

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 966 of 2025

IN THE MATTER OF:

J.C. Flowers Asset Reconstruction Pvt. Ltd.

...Appellants

Versus

**Harish Kant Kaushik,
RP of Reliance Innoventures Pvt. Ltd. & Anr.**

...Respondents

Present:

For Appellant : Mr. Krishnendu Datta Sr. Advocate with Mr. Chitranshul Sinha, Mr. Shivam Shorewala, Mr. Rakshit Bhargava and Mr. Yash Tandon, Advocates.

**For Respondents : Ms. Jyoti Singh, Advocate for R1.
Mr. Harish Kant Kaushik, Advocate for RP.**

O R D E R
(Hybrid Mode)

29.07.2025: Heard counsel for the appellant as well as Ld. Counsel for the Resolution Professional.

2. This appeal has been filed against the order passed by the Adjudicating Authority dated 03.06.2025 in IA No. 62 of 2024 by the impugned order Adjudicating Authority has disposed of I.A. 62/2024 and sent the plan back to the Committee of Creditors ("CoC") on the ground that the plan does not comply the statutory provisions that is Section 30(2) of the IBC. The CoC aggrieved by the order has come up in this appeal.

3. Ld. Counsel for the appellant challenging the order impugned submits that there was no non-compliance of Section 30(2). The Adjudicating Authority has observed that non-compliance of Section 30(2)(a) on the

grounds that plan provides for payments of CIRP cost out of internal accruals of the Corporate Debtor and no separate amount for the same has been provided in the plan. It is submitted that the Adjudicating Authority has not adverted to the clause both in the original Resolution Plan and in the addendum that if internal accruals are not sufficient SRA shall make the payment towards CIRP Cost without effecting the payouts of the Financial Creditors. It is further submitted that finding that there is a non-compliance of Section 30(2)(a) is not correct. Committee of Creditors after considering all aspects of the matter has approved the plan. It is further submitted by the counsel for the appellant that although in the addendum the plan value was increased from Rs.92.15 Crores to Rs.110.10 Crores but equivalent changes have not been carried out in the fund infusion clause. It is submitted that when the addendum clearly has increased the amount to Rs.110.10 Crores that was commitment of the SRA on the basis of negotiation by the CoC and in the clause of fund infusion mention of figure Rs.92.15 is inconsequent and in any case its plan value has to be treated as Rs.110.10 Crores.

4. It is further submitted that another discrepancy pointed out by the Adjudicating Authority is that in Form-H for Operational Creditor amount mention was Rs.12.63 Crores whereas in addendum the amount admitted towards same category is Rs.12.05 Crores. It is submitted that above is only typographical mistake, the SRA accepts the figure of Rs.12.63 Crores and in the admission as well as the payment there is no change.

5. Ld. Counsel for the Resolution Professional (“RP”) supported the submissions of the CoC and submits that plan fully complied with Section 30(2) and Adjudicating Authority ought not to have interfered with the plan.

6. We have considered the submission of counsel for the parties and perused the records.

7. The Resolution Plan has been approved by the CoC who is appellant before us questioning the order impugned. The Adjudicating Authority has proceeded to hold the plan non-compliance of Section 30(2)(a) for the reasons as noticed in the paragraphs- 36 to 41.

“36. At this juncture, it is pertinent to refer the relevant clauses of Resolution Plan submitted by the Successful Resolution Applicant. In the Resolution Plan the treatment for the CIRP Cost is mentioned as follow:

“Treatment of CIRP Costs.-

As per the Code, the CIRP Costs are accorded highest priority amongst the creditors of a Company and the CIRP Costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional, in running the operations of the Company as a going concern. It is evident from the records that during the CIRP period internal accruals and/or other cash flows of the Company will be sufficient to pay the CIRP Costs as approved by the CoC. The CIRP Costs will be paid in full and in priority to and other creditor of the Company upon the Resolution Plan becoming effective, out of the internal accruals of the Company. If the internal accruals of the Company are not sufficient to meet the CIRP Costs, the Resolution Applicant will make the payment towards the balance unpaid portion of the CIRP Costs (“Unpaid CIRP Costs”) out of the Total Resolution Amount on the Closing Date. It is clarified that any interim finance raised by the Resolution Professional from the Financial Creditors which has been utilized towards the payment of CIRP Costs shall be treated as part of the Unpaid CIRP Costs.”

further as per Form -H and the Resolution Plan, the plan value is INR 110. 10 Crores, for clarity bifurcation is provided hereunder:

Particulars	Amount in Crore
Cash Component	
(a) CIRP Cost	-
(b) Secured Financial Creditors	101.58
(c) Unsecured Financial Creditors	8.37
(d) Operational Creditors (Statutory Authorities)	0.02
(e) Other Operational Creditors	0. 13
Total Resolution Plan Value	110.10

37. On bare perusal of the aforementioned clauses under the Resolution Plan it transpires that the CIRP Cost will be paid out of the internal accruals of the Corporate Debtor and no separate amount for the same has been provided in the plan value. Further, the instant Resolution Plan does not give any specifics about the internal accruals of the Corporate Debtor from which the payment will be made and whether the same will be sufficient to provide complete payment towards the CIRP Cost.

38. Further, the clause under the Resolution Plan qua CIRP Cost mentions that if the internal accruals of the Corporate Debtor are not sufficient to meet the CIRP Cost, the SRA will make the payments towards the balance unpaid portion out of the total Resolution Plan value. Thus, the SRA will not introduce any additional funds in case the internal accruals are insufficient for meeting out the CIRP Cost. Further, the scheme proposed by the SRA for the payment of the CIRP Cost in case of insufficiency of the internal accruals will affect the whole disbursement as proposed in the plan towards other creditors of the Corporate Debtor. Hence, changing the very fundamentals of the Resolution Plan on the basis of which the plan was approved by the COC.

39. Henceforth, we are of the opinion that the Resolution Plan submitted by the SRA is in non-compliance of Section 30(2)(a) of the Code, 2016.

40. Besides the aforementioned non-compliance of the mandatory provisions of the Code, there are other discrepancies in the Resolution Plan and the addendum to the Resolution Plan. We have noticed that, the Resolution Plan value as provided under the Resolution Plan initially was Rs. 92.15 Cr. and the same was to be introduced through fund infusion. Further, the definition of the fund infusion as provided in the Resolution Plan stated that “INR 92.15 Cr [Indian Rupees Ninety Two Crores Fifteen Lakhs Only] to be infused in the CD through SPV(s) to make specified payments as per the Resolution Plan in the form of equity, debt or any other instrument as decided by the RA in its sole discretion.” There is no other mechanism provided in plan for making the payment to the creditors. Subsequently, the plan value was enhanced from Rs. 92.15 Crores to Rs. 110.10 Crores via the addendum to the Resolution Plan. However, requisite equivalent changes have not been carried out in the **“Fund Infusion”** clause of the Resolution Plan which still reflects the fund infusion to the extent of Rs. 92.15 Cr. Thus, there remains an ambiguity towards the introduction of the enhanced amount in the Resolution Plan i.e., Rs. 17.95 Cr.”

The ambit and jurisdiction of the Adjudicating Authority while considering the plan approved by Committee of Creditors is too limited. The Adjudicating Authority does have jurisdiction to interfere with the decision of the Committee of Creditors taken in commercial wisdom, in event the plan violates any of the statutory provisions and is not in compliance with Section 30(2) the Adjudicating Authority can interfere. It is submitted by the appellant and Ld. Counsel for the RP that there was no non-compliance of the Section 30(2). We thus need to examine the plan in above reference as to whether there is non-compliance of Section 30(2) or not?

8. The first main ground which has been given by the Adjudicating Authority is with regard to non-providing for payment of CIRP cost in priority. The Adjudicating Authority in paragraph-36 has noted the clause in the Resolution Plan with regard to CIRP cost paragraph-36 is as follows:-

“36. At this juncture, it is pertinent to refer the relevant clauses of Resolution Plan submitted by the Successful Resolution Applicant. In the Resolution Plan the treatment for the CIRP Cost is mentioned as follow:

“Treatment of CIRP Costs.-

As per the Code, the CIRP Costs are accorded highest priority amongst the creditors of a Company and the CIRP Costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional, in running the operations of the Company as a going concern. It is evident from the records that during the CIRP period internal accruals and/or other cash flows of the Company will be sufficient to pay the CIRP Costs as approved by the CoC. The CIRP Costs will be paid in full and in priority to and other creditor of the Company upon the Resolution Plan becoming effective, out of the internal accruals of the Company. If the internal accruals of the Company are not sufficient to meet the CIRP Costs, the Resolution Applicant will make the payment towards the balance unpaid portion of the CIRP Costs (“Unpaid CIRP Costs”) out of the Total Resolution Amount on the Closing Date. It is clarified that any interim finance raised by the Resolution Professional from the Financial Creditors which has been utilized towards the payment of CIRP Costs shall be treated as part of the Unpaid CIRP Costs.”

further as per Form -H and the Resolution Plan, the plan value is INR 110. 10 Crores, for clarity bifurcation is provided hereunder:

Particulars	Amount in Crore
Cash Component	
(a) CIRP Cost	-
(b) Secured Financial Creditors	101.58

(c) Unsecured Financial Creditors	8.37
(d) Operational Creditors (Statutory Authorities)	0.02
(e) Other Operational Creditors	0.13
Total Resolution Plan Value	110.10

9. The Ld. Counsel for the appellant has referred to the addendum of the Resolution Plan as well as similar clause in the original plan. It is useful to notice the clause-4 of the addendum which is brought on record as Annexure A-15. Clause-4 of the addendum provides as follows:-

“4. It is evident from the records that during the CIRP period internal accruals and/ or other cash flows of the Company will be sufficient to pay the CIRP Costs as approved by the CoC. The CIRP Costs will be paid in full and in priority to any other creditor of the Company upon the Resolution Plan becoming effective out of the internal accruals of the Company. If the internal accruals of the Company are not sufficient to meet the CIRP Costs, the Resolution Applicant will make the payment towards the balance unpaid portion of the CIRP Costs (“Unpaid CIRP Costs”) at actuals without any deduction from the Upfront FC Debt Payment amount in terms of this Resolution Plan.”

The above clause clearly provides that in event internal accruals of the Company are not sufficient to meet the CIRP cost resolution applicant will make the payment towards the balance unpaid portion of CIRP Cost at actual without any deduction from the amount payable to Financial Creditor in terms of Resolution Plan. The above clause is clear and categorically makes provision for payment of CIRP Costs. It cannot be held that the above clause in any manner violates Section 30(2) or provisions of Regulation, 2016 which provides requirement of provisions for CIRP cost. We thus are of the view that

Adjudicating Authority committed error in holding the plan non-compliance on the above ground.

10. Now we come to the next ground given by the Adjudicating Authority is that initially the plan value was Rs. 92.15 Crores which was increased to Rs.110.10 Crores vide addendum but the requisite equivalent changes have not been carried out in the fund infusion clause of the Resolution Plan which still reflects fund infusion to the extent of Rs.92.15 Crores. Paragraph-40 of the judgment is as follows:-

*“40. Besides the aforementioned non-compliance of the mandatory provisions of the Code, there are other discrepancies in the Resolution Plan and the addendum to the Resolution Plan. We have noticed that, the Resolution Plan value as provided under the Resolution Plan initially was Rs. 92.15 Cr. and the same was to be introduced through fund infusion. Further, the definition of the fund infusion as provided in the Resolution Plan stated that “INR 92.15 Cr [Indian Rupees Ninety Two Crores Fifteen Lakhs Only] to be infused in the CD through SPV(s) to make specified payments as per the Resolution Plan in the form of equity, debt or any other instrument as decided by the RA in its sole discretion.” There is no other mechanism provided in plan for making the payment to the creditors. Subsequently, the plan value was enhanced from Rs. 92.15 Crores to Rs. 110.10 Crores via the addendum to the Resolution Plan. However, requisite equivalent changes have not been carried out in the **“Fund Infusion”** clause of the Resolution Plan which still reflects the fund infusion to the extent of Rs. 92.15 Cr. Thus, there remains an ambiguity towards the introduction of the enhanced amount in the Resolution Plan i.e., Rs. 17.95 Cr.”*

There is no dispute from the addendum which have been brought on the record the plan value has been increased to Rs.110.10 Crores after negotiation between CoC and the SRA. There is no dispute that increased

plan value is Rs.110.10 Crores. The mere fact that in the Clause of fund infusion by mistake the mention Rs.92.15 Crores is there the said mention is in consequential since it is not the case of anyone that enhanced plan value is not Rs.110.10 Crores. Further, present is a case where no objection have been raised by any stakeholder before the Adjudicating Authority pointing out any non-compliance of provisions on any other reason. We thus, are of the view that said cannot be any ground for not approving the plan.

11. The third ground taken by the Adjudicating Authority is that in Form-H amount admitted towards the operational creditor is Rs.12.63 Crores and in the addendum the amount admitted is the shown as Rs.12.05 Crore. Ld. Counsel pointed out that the mention of admitted claim of Rs.12.05 Crore was only a typographical mistake since the payout in the plan is the same i.e; Rs.0.13 Crores which is not changed. Hence, the said in no manner effect the validity of the plan. Ld. Counsel for the appellant has submitted that in the addendum payment as part of the Resolution Plan is clearly mentioned which is as page-507 of the paper book where the payout to the Operational Creditor other than workman employee is same i.e. Rs.0.13 Crores. It is submitted that mention by typographical error with regard to admitted claim as Rs.12.05 Crores instead of Rs.12.63 Crores was also in consequential. No Operational Creditor has also raised any objection before the Adjudicating Authority with regard to any discrepancy in the Resolution Plan, the said mistake was only clerical error not effecting the validity of the plan and nor the above in any manner violates the provisions of Section 30(2) or payout being not in accordance with the requirement of Section 30(2).

12. In view of the above, we are of the view that none of the grounds given by the Adjudicating Authority for not approving the plan can be sustained. We found that the Resolution Plan is not in violation of Section 30(2). There being very limited scope of interference by the Adjudicating Authority in the commercial wisdom of the CoC in approving the plan, we are of the view that order passed by Adjudicating Authority is unsustainable. In result, the order passed by the Adjudicating Authority is set aside. The plan approval application is revived before the Adjudicating Authority for passing a fresh order in accordance with law at an early date.

With the above, Appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

harleen/NN