 31 of 2021 before the Adjudicating Authority on 22.12.2020 seeking approval of the Resolution Plan. The Successful Resolution Applicant has also deposited the Performance Bank Guarantee.
- (xvi) Application I.A. No. 31 of 2021 was heard and reserved for orders on 18.10.2021, however, on 14.12.2021 certain clarifications were sought by the Adjudicating Authority on the Resolution Plan, which was submitted by way of an

Addendum, which was taken on record on 11.01.2022. The Adjudicating Authority thereafter delivered the order on 13.06.2022 rejecting the I.A. No. 31 of 2021 and disposing of I.A. No. 293 of 2020. The conclusions of the Adjudicating Authority are recorded in Paras 147 to 150 of the order, which are to the following effect:

*“147. Thus, considering the above aspects, we hold that the Resolution Plan so approved by CoC is liable to be rejected. Section 31(2) of IBC, 2016 gives a discretion to this Adjudicating Authority, as the word "may" has been used therein, either to pass the order of initiation of liquidation process of Corporate Debtor or re-initiate the process of approval of resolution plan.*

*148. In the present case, we prefer the second option and set aside the decision of CoC and direct the RP/ CoC to make a fresh publication of Invitation of Expression of Interest from the prospective resolution applicants in accordance with the relevant provisions of CIRP Regulations, 2016. On completion of the process, the RP may make an appropriate application before this Adjudicating Authority for its consideration in accordance with the provisions of law.*

*149. Thus, IA No.31/2021 stands disposed of in terms indicated above.*

*150. The action of CoC in not considering the revised plan submitted on 15.11.2020 is declared null and void for the reasons mentioned herein above. We further hold that the Applicant herein would be given an opportunity afresh to participate in the process of submission of resolution plan. In the result IA No.293/2020 stands disposed of in above terms.”*

(xvii) Both the Resolution Professional and Successful Resolution Applicant have filed these two Appeals challenging the order dated 13.06.2022.

2. We have heard Shri Abhijeet Sinha, learned counsel appearing for the Resolution Professionals and Shri Ramji Srinivasan, learned senior counsel appearing for the Successful Resolution Applicant. We have also heard learned counsel for the CoC. None has appeared on behalf of Respondent No.1 - Giriraj Coated Fab Pvt. Ltd. (Respondent No.1 in Company Appeal (AT) (Ins.) No. 999 of 2022).

3. Learned counsel for the Resolution Professional as well as learned counsel for the Successful Resolution Applicant assailing the impugned order submits that the CoC have granted full opportunity to both Resolution Applicants i.e. Nikunj Udyog as well as Giriraj Coated Fab Pvt. Ltd., who were invited in the CoC meeting held on 07.11.2020. The Revised Plans were also submitted by both the Prospective Resolution Applicants by 10.11.2020. Both the plans were again deliberated on 12.11.2020 and

further opportunity was granted to the Prospective Resolution Applicants to submit their Revised Resolution Plans latest by 12.11.2020 at 07:00 PM. Nikunj Udyog submitted its Revised Resolution Plan within time but Respondent No.1 - Giriraj Coated Fab Pvt. Ltd. did not submit any Revised plan and it was only on 15.11.2020, the plan was sent by email to the Resolution Professional which was forwarded to the CoC. The CoC discussed and deliberated over both the plans and as per legal advice received, the voting was to be conducted on the plans received on or before 12.11.2020. Resolution Plan of Nikunj Udyog having been approved by 100% voting share of CoC, there was no occasion for the Adjudicating Authority to interfere with the Resolution Plan. The observation of the Adjudicating Authority that there is violation of principles of natural justice since Revised Resolution Plan of Giriraj Coated Fab Pvt. Ltd. has not been considered, is against the facts on record. Full opportunity was given to Giriraj Coated Fab Pvt. Ltd. which opportunity was not availed by submitting Revised Resolution Plan within the time allowed. There is no violation of principles of natural justice and very basis of the order of the Adjudicating Authority is unfounded. The approved Resolution Plan has not to be interfered with by the Adjudicating Authority it having been approved with 100% voting share of the CoC. It is further submitted that the Respondent No.1, who has filed application I.A. No. 293 of 2020, has inspite of issuing notice in Company Appeal (AT) (Ins.) No. 999 of 2022 has not filed any reply. It is submitted that the Resolution Process is to be

completed in the timelines and interference by the Adjudicating Authority in the Resolution Plan is bound to breach the timelines.

4. Learned counsel for the CoC have submitted that the Resolution Plan having been approved with 100% voting share of the CoC was required to be approved. It is further submitted the principles of natural justice were duly complied with by the CoC. None appeared on behalf of Respondent No.1 - Giriraj Coated Fab Pvt. Ltd. nor any reply has been filed by Giriraj Coated Fab Pvt. Ltd. in Company Appeal (AT) (Ins.) No. 999 of 2022.

5. In this Appeal by our order dated 08.07.2022, we have directed that in pursuance of order dated 13.06.2022, no further steps shall be taken.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. We have while noticing the facts of the case, already noticed that in the resolution process two Prospective Resolution Applicants i.e. Nikunj Udyog and Giriraj Coated Fab Pvt. Ltd. have submitted their plans. Both plans were deliberated in 5<sup>th</sup> CoC meeting held on 05.11.2020. At Agenda Item No.5 summary of both the plans was noticed. In the minutes of the meeting, comparative sheet of both the plans was also presented. After deliberation in the meeting, the CoC decided to keep the next CoC meeting on 07.11.2020. The minutes of the meeting have been brought on the record as Annexure A-3 which indicate that both the plans were threadbare noticed and compared. 6<sup>th</sup> meeting of the CoC was fixed for 07.11.2020, where revised resolution plans submitted by the Prospective Resolution

Applicants were again considered. There is detail consideration of summary of Resolution Plan submitted by Giriraj Coated Fab Pvt. Ltd. as well as Nikunj Udyog. Negotiation also took place with both the Resolution Applicants whose representatives were present in the meeting. Certain changes were suggested and both the Resolution Applicants were asked to submit revised resolution plan updating changes by 07:00 PM on 12.11.2020. It was further decided that voting window will start on 15.11.2020 at 12:00 PM. It is useful to extract the relevant portion minutes of the meeting, which is to the following effect:

*“Further, Resolution Professional asked Mr. Daga what would be the bifurcation between Secured and Unsecured Financial Creditors. Mr. Daga confirmed that the increased amount will be distributed among the secured and unsecured financial creditors in the same proportion which has been done earlier. He further replied that his team will do the working on the same and send the Revised Resolution Plan including the said bifurcation. Mr. Nikunj left the meeting.*

*Thus, it was decided in the COC meeting that by 7 pm on November 12, 2020 the revised plan updating the changes mentioned above will be submitted by the Resolution Applicants.*

*It was discussed in the COC that for the sake of clarity and an apple to apple comparison, the offer of Giriraj Coated is for Rs. 800 lakhs over a period of 1 year while Nikunj is offering Rs. 804 lakhs (Rs. 775 lakhs + Rs. 29 lakhs of estimated CIRP costs).*

*Further, the distribution in case of Nikunj Udyog is clear but the same is not yet clear in case of Giriraj Coated. The Resolution Professional mentioned that he will prepare a comparison sheet on these very lines, which would enable COC members to take an informed decision.*

*Bank of Maharashtra enquired that how are RAs aware about the bifurcation of claims of Secured and Unsecured creditors to which RP replied that the said Information is already been part of Information Memorandum shared with the Resolution Applicants.*

*The COC members discussed in detail on the distribution of the Resolution Plan amount amongst the Secured and Unsecured Financial Creditors.*

*Bank of Maharashtra and Bank of Baroda mentioned that the amount which has been increased today during the negotiations, be apportioned to the Financial Creditors in the COC voting percentage, to which SBI replied that they need to take the approval from their internal authority for the same.*

*Further BOM and BOB also mentioned that they also need to go their competent authority and take approvals on the same. SBI requested the other COC members to consider the ground reality before coming to any conclusion.*

*Further, Resolution Professional mentioned that both the Plans will be put for Voting, once the same is received from the resolution applicants and the resolution professional is satisfied with the compliance requirements of the same. The Voting window will start on November 15<sup>th</sup>, 2020 at 12 p.m and end on November 19, 2020 at 6 p.m.*

*Resolution Professional thanked all the COC members for their valuable time and inputs during the entire process.”*

8. It is to be noted that the Respondent No.1 - Giriraj Coated Fab Pvt. Ltd. did not submit its revised updated plan by 07:00 PM on 12.11.2020 and sent an email on 15.11.2020 to the Resolution Professional forwarding its revised resolution plan. 8<sup>th</sup> CoC meeting was held on 20.11.2020, where details pertaining to the resolution plans were noticed. In the minutes under the heading 'To extend the timelines by 90 days', after deliberating with different members of the CoC, the Resolution Professional concluded in following words:

*“RP further concluded that there can be two scenarios:*

- 1. If the legal opinion received says that COC can consider the resolution plans received only within the prescribed timelines, then RP will reopen the voting for COC on Monday 23 November 2020.*
- 2. If the legal opinion says that the resolution plan received after the prescribed timelines*

*is to be considered, the COC should call both the resolution applicants and a COC meeting will be called again on Monday 23 November 2020 to discuss and negotiate further with both the resolution applicants.”*

9. After the 8<sup>th</sup> CoC meeting, the Resolution Professional received the legal opinion on 21.11.2020 which opined that CoC has to consider only Resolution Plan(s) which has been submitted within the prescribed timeline from prospective Resolution Applicant. In view of the legal opinion, voting continued and the result of voting was announced on 16.12.2020, approving the Resolution Plan by Nikunj Udyog with 100% positive votes.

10. An application was filed by the Respondent No.1 - Giriraj Coated Fab Pvt. Ltd. being I.A. No. 293 of 2020 on 25.11.2020 after voting had already commenced. The application has been allowed by the Adjudicating Authority by the impugned order relying on principles of natural justice. There is detail discussion in the judgment of the Adjudicating Authority regarding the principles of natural justice. After referring to several judgments of Hon'ble Supreme Court, the Adjudicating Authority in the impugned order has concluded that proceeding in insolvency resolution have to be conducted in accordance with principles of natural justice. In Para 96 following has been observed:

*“96. Thus, in view of above discussion, we are of the view that principles of natural justice are laws in force, and, therefore, these rules fall*

*within the realm of Section 30(2) (e) of IBC, 2016. Thus, any violation thereof by RP/CoC may render a CoC approved resolution plan liable to be rejected in terms of provisions of Section 31(2) of IBC, 2016.”*

11. There can be no dispute to the proposition that proceedings before the Adjudicating Authority and this Appellate Tribunal have to be conducted in accordance with principles of natural justice. Insofar as the proceedings conducted by the Resolution Professional and the CoC in the resolution process, there are provisions of the I&B Code and statutory regulations of CIRP Regulations, 2016 which covers entire field on submission of Resolution Plan, consideration of Resolution Plan and proceeding for approving the Resolution Plan. From the facts as noticed above, it is clear that both the resolution plans submitted by Giriraj Coated Fab Pvt. Ltd. and Nikunj Udyog were submitted and considered in the CoC meetings, both the Resolution Applicants were also called to attend the meeting and explain their plans, both the Resolution Applicants appeared in CoC meeting on 07.11.2020 and were heard. On 12.11.2020, it was decided that after updating the plan, as per discussions, revised resolution plans be submitted by 07:00 PM on 12.11.2020. Respondent No.1 did not submit its revised resolution plan within the time allowed by the CoC.

12. Present is not a case where there is violation of principles of natural justice on the part of the CoC or the Resolution Professional. The opportunity which was given to Respondent no.1 to submit the revised updated plan was not availed by the Respondent No.1 and it was only after

expiry of the time the revised resolution plan was submitted, the plan was sent by email to the Resolution Professional on 15.11.2020 that is much beyond the time which was allowed. The CoC after deliberation directed the Resolution Professional to seek legal opinion and act accordingly. Resolution Professional having received legal opinion that CoC has to consider only Resolution Plan which has been submitted within the prescribed timeline i.e. on or before 07:00 PM on 12.11.2020, Resolution Professional proceeded on voting of the plan. We, thus, are of the view that the Adjudicating Authority had drawn wrong conclusion that there is violation of principles of natural justice. In Para 140, the Adjudicating Authority observed that no CoC meeting took place between 12.11.2020 to 15.11.2020 before the voting lines were opened. In Para 140 following observations have been made:

*“140. Further, no material has been placed on record to show that any meeting of the CoC, in-fact, took place between 12<sup>th</sup> November, 2020 and 15 November, 2020 before the voting lines were opened.”*

13. In the minutes of meeting of 7<sup>th</sup> CoC meeting held on 12.11.2020 course of action was decided and there was no occasion to convene any further meeting of the CoC as voting was already decided in the CoC meeting held on 12.11.2020, which voting was continued by the Resolution Professional thereafter. Observation of the Adjudicating Authority that CoC was in tearing hurry to approve the resolution plan is also without any

basis. In Para 141 following observations have been made by the Adjudicating Authority.

*“141. Thus, the above aspects go to show that apart from the resolution plan being approved in flagrant violations of the provisions of law that CoC members were in a tearing hurry to approve the resolution plan of the SRA though they had sufficient time in their hands to complete the CIRP in a reasonable time i.e., within 90 days from the expiry of the CIRP period.”*

14. It is well settled that CIRP proceedings have to be completed within timelines and timelines has its own importance and adherence to the timelines by the CoC cannot be termed as any tearing hurry as has been observed by the Adjudicating Authority. The Adjudicating Authority thereafter had referred to various clauses of the resolution plan. The Adjudicating Authority observed that since Section 31(2) of I&B Code uses the expression ‘may’, the Adjudicating Authority has discretion to reject the plan. In Para 147 following has been observed:

*“147. Thus, considering the above aspects, we hold that the Resolution Plan so approved by CoC is liable to be rejected. Section 31(2) of IBC, 2016 gives a discretion to this Adjudicating Authority, as the word ‘may’ has been used therein, either to pass the order of initiation of liquidation process of*

*Corporate Debtor or re-initiate the process of approval of resolution plan.”*

15. The Hon'ble Supreme Court in large number of judgments has laid down that scope of judicial review of the commercial decision taken by the CoC is very limited. The Adjudicating Authority is not to interfere with the commercial wisdom of the CoC unless there is any violation of provisions of the I&B Code or regulations. The Hon'ble Supreme Court in “***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr., (2022) 2 SCC 401***”, referring to the earlier judgment of “*CoC of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*” and “*K. Sashidhar vs. Indian Overseas Bank & Ors.*” laid down following in Para 156.6:

*“156.6. In Essar Steel<sup>2</sup>, a three-Judge Bench of this Court, affirmed a two-Judge Bench decision in K. Sashidhar<sup>6</sup>, prohibiting the adjudicating authority from second-guessing the commercial wisdom of the parties or directing unilateral modification to the resolution plans Essar Steel<sup>2</sup>.”*

16. We are of the view that the Adjudicating Authority having come to the conclusion that there is violation of principles natural justice in not considering the revised resolution plan of Respondent No.1 had proceeded to reject the resolution plan, which was the main reasons for passing order rejecting the approval of resolution plan. We, thus, are of the view that there was no sufficient reasons for allowing I.A. No. 293 of 2020 directing for initiating fresh process for consideration by the CoC. The Adjudicating

Authority also committed error in dismissing I.A. No. 31 of 2021 which was filed for the approval of the Resolution Plan.

17. In view of the foregoing discussion, we are unable to uphold the impugned order dated 13.06.2022. The impugned order dated 13.06.2022 is set aside. Application I.A. No. 293 of 2020 is rejected. I.A. No. 31 of 2021 is revived before the Adjudicating Authority for passing fresh order in accordance with law. The I.A. No. 31 of 2021 being pending for last more than one year, Adjudicating Authority shall endeavor to dispose of the said application as early as possible. Both the Appeals are allowed to the extent indicated above.

**[Justice Ashok Bhushan]  
Chairperson**

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

**NEW DELHI**

**2<sup>nd</sup> February, 2023**

*Archana*