

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 149 of 2025

(Arising out of Order dated 04.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in New IA-4783/2024 in (IB)-297(PB)/2018)

IN THE MATTER OF:

Parmesh Construction Company Ltd.
Through its Authorised Representative,
Having its registered office at:
7th Floor, Tower C, Bhutani Alphathum,
Janpath Marg, Sector 90, Gautam Buddha Nagar,
Noida, Uttar Pradesh, India, 201301 ...Appellant

Versus

Pramod Kumar Sharma
Resolution Professional of
International Recreation and Amusement Ltd.
Dashrath Kunj West Arjun Nagar,
Agra, Uttar Pradesh - 282001 ...Respondent

Present:

For Appellant : Mr. Gopal Jain, Sr. Advocate and Mr. Vivek Kohli, Sr. Advocate with Mr. Gajanand Kirodimal, Mr. Himanshu Goel, Mr. Rohan Jaitley, Advocates.

For Respondent : Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Mr. Aditya, Advocates for RP.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Nilotpal Shyam, Mr. Avishkar Singhvi, Mr. Auritro Mukherjee, Vivek Kumar Singh, Advocates for SRA.

Mr. Keshri Kumar, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 04.12.2024 passed by National Company Law Tribunal, New Delhi, Principal Bench rejecting New IA-4783/2024 filed by the Appellant.

2. Brief facts necessary to be noticed for deciding the Appeal are:
- (i) The Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor (“**CD**”) – International Recreation and Amusement Ltd. commenced vide order dated 03.08.2018 passed by Adjudicating Authority. Mr. Pramod Kumar Sharma, was appointed as Resolution Professional (“**RP**”).
 - (ii) The claims were invited by the RP and Committee of Creditors (“**CoC**”) was constituted. The CoC in its Meeting dated 09.05.2019 approved the Resolution Plan submitted by HGAS-Apex JV (a joint venture of Hari Global Advisory Services and Parklane Investment and Securities Ltd.). The RP filed an IA for approving the Resolution Plan before the Adjudicating Authority in the year 2019. The Resolution Plan approval Application filed by the RP is pending consideration. Various objections to the Resolution Plan Application being IA No.5095 of 2020 was filed, which are also pending consideration. No orders have yet been passed by the Adjudicating Authority on the Plan approval Application and Adjudicating Authority vide order dated 04.12.2024 directed listing of Plan approval Application along with other Applications on 09.12.2024.
 - (iii) The Appellant herein filed an IA No.4783/2024 in the year 2024, on which notices were issued by Adjudicating Authority on 16.10.2024. The RP filed a reply to IA No.4783/2024. The Adjudicating Authority vide order dated 04.12.2024 rejected

IA No.4783 of 2024. Aggrieved by which order this Appeal has been filed.

3. The CD – International Recreation & Amusement Ltd. is wholly owned subsidiary of International Amusement Ltd. (“**IAL**”). The IAL holds 51% shareholding in the Corporate Debtor. The Appellant claiming to have acquired a substantial shareholding in Appu Ghar Entertainment Pvt. Ltd. filed an Application IA No.4783/2024 praying for following reliefs:

- "1. Direct the Respondent to place the resolution plan of the Applicant/ promoter of IRAL proposing a reverse insolvency resolution, before the CoC for its consideration;
2. Pass any other order as this Hon'ble Adjudicating Authority may deem fit in interest of justice."

4. The Application came to be rejected by the Adjudicating Authority relying on the judgment of this Tribunal in **TA (AT) No.134/2021 (Dr. Ravi Shankar Vedam vs. Tiffins Barytes Asbestos and Paints Ltd. & Ors.)**.

5. We have heard Shri Gopal Jain, learned Senior Counsel for the Appellant; Shri Arun Kathpalia, learned Senior Counsel and Shri Abhishek Anand, learned Counsel for the RP; Shri Abhijeet Sinha, learned Senior Counsel for Successful Resolution Applicant (“**SRA**”); and learned Counsel for Respondent.

6. Learned Counsel for the Appellant submits that the Appellant is a Promoter of the CD and is desirous of carrying out the construction and development of the CD and as a Promoter of the CD has submitted a Resolution Plan to be placed before the CoC for its consideration, which

has been rejected by the Adjudicating Authority, relying on judgment of this Tribunal in **Dr. Ravi Shankar Vedam**, which has no applicability. It is submitted that judgment of **Dr. Ravi Shankar Vedam** was a case where this Tribunal held that a shareholder has no right to challenge the Resolution Plan approved by the CoC. It is submitted that the said judgment has no applicability.

7. Shri Arun Kathpalia, learned Senior Counsel appearing for RP submits that the Appellant's claim that it is Promoter of the CD is incorrect. The Appellant claims to have acquired certain shareholding in Appu Ghar Entertainment Pvt. Ltd., which claim to have majority shareholding in IAL and the CD is subsidiary of IAL. It is submitted that in the CIRP of the CD, a Resolution Plan was submitted, which was approved by the CoC in the Meeting dated 09.05.2019 and the Plan after being approved, an IA No.1225 of 2019 was filed by the RP before the Adjudicating Authority seeking approval of the Resolution Plan. During the pendency of the aforesaid Application, SRA has informed that it intended to replace "Parklane Investment and Securities Limited" with another entity "Paras Buildtech" as its JV Partner. It is submitted that the Appellant has no authority or jurisdiction to submit a new Resolution Plan for resolution of the CD, nor it has any jurisdiction to file an Application and Application filed by the Appellant has rightly been rejected by the Adjudicating Authority.

8. We have considered the submission of learned Counsel for the parties and have perused the record.

9. From the facts, which were brought on the record by the Appellant, it is clear that Resolution Plan submitted by SRA has been approved by the CoC and Application for approval of Resolution Plan is filed by the RP, which is pending consideration. There are various Applications, which were filed objecting to the Resolution Plan, which are also pending consideration before the Adjudicating Authority. The Adjudicating Authority by the order impugned itself, adjourned the Applications to next date, i.e., 09.12.2024. When a Resolution Plan has been approved by the CoC, the CoC is clearly bound by such approval of Resolution Plan. The law in this reference is well settled by the Hon'ble Supreme Court in **(2022) 2 SCC 401 – Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. & Anr.**, wherein in paragraph 115 of the judgment, it has been held by the Hon'ble Supreme Court that Resolution Plan even prior to the approval of the Adjudicating Authority is binding *inter se* the CoC and the SRA. In paragraph 115, following has been laid down by the Hon'ble Supreme Court:

“115. While the above observations were made in the context of a scheme that has been sanctioned by the court, the resolution plan even prior to the approval of the adjudicating authority is binding *inter se* the CoC and the successful resolution applicant. The resolution plan cannot be construed purely as a “contract” governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the adjudicating authority. Even at that stage, its binding effects are produced by IBC framework. The BLRC Report mentions that “[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors” [3.3.1, The Report of the Bankruptcy

Law Reforms Committee, Vol. I : Rationale and Design (November 2015), p. 13, available at <https://ibbi.gov.in/BLRCReportVol1_04112015.pdf> last accessed 20-8-2021.] . The BLRC Report also mentions that, “the RP submits a binding agreement to the adjudicator before the default maximum date” [*Id*, p. 92.] . We have further discussed the statutory scheme of IBC in Sections I and J of this judgment to establish that a resolution plan is binding inter se the CoC and the successful resolution applicant. Thus, the ability of the resolution plan to bind those who have not consented to it, by way of a statutory procedure, indicates that it is not a typical contract.”

10. The CoC is clearly not entitled to consider any other request for consideration of any Resolution Plan, after it has approved the Resolution Plan, which is pending consideration for approval before the Adjudicating Authority. The learned Counsel for the Appellant submitted that the SRA itself is no longer in existence and one of the JV Partner has withdrawn and it has requested to opt another JV Partner, which itself makes the Plan unimplementable. We are of the view that in this Appeal, we are not required to consider any issue pertaining to Plan approval Application, which is pending consideration. The Appellant claiming to be Promoter of the CD had no authority or jurisdiction to submit/file a Resolution Plan for consideration, nor the prayer made by the Appellant that Resolution Plan submitted by the Appellant be placed before the CoC, could have been accepted.

11. The submission of learned Counsel for the Appellant although is correct that judgment as relied by the Adjudicating Authority in **Ravi Shankar Vedam**, may not be applicable in the facts of the present case.

However, we are of the clear opinion that Application, which was filed by the Appellant after approval of the Resolution Plan by the CoC on 19.05.2019, which Application for approval of Resolution Plan being pending consideration before the Adjudicating Authority, the prayers made by the Appellant in the Application could not have been considered and has rightly been rejected. We, thus, are of the view that no interference is called for in the order of Adjudicating Authority rejecting IA No.4783/2024.

12. For the reasons as indicated above, we do not find any merit in the Appeal. The Appeal is accordingly dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

11th February, 2025

Ashwani