NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 148 of 2025 &
I.A. No.1083 of 2025

(Arising out of Order dated 22.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in IA No.5176/ 2024 and IA No.52/2024 in Company Petition No.(IB)-653(PB)2023)

IN THE MATTER OF:

Gateway Investment Management Services Ltd. ...Appellant

Versus

ASC Insolvency Services LLP & Ors. ...Respondents

Present:

For Appellant	:	**Mr. Arun Kathpalia, Sr. Advocate and Mr. Abhijeet Sinha, Sr. Advocate with Ms. Udita Singh, Mr. Vaibhav Mishra, Mr. Ekaansh Mishra, Ms. Shankari Mishra Advocates.**
For Respondents	:	**Mr. Vivek Sibal, Sr. Advocate with Ms. Rashmi Raj, Ms. Kiran Bisht, Mr. Abhishek Periwal, Mr. Rohil Malhan, Advocates for R-1 (RP).**
		Mr. Niranjan Reddy, Sr. Advocate with Mr. Abhishek Anand, Ms. Aditi Sinha, Ms. Palak Arora, Mr. Dhruv Malik, Ms. Rajnandini Singh, Advocates for R-2 (NARCL).
		Mr. Krishnendu Datta, Sr. Advocate with Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Aakruti Gupta, Advocates for R-3.
		Mr. Ramji Srinivasan, Sr. Advocate with Mr. Arijit Mazumdar, Ms. Akanksha Kaushik, Mr. Shambo Nandy, Arjun Bhatia, Ms. Shefali Munde, Advocates for R-5/SRA.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by an unsuccessful Resolution Applicant has been filed challenging the order dated 22.01.2025 passed by National Company Law

Tribunal, Principal Bench, New Delhi in IA No.5176/2024 filed by the Appellant as well as IA No.52/2024 filed by Resolution Professional ("**RP**") for approval of Resolution Plan. By the impugned order dated 22.01.2025, the Adjudicating Authority has rejected IA No.5176 of 2024 filed by the Appellant raising objection to the approval of Resolution Plan and allowed the Application – IA No.52 of 2024 praying for approval of Resolution Plan.

2. Brief facts necessary to be noticed for deciding the Appeal are:

i. Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor ("**CD**") – Helios Photo Voltaic Ltd. commenced by an order dated 11.01.2024 on an Application filed by Financial Creditor – National Asset Reconstruction Co. Ltd. ("**NARCL**").

ii. In the CIRP of the CD, the RP after approval of the Committee of Creditors ("**CoC**") issued request for Resolution Plan on 23.04.2024. The last date for submission of Resolution Plan was 06.06.2024. The Appellant as well as Successful Resolution Applicant ("**SRA**") (Respondent No.5 herein) submitted their Resolution Plans before 06.06.2024 along with other Resolution Applicants.

iii. The CoC decided upon a challenge process for price discovery and value maximisation for all the stakeholders of the CD. E-bidding between participants took place on 29.07.2024. The Appellant Net Present Value ("**NPV**") was 101.50 crores and that of OCL (Respondent No.5) was Rs.99.05 crores. In the

13th CoC Meeting held on 31.07.2024 e-bidding result was presented. The CoC agreed to grant time upto 05.08.2024 to Prospective Resolution Applicants to submit final Resolution Plan, failing which the Resolution Plan as submitted by the Resolution Applicants on 06.06.2024 would be treated as final. The Appellant, SRA and other Resolution Applicants had submitted their final Resolution Plan. Resolution Applicants were permitted to submit clarification/ signed addendums till 30.08.2024. E-voting commenced on 31.08.2024, which was to continue till 07.09.2024.

iv. On 05.09.2024, after submission of final Resolution Plan, the Appellant sent an email stating that second installment under its Resolution Plan would be paid within 90 days. The said email was sent to Members of the CoC and also forwarded to the RP. The RP on 09.09.2024 replied to the Appellant that Resolution Plans were already put to vote and the email dated 05.09.2024 was already sent by the Appellant to the CoC, no instructions have been received by the RP regarding the same.

v. Based on e-voting result in 16th CoC Meeting held on 12.09.2024, the Resolution Plan submitted by Respondent No.5 was approved with 73.38% vote share. The RP on 17.09.2024 filed IA No.52 of 2024 before the Adjudicating Authority, praying for approval of the Resolution Plan.

vi. The Appellant filed a Writ Petition No. WP (C) 13278 of 2024 before the High Court of Delhi seeking fresh voting on the Resolution Plan of the Appellant as per email dated 05.09.2024 sent by it. The High Court on 23.09.2024 dismissed the Writ Petition with liberty to take appropriate recourse before the Adjudicating Authority. The Review Petition was filed by the Appellant before the High Court of Delhi, which was also disposed of on 04.10.2024 observing that if the applicant/ petitioner is so advised and it chooses to make renewed or better offer, it is at liberty to do so.

vii. On 07.10.2024, the Appellant sent an email to the CoC with its enhanced proposal to the tune of Rs.120 crores payable within 30 days. In 17th CoC Meeting held on 14.10.2024, the CoC discussed the email sent by the Appellant with its enhanced offer. The CoC decided to strictly adhere to the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**")

viii. On 18.10.2024, the Appellant filed IA No.5176 of 2024 praying for following reliefs:

> *"a) Allow the instnt Application.*
>
> *b) Reject the Resolution Plan as approved by Respondent Nos. 2, 3 and 4 (Committee of Creditors) in its meeting in the ongoing Corporate Insolvency Resolution Process of M/s Helios Photo Voltaic Ltd.*

c) *Direct the Respondents to consider and approve the revised offer submitted by the Applicant vide e-mail dated 07.07.2024*

d) *Pass any such or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case."*

ix. The Application for approval of Resolution Plan as well as IA filed by the Appellant came to be considered and decided by Adjudicating Authority vide order dated 22.01.2025. The Adjudicating Authority rejected IA No.5176 of 2024 filed by the Appellant holding that in view of the RFRP, the Appellant was not entitled to revise its offer by email dated 05.09.2024. Enhanced offer given by the Appellant was not considered as per the provisions of RFRP. The Adjudicating Authority approved the Resolution Plan, which was approved by CoC with vote share of 73.38%. The Adjudicating Authority also noticed that as per Evaluation Matrix, Respondent No.5 scored 51 marks, whereas the Appellant could score 48 marks on both quantitative and qualitative parameters. The Adjudicating Authority also held that alleged clarification dated 05.09.2024 sent by the Appellant was not required to be considered.

x. Aggrieved by the said order, this Appeal has been filed.

3. We have heard Shri Arun Kathpalia, learned Senior Counsel and Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant; Shri Vivek Sibal, learned Senior Counsel appearing for Respondent No.1; Shri Niranjan Reddy, learned Senior Counsel with Shri Abhishek Anand, learned Counsel appearing for Respondent No.2 (NARCL); Shri Krishnendu Datta, learned Senior Counsel appearing for AARCL (Respondent No.3); and Shri Ramji Srinivasan, learned Senior Counsel appearing for SRA. All the parties were heard on 24.01.2025.

4. Subsequent to reserving of order in the Appeal, an IA No.1083 of 2025 has been filed by the Appellant making following reliefs:

> "a) Allow the instant Application;
>
> b) De-reserve the Company Appeal (AT) (Ins) No. 148 of 2025, c) having been reserved vide order dated 24.01.2025 passed by this Hon'ble Appellate Tribunal;
>
> c) Pass such order as this Hon'ble Appellate Tribunal may deem fit and proper in light of facts and circumstances of the instant case."

5. It was pleaded in IA No.1083 of 2025 by the Appellant that after hearing the parties and reserving of the order, another Appeal – Company Appeal (AT) (Ins.) No.179 of 2025 has been filed by Alchemist Asset Reconstruction Company Ltd., which was listed on 31.01.2025, where this Tribunal has permitted the Appellant to file additional affidavit to place on record additional legal submissions. It is submitted that in the Application, reference has also made to provisions of Competition Commission Act, 2002, Section 5. The Application was filed by the Applicant on 07.02.2025, was directed to be listed on different dates along with Company Appeal (AT)

(Ins.) No.179 of 2025, which were heard on 28.03.2025 and order in IA No.1083 of 2025 was reserved.

6. We proceed to notice the submissions raised by learned Counsel for the Appellant in support of the Appeal.

7. Learned Counsel for the Appellant challenging the order dated 22.01.2025 submits that in the challenge process, the Appellant has given the highest NPV. It is submitted that object of IBC is to maximise the value of CD. The Appellant by email dated 05.09.2024 has informed that 75% of the amount shall be paid within 90 days, which was earlier informed to be paid within 364 days. It is submitted that email dated 05.09.2024 was only clarification and in no manner modified the financial proposal submitted by the Appellant. It is submitted that financial proposal submitted by the Appellant remained the same and the Appellant has only offered to pay 75% within 90 days. It is submitted that RP committed error in not placing the email dated 05.09.2024 before the CoC for consideration. The CoC never had occasion to consider the email dated 05.09.2024, thus the Resolution Plan submitted by the Appellant has not been considered with clarification dated 05.09.2024 and the result of voting is vitiated, due the above reason. Learned Counsel for the Appellant relying on the order of Delhi High Court dated 23.09.2024, submits that the High Court has disposed of the Writ Petition giving liberty to the Appellant to raise grievance before the Adjudicating Authority and by way of order dated 04.10.2024 passed in the Review Application, liberty was granted to the Appellant to submit a renewed or better offer. The Appellant on 07.10.2024 has submitted a

revised offer of Rs.120 crores to be paid within 30 days. The CoC did not consider the revised offer in its Meeting dated 14.10.2024, which is not in accordance with the intent and object of the IBC. The Appellant's IA No.5176 of 2024 deserved to be allowed and re-voting was required to be directed. The Appellant has also expressed its willingness to participate in fresh e-bidding.

8. Learned Counsel for the RP refuting the submissions of learned Counsel for the Appellant submits that RP has conducted the entire process in accordance with RFRP. Referring to Clause 1.4.6 of RFRP, it is submitted that financial proposal submitted during the challenge process is unconditional and irrevocable and cannot be modified by the Resolution Applicant. The email dated 05.09.2024 was not a clarification, but modification in the offer submitted by the Appellant. All PRAs were permitted to submit their clarification by 30.08.2024 and the Appellant itself has given its clarification. It is submitted that voting has commenced on 31.08.2024 at 11:30 AM and concluded at 10:00 PM on 07.09.2024. Email dated 05.09.2024 was sent after voting has commenced. The Appellant has sent email to all CoC Members. Email sent by the Appellant revised payment proposal, which deserved no consideration.

9. Learned Counsel for Respondent No.2 submitted that as per RFRP, even on the quantitative and qualitative marks as per Evaluation Matrix, Respondent No.5 scored 51 marks and the Appellant has scored only 48 marks. The financial proposal given by SRA was approved with 73.38% vote share, which approval was in commercial wisdom of the CoC. The

Appellant has given offer to pay only 25% within 45 days and rest within one year, whereas Respondent No.5, in its Plan has submitted that entire amount shall be paid within 30 days. The revised or enhanced offer given by the Appellant could not have been considered by virtue of RFRP. Subsequent to the order of Delhi High Court, the CoC in its 17th Meeting dated 14.10.2024 discussed the enhanced offer and was of the view that CoC has to adhere to the provisions of the IBC and RFRP. The Adjudicating Authority has rightly rejected the IA filed by the Appellant and approved the Resolution Plan.

10. Learned Counsel for the SRA has also submitted that it has offered entire 99.05 crores as upfront, whereas the Appellant has offered only Rs.27.47 crores within 45 days and the remaining within 364 days. Subsequently, the Appellant sought to modify its offer vide email dated 05.09.2024, which was not permissible as per RFRP. As per the quantitative and qualitative parameters score of Evaluation Matrix, Respondent No.5 scored 51 marks, whereas the Appellant scored only 48 marks. The CoC in its commercial wisdom has considered all aspects and on the basis of e-voting approved the Resolution Plan of Respondent No.5, which had rightly not been interfered with by the Adjudicating Authority in the impugned order.

11. Before we enter into respective submissions of the parties, we need to first consider IA No.1083 of 2025 filed by the Appellant on 07.02.2025. As noted above, the Appeal was heard on 24.01.2025 and after hearing the parties, the orders were reserved. The Application – IA No.1083 of 2025

has been filed on 07.02.2025 stating that on 31.01.2025, while hearing another Appeal in Company Appeal (AT) (Ins.) No.179 of 2025 filed by Alchemist Asset Reconstruction Company Ltd., challenging the same order, this Tribunal has granted liberty to the Appellant Alchemist to file an additional affidavit to place on record additional legal submissions. It is submitted that one of the submissions, which was sought to be raised by the Alchemist was non-compliance of Section 5 of the Competition Act, 2002 in the Resolution Plan. On the said basis the Applicant/ Appellant has prayed for de-reserving the Appeal, which was reserved on 24.01.2025.

12. We having heard the Appeal on the grounds raised in the Appeal and hearing having been completed on 24.01.2025, are of the view that grounds as referred in IA No.1083 of 2025, does not furnish any foundation for de-reserving the Appeal and hearing the Appeal afresh. The Appellant has made his submission on 24.01.2025 on the basis of grounds taken in the Appeal, which submissions were completed and orders reserved. We, thus, do not find any ground to allow the prayers made in IA No.1083 of 2025. **IA No.1083 of 2025 is rejected**.

13. We have noticed the facts giving rise to the Appeal. Both, the Appellant and Respondent No.5 had submitted the Resolution Plan by 06.06.2024, which was the last date for submission of the Plan. Apart from Appellant, 16 other Resolution Plans were received from Prospective Resolution Applicants. The CoC decided to adopt challenge process for which the process document was issued, E-bidding was conducted on

29.07.2024. In the E-bidding, the Appellant had given the highest bid. Details of E-bidding of the Appellant and Respondent No.5 are as follows:

	OCL	**Gateway**
Upfront Payment	INR 99.05 Cr.	Inr 27.477 Cr.
Deferred payment	NA	Inr 82.398 Cr.
Time for deferred payment	NA	Within 364 days from the date of approval of the Resolution Plan
NPV	INR 99.05 Cr.	INR 101.501 Cr.

14. After completion of the e-bidding, in the 15th CoC Meeting the score of PRAs on the basis of evaluation matrix was declared. The score of the PRAs have been noticed by Adjudicating Authority in the impugned order in paragraph 14.3. Paragraph 14.3 of the impugned order is as follows:

> "14.3 Thereafter, the E-bidding process was conducted on 29.07.2024. In the 13th CoC meeting dated 31.07.2024 the RP updated the CoC about the conclusion of E-bidding process and presented the results before it. The CoC in this meeting agreed to grant time until 05.08.2024 to the PRAs to submit their revised resolution plan with the clarifications and the revised financial proposal. M/s GIMS and other PRAs submitted their revised resolution plan on 05.08.2024. In the 14th CoC meeting dated 12.08.2024 the RP apprised the CoC that the revised resolution plan which were received by the end of the day on 05.08.2024 were uploaded on a secured virtual network (VDR- Virtual Data Room) and the link to access the same has been shared with the CoC members. In the 15th CoC meeting dated 29.08.2024 the RP apprised CoC regarding quantitative and qualitative parameters on the CoC approved format of Evaluation Matrix (EM) and presented the scores of the PRAs as per the EM for the consideration of the CoC. The

compilation of the scores of the fifteen PRAs on both quantitative and qualitative parameters is as under:

Sr. No.	Names of PRA	Final Score as per Evaluation Matrix (Quantitative + Qualitative)
1.	Gateway Investment Management Services (DIFC) Limited	48
2.	OCL Iron & Steel Ltd	51
3.	Palika Towns LLP	33
4.	Dickey Alternative Investment Trust	38
5.	Aavanti Renewable Energy Pvt. Ltd	13
6.	JFC Finance (India) Limited (Lot 2a)	28
7.	Derit Infrastructure Private Limited	22
8.	Kundan Care Group - Ankit Sharma	25
9.	Vensar Constructions Company Limited	15
10.	Ever On Power	14
11.	HR Commercials Private Limited & Sunrise Industries	10
12.	Resurgent Property Ventures Pvt Ltd and Sanjay Lodha	15
13.	Authum Investment & Infrastructure Limited	15
14.	Shravan Sampath	14
15.	Orissa Metaliks Private Limited	12

15. From the above, it is clear that Respondent No.5 has scored the highest marks of 51 and Appellant has scored 48 marks on the Evaluation Matrix. Challenge process document has also been brought on record as Annexure A-13 to the Appeal. Clause 1.4.6 provided that financial process submitted during challenge process shall be unconditional and irrevocable and cannot be modified. Clause 1.4.6 is as follows:

> "**1.4.6** The financial proposals submitted during the Challenge Process shall be unconditional and irrevocable and cannot be modified at their own behest in any manner whatsoever subsequent to the Challenge Process. In case any Eligible PRA does not participate in the Challenge Process, the last financial proposal submitted by such Eligible PRA in respect of its resolution plan on or before 6 June 2024 shall be considered as its final financial proposal and no further modification shall be permitted to such financial proposal. Any modification sought to be undertaken in breach of this provision shall be tantamount to a breach of the terms of the RFRP and shall be subject to the consequences as set out in the RFRP, the Code and CIRP Regulations."

16. It is necessary to notice final Resolution Plan submitted by the Appellant on 05.08.2024, in which timeline for payments were as follows:

> "6.2.3 Conformed Timeline of Resolution Amount to be paid to Secured Financial Creditors

Particulars	Amount in INR Lakh
Upfront Payment – within 45 Days from NCLT Approval Date	2,747.70
Deferred Paymnt – Within 364 Days from NCLT Approval Date	8,239.80
Grand Total	10,987.50

17. It is relevant to notice that in the Plan submitted by Respondent No.5, the payments were to be made within 30 days, whereas in the Resolution Plan submitted by Appellant, payments were to be made 25% within 45 days and 75% within 364 days. As per the decision of the CoC, Resolution Plans were put to vote and the voting commenced on 31.08.2024 and was to completed on 07.09.2024. It was on 05.09.2024 that an email was sent by the Appellant on the subject "*Revised Payment Proposal from RA*", which email is as follows:

> "From: Haider Bangash
> Sent: Thursday, September 5, 2024 1:45 PM
>
> To: taveesh blackdiamondpe.in; keyur.thar@idrcl.co.in; pankaj agnihotri@idrcl.co.in; zng@ifc.org; sanjay.sipani@idrcl.co.in; arhawnn.sinzivnidrcl.co.in; makveyune@ifc.org; manish@alchemistarc.com; jeevan@alchemistarc.com; manish@alchemistarc.com
>
> **Subject:** Revised Payment Proposal from RA
>
> Dear Sirs,
>
> With reference to Resolution Plan submitted by us, RA had proposed to pay 2 installments.
>
> We hereby confirm that we shall make payment of second installment to SFCs (in lieu of Assignment of Debt in favor of RA) within 90 days.
>
> Regards
>
> Haider Bangash
> CEO
>
> Gateway Investment Management Services (DIFC) Limited
> 21-01 ICD Brookfield Place
> DIFC, Dubai
> 00971 (0) 4323 1234
> 00971 (0) 5616 40472"

18. The copy of the email was sent to the CoC and subsequently forwarded to the RP. The RP on 09.09.2024 replied to the email to the following effect:

> "From: ib2024helios@gmail.com
> Sent: 09 September 2024 13:23
> To: Harider Bangash
> Cc: Alok Kumar Agarwal: abhishek@insolvencyservices.in, rohit@insolvencyservices.in;
> Subject: Re: Revised Payment Proposal from RA
>
> Dear Sir,
>
> As you are aware, the resolution plans were put to vote on 31 August 2024 and no clarifications could have been accepted by the undersigned after the resolution plans were put for approval of the CoC.
>
> You may appreciate that time and reasonable opportunities were accorded to the PRAs for submitting their resolution plan and the clarifications after the E-bidding concluded on 29 July 2024. After the receipt of the final resolution plans on 5 August 2024, considerable opportunities were granted to the PRAs to provide clarifications until 30 August 2024. Subsequently, all eligible resolution plans along with the addendums/clarifications received until 30 August 2024 were put for approval of the CoC.
>
> We also note that you have conveyed the proposal to the CoC members before the email was sent to the undersigned and the CoC members are aware of the changes proposed by you. However, the RP has not received any instructions from any CoC member to consider the changes proposed by you.
>
> The outcome of the e-voting shall be conveyed to the PRAs in accordance with the RFRP.
>
> On Thu, Sep 5, 2024 at 6:25 PM Haider Bangash <hbangash@gatewayims.com> wrote:
>
> Please see our revised offer below. Apologies for not sending you the email earlier.
>
> It was an inadvertent mistake.
>
> Regards"

19. On 18.09.2024, RP also sent an email to the Appellant for return of the Bank Guarantee.

20. We have also noticed that the Appellant has filed a Writ Petition in Delhi High Court being Writ Petition (C) No. 13278 of 2024, which Writ Petition was dismissed on 23.09.2024. The Adjudicating Authority in paragraph 13.5 has quoted the relevant part of the High Court order as well as the order passed in review on 04.10.2024. Paragraph 13.5 of the order is as follows:

> "**13.5** On 23.09.2024 GIMS filed a Writ Petition bearing no. W.P. (C) No. 13278/2024 before the Hon'ble Delhi High Court seeking directions against the RP and the CoC to initiate the process of fresh voting on the resolution plan submitted by GIMS after taking into consideration clarification dated 05.09.2024. Hon'ble Delhi High Court vide its order dated 23.09.2024 dismissed the writ petition. Para 14, 15, 16 and 17 of the order dated 23.09.2024 as passed by Hon'ble Delhi High Court read as under:
>
>> 14. In view of the aforesaid guidelines coupled with the relevant provisions of the IBC, which have been referred to during the course of arguments, this Court is not enjoined upon to exercise its power of judicial review and thereby usurp upon the powers of the NCLT to inquire into the commercial wisdom of the CoC whereby the Resolution Plan of the petitioner was rejected vide impugned letter dated 18.09.2024.
>>
>> 15. In the end, a last desperate attempt is made by the petitioner that it is willing to renew its offer and match the offer given by the SRA in every aspect, but the same cannot be entertained by this Court. Although there is no gainsaying that in matters of public funds auction the best methodology for discovering fair value and the principle criteria is to ensure maximizing the recovery, the bottom line is that the decision of the CoC shall definitely be considered by the NCLT in a just and expedient manner, and if it deems fit it, may even allow "Open Court Bidding" in accordance with law.

> 16. In view of the foregoing discussion, the present writ petition is dismissed with liberty to the petitioner to take appropriate recourse before the NCLT, which forum alone shall decide the objections of the petitioner, if any preferred, on its own merits in accordance with law.
>
> 17. The present writ petition, along with the pending application, accordingly stands disposed of.

On 04.10.2024 Review application filed by GIMS before the Hon'ble Delhi High Court was disposed of wherein in paras 7 and 8, Hon'ble Delhi High Court recorded as follows:

> 7. In view of the peculiar facts and circumstances, suffice to provide that if the applicant/ petitioner is so advised and it chooses to make a renewed or better offer, it is at liberty to do so. Likewise, it could only be provided that so long as the Resolution Plan is not considered and approved by the NCLT, the applicant/petitioner may make a fresh offer or a renewed offer which, if permitted, may be considered in accordance with law. No further issues arise in the present review petition.
>
> 8. The present review petition is disposed of accordingly.

Pursuant to the order dated 04.10.2024 passed by Hon'ble Delhi High Court, GIMS submitted its revised offer to pay Rs. 120 Crores within 30 days."

21. We have already noticed Clause 1.4.6 of the challenge process document, which clearly prohibits Resolution Applicants to modify its proposal, which was given in the challenge process. Learned Counsel for the Appellant sought to contend that email dated 05.09.2024 was only a clarification and cannot be said to be revised or enhanced proposal. The above submission cannot be accepted. The email itself contained a heading "Revised Payment Proposal from RA". When the Appellant has given proposal to pay 25% within 45 days and 75% in 364 days, upfront payment

was offered only 25%, which was sought to be modified by email dated 05.09.2024 by providing second installment, i.e. 75% within 90 days. The Appellant clearly sought to modify/ enhance its proposal. Upfront payment was offered by the Appellant initially only of 25%, hence, no error can be said to have been committed by the RP and the CoC in not considering the revised payment offer made vide email dated 05.09.2024.

22. Insofar as, the revised proposal submitted on 07.10.2024, the said proposal was submitted after the Resolution Plan was approved by the CoC with requisite majority on the basis of e-voting, which concluded on 07.09.2024. In the 12th CoC Meeting held on 12.09.2024, Plans were approved and the CoC with 73.38% vote share has approved the Resolution Plan of Respondent No.5. It is well settled that the CoC is fully entitled to take its commercial decision after considering the Resolution Plans, which are up for consideration and the commercial decision taken by the CoC has rightly not been interfered by the Adjudicating Authority. The ambit and scope of jurisdiction of the Adjudicating Authority to interfere with the commercial wisdom of the CoC are well settled. We, thus, do not find any error in the order of the Adjudicating Authority approving the Resolution Plan, which was approved with 73.38% vote share.

23. Insofar as, the grievance of the Appellant that his revised payment proposal dated 05.09.2024 was not considered by the CoC, the said proposal could not have been considered in view of the relevant Clause 1.4.6 of the process document as extracted above. In the challenge process, final proposals were given and on that basis Resolution Plans were

submitted on 05.08.2024. Clarifications were permitted by all parties till 30.08.2024. The Appellant also has given his clarification by 30/31.08.2024, as has been submitted by learned Counsel for the RP. It was not open for the Appellant to give enhance or change its offer after 05.08.2024, when the final Resolution Plan was required to be submitted, which actually was submitted by the Appellant as well as Respondent No.5. The CoC and RP did not commit any error in not considering the revised payment proposal, which was clearly contrary to the challenge process document. The CoC has also subsequently considered the enhanced proposal submitted on 07.10.2024 and decided to abide by the process document, which prohibited consideration of any enhanced/ modify offer after due date. The judgment of the Delhi High Court has already been noticed by the Adjudicating Authority, which gave only liberty to the Appellant to appear before the Adjudicating Authority and make its prayer. The Delhi High Court did not accept the prayer made by the Appellant in the Writ Petition. IA No.5176 of 2024 filed by the Appellant, in which prayer was made to reject the Resolution Plan as approved by the CoC and to direct the Respondents to consider and approve the revised offer submitted by the Appellant vide email dated 07.10.2024 has rightly not been allowed by the Adjudicating Authority. IA No.5176 of 2024 has been rejected by the Adjudicating Authority by giving appropriate reasons. The Adjudicating Authority in the impugned order has considered all aspects of the matter, including the revised payment proposal dated 05.09.2024 and the decision of the CoC has also been noticed.

24. We, thus, do not find any error in the order of the Adjudicating Authority dismissing IA No.5176 of 2024 filed by the Appellant. The approval of Resolution Plan by the impugned order cannot be interfered with on the grounds as raised by the Appellant in the present Appeal. The Appeal is dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

15th May, 2025

Ashwani