NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

13.10.2025

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Insolvency) No. 411 of 2025

Dorni Vinimoy Private Limited **...Appellant**

Vs

Rachna Anchalia
Resolution Professional of
Imperial Tubes Private Limited & Ors. **...Respondents**

For Appellant: Ms. Surjadipta Seth, Ms. Soumya Dutta, Mr. Siddhant Upmanyu and Mr. Abhijeet Pandey, Advocates

For Respondent: Mr. Arjun Asthana, Mr. Siddhartha Sharma and Mr. Nachiket Chawla, Advocates for R-1/RP
Mr. Sudhanshu Khandelwal, Advocate for R-2
Mr. Shaunak Mitra, Advocate for CoC
Mr. Vasu Bushan, Mr. Abhishek Taneja and Mr. Shashank Agarwal, Advocates for R2 & 3

(Arising out of Impugned Order dated 20th December, 2024 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench (Court-I), Kolkata in IA (I.B.C.)/1003(KB)2023 arising out of C.P. (IB)121(KB)2021)

With

Company Appeal (AT) (Insolvency) No. 273 & 275 of 2025

Rachna Anchalia **...Appellant**
Resolution Professional of
Imperial Tubes Private Limited

Vs

Yaana Apparels Pvt. Ltd. & Ors. **...Respondents**

For Appellant: Mr. Arjun Asthana, Mr. Siddhartha Sharma and Mr. Nachiket Chawla, Advocates

For Respondent: Mr. Shaunak Mitra, Advocate for CoC
Mr. Vasu Bushan, Mr. Abhishek Taneja and Mr. Shashank Agarwal, Advocates for R1 & 2
Ms. Surjadipta Seth, Ms. Soumya Dutta, Mr. Siddhant Upmanyu and Mr. Abhijeet Pandey, Advocates for R-3
Mr. Sudhanshu Khandelwal, Advocate for R-4

(Arising out of Impugned Order dated 20th December, 2024 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench-I in INV.P. (IBC)/20(KB)2023 & INV.P.(IBC)/1(KB) 2024 in IA(I.B.C.)/1003(KB)2023 arising out of C.P. (IB)121(KB)2021)

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

There are three appeals whose backdrop is now broadly provided: a certain Imperial Tubes Pvt. Ltd., faced CIRP proceedings, in which Resolution Professional (appellant in Company Appeal (AT) (Ins) No.273 and 275 of 2025) was appointed. He had shortlisted four PRAs and had invited them to submit their resolution plans. However, just two days before the closure date for submitting the resolution plan, a certain ***Dorni Vinimoy Pvt. Ltd***., (henceforth would be termed as ***Dorni***) joined the other four, apparently pursuant to an Order of the Adjudicating Authority (understanding the true import of this order itself is an aspect involved in the appeals). With barely two days to go from the date of the said Order, Dorni submitted its EoI on the next day, and submitted the plan on the second day, and deposited the EMD two days later, since according to Dorni banks were closed in the intervening two days as public holidays. Eventually Dorni's plan was approved by the CoC, following which the RP moved the Adjudicating Authority for the latter's approval. As this is pending, two of the unsuccessful resolution applicants namely, ***M/s Yaana Apparels Pvt. Ltd.***, and ***Krishna Wax*** (would be referred to as ***Yaana*** and ***Krishna*** respectively in this Order), intervened the same with two separate applications and challenged the legality of the process by which Dorni was admitted in the resolution process. This objection was upheld by the adjudicating authority, which has now given rise to three appeals, two by the RP (Comp.A 273 and 275 of 2025, and one by the SRA (Comp.A 411 of 2025).

Facts

2. The material facts relevant for the current purpose may now be stated with greater specificity:

a) On 22.8.2022, CIRP against the CD commenced and it moved to the stage where the RP had issued Form G inviting EoI from prospective resolution applicants, stipulating therein 21.10.2022 as the last date for receipt of the EoI. As stated in the earlier paragraph both ***Yaana*** and ***Krishna*** had submitted their respective EoI. The RP would now prepare a provisional list of PRAs and then the final list of PRAs, and on 25.11.2022 requested the shortlisted PRAs to submit their resolution plans. Initially the last date for submission of the plan was fixed as 28.12.2022, but later it was extended a couple of times, and finally it was fixed as 22.01.2023.

b) Be that as it may, Dorni sent its EoI to the RP, but 47 days after the expiry of the date stipulated for it in Form – G. On 27.12.2022, the RP rejected it. Dorni would now move the Adjudicating Authority with its I.A. 86/2023 for its inclusion in the resolution process. On 20.01.2023, the Adjudicating Authority allowed IA 86/2023 condoning the delay in filing the EoI, but carefully underscored in its Order that "*mere condonation of delay will not be construed to be a relaxation of any conditions of the EoI in any manner" and that the "plan shall be submitted in accordance with EOI conditions and the Resolution Professional and COC will consider the Plan strictly in accordance with law.*"

c) On the following day, (21.01.2023), Dorni submitted its EOI along with a refundable deposit of Rs.20.0 lakhs as required. And on 22.01.2023, the last date for submission of Resolution Plan, Dorni submitted its plan but without the EMD amount of Rs.50.0 lakhs. It eventually deposited the EMD only on 25.01.2023, since 23.01.2023 and 24.01.2023 were declared as public holidays in West Bengal.

d) On 31.01.2023, the RP e-mailed all the PRAs in the fray informing them that the resolution plans would be opened in their presence in the meeting of the CoC to be held on 02.02.2023.

e) On 02.02.2023, the 5th meeting of the CoC took place. The CoC was informed about Dorni's participation pursuant to the Order of the Adjudicating Authority in IA 86 of 2023.

f) On 02.03.2023, the 6th meeting of the CoC was convened and as per the evaluation matrix, Yaana was placed second whereas Krishna was placed at the 4th place. The RP informed both Yaana and Krishna to submit a modified plan latest by 06.03.2023, if they are desirous. On 06.03.2023, both of them submitted their respective modified resolution plans.

g) In the 7th meeting of CoC that took place on 10.03.2023 (and continued on 13.03.2023) all the resolution plans were placed before the CoC and were discussed. Voting lines were soon opened and on 11.05.2023, the CoC approved the Resolution Plan of Dorni by a majority of 99.87% votes. On the same day RP e-mailed all the unsuccessful resolution applicants about the rejection of their plans.

h) Subsequently, on 19.05.2023, RP took out IA IBC 1003 of 2023 for the approval of the Resolution Plan by the Adjudicating Authority. Both Yaana and Krishna would now take out separate intervener Petition in I.A.20 of 2023 and I.A.1 of 2024, alleging illegalities involving violation of few CIRP Regulations in approving Dorni's resolution plan by the CoC and prayed *inter alia* that the said approval be set aside. (It may be stated that earlier

Krishna filed I.A.23 of 2023 and it was later withdrawn by it and filed a fresh Petition in I.A. 1 of 2024).

3. The quintessence of the allegations of Yaana and Krishna may be grouped under two heads: (a) that the participation of Dorni is plagued with material irregularity of the kind that would vitiate the approval granted to its plan; and (b) that there had been a massive collusion between the CoC, RP and Dorni in hijacking the procedure prescribed.

4.1 The allegations constituting the circumstance which alleged to establish the collusion between RP, CoC and Dorni are:

- On 27.12.2022 Dorni e-mailed the RP of its interest to participate in the resolution process, but many days after the closure date for submission of the EoI. RP rejected it on the same day on the ground that it was beyond time. And she did not stop there. she would volunteer to advice Dorni to approach the Adjudicating Authority. Following this advice, Dorni approached the Adjudicating Authority with I.A.86 of 2023 for condonation of delay in filing the EoI. This was listed on 16.01.2023, and with RP and CoC offering no contest, it came to be allowed on 20.01.2023.
- Later when Dorni filed its EoI and also its plan, they were received in violation of the prescribed statutory procedure [the details thereof are listed in paragraph 3(b)], and even contrary to the terms of Form G. Finally, both CoC and RP ensured that participation of Dorni in the resolution process through a wild card entry.

- To complete the acts of collusion, the participation of Dorni was kept a closed guarded secret from the other PRAs. The objecting PRAs, namely Yaana and Krishna came to know of Dorni's participation only on 11.05.2023, through the e-mail which the RP had sent to communicate the rejection of their plans.

4.2 The material irregularities involving breach of the CIRP Regulations are:

- When the Adjudicating Authority allowed I.A.86 of 2023, it merely condoned the delay. It did not grant exemption to the RP or CoC from accommodating Dorni in rejection of law. On the contrary, it was cautious not to engage in any such extravaganza.
- Regulation 36A(6) mandates that any Expression of Interest made available after the date stipulated for it in Form-G should be rejected. But RP had received it, which positively proscribes reception of any EoI after the date stipulated for it.
- In accommodating Dorni, the RP had ignored Regulation 36A(8) and (10) to (12). The other PRAs who were already in the fray did not get an opportunity to raise an objection against Dorni.
- Despite the fact that Dorni's name did not figure in the final list of PRA, CoC chose to consider its resolution plan. However, Regulation 39(1-B)(b) lays an embargo on the CoC from considering any resolution plan of the one whose name does not figure in the final list of PRAs.

- Even the EoI as submitted by Dorni is faulty since it was not accompanied by the requisite EMD as insisted in Form–G but was deposited only on 25.02.2023.
- The EoI of Dorni was not accompanied by necessary refundable deposit and so was the EMD amount as its deposit did not accompany Dorni's resolution plan. The plan was submitted on 22.01.2023, whereas the EMD was deposited only on 25.01.2022. This is in breach of Regulation 36B(4) and (4A).

5. The RP and the SRA resisted the I.A. preferred by Yaana apparels and Krishna Wax, inter alia on the ground of their maintainability. Eventually the Adjudicating Authority vide its common order (which is now impugned in this batch of appeals) allowed I.A.20/2023 and I.A.1/2024 and set at naught the approval of the CoC to the resolution plan of Dorni. Its line of reasoning is:

a) That in terms of the ratio in ***Ashdan Properties Pvt. Ltd., Vs Mamta Binani (RP of Rolta India Ltd.) & Other*** [2024 SCC OnLine NCLAT 1653] without issuing a fresh Form-G, Dorni should not have been allowed entry;
b) That Regulation 36A is impregnable, and that the order of the Adjudicating Authority, dated 20.01.2023, condoning the delay which had eventually enabled Dorni to submit its EOI violates Regulation 36A(10), implying there by the order in I.A.86 of 2023 is bad in law.
c) Failure of Yaana Apparels and Krishna Wax to challenge the Order passed in I.A.86/2003 (by which the Adjudicating Authority had condoned the

delay of Dorni to submit its EoI) is of no consequence since they were not informed by the RP about the filing of I.A. 86 of 2023.

This Order is now under challenge in this batch of appeals:

Arguments

6.1 The learned counsel for the RP (appellant in C.A.273 and 275 of 2025) argued:

a) Neither the RP nor the CoC welcomed the participation of Dorni when it made its belated attempt to participate in the resolution process, well after the closure date specified for disclosing EoI. It is only after the Adjudicating Authority had allowed I.A.86 of 2023, did the RP receive it. Eventually it is the decision of the CoC to accommodate Dorni. In the quest for maximization of asset value of the Corporate Debtor, RP played only its role. So far as the belated deposit of EMD on 25.01.2023 is concerned, Dorni has explained that since 23.01.2023 and 24.01.2023 were public holidays and banks were not functioning, it was deposited on 25.01.2023, and the CoC has condoned the two days delay. And, the CoC is not powerless to condone it. It is inbuilt in Regulation 36B (4A).

b) Without purporting to review its earlier Order in I.A.86 of 2023, the Adjudicating Authority in effect has reviewed it and has held that the said order was in violation of Regulation 36A(10). It however, does not have any authority to review its own order. Reliance was placed on the ratio in ***Aircastle (Ireland) Ltd., Vs Ashish Chawchharia, RP of Jet Airways***

(India) Ltd., and others [Comp.A.(AT)(INS) 1178 of 2024]. Its consequence would be that the Order in I.A.86 of 2023 sands which validates the participation of Dorni in the resolution process. For Yaana and Krishna to sustain their objections, they should have challenged the Order in I.A.86 OF 2023, which they did not.

c) So far as the allegation of material irregularity vis-à-vis receiving the EoI of Dorni without a fresh Form-G goes, it is supported by the ratio of NCLAT in ***Anil Kumar Vs Jayesh Sangharaka*** [Comp.A.(AT)(Insolvency) No.513 of 2023, dated 03.08.2023) and ***Ankit Patni Vs SBI*** (Comp.A.(AT)(Insolvency) No. 326 of 2022, dated 06.04.2022). As long as the window for receiving the resolution plan is open, reception of the resolution plan even from Dorni is not barred.

d) It is wrong to say that Yaana and Krishna were kept in dark about the entry of Dorni. On 31.01.2023, the RP had e-mailed all the PRAs that all the plans would be opened by the CoC on 02.02.2023. And, on 02.02.2023, the 5th Meeting of the CoC took place. Each of the resolution plans were submitted by the respective resolution applicants in a sealed cover. It is a closed tender. As per the practice, in order to ensure transparency and fairness in the process, signature of the resolution applicants or their representatives would be obtained on the reverse side of each of the cover containing the resolution plan. In all these, the signature of both the representatives of Yaana and Krishna had signed along with the representative of Dorni. Therefore, it is futile to contend that these objectors were kept in dark about the participation of Dorni. This apart, on 09.02.2023, the RP had sent an e-mail to all the resolution applicants and the address bar of the e-mail included the mail.id of Dorni.

e) Neither Yaana nor Krishna were treated badly. After the resolution plans were opened on 02.02.2023 in the 5th meeting of the CoC, and the discussion on them by it in its 6th meeting on 02.03.2023, the RP had required both Yaana and Krishna to modify their plan-proposals, and they had also submitted their respective modified plans on 06.03.2023. If the intention was to pull the wool from the eyes of Yaana or Krishna, this request need not have been made to them.

f) On 11.05.2023, the RP had intimated both Yaana and Krishna about the rejection of their plans and required them to receive the EMD. Neither of the two respondents chose to challenge it immediately. It was only after few months they have chosen to challenge it. In the meantime, Krishna Wax had even got back the EMD, and yet it challenges the plan as approved by the CoC. The challenge is motivated, that the two unsuccessful resolution-applicants have no locus standi to maintain their challenge.

6.2 Supporting the submissions of the RP, the counsel for the CoC would submit that:

a) Guided by its commercial wisdom and obligation to optimize the asset value of the corporate debtor, CoC considered Dorni's plan. Indeed, Dorni tendered its plan through the legal way and the other resolution-applicants knew about Dorn's participation.

b) Other than challenging the approval of the CoC for its alleged violation of certain specific provisions of Regulation 36A, neither Yaana nor Krishna could raise any specific objection to the eligibility of Dorni to participate.

c) And, at no point of time either Yaana or Krishna chose to challenge the Order in I.A.86 of 2023. Even if the line of the case of these unsuccessful applicants is presumed to be true, it will still show that they both had their earliest opportunity to challenge the participation of Dorni after the 5th meeting of the COC on 02.02.2023. They did not do it.

6.3 The learned counsel for the SRA (the appellant in Comp.A. 411 of 2025) would submit that the fundamental accusation directed against the resolution plan of Dorni is not that it is less attractive than the offer of these unsuccessful applicants, but Dorni had a back door entry and that they did not know about its participation. However, in its rejoinder filed to its I.A.20/2023 Yaana Apparels had admitted "*that the PRAs including the applicants were aware of the participation of Dorni Vinimoy Pvt. Ltd. but did not raise objection*", and this settles the issue. Again on 15.05.2023, the RP had informed Krishna Wax to collect its EMD and this was acknowledged by Krishna Wax with its reply. Necessarily both the doctrine of acquiescence and estoppel would apply to deny the interveners of their right to challenge the commercial wisdom of the COC in approving the resolution plan of Dorni.

7.1 Per contra, the learned counsel for the respondents, Yaana Apparel and Krishna Wax made the following submissions, which are but reiteration of their stand in the reply:

a) Till 11.05.2023 when the RP had sent his e-mail informing the rejection of their plans, neither Yaana Apparels nor Krishna Wax knew about Dorni's participation. So far as the signatures which the representatives of Yaana and Krishna had put on the reverse side of the cover containing resolution plan goes, the meeting of the CoC with the PRAs is one to one meeting, and hence there is hardly any way for Yaana and Krishna to ascertain a new entity entering with a resolution plan. So far as the inclusion of Dorni's mail id in the address bar of the e-mail of the RP dated 09.02.2023, is concerned, an address bar can hardly alert anything about the participation of a new person, since law does not prevent an individual or entity from having more than one e-mail account. Therefore, unless it is specifically brought to the notice of the existing PRAs about the late arrival of Dorni, knowledge about Dorni's participation cannot be attributed to the former. When Dorni laid I.A 86 of 2023, in fitness of things RP ought to have informed the existing PRAs about the same. But it was deliberately hidden from their knowledge.

b) The application which Dorni had made before the Adjudicating Authority is only for condonation of delay of 47 days in submitting the EoI after the closure date stipulated for it in Form-G. And, the Adjudicating Authority had merely condoned the delay, yet underscored the need to comply with law. The RP however, had considered the said order to be a license to breach every Regulation that either prohibits what he had done, or which prescribes what he should do. They are listed below:

- Regulation 36A(6) mandates that any EOI received after the time specified shall be rejected but the RP received the EOI of Dorni. It is mandatory that unless a fresh Form-G is issued, no RP at no time can received an EOI after the closure date for receiving the EOI in the initially published Form-G. Reliance was placed on the ratio in ***Ashdan Properties Pvt. Ltd., Vs Mamtha Binani*** [2024 SCC OnLine NCLAT 1652].
- Regulation 36A (8) mandates that the RP shall conduct due diligence that a PRA has satisfied the eligibility criteria as prescribed by the CoC and that a PRA is not disqualified under Sec. 29A. The RP in the instant case had ignored it vis-à-vis the EoI of Dorni. In this context, it is relevant to mention that the paid-up share capital of Dorni is less than that of Yaana Apparels.
- After scrutinizing the EoI submitted before him, the RP is required to issue a provisional list of eligible PRAs. Any objections to the inclusion or exclusion of a PRA may be made to the provisional list of PRAs. However, the process as devised by the RP ensured that none of the PRAs in the provisional list published by the RP ever get an opportunity to object to the participation of Dorni. Regulation 39(1B)(b) imposes a statutory restriction on the CoC

from considering any resolution plan received from any person whose name does not appear in the final list of PRAs. So far as Dorni is concerned, its name did not figure in any of the list-both provisional and final, and hence considering the Dorni's plan by the CoC is akin to Adam's sin in procedure.

- The resolution applicant is required to make the EMD of Rs.50.0 lakhs to accompany the resolution plan, whereas Dorni, though had filed its plan on the last day, has not deposited the EMD required along with it but only on 25.01.2023. Dorni claims that because 23.01.2023 and 24.01.2023 where declared public holidays it could not make the deposit. However, for making any e-transfer of funds through NEFT, banks need not be opened. And, Dorni had only e-transferred the EMD amount. When material irregularities as stated are established, necessarily the Adjudicating authority cannot approve the resolution plan. Reliance was placed on the ratio in ***Amit Sangal Vs Kairav Anil Trivedi & Others*** [Manu/NL/0146/2025]

Where a resolution process is loaded with material irregularities, it vitiates the purity of the outcome. When law requires anything to be done in a certain way, it shall be done in that way and no other. It is true that neither Yaana nor Krishna had challenged either the order in I.A.86 of 2023 which Dorni had filed, or the resolution plan as approved by the CoC immediately. At any rate, when there is a breach of law no estoppel operates and hence neither Yaana nor Krishna are estopped from raising the legal issues. Reliance was placed on the ratio of ***Independent Sugar Corporation Ltd., Vs Girish Sriram Juneja & Others*** [(2025)5 SCC 209 : 2025 INSC 124], ***Central Bank of India, Stressed Asset Management Branch II Vs Deepen Arun Parekh*** [2024 SCC OnLine Nclat 1309], ***State of Rajasthan Vs Surendra Mohnot*** [(2014)14 SCC 77], ***Amit Sangal Vs Kairav Anil Trivedi & Others*** [Manu/NL/0146/2025].

c) The Adjudicating Authority was well within his powers to review its earlier order in I.A.86 of 2023 as it was patently illegal. Power to review is inherent in it its own illegal orders. Reliance was placed on the ratio in ***Union Bank of India (erstwhile Corporation bank) Vs Dinkar T. Venkatasubramanian & Others*** [C.A.(AT)(INS)729/2020].

d) The above points when juxtaposed exposes the collusion between RP, CoC and Dorni, and how they had used the Adjudicating Authority for executing it emerges as an inevitable inference. Collusion, like fraud can only be inferred from the facts and the circumstances in which those facts are presented.

7.2 In the context of EoI, the learned counsel submitted, that after the approval of Dorni's resolution plan, Yaana Apparels did give a better offer to the CoC. Given the fact that Yaana was kept in dark, at least this offer should have been considered.

Discussion & Decision

8. The genesis of the ongoing controversy commenced with the Order of the Adjudicating Authority in I.A.86 of 2023 condoning the delay of Dorni in submitting its EOI. It has provided a cover of legitimacy to what the RP and the CoC had done subsequently. So far as the Order in I.A.86 of 2023 goes, according to the appellant, in the impugned order, the Adjudicating Authority had reviewed the earlier Order and chose not to consider its effect. This has invited some arguments from both the sides on the Adjudicating Authority's power to review its own order. If the Order of the Adjudicating Authority is carefully read, it has observed in paragraph 36 as follows: *"……The only reason the applicant could not challenge the order dated 20.01.2023 because the Applicant and other Resolution Applicants was not even informed by the Resolution Professional about the final list of the prospective resolution applicants and that Dorni was allowed by* ***<u>the Order dated 20 January, 2023 in violation of Regulation 36A(10) of CIRP Regulations, 2016</u>****."* On the face of it, it does not show that the Adjudicating Authority has attempted to review its earlier Order in I.A.86 of 2023 but has only sidestepped the said Order as it felt that the very Order was passed against the Regulation. It therefore, does not require any investigation vis-à-vis the power of review of the Adjudicating Authority, but only requires a consideration whether the Order in I.A.86 of 2023 should be taken note of and acted. This aspect will be considered later in this judgement.

9. The entire justification of Yaana Apparels and Krishna Wax is pivoted in their allegation that in accommodating Dorni in the resolution process there had occasioned a breach of critical CIRP Regulations and that any resolution process painted with statutory violations is necessarily tainted with material irregularity. Their allegations can be segregated into two parts: (a) collusion between CoC, RP and Dorni resulting in material irregularity so much so even the participation of Dorni was well concealed from the other PRAs; and (b) violation of specific CIRP Regulations constituting material irregularity. They are now considered.

On The Plea of Collusion

10. So far as the allegation of collusion goes, the facts as presented are inadequate to infer that there was one. The reasons are:

a) Firstly, the RP did not accept Dorni's EoI beyond the date stipulated in Form-G. He received it because there was an Order of the Adjudicating Authority in I.A.86 of 2023. That the legality of this order might have been suspected by the Adjudicating Authority later, but on 20.01.2023, when the Order in I.A.86 of 2023 was passed, it binds the RP, and therefore he cannot be blamed for acting on the basis of the Order. At least he cannot be blamed of collusion.

b) The second limb of the allegation is that even as the RP refused to accept Dorni's EoI, he had given an unsolicited legal advice to Dorni that the latter might approach the NCLT. This appears farfetched. A RP, after all is a human being and not a preprogrammed designer-robot not to exhibit ordinary human tendencies. Set in the context, the alleged suggestion of RP to Dorni appears more as an ordinary human courtesy spontaneously made. Now, what if Dorni had approached the NCLT on its own? Dorni does not require RP's leave to approach the NCLT. Life of law, after all, is not logic but experience, and hence to ordinary acts happening in the ordinary course of human conduct should not be unnecessarily and unduly hyped.

c) The third aspect is that the RP had not disclosed to the other shortlisted PRAs about Dorni's I.A.86 of 2023. But, is the RP under a statutory duty to disclose? And, do the other PRAs, Yaana and Krishna included, have a right to be informed? The CD and not the PRAs is central to the theme of resolution process. If the stage at which Dorni's EoI was received is considered (this aspect will echo at few places later in this judgement), Yaana and Krishna had merely responded to Form G inviting them to satisfy their eligibility to participate in the resolution process, and that they have been found to be eligible and the financial ability to move to the next the stage of the resolution process. Therefore, what is the right vested in them which was affected at that point of time by Dorni's 'belated' entry as to warrant a notice to Yaana and Krishna?

d) Every PRA should remember that when the RP makes a RFRP, it is only an invitation to offer, and no PRA is under any compulsion to make an offer. A mere opportunity to make an offer does not create any vested right in any of the PRAs, more so when the closing date for the submission of the resolution plan is yet to arrive. Indeed ***R.K Industries (Unit-II) LLP Vs H.R Commercial Private Limited & others*** [2022 SCC OnLine SC 1124] has held in the context of liquidation that even the H1/Anchor bidder does not have any vested right. Both Yaana and Krishna appeared to have helped themselves with considerable misconception about their right to contend that they ought to have been informed about I.A.86 of 2023. Thus, what prima facie appears to be impressive, deeper scrutiny exposes the fallacy within. It is misconceptions such as these which halt and hamstring the resolution process leading to breach of statutory timeline. Alternatively, even if it is presumed that both Yaana and Krishna were entitled to be informed about Dorni's I.A.86 of 2023, the preponderating probability is that they knew it, though not immediately but later when the resolution plans were opened. To mark the participation of the PRAs, the signatures of their respective representatives were obtained in the reverse side of the cover, and the copy of the document produced by the RP tilts the balance against Yaana and Krishna. Their explanation to the same is hardly convincing.

e) On facts, if the intention of CoC and the RP were to provide a back-door entry to Dorni, then they need not have required both Yaana and Krishna to improve their respective offers after the resolution plans were opened.

f) The next aspect is, should the CoC have objected to I.A.86 of 2023, and by not objecting to it can it be accused of colluding with Dorni? If the object is to maximize the asset-value of the CD, then from the CoC's standpoint, greater the number the better. Therefore, why should the CoC object? Here there is lack of clarity in the contention of Yaana and Krishna.

On Material Irregularity

11. The allegation has been that the admission of Dorni into the resolution process is bristled with violation of Regulations 36A (5) read with (6), (8), (10) to (12), 36(1B)(b) and Regulation 36B(4) and (4A). It all started fundamentally with what Yanna and Krishna allege as the belated submission of EoI by Dorni when Regulation 36A (5) insists that EoI must be submitted within the time stipulated for it and followed it with a statutory injunction against the RP requiring him to reject any EoI submitted after the said time vide sub-Regulation (6). And this led to the CoC considering the resolution plan of Dorni when Dorni's name very evidently could not be in the final list of PRAs, something which Regulation 39(1B)(b) forbids. If the Order of the Adjudicating Authority in I.A.86 of 2023 which paved the way for Dorni to submit its EOI and join the resolution process is kept aside, there is apparent merit in the contentions of Yaana and Krishna since the breach of these Regulations cannot be concealed.

Understanding Material Irregularity

12. The bottom line of every legislation-driven action is that every action must be done in the manner prescribed, and no other. The instruction is to trek along the track which law has laid and not to lay any track, howsoever superior its convenience might be. Besides establishing the legitimacy of the action, this doctrine shuts the door on arbitrariness from seeping into erode the fairness

which ought to associate with every action in law. Obedience to rule of law may be considered as non-negotiable, still law does not hurry to negate and nullify everything that is done in contravention of its prescription, nor does it become unduly anxious to restore *status quo ante.* Here steps in the rule of material irregularity. To explain, while every deviation from the manner prescribed by law necessarily constitutes an irregularity, yet law takes cognizance of only those which falls within the contours of material irregularity for its response.

13.1 What then constitutes material irregularity? In ***Amit Sangal Vs Kairav Trivedi and Others*** [Manu/NL/0416/2025], this tribunal has explained it as follows:

> *"56. ….. Material Irregularity refers to a significant deviation from established rules, practices, or procedures that is substantial enough to influence the outcome of a legal proceeding or decision. It involves failure to adhere to prescribed methods, either by omitting necessary actions or performing them improperly or untimely. Such irregularities are not merely formal defects but have material impact, **affecting the merit of a case or the rights of the parties involved**. Unlike illegality, which denotes a violation of law, material irregularity pertains to procedural defects that can undermine the fairness or validity of legal proceedings…. .**that a material irregularity in the conduct of the CIRP is one that significantly impacts the fairness, legality and integrity of the process. Such irregularities can lead to delays, financial losses, and litigation, thereby defeating the objectives of the Code**. Material irregularities may arise from non-compliance with the statutory provisions, rules, and regulations governing the CIRP. Any deviation from these prescribed legal provisions, both procedural or substantive, may amount to a material irregularity and affect the legitimacy of the resolution process."*
>
> *(emphasis supplied)*

13.2 Material irregularity, accordingly, is not auto-generated from every act of irregularity, but is determined by the quality of their impact and the nature of the consequence an alleged irregular act produces. In other words, it is the *ex-post facto* consequence of an *ex-ante* breach that will decide whether an apparently irregular act may qualify to be termed as material irregularity as to render void what has been done.

13.3 In the context of a CIRP, as stated in the above extracted passage from ***Amit Sangal case***, for a material irregularity to infect a CIRP, there must be, not just a violation of statutory provision or rules or regulations but it should be also of such a nature that it has landed the resolution process in palpable unfairness or plain illegality which affects the integrity of the resolution process. This is the litmus test. To state it differently, a breach of a regulation *ipso facto* need not necessarily render every act done in violation thereof void, but requires an impact assessment of such violation on the resolution process, not superficially or subjectively, but most objectively. In other words, when a violation of Regulation is alleged, and is also found, there is hardly any need for a panic-response. An Adjudicating Authority is then required to undertake an impact assessment analysis of such violation on the resolution process. Indeed, if every statutory provision or rules (in the context of IBC, also the Regulation) is considered inviolable, then how to explain situations where the Court interprets what may apparently be seen as a mandatory provision as directory? It depends on the nature of provision, the objective sought to be achieved and whether any deviation therefrom has affected the objectives which the law-makers have conceived. For instance, notwithstanding the conscious prescription of a specific timeline for admitting a CIRP, the same is judicially declared to be directory as in ***Committee of Creditors of Essar Steel India Ltd., Vs Satish Kumar Gupta & Others*** [(2020)8 SCC 531], ***Surendra Trading Co., Vs Juggilal Kamlapat Jute Mills Co. Ltd*** [(2017)16 SCC 143]. But the same may not be true if there is a breach of Secc.29A of the Code and if those who have been forbidden to participate in the resolution process are allowed to participate in the same.

13.4 Law does not aspire to match the rules of pure science, but only aims to promote and preserve that which the legislature has intended. It deals with human beings and their problems and challenges. Hence law does not develop formulae for equal application in all circumstances, but only principles. The duty of the Court is to unearth the underlying principles from the statutory provisions to optimize the working of the law and its purpose. Therefore, the maxim "*what applies to goose applies to the gander*" may not be useful in law. Facts of every case decide how a principle should be applied. They also decide whether an existing principle needs a modification or qualification for its application. Working of law is dynamic and Courts keep alive this dynamism, for Court cannot plead helplessness to deal with varieties of situations which may not have been in the contemplation of the legislature. Thus was groomed the concept of material irregularity which statutes have expressly adopted at times or have allowed the Courts to determine it in other times. Set in the context, if every irregularity were to be considered as impermissible, Courts would not have developed the concept of material irregularity.

13.5 Having stated thus, deviation in the manner of achieving the legislative intent, as a rule, is neither prescribed nor recommended, but when it occurs, it does not always invalidate what is done in violation of a regulation either. It depends on multiple factors, and hence the focus must be to engage objectively in an impact assessment of the consequence an alleged violation of the Regulation has produced: has it (deviation from regulation) produced a result which are plainly illegal, or has been so unfair that it offends the integrity of the resolution process. If despite the violation of any Regulation, the consequences it produced falls short of what is stated herein above, why should there be a hurry to invalidate an act so done?

13.6 It could now be derived, that while breach of a procedure as prescribed is not recommended, yet if the violation is not material, the act done contrary to a Regulation can still be saved. It could now be further derived that any irregularity, founded on any breach of a Regulation, but not amounting to material irregularity, is not a negation of rule of law, but part of it.

Legal Character of Regulations

14. Turning to the facts of the present case, to provide narrative convenience, the core allegations of the respondents are now repeated: By accepting Dorni's EoI after the closure date for its submission, RP had avoided at least three stages as contemplated in Regulation 36A(10) to (12). While the Regulations require RP to publish a list of provisional PRAs, and then to invite objections mutually from the shortlisted PRAs and to publish a final list of PRAs, Dorni was given the

privilege of a wild card entry into the resolution process. And the CoC committed a sin of considering Dorni's resolution plan when it is on an embargo not to consider any resolution plan submitted by one whose name does not figure in the final list as provided in Regulation 39(1B)(b).

15. Given the fact that allegation of material irregularity is associated with breach of certain specific CIRP Regulations, it is necessary to understand the character of the Regulations. CIRP Regulations are but a piece of delegated legislation whose aim is to aid in the working of the Code. Indeed, under Sec.240 of the Code, the legislature has authorized the IBBI to frame Regulations "*consistent with the Code and the Rules made thereunder*". It is principally a procedural law, and as an adjective law to a nascent statute that the IBC is, it is still evolving and has not yet attained a kind of stability like a Civil Procedure Code, since it is still in the process of being finetuned. How then to understand a procedure law? It is best stated by Lord Penzance in ***Combe Vs Edwards*** [(1878) LR 3 PD 142] as below:

> *"The picture of law triumphant and justice prostrate, is not I am aware, without admirers. To me it is a sorry spectacle. The spirit of justice does not reside in formalities, or words, nor is the triumph of its administration to be found successfully picking a way between the pitfalls of technicality. After all, the law is, or ought to be, but the handmaid of justice, and inflexibility, which is the most becoming robe of the latter, often serves to render the former grotesque…"*

Being a procedural law, the CIRP Regulations are but facilitatory provisions through which accomplishing, *inter alia* the statutory objective of value maximization of the CD is conceived. They principally aim to provide clarity, consistency and transparency for ensuring optimum fairness in the resolution process and also insulating it from any temptations eroding the ethical fidelity (defined by non-arbitrariness or subjectivity or personal preferences) associated with their respective duties. In other words what ought to be the norm of self-discipline for the RP or the CoC is given a statutory status through the Regulations.

The Order in I.A.86 of 2023

16.1 The controversy in this case, it may be stated, is not traceable to any profligate acts of the RP or the CoC in discharging their responsibility in gross breach of the provisions of the Regulation, but to the Order of the Adjudicating Authority, dated 20.02.2023, in I.A.86 of 2023. It reads:

> *"d. In view of the statement made by the Ld. Counsel for the COC supported by the RP, we allow this application and allow the applicant to submit its resolution plan with the COC by 22.01.2023.*
>
> *e. It is made clear that merely condonation of delay will not be constitute to be a relaxation of any conditions of the EOI in any manner.*
>
> *f. The plan shall be submitted in accordance with EOI conditions and that the Resolution Professional and COC will consider the plan strictly in accordance with law."*

If this Order is dissected, it shows that the Adjudicating Authority had not only condoned the delay of Dorni in submitting the EOI, but also had directed it to submit its resolution plan by 22.02.2023, the last date for submitting it and has added two riders to it: that the condonation of delay should not be construed as relaxation of conditions in the EOI; and (b) such resolution plan which Dorni might submit should be considered strictly in accordance with law.

Impact Assessment – Preludial Statement

16.2 Has this Order of the Adjudicating Authority resulted in any consequence as to shock the senses of the right thinking vis-à-vis the working of the provision of the IBC and the Regulations? Here begins the impact assessment analysis and it will be soon undertaken. Before embarking on such analysis, it is necessary to bring to focus two associated aspects:

a) Yaana or Krishna do not contend that neither the RP nor the CoC are bound by the Order of the Adjudicating Authority condoning the delay for Dorni to submit its EoI.
b) The respondents at no time have challenged the authority of the Adjudicating Authority to pass an Order of the kind it has passed in I.A.86 of 2023 which, it must be stated, is traceable only to its inherent powers under Rule 11 of the NCLT Rules. In other words, they did not dispute the jurisdiction of the Adjudicating Authority to pass the Order of the kind it had passed in I.A.86 of 2023 to render the same void and hence ignorable. It should not be forgotten that the CoC had also lent its consent for passing

the said order. That it did not amount to collusion has already been explained earlier in this Order (It may be stated that both Regulations 36A and 39 are not directed against the Adjudicating Authority)

The issue therefore, is not about how RP and the CoC should have acted in the face of the Order of the Adjudicating Authority in I.A.86 of 2023 nor about if they should have acted in violation of the terms of the said Order, but whether their acts had produced a consequence which had either affected the integrity and purity of the resolution process or produced any results which are inconsistent with the legislative theme behind the resolution process.

17. For appreciating the allegation of material irregularity, it is necessary to remind that the statutory philosophy behind the resolution process:

a) First, it aims to optimize the asset-value of the stressed assets of a debt trapped company. The entire resolution process is designed, devised and geared to gyrate around this philosophy.

b) Loss of time is loss of value of the CD.

c) the Adjudicating Authority is an on-field regulator merely with well earmarked authority delineated in the Code, coupled with inherent powers for sparse use. It cannot hold an enquiry into the correctness of the valuation of the CD nor can it override the commercial wisdom of the CoC or substitute it with its wisdom.

d) The Code does not distinguish between one member CoC or a multi-member CoC vis-à-vis its design for the resolution process.

Therefore, when an impact assessment analysis in the context of an allegation of breach of Regulation is undertaken, these aspects cannot be forsaken.

The Impact Assessment Analysis

18.1 Has the Order of the Adjudicating Authority passed in I.A.86 of 2023 and what happened thereafter constituted material irregularity? It commences with an assessment of the impact of the Order in I.A.86 of 2023:

a) First, while passing the Order in I.A. 86 of 2023, the Adjudicating Authority did not enlarge the time for Dorni to submit its plan beyond the time which was stipulated for others. In that sense the integrity associated with the bidding process is preserved: it continues to be a closed bidding and no resolution plan has been opened by the CoC at that stage.
b) Secondly, the Order did not purport to relax the conditions (which are mostly the pre-qualification conditions) stipulated in the EoI for Dorni. This implies that the uniform treatment, which is part of the fairness of the resolution process, to which other PRAs are entitled is not compromised.
c) Thirdly, by underscoring that the resolution plan of Dorni must be considered only in accordance with law, the Adjudicating Authority has not suggested or directed that CoC should have to approve the plan of Dorni. It continued its emphasis on equal treatment of all the PRAs and an impartial assessment of all the plan-proposals by the CoC. Again, the fairness of the resolution process is not seen compromised.

Therefore, why should the Adjudicating Authority have believed that an Order of the nature that it had earlier passed in I.A.86 of 2023 was wrongly passed as to sidestep it in its Order now impugned in these appeals? It appears to have believed that by enlarging time for Dorni to submit its EoI, it has sinned. But the issue is no more about the nature of the Order passed in I.A.86 of 2023 but about the consequence it has left on the resolution process. This will be the second part of the ongoing impact assessment analysis.

18.2 The only effect of the order in I.A.86 of 2023 is that it has relaxed the timeline stipulated for submission of EoI by Dorni but without relaxing the conditions stipulated therefor. The immediate consequence of receiving the EoI of Dorni is that its name could not be entered in the provisional list of PRAs in terms of Regulation 36A(10), nor could other PRAs who were already on the fray raise objections to Dorni's inclusion, nor could Dorni's name be included in the final list of PRAs. If one looks through the lens of strict compliance of the Regulations dehors the Order of the Adjudicating Authority, there indeed has occasioned an undeniable breach of the Regulations. However, the probe is to ascertain if it has led to any material irregularity in the procedure adopted. This is now discussed.

a) Firstly, it cannot be said that either RP or the CoC had attempted to play fraud on the statute when Dorni's EoI was received beyond the stipulated time, for they had acted only pursuant to the Order of the Adjudicating Authority.

b) Secondly, an EoI merely enables a filtering process to ensure that only serious contenders participate in the resolution process. Set in the context, Regulation 36A(11) which provides for the provisionally shortlisted PRAs under Regulation 36A(10) to raise mutual objection about the other's inclusion (and also exclusion) is but the second stage of the filtering-process. In this stage of the resolution process nothing significant vis-à-vis achieving the legislative objectives involved in the resolution process takes shape.

c) Thirdly, while both Yaana and Krishna were seen harping on the lost opportunity to object to Dorni's entry, yet they did not spell out what those objections are. In other words, they have no case that Dorni did not possess the required pre-qualification criteria for submitting the resolution plan. Indeed, Regulation 36A(11) itself mandates that objection to the inclusion of a PRA in the provisional list must be accompanied by '*supporting documents*'. Regulations 36A(10) to (12) in that sense are only part of a procedure on the way to achieve the legislative purpose behind a resolution process. They are means to an end and not an end in itself. If there are no evidentiary documents to demonstrate that Dorni was not eligible to be included in the resolution process, how can a mere loss of an opportunity to object to its inclusion become significant? It therefore, follows that when it is not established that Dorni has not satisfied the conditions stipulated for submitting the EoI or is otherwise disqualified, a mere late entry in submitting the EoI cannot cast a shadow on the fairness of the resolution process and consequently loss of an opportunity to object in terms of Regulation 36A(11) cannot be said to taint the resolution process with material irregularity. To state it differently but with an emphasis that receiving Dorni's EoI is not tainted in malafide for it is done thanks to the Order of the Adjudicating Authority, and even it is considered as breaching Regulation 36A(6), given the facts of this case, it has not affected the purity, integrity and fairness associated with the resolution process. In other words, Yaana and Krishna have not established a case of material irregularity.

18.3 The last leg of the allegation of material irregularity is that the CoC has considered the resolution plan of Dorni, its name not in the final list of the PRAs notwithstanding. It is true, but again the issue is, how has it affected the purity and integrity of the resolution process?

a) First, as has been stated a few times now, the Adjudicating Authority when it condoned the delay and allowed Dorni to submit the EoI, it did not stipulate that Dorni could submit its EoI but not its resolution plan, for that would render the very Order passed by the Adjudicating Authority as a meaningless exercise.

b) Secondly, Dorni had submitted the resolution plan within the time stipulated therefor. It may be true that Dorni might have deposited the EMD couple of days after the submission of the resolution plan. Dorni claims that the delayed deposit of EMD had occasioned due to the intervention of two consecutive public holidays. Without getting into the merit of this explanation, it may be stated that as per Regulation 36B(4A), EMD needs to be paid only within such date as the CoC determine. And, the CoC has the authority to condone the delay and it has condoned it. See the ratio in ***Kalparaj Dharamshi Vs Kotak Investment Advisors Ltd., & another*** [(2021)10 SCC 401] and ***Athum Investment and Infrastructure Ltd., Vs Ashdan Properties Pvt. Ltd., and others*** [Comp.A (AT)(Ins) 1566 of 2024]. But how has this affected the integrity, purity, fairness and legality of the process involved in considering the resolution plan of Dorni? Yaana and Krishna's efforts necessarily fall well short of establishing material irregularity even at this stage.

c) The third aspect relates to the actual consideration of the resolution plan. As stated above, Dorni has not produced the plan not after the plans of other PRAs were opened as in ***Ashdan Properties Case***, but on the last date for submitting it. And, its plan was opened on the same day when CoC opened the plan of others. Therefore, Dorni did not enjoy any unmerited advantage or privilege that was not made available to Yaana or Krishna. In other words, neither of them was treated unfairly as to affect the fairness of the resolution process. Necessarily there can never be an issue of material irregularity.

d) The fourth aspect is that, after opening the resolution plans, both Yaana and Krishna were given opportunities to improve their offer, which they did. If only the CoC had intended to hijack the resolution process to confer a benefit on Dorni which it does not deserve in law, it need not have been charitable to Yaana and Krishna. Apparently both Yaana and Krishna were treated fairly when the resolution plans were considered for approval by the CoC, and hence there cannot be a case for material irregularity.

19. To sum it up, both Yaana and Krishna have merely engaged in an exercise to glorify their perceived inviolability of certain provisions of the Regulation but without understanding their contextual significance and the ultimate effect it has produced. The working of the Regulation may not lead to a situation where the Regulation triumphs and the Code prostrates. A case of missing the wood for the tree. It would therefore, be a plain disservice to the Code and what it aims to achieve, if the alleged violation of few Regulations were to be termed as constituting material irregularity. Hence, this tribunal holds that a case of material irregularity has not been made out.

20. If however, the resolution plan of Dorni is not approved as was done by the Adjudicating Authority (without reasons for substantiating it), it is not going to benefit either Yaana or Krishna. The entire resolution process might have to commence all over again. Firstly, that will be time consuming, and as is often said time loss is value loss, and it must be avoided. Secondly, there is no guarantee that there may be takers if the resolution process is to kick starts from the stage of submission of EoI again. And, if the CD goes to liquidation, then it will be a bad advertisement for the resolution process which the Code prides over. Therefore, when a case of material irregularity is not established, and when

upholding the line of reasoning of the Adjudicating Authority holds the prospects of defeating the resolution process, it is important to hold in favour of the resolution plan of Dorni.

21.1 A couple of miscellaneous arguments were also heard: One is that after coming to know of the approval of Dorni's plan, Yanna had submitted a better plan and that it should have been considered. Every PRA must realise that they should offer the best before voting is done and not thereafter. Neither the PRA nor the Adjudicating Authority can interfere with the commercial wisdom of the CoC. Another argument was that Yanna's paid up capital was more than Dorni. Yanna must be told that this aspect relates to the minimum eligibility criteria for participating in the resolution process, and how far it should weigh in the mind of the CoC while voting on a plan depends not on the basis of better eligibility criterion of an applicant but which is the best and most viable offer in its commercial wisdom.

21.2. Turning to the appellant case, they accused that Krishna, having obtained back its EMD after being informed of the approval of Dorni's plan, does not have locus standi to challenge the approval, and this argument is not without merit, but inasmuch as they have been heard and the issue on the principal plea of material irregularity having been decided, it does not deserve greater probe. Another argument advanced was that both Yanna and Krishna did not challenge the CoC's approval immediately but only after couple of months, and hence their intent to object lacks *bonafide*. If indeed in a given case the procedure adopted by RP and CoC is tainted in material irregularity, mere delay in bringing it to the notice of the Tribunal should not matter.

The Conclusion

22. It is a writing on the wall. In the result, all the three appeals are allowed and the order of the Adjudicating Authority dated 20.12.2024 in I.A. 20 of 2023 and I.A 1 of 2024 in I.A.1003 of 2023 is set aside. The Adjudicating Authority is now required to revive I.A.1003 of 2023, the application the RP has filed for the approval of the plan under section 31 of IBC. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

rs/sk