

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1542 of 2024

[Arising out of order dated 25.06.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench – IV), in I.A. No. 910/2024
in C.P. (IB) No. 594/MB/2021]

IN THE MATTER OF:

Jagdish Valecha

Prabhu Kutir, 43, Vithal Nagar,
N.S. Road No. 11, Irla Nallah,
JVPD Scheme,
Mumbai – 400049.

...Appellant

Versus

**1. Anurag Kumar Sinha,
Resolution Professional of Valecha Engineering
Limited**

Reg. No.: IBBI/IPA-001/IP-P00427/2017-
18/10750;

144-B, Mittal Court,
14th Floor, Nariman Point,
Mumbai – 400021.

...Respondent No. 1

2. J.K. Solutions Private Limited

Plot No. 92, Balaji Corporate Park,
4th Floor, Pratap Nagar, Opp. SBI Bank,
Nagpur – 440022.

Email: jksolution.ngp@gmail.com

...Respondent No. 2

3. One Media Facility Management

Plot No. 81, Saikrupa Bhausahab Surve Nagar,
Jaitala Road,
Nagpur – 440022.

...Respondent No. 3

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Tushar Ajnkya, Ms. Pratiksha Sharma, Ms. Tanishka Desai, Ms. Alina Merin Mathew, Ms. Ritu Chaudhary and Mr. Saahil Bijliwala, Advocates.

For Respondents : Mr. Gopal Jain, Sr. Advocate with Mr. Dhananjaya Sud, Mr. Lokesh Malin, Mr. Akhand Pratap, Ms. Swechcha Mishra, Mr. Manlik Chokshi, Ms. Rajnandini Singh and Ms. Suvarna Kashyap, Advocates for R-1.

Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha and Ms. Aakriti Gupta, Advocates for R-2 & R-3

Mr. Gaurav Mitra, Sr. Advocate with Mr. Ankit Acharya and Ms. Lavanya Pathak, Advocates for Intervenor.

WITH

Company Appeal (AT) (Insolvency) No. 1552 of 2024

[Arising out of order dated 25.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench – IV), in I.A. No. 2519/2024 in C.P. (IB) No. 594/MB/2021]

IN THE MATTER OF:

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Prabhu Kutir, 43, Vithal Nagar,
N.S. Road No. 11, Irla Nallah,
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Mumbai – 400049.

...Appellant

Versus

**1. Anurag Kumar Sinha,
Resolution Professional of Valecha Engineering
Limited**

Reg. No.: IBBI/IPA-001/IP-P00427/2017-
18/10750;

144-B, Mittal Court,
14th Floor, Nariman Point,
Mumbai – 400021.

...Respondent No. 1

2. J.K. Solutions Private Limited

Plot No. 92, Balaji Corporate Park,
4th Floor, Pratap Nagar, Opp. SBI Bank,
Nagpur – 440022.

Email: jksolution.ngp@gmail.com

...Respondent No. 2

3. One Media Facility Management

Plot No. 81, Saikrupa Bhausahab Surve Nagar,
Jaitala Road,
Nagpur – 440022.

...Respondent No. 3

4. State Bank of India

Stressed Asset Management Branch – I,
Mumbai, The Arcade, 2nd Floor,
World Trade Centre,
Cuffe Parade, Colaba,
Mumbai – 400005.

Email: Sbi.04107@sbi.co.in

...Respondent No. 4

5. Yes Bank Limited

Yes Bank House,
Off Western Express Highway,
Santacruz (East),
Mumbai – 400055.

Email: principal.nodalofficer@yesbank.in

...Respondent No. 5

6. Axis Bank

Stressed Asset Group, Axis House,
7th Floor, C-2, Wadia International Centre,
Pandurang Budhkar Marg, Worli,
Mumbai 400025.

Email: loans@axisbank.com

...Respondent No. 6

7. Bank of Baroda

Stressed Asset Management Branch,
Mumbai, 17 – Horniman Circle,
D. Nanji Buildings,
Mumbai – 400001.

Email: sammum@bankofbaroda.com

...Respondent No. 7

8. Canara Bank

Stressed Asset Management Branch,
Circle Office Building, 8th Floor,
B-Wing, C-14, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051.

Email: Cb15550@canarabank.com

...Respondent No. 8

9. Central Bank of India

Stressed Assets Management Branch – I,
346, Standard Building, 3rd Floor,
Dr. D.N. Road,
Mumbai – 400023.

Email: agmifb3873@centralbank.co.in

...Respondent No. 9

10. Indian Overseas Bank

Stressed Asset Management Department,
5th Floor, Maker Tower,
E Wing, Cuffe Parade,
Mumbai 400005.
Email: iob1998@iob.in

...Respondent No. 10

11. DBS Bank India Limited

1st Floor, Express Towers,
Nariman Point,
Mumbai – 400021.
Email: ketankulkarni@dbs.com

...Respondent No. 11

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Tushar Ajnkya, Ms. Pratiksha Sharma, Ms. Tanishka Desai, Ms. Alina Merin Mathew, Ms. Ritu Chaudhary and Mr. Saahil Bijliwala, Advocates.

For Respondents : Mr. Gopal Jain, Sr. Advocate with Mr. Dhananjaya Sud, Mr. Lokesh Malin, Mr. Akhand Pratap, Ms. Swechcha Mishra, Mr. Manlik Chokshi, Ms. Rajnandini Singh and Ms. Suvarna Kashyap, Advocates for R-1.

Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha and Ms. Aakriti Gupta, Advocates for R-2 & R-3

Mr. Gaurav Mitra, Sr. Advocate with Mr. Ankit Acharya and Ms. Lavanya Pathak, Advocates for Intervenor.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeals have been filed by the Appellant challenging the Order dated 25.06.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench – IV).

2. In Comp. App. (AT) (Ins.) No. 1542/2024, the Appellant has challenged the Order dated 25.06.2024 in I.A. No. 910/2024 filed by the Appellant. Appellant has also sought to challenge the Order dated 25.06.2024 passed in

I.A. No. 5819/2023, i.e., Plan approval Application. In Comp. App. (AT) (Ins.) No. 1552/2024, Appellant has challenged the Order dated 25.06.2024 passed in I.A. No. 2519/2024 filed by the Appellant. The Adjudicating Authority by the Impugned Order has rejected I.A. No. 2519/2024. By the same Order dated 25.06.2024, Adjudicating Authority has allowed the I.A. No. 5819/2023 filed by the Resolution Professional ('RP'), for approval of the Resolution Plan and by the same Order, dismissed I.A. No. 910/2024 filed by the Appellant.

3. Brief facts of the case necessary to be noticed for deciding these Appeals are;

- i. Appellant was Director of the Corporate Debtor M/s. Valecha Engineering Ltd. who resigned on 19.11.2019.
- ii. On an Application filed by the State Bank of India ('SBI') under Section 7 of the Insolvency and Bankruptcy Code, 2016, (for short 'The IBC'), Adjudicating Authority initiated Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor by Order dated 21.10.2022.
- iii. Interim Resolution Professional ('IRP') issued a public announcement on 03.11.2022. In pursuance of Notice inviting Expression of Interest ('EoI'), 6 EoIs were received, 'Form-G' was republished, 4 Resolution Plans were submitted which was placed before the Committee of Creditors ('CoC').
- iv. The Resolution Plan submitted by JK Solutions Pvt. Ltd. in consortium with One Media Facility Management was approved with 97.54% vote

in the 19th Meeting of the CoC held on 30.10.2023, which concluded on 25.11.2023.

- v. RP filed I.A. No. 5819/2023, praying for approval of the Resolution Plan.
- vi. I.A. No. 910/2024 was filed by the Appellant, ex-Promoter and ex-Director and guarantor of the Corporate Debtor.
- vii. Applicant's case in the Application was that he does not have access to any document or copies of all papers necessary pertaining to the Corporate Debtor.
- viii. Applicant by the Application has sought copy of the Resolution Plan as approved by the CoC of the Corporate Debtor.
- ix. RP filed the Reply to the I.A. No. 910/2024, opposing the Application stating that Appellant having resigned on 19.11.2019 is no longer the Director of the Corporate Debtor. The Appellant was not entitled either to participate in the proceedings or to receive any documents or information.
- x. Another I.A. No. 2519/2024 was filed by the Appellant before the Adjudicating Authority which is referred as Fixed Deposit ('FD') Application in which Application, Applicant pleaded that during the period April 2014 to April 2018, Corporate Debtor had submitted various FD receipts to the Officer of the Executive Engineer, Construction Division – 3, PWD Manipuri by way of Performance Guarantee. The Executive Engineer authorised the refund of the FD vide letter dated 23.11.2019. It was pleaded that RP has concealed and undervalued Assets of the Corporate Debtor.

- xi. Reply was filed by RP to the Application, opposing the same pleading that no proceedings have been remitted by the SBI. RP pleaded that all facts have been placed before the CoC. Resolution Plan has been approved, which include the proposal of Successful Resolution Applicant ('SRA') on relinquishment of their rights in favour of the Financial Creditor "pertaining to money which may be recovered by the Corporate Debtor from third-party".
- xii. RP submitted that Resolution Plan has already dealt with any receipt of money by the Corporate Debtor.
- xiii. As noted above, the Adjudicating Authority has rejected the I.A. No. 2519/2024, by Order dated 25.06.2024 and by a separate Order of the same day allowed the I.A. filed by the RP for approval of the Plan and rejected I.A. No. 910/2024 filed by the Appellant.

4. We have heard Mr. Krishnendu Dutta Learned Sr. Counsel appearing for the Appellant. Mr. Gopal Jain has appeared for the Respondent No. 1/RP. Mr. Milan Singh Negi has appeared for Respondents No. 2 & 3, who are the SRA. Mr. Gaurav Mitra Learned Sr. Counsel has appeared for the Intervener.

5. Mr. Krishnendu Dutta, Learned Sr. Counsel appearing for the Appellant submitted that Appellant was ex-Director of the Corporate Debtor and has also given guarantee. Appellant is widely affected by the approval of the Resolution Plan. Appellant has filed I.A. No. 910/2024 before the Adjudicating Authority. Appellant had no access to the relevant information and documents including the Resolution Plan. Appellant was entitled for all relevant information, including the copy of the Resolution Plan as approved

by the CoC, which has been wrongly denied to the Appellant before the Adjudicating Authority. Learned Counsel for the Appellant placing reliance on the Judgment of the Hon'ble Supreme Court in the matter of '**Vijay Kumar Jain Vs. 'Standard Chartered Bank & Ors.'**' reported in **(2019) 20 SCC 455**, contends that as per the law declared by the Hon'ble Supreme Court, ex-Directors are also entitled for all relevant information, in the Corporate Insolvency Resolution Process ('CIRP'), including the copy of the Resolution Plan to enable them to effectively participate in the CIRP. The rejection of the Application 910/2024 filed by the Appellant is clearly against the law laid down the Hon'ble Supreme Court in '**Vijay Kumar Jain' (Supra)**. It is submitted that Resolution Plan affects the right of the guarantors since unless the Performance Guarantees are not relinquished in the Resolution Plan, after the approval of the Plan, Appellant's liability shall stand and Financial Creditor shall proceed to recover from Appellant. Thus, the Appellant has right in participation and had right to object the approval of the Resolution Plan. It is submitted that the Adjudicating Authority committed an error rejecting I.A. No. 910/2024. It is further submitted that the RP has not correctly valued the Assets of the Corporate Debtor. The amount of about ₹20 Crores which relate to Performance Guarantee given by the Corporate Debtor has not been taken note while valuation of the Assets of the Corporate Debtor. The Officer of Executive Engineer, Construction Division – 3, PWD, Manipuri had sent a letter dated 23.12.2019 to the Branch Manager authorising the refund of the amount of ₹8,46,66,072/- and further Fixed Deposit Receipts ('FDR') of approximately ₹12 Crores and from time to time submitted by the Corporate Debtor to various Government Authorities by way of Performance

Guarantee. Application filed by the Appellant being I.A. No. 2519/2024 has been rejected by the Adjudicating Authority incorrectly.

6. Mr. Gopal Jain, Counsel appearing for the RP submits that RP has opposed both the IAs filed by the Appellant. Appellant was ex-Director who had resigned much before the initiation of CIRP of the Corporate Debtor, had no right either to participate in the CIRP or to receive any information or copy of the Resolution Plan. The Judgment of the Hon'ble Supreme Court in '**Vijay Kumar Jain' (Supra)** has no application in the facts of the present case. It is submitted that the ex-Director and Promoters who were the Directors of the Corporate Debtor at the time of commencement of the CIRP were allowed to participate in the CIRP Process and were present throughout, insofar as valuation of the Corporate Debtor is concerned, the RP obtained the Valuation Report from registered Valuers as per CIRP Regulations, 2016, and no Member of the CoC have ever raised any objection to the Valuation.

7. Learned Counsel for SRA supported the Impugned Order passed by the Adjudicating Authority and submits that CoC has approved the Resolution Plan with overwhelming majority with 97.54% vote shares. Resolution Plan also include the third-party receivables which fully covers any amount which is received by the Corporate Debtor from third-party, which may also cover the amount received out of Performance Bank Guarantee given by the Corporate Debtor to different authorities.

8. We have considered the submissions of the Counsel for the Parties and perused the record.

9. We may first consider the Comp. App. (AT) (Ins.) No. 1552/2024, which is filed against the separate Order dated 25.06.2024, rejecting I.A. No. 2519/2024. As noted above, the Appellant was the ex-Director of the Corporate Debtor who resigned on 19.11.2019, i.e., almost about three years prior to initiation of the CIRP, which was initiated on 21.10.2022. In I.A. No. 2519/2024, where following prayers were made:

“(a) Directing the Resolution Professional to disclose the status of the FDRs and the reasons for non-disclosure of the same to the CoC;

(b) Calling for a statement on oath from the Resolution Professional as to whether the FDRs have been disclosed to the CoC;

(c) Calling for statements from Respondent Nos. 2 to 9 as to whether the amounts received back by the Corporate Debtor under the FDRs have been disclosed to the CoC and whether the same form a part of the resolution plan of the Corporate Debtor.

(d) Causing an inquiry against the Resolution Professional and the conduct of the corporate insolvency resolution process to determine as to whether assets of the Corporate Debtor were under-valued;

(e) Directing cancellation of the Resolution Plan and recommencement of the CIRP process;

(f) Pending the hearing and final disposal of the present Application, staying passing of any orders on the resolution plan, including the I.A. No. 5819 of 2023; and

(g) Pass such other and further orders as this Hon’ble Tribunal deems fit and necessary in the facts and circumstances of the present matter.”

10. Reply of the RP was filed to the I.A. No. 2519/2024, where RP has raised the locus of the Applicant to file the Application. The Application I.A. 2519/2024 is dated 16.05.2024, whereas the Adjudicating Authority has reserved the Orders in I.A. No. 910/2024 filed by the Applicant for staying the

CIRP Process. This Application was filed only to create hurdles in the completion of CIRP Process. With regard to the FDR, it was pleaded that no proceed of fixed deposit were received by the Corporate Debtor during the CIRP period. Details were given in Paragraphs 12 to 16 of the Reply.

11. It was further pleaded by the RP that relevant Clause in the Resolution Plan provides that any cash/bank balance in the accounts of the Corporate Debtor as on the date of approval of the Resolution Plan by appropriate authority after CIRP cost payments could be distributed between Financial Creditor over and above the amount stated above. In Para 20 of the Reply following was pleaded:

“20. It is pertinent to state that as per the said resolution plan, approved by the COC, any cash/bank balance in the accounts of the Corporate Debtor as on the date of approval of resolution plan by appropriate adjudicating authority after CIRP Cost payments shall be distributed between financial creditors. It is pertinent to state that the said amount is over and above the money as proposed by the Resolution Applicant in its resolution plan. The relevant clause of the resolution plan has been reproduced herein below-

“Any cash/ bank balance in the accounts of corporate debtor as on the date of approval of resolution plan by appropriate adjudicating authority after CIRP Cost payments would be distributed between financial creditors over and above the amount stated above.”

12. RP has further pleaded that he had taken the matter to PWD Department Manipuri also to pay the receivables of ₹20 Crores/- including ₹8,46,66,072/- in the form of FDR. However, no reply was received from PWD.

In Para 21 of the Reply, it was stated:

“21. It is submitted that the Answering Respondent has taken up the matter with PWD Dept, Mainpuri also to pay the receivables of Rs 20,05,39,312/- including Rs 8,46,66,072/- in the form of FDRs. In fact, the total

*receivables payable by PWD Dept, Mainpuri as per the books of Valecha Engineering Ltd is Rs 20,05,39,312/- . However, no reply has been received from PWD Dept till date. In fact, there are several earlier projects where the project has not been completed as per the satisfaction of the client and hence, the security money has not been paid/ security in the form of BG given has been invoked, retention money has not been released etc. Further in this matter also, the receivables are outstanding for more than 5 years and have not been realised. The print- out of the mail sent by CFO on 31.05.2024 is annexed herewith and marked as **Annexure R-5**. Further, the E-Mail print-out from 30.01.2023 till 01.06.2024 and the copy of the letter dated 01.06.2024 sent to PWD Dept is annexed herewith and marked as **Annexure R-6**.”*

13. Adjudicating Authority after hearing, the both Parties rejected the Application. Adjudicating Authority in its Order dated 25.06.2024 has noted the case of Applicants as well as the Reply of the RP. The submission of the Appellant that Application was rejected only on the ground that it was filed after the Orders were reserved on 06.05.2024, and the Application has been filed much belatedly is not acceptable since the above is not the only reason for rejecting the Applications rather Adjudicating Authority has taken the view that the Application is devoid of merits. In Para 3 of the Judgment of the Adjudicating Authority following has been observed:

“3. During the course of hearing on 03.06.2024, the Applicant and Respondent in the application-at-hand were heard at length. Upon perusal of the materials which form part of the record, we are of the considered view that the application-at-hand is devoid of any merits whatsoever. As the Resolution Plan was reserved for Orders on 06.05.2024, the application-at-hand has been filed much belatedly. Notwithstanding the same, the Resolution Plan in consideration hereto has specifically dealt with all eventualities pertaining to recovery of monies and/ or receivables in relation to the Corporate Debtor, and the Committee of Creditors of the Corporate Debtor are unambiguously in principle satisfaction with the same. We therefore are of the

shared view that the same does not warrant this Tribunal's interjection.”

14. The submission of the Counsel for the Appellant is that valuation of the Corporate Debtor was not correctly done and the amount of ₹20 Crores/- which was to be received from out of Performance Bank Guarantee issued by the Corporate Debtor has not been taken note in the Valuation. Suffice it to say that valuation was conducted by the RP in accordance with CIRP Regulations, 2016. Adjudicating Authority has also noticed the Reply of the RP where RP has written to PWD to transfer of balance as against the same FDRs to the Corporate Debtor, but no proceeds have been remitted.

15. We, thus are of the view that no error has been committed by the Adjudicating Authority in rejecting the I.A. No. 2519/2024 filed by the Appellant, hence there is no merit in the Appeal. Comp. App. (AT) (Ins.) No. 1552/2024 deserves to be dismissed

16. Now we come to the Comp. App. (AT) (Ins.) No. 1542/2024, which has been filed by the Appellant challenging the Order passed in I.A. No. 910/2024 filed by the Appellant as well as I.A. No. 5819/2023 filed by the RP for approval of the Resolution Plan. I.A. No. 910/2024 has been filed by the Appellant where following prayers were made:

“(a) Directing the Resolution Professional to provide a copy of all the Resolution Plan, included the Resolution Plan approved by the COC, along with the supporting documentation submitted to the Resolution Professional by prospective resolution applicants, to the Applicant;

(b) Directing the Resolution Professional to provide the Applicant with inspection and copies of all papers necessary in order to enable the Applicant to defend proceedings filed and show cause notices against him pertaining to the Corporate Debtor, including but not

limited to the applications filed against the Applicant, the guarantees provided by the Applicant in relation to the Corporate Debtor, and documents in relation thereto;

(c) Pending the hearing and final disposal of the present Application, and receipt of the resolution plans as prayed for in clause (a) above, staying any proceedings on any resolution plan, including the I.A. No. 5819 of 2023; and

(d) Pass such other and further orders as this Hon'ble Tribunal deems fit and necessary in the facts and circumstances of the present matter."

17. The prayer in the Application I.A. 910/2024 as noted above were essentially direction to provide copy of the Resolution Plan along with the supporting documents and to provide inspection and copies of all papers necessary in order to enable the Applicant to defend proceedings filed and show cause notice against him pertaining to the Corporate Debtor and further to stay the proceeding on any Resolution Plan including I.A. No. 5819/2023.

18. We have already noticed above that Applicant has resigned as ex-Director on 19.11.2019, whereas the CIRP against the Corporate Debtor commenced on 21.10.2022. The sheet anchor of the submission of the Counsel for the Appellant in the Judgment of the Hon'ble Supreme Court in '**Vijay Kumar Jain' (Supra)**, the emphasis of the Counsel for the Appellant is that in view of the law laid down by the Hon'ble Supreme Court in '**Vijay Kumar Jain' (Supra)**, Appellant as ex-Director was entitled copy of the Resolution Plan and all other information and documents.

19. We need to first notice the Judgment of the Hon'ble Supreme Court in '**Vijay Kumar Jain' (Supra)**. Vijay Kumar Jain was a case where the Appeal was filed in the Hon'ble Supreme Court by Appellant who was Member of the Suspended Board of Directors. In the above case also the prayer of the Vijay

Kumar Jain for direction to the RP to provide relevant documents including the Resolution Plan was rejected by the NCLT. Facts of the case noticed in Paragraphs 1 & 3 of the Judgment, are as follows:

“1. The present appeal arises out of an Appellate Tribunal's judgment [Vijay Kumar Jain v. Standard Chartered Bank Ltd., 2018 SCC OnLine NCLAT 855] rejecting the appellant's prayer for directions to the resolution professional to provide all relevant documents including the insolvency resolution plans in question to members of the suspended Board of Directors of the corporate debtor in each case so that they may meaningfully participate in meetings held by the Committee of Creditors (CoC).

3. One Shri Shailendra Ajmera of Ernst and Young was appointed as the Interim Resolution Professional in both petitions. The CoC was constituted under Section 21 of the Insolvency and Bankruptcy Code, 2016 (“the Insolvency Code” or “the Code”), and the appellant being a member of the suspended Board of Directors was given notice and the agenda for the first CoC meeting held on 12-1-2018, and was permitted to attend the aforesaid meeting. He alleges, which is disputed by the respondents, that subsequent meetings of the CoC were held in which he was denied participation. As a result, the appellant filed Miscellaneous Application No. 518 of 2018 on 7-6-2018 before NCLT in order that the appellant be allowed to effectively participate in these meetings. It is stated before us that in the tenth meeting dated 12-8-2018, the appellant executed a non-disclosure agreement for sharing resolution plans of the corporate debtor. Under the said agreement, the appellant undertook to indemnify the resolution professional and keep information that is received as to the resolution plan strictly confidential.”

20. From the aforesaid Paragraphs, it is clear that Appellant was Member of the Suspended Board of Director and was given Notice in the agenda for the first CoC Meeting which was to be held on 12.01.2018. As per Section 24(3) of the IBC, Notice is mandatory to Members of the Suspended Board of Directors. Section 24(1) to (3) is as follows:

“24. Meeting of committee of creditors. –

(1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6-A) of section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.”

21. We may also notice the provisions of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which provides that contents of the Notice for Meeting. Regulation-21 which is relevant is as follows:

“21. Contents of the notice for meeting. –(1) The notice shall inform the participants of the venue, the time and date of the meeting and of the option available to them to participate through video conferencing or other audio and visual means, and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means.

(2) The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorised representative:

Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorised representative who will attend and vote at the meeting on its behalf.

(3) The notice of the meeting shall contain the following–

(i) a list of the matters to be discussed at the meeting;

(ii) a list of the issues to be voted upon at the meeting; and

(iii) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.

(4) The notice of the meeting shall –

(a) state the process and manner for voting by electronic means and the time schedule, including the time period during which the votes may be cast:

(b) provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in a secure manner; and

(c) provide contact details of the person who will address the queries connected with the electronic voting.”

22. A perusal of the Regulation 21(3) clearly indicates that Notice of the Meeting shall contain copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the Meeting.

23. The Hon'ble Supreme Court in '**Vijay Kumar Jain' (Supra)**, after elaborately considering all the relevant statutory provisions of the IBC as well as the CIRP Regulations 2016 has held that Members of the Suspended Board of Directors are entitled for copy of the Resolution Plan. Appellant has placed reliance on Paragraphs 19.3 and 22, which are as follows:

“19.3. Even assuming that the Notes on Clause 24 may be read as being a one-way street by which erstwhile members of the Board of Directors are only to provide information, we find that Section 31(1) of the Code would make it clear that such members of the erstwhile Board of Directors, who are often guarantors, are vitally interested in a resolution plan as such resolution plan then binds them. Such plan may scale down the debt of the principal debtor, resulting in scaling down the debt of the guarantor as well, or it may not. The resolution plan may also scale down certain debts and not others, leaving guarantors of the latter kind of debts exposed for the entire amount of the debt.

22. As a result of the aforesaid discussion, the arguments of the respondents that “committee” and “participant” are used differently, which would lead to the result that resolution plans need not be furnished to the erstwhile members of the Board of Directors, must be rejected. Equally, the Regulations, far from going beyond the Code, flesh out the true intention of the Code that is achieved by reading the plain language of the sections that have already been adverted to. So far as confidential information is concerned, it is clear that the resolution professional can take an undertaking from members of the erstwhile Board of Directors, as has been taken in the facts of the present case, to maintain confidentiality. The source of this power is Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, read with Para 21 of the First Schedule thereto. This can be in the form of a non-disclosure agreement in which the resolution professional can be indemnified in case information is not kept strictly confidential.”

24. Hon’ble Supreme Court in Para 20 has also held that expression “documents” is a wide expression which would certainly include the Resolution Plans. Para 20 of the Judgment is as follows:

“20. It is also important to note that every participant is entitled to a notice of every meeting of the Committee of Creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Obviously, resolution plans are

“matters to be discussed” at such meetings, and the erstwhile Board of Directors are “participants” who will discuss these issues. The expression “documents” is a wide expression which would certainly include resolution plans.”

25. The law laid down by the Hon’ble Supreme Court in the above Judgment is very clear that Members of the Suspended Board of Directors who may also be Guarantors of the Corporate Debtor are entitled to receive all relevant documents, including the Resolution Plan. There can be no quarrel to the proposition laid down by the Hon’ble Supreme Court in the above case. The question which needs to be considered in the present case is as to whether Appellant in the present Appeal was entitled for the copy of the Resolution Plan and other relevant documents. It is not the case of the Appellant that Appellant was issued Notice for participating in the Meeting of the CoC as required by the provisions of the IBC. Appellant has resigned more than two years prior to initiation of the CIRP and cannot be held to be a Suspended Director. Suspended Directors are Directors whose power to act as Directors are suspended by virtue of initiation of CIRP. Suspended Directors may include those Directors of the Corporate Debtor who were working in such capacity on the date of initiation of the CIRP.

26. We, thus are of the view that Judgment of the Hon’ble Supreme Court in *‘Vijay Kumar Jain’ (Supra)*, in no manner help the Appellant to seek a direction from Adjudicating Authority to receive the copy of the Resolution Plan and other relevant information. Adjudicating Authority did not commit any error in rejecting the I.A. No. 910/2024.

27. In Paragraphs 9, 19.2 and 19.3 of the Judgment, Adjudicating Authority held as follows:

“9. Upon evincing the records, we note that this Tribunal had allowed the Respondent RP in the Application-at-hand to file its Reply vide Order dated 06.03.2024. The same was effectuated, and the RP has raised several averments in contradistinction to the Applicant’s submissions vide Affidavit-in-Reply dated 30.04.2024.

19.2. Upon perusal of records which form part of the application-at-hand, we note that the Applicant resigned from the directorship of the Corporate Debtor at its own accord before the initiation of CIRP of the latter by this Tribunal. The Applicant resultantly does not fall within the purview of the ‘suspended’ or ‘erstwhile’ board of directors as enunciated by the Code and therefore, the Applicant’s principal reliance upon the afore-mentioned judgement in para {19.1} hereto, is wholly misplaced. We are therefore of the considered view that the Applicant’s request for Resolution Plan(s) cannot be granted herewith.

19.3. With regards to document(s) sought by the Applicant in application-at-hand from the Respondent RP via prayer clause (b), we are of the shared view that the said documents from part of the public record(s), and any direction from this Tribunal to necessitate the provision of the same need not be warranted for at this juncture.”

28. We are of the view that the Adjudicating Authority has rightly dismissed the I.A. No. 910/2024 by making observations in Paragraphs 9, 19.2 and 19.3 as noted above.

29. Adjudicating Authority having rejected the I.A. No. 910/2024, we are of the view that the Appellant cannot be allowed to challenge the approval of the Resolution Plan by the Adjudicating Authority, which stood approved by the CoC by vote share of 97.54%. It is well settled that commercial wisdom of the CoC in approving Resolution Plan is not to be lightly interfered with. The jurisdiction of the Adjudicating Authority to interfere with approval of the Resolution Plan is limited within the four corners of Section 30(2) of the Code.

Adjudicating Authority in the Impugned Order has held that Resolution Plan meets the requirement of Section 30(2).

30. We, thus, do not find any ground to interfere with the Impugned Order of the Adjudicating Authority approving the Resolution Plan at the instance of the Appellant. In result, Comp. App. (AT) (Ins.) No. 1542/2022, also deserves to be dismissed.

In result, both the Appeals are dismissed. No Order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

29th August, 2024

himanshu