

National Company Law Appellate Tribunal
Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 701 of 2021

(Arising out of Order dated 08th July, 2021 passed by National Company Law Tribunal, New Delhi, Court-III, in I.A. 2763/2021 in IB No.- 581(ND)/2020).

IN THE MATTER OF:

**Amanat Randhawa Hotels Pvt. Ltd.
Shop No. 20, Abadi Green Avenue,
Amritsar – 143001
Punjab.**

...Appellant

Versus

**1. Shashi Kant Nemani
Resolution Professional of Aryavir Buildcon
Private Limited
1517, Devika Towers
6, Nehru Place,
New Delhi – 110019
E-mail: adpl.cirp@gmail.com
Also at: nemani61@gmail.com**

...Respondent No. 1

**2. Committee of Creditors of Aryavir Bulcon
Private Limited
Through: Tourism Finance Corporation of
India
4th Floor, Tower-1, NBCC Plaza,
Sector-V, Pushp Vihar Saket,
New Delhi – 110017
E-mail: anoop.bali@tfcilttd.com**

...Respondent No. 2

**3. Amit Arora
Suspended Director of the Corporate Debtor
248, Satnam Farms Westend Marg,
Saiduljab, Saket
Delhi
E-mail: amit.arora@kohinoorfoods.in**

...Respondent No. 3

Appellant:	Mr. Dhruva Mukherjee, Sr. Advocate alongwith Mr. Pulkit Deora, Ms. Navya Khillon, Mr. Kumar Anurag Singh & Mr. Zain A. Khan, Advocates.
Respondents:	Mr. Kanishk Khetan, Mr. Alok Dhir, Ms. Varsha Banerjee, Advocates for RP/R-1. Ms. Shashi Kant Nemani, Advocate for R-1.

**Mr. Nitin Dahiya, Advocate for R-2/CoC.
Ms. Eshna Kumar & Mr. Aditya Maheshwari,
Advocate for R-3.
Mr. Shailendra Singh, Ms. Muskaan Garg, Ms.
Prerna Robin & Mr. Dhruv Goel, Advocate for SRA.**

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 785 of 2021

(Arising out of Order dated 06th September, 2021 passed by National Company Law Tribunal, New Delhi, Court-III, in I.A. 2714(ND)/2021 in IB No.- 581(ND)/2020).

IN THE MATTER OF:

**Amanat Randhawa Hotels Pvt. Ltd.
Shop No. 20, Abadi Green Avenue,
Amritsar – 143001
Punjab.**

...Appellant

Versus

**1. Shashi Kant Nemani
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...Respondent No. 2

**3. Amit Arora
Suspended Director of the Corporate Debtor
248, Satnam Farms Westend Marg,
Saiduljab, Saket
Delhi
E-mail: amit.arora@kohinoorfoods.in**

...Respondent No. 3

Appellant: Mr. Dhruva Mukherjee, Sr. Advocate alongwith Mr.

*Company Appeal (AT) (Insolvency) No. 701 of 2021
With
Company Appeal (AT) (Insolvency) No. 785 of 2021*

Respondents: **Kumar Anurag Singh & Mr. Zain A. Khan, Advocates.**
Ms. Shashi Kant Nemani, Advocate.
Mr. Alok Dhir, Ms. Varsha Banerjee & Mr. Kanishk Khetan, Advocates for R-1/RP.
Mr. Nitin Dahiya, Advocate for R-2/CoC.

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Challenge in these Appeals namely, *Company Appeal (AT) (Insolvency) No. 701 of 2021 & Company Appeal (AT) (Insolvency) No. 785 of 2021* in IB No.- 581(ND)/2020 preferred by the Unsuccessful Resolution Applicant- ‘*Amanat Randhawa Hotels Pvt. Ltd.*’ (hereinafter referred to as the ‘**Appellant**’), are against the Orders of the Adjudicating Authority in I.A. 2763 of 2021 and I.A. 2714 of 2021 respectively.
2. Vide Order dated 08.07.2021 in I.A. 2763 of 2021, the Adjudicating Authority has dismissed the Application preferred by the Applicant on the ground that the Application has been filed for consideration *after* the approval of the Resolution Plan by the CoC.
3. In the Impugned Order dated 06.09.2021, passed in I.A. 2714 of 2021 preferred by the Resolution Professional under Section 30(6) seeking approval of the Resolution Plan submitted by one Mr. Sarabjit Singh, the Learned Adjudicating Authority has observed as follows:-

“While considering the present application, the unsuccessful Resolution Applicant whose interim application bearing IA No. 2763 of 2021 (after careful consideration by this Tribunal) was dismissed on 8th July, 2021 has appeared before the Tribunal (virtual mode) and submitted that they have preferred an appeal against the orders of the NCLT in the above

Company Appeal (AT) (Insolvency) No. 701 of 2021
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matter and the said matter is now posted to 23.09.2021 and prayed for deferring the finalization of the present Application. Present application filed by the Resolution Professional (I.A. No. 2714 of 2021). The Counsel has also submitted that his client is willing to deposit an amount of Rs. 60 crores before 23.09.2021 to show the bonafides and seriousness about the matter.

This Tribunal has also been apprised by the Resolution Professional that this company i.e. the unsuccessful Resolution Applicant, Amanat Randhawa Hotels Pvt. Limited has come into existence in the year 2020 and may not be financially sound organization to fulfil its huge offer commitment of the Resolution Plan which is approximately Rs. 121 Crores for the buyout of the Corporate Debtor.

Having considered the submissions made by the Counsel for the Resolution Professional, Counsel for the Amanat Randhawa Hotels Pvt. Ltd., counsel for the Members of Suspended Board, this Tribunal makes the following order:

1. Amanat Randhawa Hotels Pvt. Limited shall pay Rs. 10 crores to R.p. of the Corporate Debtor within seven working days and the same shall stand forfeited to the credit of Resolution Professional for the benefit of the Corporate Debtor in the event of dismissal of its appeal preferred before NCLAT.
2. Apart from payment of above amount of Rs. 10 crores, an amount of Rs. 50 crores shall be paid by Amanat Randhawa Hotels Pvt. Limited on or before 23.09.2021 and it is a refundable deposit which will not carry any interest.

3. So, in view of the above, the present application filed by the Resolution Professional stands posted to 28.09.2021.”

4. Since, both these Appeals deal with a common subject matter, they are being disposed of by this Common Order.

5. Learned Counsel appearing for the Appellant vehemently argued that the ‘Expression of Interest’ was invited by the Resolution Professional on 19.02.2021 but was not widely published as required under Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, that the last date of submission of EOI was 06.03.2021; an email was sent to the Resolution Professional expressing their interest in participating in the CIRP on 13.06.2021 and on 15.06.2021 requesting the Resolution Professional to place the proposal of offer of Rs. 121 Crores before the CoC for its consideration, but no reply was received; that the Appellant preferred an Application on 23.06.2021 before the Adjudicating Authority seeking directions to consider their EoI and submitted that the Impugned Order dated 08.07.2021, passed by the Adjudicating Authority dismissing their Application on the ground that the Resolution Plan was already approved, is erroneous.

6. Learned Counsel contended that subsequently in I.A. 2714 of 2021, preferred by the Resolution Professional under Section 30(6) seeking approval of Resolution Plan it was submitted before the Adjudicating Authority that an Appeal against the Order dated 08.07.2021 was pending before this Tribunal (NCLAT) and that they were ready and willing to deposit an amount of Rs. 60 Crores before 23.09.2021. The Learned Adjudicating

Authority had considered their submissions and directed the Appellant to pay Rs. 10 Crores to the RP within 7 working days else the same shall be forfeited the balance Rs. 50 Crore was directed to be paid on or before 23.09.2021.

7. It is vehemently contended by the Counsel that the Adjudicating Authority ought not to have imposed any conditions while allowing them to file their claim before CoC and that the aforementioned directions in the Impugned Order was *akin* to 'penalizing' the Appellant herein; that the condition of forfeiting the amount of Rs. 10 Crores is arbitrary and that the Appellant had given a very good offer of Rs. 121 Crores as opposed to Rs. 67.49 Crores offered by the Successful Resolution Applicant and hence the Order of the Adjudicating Authority in I.A. 2714 of 2021 is unjustified.

8. Heard the Learned Counsel appearing for the first Respondent, the Resolution Professional of the 'Corporate Debtor' and the second Respondent who is appearing on behalf of Committee of Creditors and also Mr. Singh, who appeared for the Successful Resolution Applicant.

9. It is not in dispute that the IRP issued the Public Announcement under Section 15 of the Code on 25.12.2020 in Form A in the 'Financial Express' (English) in Delhi and Chandigarh Editions apart from 'Jansatta' and 'Dainik Jagran', inviting claims from the Creditors of the 'Corporate Debtor'. The record shows that after receiving the claims, the IRP collated the list of Creditors and constituted the CoC. In terms of the decision of the CoC in the 2nd Meeting held on 15.02.2021, the RP carried out publication of Form G inviting 'Expression of Interest' in 'Economic Times' and All India Edition on 19.02.2021, the 'Business Standard' on 20.02.2021 and in

‘Punjab Jagran’, Amritsar. Hence, the contention of the Learned Counsel appearing for the Appellant that vide publicity was not given while inviting EoI, is unsustainable.

10. A total of 9 EoI’s were received from the prospective Resolution Applicants by the last date of submissions and on account of the lockdown, the CoC decided to extend the last date for submission of Resolution Plans from 26.04.2021 to 10.05.2021.

11. The Counsel for the Resolution Professional submitted that 5 Resolution Plans were received by 10.05.2021 which are listed as follows:-

- a. Kundan Care Products Limited
- b. RKG Fund I and Mr. Hemant Sood
- c. Rajeev Mukul, Proprietor of Zee Laboratories
- d. Mr. Harvinder Singh Sikka through SPV Binbyte Avenue Private Limited
- e. Mr. Sarabjit Singh

12. Subsequently, the Members of the CoC with 98.03% of votes passed a Resolution seeking extension of 90 days for completion of the CIRP and the same was allowed by the Adjudicating Authority vide Order dated 08.07.2021. Subsequently, in the 9th Meeting of the CoC convened on 21.06.2021 after examining the feasibility and viability, approved by 100% voting share, the Resolution Plan of Mr. Sarabjit Singh was approved and the Letter of Intent was issued. An Application was preferred before the Adjudicating Authority for approval of the Resolution Plan under Section 31 of the Code.

13. It is seen from the record that the Appellant sought the indulgence of the RP to place its offer before the CoC for consideration vide emails dated

15.06.2020 and 16.06.2021, which were placed before the CoC by the Resolution Professional, but as the last date for submission of EoI has expired, the CoC rejected the same. Admittedly, the last date for submission of EoI's was 06.03.2021 and the extended last date for submission of Resolution Plan was 10.05.2021 and it is pertinent to note that the email sent by the Appellant herein is dated 13.06.2021, *which is much after the last date*. At this juncture, it is relevant to reproduce the discussion by the CoC on the offer made by the Appellant in their Meeting dated 17.06.2021:-

“Mr. Arora that the RP is supposed to follow the process and the timelines as decided by the CoC and at this stage it was not possible to entertain any new offers. Mr. Arora however insisted that the party should be given an opportunity to give EMD and participate in the process. RP stated that the same was not as per the provisions of law. At this juncture, Mr. Anoop Bali from TFCI also explained to Mr. Arora that there are several Resolution Applicants who have followed the due process of law and RFRP and submitted their plans as per timelines. He stated that although at this juncture he is not aware about the financial offers contained therein, however, it would be unfair to the persons who have already submitted their plans to allow any other third party who has expressed his desire to submit a Plan, which is way past the established timelines. He stated that the CoC, in their commercial wisdom will consider the compliant plans already received as per timelines and no further participation may be allowed at such an advance stage. Upon hearing the discussion of the CoC, Mr. Arora then disconnected the call voluntarily.”

(Emphasis Supplied)

14. Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, clearly stipulates that *‘the Expression of Interest received after the time*

specified in the limitation under clause (b) of sub-Regulation (3) shall be rejected’.

15. The Hon’ble Supreme Court in ‘**Committee of Creditors of Essar Steel India Limited**’ Vs. ‘**Satish Kumar Gupta & Ors.**’ [2019 SCC OnLine SC 1478], in paras 129 and 130 has observed as follows:-

“129. As has been held in this judgment, it is clear that Explanation 1 has only been inserted in order that the Adjudicating Authority and the Appellate Tribunal cannot enter into the merits of a business decision of the requisite majority of the Committee of Creditors. As has also been held in this judgment, there is no residual equity jurisdiction in the Adjudicating Authority or the Appellate Tribunal to interfere in the merits of a business decision taken by the requisite majority of the Committee of Creditors, provided that it is otherwise in conformity with the provisions of the Code and the Regulations, as has been laid down by this judgment.

130. Equally, Explanation 2 applies the substituted Section to pending proceedings either at the level of the Adjudicating Authority or the Appellate Authority or in a Writ or Civil Court. As has been held in **Swiss Ribbons** (supra) and **ArcelorMittal India** (supra) (see paragraph 97 of **Swiss Ribbons** (supra) and paragraph 82, 84 of **ArcelorMittal India** (supra)), no vested right inheres in any resolution applicant to have its plan approved under the Code. Also, the Federal Court in **Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri** AIR 1941 FC 5 and later, this Court in **Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.** (2003) 6 SCC 659 (at paragraphs 16 and 17) have held that an appellate proceeding is a continuation of an original proceeding. This being so, a change in law can always be applied to an original or appellate proceeding. For this reason also, Explanation 2 is constitutionally valid, not having any retrospective operation so as to impair vested rights.

(Emphasis Supplied)

16. The Hon'ble Supreme Court in **'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.'** Civil Appeal No. 8129 of 2019 has observed as follows:-

"57. It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by Adjudicating Authority is limited to the extent provided under Section 31 of I&B Code and of the Appellate Authority is limited to the extent provided under subsection (3) of Section 61 of the I&B Code, is no more res integra.

58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern."

17. This Tribunal in **'Chhatisgarh Distilleries Ltd.' Vs. 'Dushyant Dave & Ors.'** Company Appeal (AT) (Insolvency) No. 461 of 2019 has observed that the Adjudicating Authority cannot direct the CoC to consider another Resolution Plan when the first Resolution Plan is already accepted by not less than 66% of voting share of the Financial Creditors after considering its feasibility and viability, though the other Resolution Applicant is ready to invest more amount in comparison to the first Resolution Applicant.

18. The Hon'ble Supreme Court in **'Ebix Singapore Pvt. Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Ltd. & Anr.'** [2021 SCC OnLine SC 707] held that the NCLT and NCLAT should not entertain late unsolicited bids and should strictly adhere to timelines.

19. Keeping in view the aforementioned decisions of the Hon'ble Supreme Court and also taking into consideration, the legislative intent of the statute together with the fact that in the instant case the Resolution Plan was accepted by 100% of voting share in the CoC Meeting dated 21.06.2021 and having regard to the fact that the Appellant *had never participated* in the EoI, we are of the view that any reliefs granted in contra to the timelines would be ultra vires to the scope and objective of the Code. The ratio of the Hon'ble Supreme Court in '***Ebix Singapore Pvt. Ltd.***' (***Supra***) is squarely applicable to the facts of this case wherein it was observed by the Hon'ble Apex Court that once the Plan is approved by majority of the CoC as provided for under Section 30 of the Code, then no fresh plans may come in intervention of an already approved Plan.

20. In the light of the aforementioned reasons, both these Appeals are dismissed vide this Common Order. No order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
07th October, 2021

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