



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
COURT-I  
KOLKATA**

**I.A. (IB) No. 1497/KB/2022  
And  
I.A. (IB) No. 628/KB/2023  
And  
I.A. (IB) No. 701/KB/2023  
in  
C.P. (IB) No. 369/KB/2020**

*In the matter of:*

**DBS Bank Limited**

*...Financial Creditor*

*versus*

**Hindusthan National Glass & Industries Limited**

*... Corporate Debtor*

*And*

**I.A. (IB) No. 1497/KB/2022**

*An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016.*

*In the matter of:*

***Independent Sugar Corporation Limited***

*... Applicant*

*versus*

***1.Girish Sriram Juneja, Interim Resolution Professional of Hindustan***

***National Glass & Industries Limited***

***2.AGI Greenpac Limited***

*...Respondents*



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and I.A.(IB) No. 701/KB/2023 in C.P. (IB) No. 369/KB/2020

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**I.A. (IB) No. 628/KB/2023**

*An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

*In the matter of:*

***AGI Greenpac Limited***

*... Applicant*

*versus*

***1. Girish Sriram Juneja, Interim Resolution Professional of Hindustan  
National Glass & Industries Limited***

***2. Committee of Creditors of Hindustan National Glass & Industries Limited***

*... Respondents*

**I.A. (IB) No. 701/KB/2023**

*An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

*In the matter of:*

***Girish Sriram Juneja, Interim Resolution Professional of Hindustan  
National Glass & Industries Limited***

*... Applicant*

***Coram:***

**Mr. Rohit Kapoor** : **Member (Judicial)**

**Mr. Balraj Joshi** : **Member (Technical)**

***Appearances (via hybrid mode):***

For the Independent Corporation : 1. Mr. Ranjan Bachawat, Sr. Adv.  
Limited : 2. Mr. Soorjya Ganguli, Adv.



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- For the Resolution Professional : 3. Ms. Pooja Chakraborti, Adv.  
4. Ms. Kiran Sharma, Adv.  
1. Mr. Abharajit Mitra, Senior Adv.  
2. Mr. Jishnu Chowdhury, Adv.  
3. Mr. Vikram Wadehra, Adv.  
4. Mr. Soumava Ghosh, Adv  
5. Mr. Mayukh Roy, Adv.
- For the AGI Greenpac Limited : 1. Mr. S.K. Kapoor, Sr. Adv.  
2. Mr. Joydip Kar, Sr. Adv.  
3. Mr. Sanjeev Sharma, Adv.  
4. Mr. D. Basu Mallick, Adv.  
5. Ms. Sanya Sud, Adv.  
6. Mr. Rahul Singh, Adv.  
7. Ms. T. Lawrence, Adv.  
8. Mr. Vaishali Goyal, Adv.
- For the Workmen : 1. Mr. Joy Saha, Snr. Adv.  
2. Mr. Ratnanko Banerji, Snr. Adv.  
3. Mr. Anuj Singh, Adv.  
4. Mr. Aman Agarwal, Adv.  
5. Mr. Tanish Ganeriwala, Adv.  
6. Mr. B. Ghosh, Adv.

Date of pronouncement: 28<sup>th</sup> April 2023

**ORDER**

*Per: Rohit Kapoor, Member (Judicial)*

**1. Preamble**

- 1.1. The Court convened through hybrid mode.
- 1.2. *Vide* order dated 21 October 2021, this Adjudicating Authority admitted Hindusthan National Glass & Industries Limited (“Corporate Debtor”) into Corporate Insolvency Resolution Process (“CIRP”). The Form G was published on 25 March 2022 and the Request For Resolution Plan



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(“RFRP”) was supplied to the provisional Resolution Applicants on 24 May 2022.

**2. I.A. (IB) No. 1497/KB/2022**

2.1. This I.A. (IB) No. 1497/KB/2022 has been filed by Independent Sugar Corporation Limited against Mr. Girish Sriram Juneja and AGI Greenpac Limited praying for the following reliefs:

- a. *An order dismissing the Application filed by the Respondent No. 1, being I.A. (IBC) No. 1401/2022, wherein the Respondent No. 1 has sought approval of the Resolution Plan submitted by the Respondent No. 2 in respect of the Corporate Debtor;*
- b. *An order directing the Respondent No. 1 to withdraw its communication dated October 28, 2022 stating that the Respondent No. 2 had been declared as the Successful Resolution Applicant with respect to the CIRP of the Corporate Debtor;*
- c. *An order directing the Respondent No. 1 to place the Resolution Plan submitted by the Applicant before the Committee of Creditors for fresh consideration/reconsideration;*
- d. *Pending the hearing and disposal of the instant application, this Tribunal be pleased to stay any further proceedings pertaining to the Resolution Plan of Respondent No. 2 and/or direct the Respondents, not to act upon or in furtherance of the Resolution Plan submitted by Respondent No. 2.*

**3. Submissions of the learned Senior Counsel appearing on behalf of the Applicant in I.A. (IB) No. 1497/KB/2022 are summarised hereinunder:**

3.1. The learned Senior Counsel submitted that the present Application has been filed seeking that I.A. (IB) No. 1401/KB/2022 filed by Respondent No. 1 i.e. the Resolution Professional for approval of the Resolution Plan of the Respondent No. 2 i.e. AGI Greenpac, be rejected since Respondent No. 2 has failed to obtain the mandatory approval of the Competition Commission of India (“CCI”) with respect to acquisition of the Corporate Debtor prior to the same



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being considered for approval of this Adjudicating Authority and also in gross violation of the directions issued by Respondent No. 1 *vide* his email dated 25 August 2022.

3.2. It is stated that the Applicant herein also submitted a Resolution Plan and obtained the requisite CCI approval on 30 September 2022 *via* green channel approval route pursuant to the instructions communicated by the Respondent No. 1 in said email dated August 25, 2022. Despite not having the requisite CCI approval, the non-qualified resolution plan of the Respondent No. 2 was incorrectly and illegally placed by the Respondent no 1 before the Committee of Creditors and was approved by the Committee of Creditors of the Corporate Debtor.

3.3. The learned Senior Counsel submitted that the Applicant has the locus standi to maintain the instant application and placed reliance on *Hindustan Oil Exploration Company v. Erstwhile Committee of Creditors JEKPL (P) Ltd., Company Appeal (AT) (Insolvency) No. 969 of 2020*, the Hon'ble NCLAT has determined the locus of an unsuccessful resolution applicant to challenge rejection of their plan by the Committee of Creditors ("CoC"). The relevant portion of the judgment is as follows:

*"If the terms of the approved Resolution Plan of Successful Resolution Applicant have been varied or time extended to facilitate its implementation and the creditors have not claimed any prejudice on that count and the Committee of Creditors comprising of the creditors as stakeholders has not objected to same rather been privy to it on account of hardship due to prevailing circumstances, the Appellant cannot be permitted to cry foul."*

3.4. The instant case may be distinguished on the ground that here the premise of the Applicant's objection to the Resolution Plan approved by the CoC is not merely a commercial decision taken by the CoC



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in exercise of its commercial wisdom, but a legal requirement that the successful resolution applicant was required to comply with before consideration of the plan by the Adjudicating Authority for approval. Therefore, the Applicant has the locus to take such objection and maintain the instant application, since the resolution plan (at present) suffer from legal irregularity as mandated under the provisions of the Code. Reliance has been placed on the order of the learned NCLT Chandigarh Bench, in *Phoenix ARC Private Limited v. GPI Textiles Ltd.*<sup>1</sup>, has upheld the right of the unsuccessful resolution applicant to challenge the eligibility of the successful resolution applicant qua Section 29A of the Insolvency and Bankruptcy Code, 2016.

3.5. In view of the aforesaid, any reliance placed by Respondent No.2 on the decision of Hon'ble NCLAT in *PanchTatva Promoters Private Limited v. GPT Steel Industries Limited and Ors.* (2021 SCC OnLine NCLAT 296), is highly misplaced.

3.6. The learned Senior Counsel led us through section 31(4)<sup>2</sup> of the Insolvency and Bankruptcy Code, 2016 ("Code").

3.7. The NCLAT in the matter of *ArcelorMittal India Put. Ltd. v. Abhijit Guhathakurta* (2019 SCC OnLine NCLAT 920) held:

"It is always open to the 'Committee of Creditors', which looks into viability, feasibility and commercial aspect of a Resolution Plan to

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<sup>1</sup> IA No. 348/2021 and IA No. 155/2021 in CP(IB) No. 35/Chd/HP/2018, decided on May 24, 2022

<sup>2</sup> 31 (4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.



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approve the 'Resolution Plan' subject to such approval by Commission".

3.8. Further, in *Makalu Trading v. Rajiv Chakraborty* (2020 SCC OnLine NCLAT 643), the Hon'ble NCLAT held that a Resolution Plan will not fall foul of section 31(4) of the Code as long as the CCI approval is sought / obtained before the approval of the resolution plan by the Adjudicating Authority.

3.9. It is humbly submitted that in the instant matter, this Adjudicating Authority has taken up the Resolution Plan submitted by the successful resolution applicant for consideration and approval on 08 February 2023. It is undisputed that CCI permission is necessary in the instant case, and the same has not been obtained as on 08 February 2023 and on 09 February 2023 when the Applicant's petition was heard.

3.10. The learned Senior Counsel submitted that having CCI approval at the time of approval of the Resolution Plan by the Adjudicating Authority is mandatory, and not directory. Hence, the application seeking approval of the resolution plan should be rejected on this ground alone.

3.11. It is submitted that it is a settled proposition of law that there can be no conditional acceptance of a Resolution Plan. Admittedly, as on date, the successful resolution applicant has not been able to obtain CCI permission as mandated. The Resolution Plan cannot be approved subject to receiving permission of the CCI on a future date.

3.12. The Hon'ble Supreme Court of India in *Ebix Singapore Put. Ltd. vs Committee of Creditors of Educomp Ltd.* (Civil Appeal No. 3224 of 2020) [(2022) 2 SCC 401] has held that a Resolution Plan conditional to future events/ negotiations cannot be approved in its present form.



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- 3.13. It has also been held by the NCLT in various matters that a Resolution Plan that cannot be implemented by the Resolution Applicant, cannot be approved. It is submitted that there is no certainty that the successful resolution applicant will be able to secure the permission of the CCI, especially in view of the fact that the successful Resolution Applicant has a 20% and the Corporate Debtor has a 40% market share in the same line of business of glass container industry, and a combination will give rise to a monopoly in market (approx. 60%+ of market share in the market of container glass) thereby violating spirit of Competition Law and such a combination if approved, will have an appreciable adverse effect on competition in India. Further, it will be evident that the successful Resolution Applicant and the Corporate Debtor are engaged in manufacturing of container glass which results in direct horizontal overlaps between the successful resolution applicant and Corporate Debtor.
- 3.14. Further, the successful resolution applicant is engaged in manufacturing of container glass which needs specialized molds or other equipment. The Corporate Debtor has the facility to support this activity. This service could result in vertical overlaps between both the successful resolution applicant and Corporate Debtor.
- 3.15. In Southern India, the only manufacturing facilities belong to the successful resolution applicant and the Corporate Debtor, so they will enjoy 100% market share which is detrimental to competition. It is also noteworthy that the successful resolution applicant failed to secure CCI permission through the Green Channel
- 3.16. Therefore, there is no certainty that the successful resolution applicant will be able to secure the mandatory approval/permission of the CCI, and hence the application seeking approval of the resolution plan should be rejected.



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- 3.17. The fact that CCI not being in session presently and not having quorum to consider the successful resolution applicant's application seeking permission, the successful resolution applicant has submitted that the application seeking approval of the resolution plan should be kept in abeyance until June 2023, in view of the fact that the successful resolution applicant will get "deemed approval of the CCI for the resolution plan by virtue of section 31(11) of the Competition Act, 2002 in June 2023.
- 3.18. At the outset, it is submitted that the provisions of the Code do not contemplate a situation where an application seeking approval of a resolution plan can be kept in abeyance and not considered, waiting for the applicable permission (as a deemed approval) under the Competition Act, 2002, which should have been obtained ahead of the resolution plan being considered by the Adjudicating Authority.
- 3.19. The argument that the period of 210 days should be excluded from the CIRP period, as time spent in legal proceeding', should be rejected as statutory timeline for obtaining approval of the CCI cannot be classified as legal proceeding'.
- 3.20. Further, by virtue of Section 238 of the Code, the provisions of the Code [Section 31(4) read with the proviso] override the provisions of the Competition Act, 2002.
- 3.21. Hence, the Learned Adjudicating Authority cannot keep the resolution plan in abeyance and not consider it, having already taken it up for consideration on 08 February 2023.
- 3.22. The successful Resolution Applicant has also lost sight of the fact that the Competition Commission of India might be constituted before such period expires, and their application pending before the CCI may be rejected, reasons for which has been detailed hereinabove. In such case, the entire exercise of keeping the



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consideration of the resolution plan in abeyance would be a futile exercise.

- 3.23. The Respondent No. 2 has relied upon the Hon'ble Supreme Court's judgment in the matter of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta* [(2020) 8 SCC 531] citing the reason that the period lost during litigation shall be excluded in reckoning the CIRP period. However, in the instant case, the Respondent No. 2 is awaiting the mandatory approval of the CCI, which is and cannot be classified as 'legal proceeding' and therefore, any reliance on *Essar (supra)* is misplaced.
- 3.24. It is also pertinent to note that the successful resolution applicant, while praying for keeping the approval of the resolution plan in abeyance, has not considered the effect of such delay either on the health of the corporate debtor or the interest of the stakeholders. It is submitted that delay in approval of the Resolution Plan will result in heavy loss of public money. Admittedly, the CoC is losing about Rs. 15 crores per month (calculating interest @10% per annum).
- 3.25. Further, this continuing delay will lead to deterioration in asset quality and thereby put at risk the chances of revival of the Corporate Debtor. For the reasons above, the resolution plan cannot be kept in abeyance and should be taken up for approval and rejected immediately.
- 3.26. The Hon'ble Supreme Court of India in *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Ltd.* (Civil Appeal No. 3224 of 2020) [(2022) 2 SCC 401] has held that the Adjudicating Authority should be mindful of the delay caused in the process of approval of resolution plan, as such delay is against the spirit of the Code.



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- 3.27. The Applicant obtained required CCI permission and accordingly submitted a resolution plan pursuant to the directions issued by the Respondent No. 1 *vide* his email dated 25 August 2022
- 3.28. It is submitted that the Applicant proceeded to apply for the requisite CCI approval pursuant to the directions issued by the Respondent No. 1 *vide* email dated 25 August 2022. It is stated that on the date of consideration of the resolution plans by the Committee of Creditors, the Applicant had the requisite approval of the CCI, while the Respondent No. 2 did not have such permission.
- 3.29. Had there not been any specific instruction from the Respondent No. 1 in this regard, the Applicant would have applied for CCI approval subsequent to approval of its resolution plan by the Committee of Creditors. However, despite obtaining the prior approval of the CCI, the resolution plan of the Respondent No. 2 was approved. The Respondent No. 2 bypassed the instructions issued by the Respondent No. 1.
- 3.30. In this connection, it is pertinent to note that Clause 2.6.3 of the RFRP issued by the Respondent No. 1 stated that the CCI approval could be obtained pursuant to the Letter of Intent being issued to the Successful Resolution Applicant, while Clauses 3.3 and 4.1.1 (k) of the RFRP stated that the Resolution Applicant should obtain the CCI approval prior to the Resolution Plan being approved by the CoC. Clause 3.3 and 4.1.1(k) of the RFRP are in consonance with the provisions of section 31(4) of the Code.
- 3.31. Therefore, in the event, the resolution plan submitted by Respondent No. 2 is approved by the Learned Adjudicating Authority, despite there being no approval from the CCI, there would be no sanctity and relevance of the RFRP issued by the Respondent No. 1.



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**4. Submissions of the learned Senior Counsel appearing on behalf of the Resolution Professional in I.A. (IB) No. 1497/KB/2022 are summarised hereinunder:**

4.1.The present I.A. is not maintainable. He placed reliance on the judgments passed by the Hon'ble Supreme Court of India in *Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors. [(2019) 2 SCC 1]* (Paragraph Nos. 82 and 84) has held that no vested right inheres in any Resolution Applicant to have its Resolution Plan approved under the Code when another Resolution Plan is under consideration before the Adjudicating Authority.

4.2.The Code mandates the Resolution Professional to submit the Resolution Plan, as approved by the Committee of Creditors, to the Adjudicating Authority. The Code does not take into account any interference by a Resolution Professional qua submission of an approved resolution plan with the Adjudicating Authority.

4.3.The Code does not contemplate any discretionary interference by the Resolution Professional with respect to submission of a Resolution Plan with the Adjudicating Authority for its approval.

4.4.There is no ambiguity in the terms of the RFRP much less any contradiction to the settled proposition in law vis-s-vis the stage at which a Resolution Applicant is required to obtain approval from the CCI.

4.5.Section 31(4) of the Code unequivocally states that the Resolution Applicant, shall, pursuant to the Resolution Plan approved under Section 31(1) obtain the necessary approvals required under any law for the time being in force within one year from approval by the Adjudicating Authority or within such period as provided for in such law, whichever is later. The proviso to section 31(4) of the Code, specifically deals with CCI approval wherein it mandates that where a resolution plan contains a provision for combination, as referred to



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in section 5 of the Competition Act, 2002, the resolution applicant shall obtain approval of the CCI prior to approval of such a plan by the COC.

4.6. The applicability of proviso to section 31(4) was considered by the Hon'ble NCLAT, New Delhi Bench in the matter of *Arcelormittal India Pvt. Ltd. v. Abhijit Guhathakurta in Company Appeal (AT) (Insolvency) No. 524 of 2019* wherein *vide* judgement dated 16 December 2019 it has held in paragraph 15 that such a provision is directory and not mandatory. The judgments states that the provision is manifestly arbitrary to Article 14 of the Constitution of India as well as an excessive and unreasonable restriction thereby preserving the substantive right of the Corporate Debtor and giving discretion to the Adjudicating Authority to the extend the CIRP timeline as required, but only if 'exceptional circumstances' so exist. The Appellate Tribunal, by a three member Bench has settled the position in law that the Committee of Creditors can approve a Resolution Plan subject to a subsequent approval by the Committee of Creditors.

4.7. Therefore, the proposition that a differential and preferential treatment has been meted out to the Respondent No. 2 by being allowed to become the Successful Resolution Applicant, even though it has failed to secure approval from the CCI, and thus calling upon the Resolution Professional to withdraw its communication dated 28 October 2022 declaring the Respondent No. 2 as the successful resolution applicant is misconceived in law.

4.8. The said proposition was further upheld by the Hon'ble NCLAT in the matter of *Makalu Trading Ltd. and Ors. v. Rajiv Chakraborty and Ors.* in Company Appeal (AT) (Insolvency) No. 533 of 2020 (para 11).



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- 4.9. The Resolution Professional, in discharge of duties, in the course of the 17<sup>th</sup> meeting of the CoC held on 28 October 2022, had brought to the attention of the CoC members, before the issuance of the 'Letter of Intent' to the successful resolution applicant, that the Respondent No 2, who has secured the highest majority votes, does not have an approval from CCI and highlighted the law in this regards.
- 4.10. The members had deliberated and discussed the issue of the CCI approval to be obtained by the SRA i.e. the Respondent No. 2 and the members were of the view that as long as the approval from the CCI is obtained prior to the approval of the Resolution Plan by the Adjudicating Authority, such action would not be in contravention of the provisions of the Code in as much since the proviso to section 31(4) of the Code, since been watered down. On 3<sup>rd</sup> November 2022, the Resolution Professional had written to the Committee of Creditors calling upon the members for their comments or modification to the answering respondent proceeding with filing of the application for approval of Resolution Plan filed by the Respondent No. 2 with this Adjudicating Authority. However, in absence of any comments from the CoC, the Resolution Professional proceeded with filing of the application for approval of Resolution Plan under section 30(6) of the Code.
- 4.11. The Applicant has indicated certain contraventions in the terms of the RFRP read together with the clarificatory e-mail issued by the Resolution Professional.
- 4.12. The Resolution Professional, with a view to assist this Adjudicating Authority, has also indicated briefly and, subject to the outcome of this application, will place reliance on the line of judgments passed by the Hon'ble NCLAT, New Delhi Bench that liquidation is not the only resort available to this Adjudicating



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Authority since liquidation is always a last resort and that the CIRP can be rebooted. He placed reliance on an order passed by this Adjudicating Authority in *Beni Gopal Singhi and Ors. v. EMC Limited and Ors.*,<sup>3</sup> directing re-initiation of the Corporate Insolvency Resolution Process from the stage of issuance of Form G i.e. invitation for Expression of Interest. This order was passed in the view that the successful Resolution Applicant was in wilful contravention of the Resolution Plan.

4.13. The learned Senior Counsel submitted that the Resolution Professional has conducted the CIRP, managed the operation and affairs of the Corporate Debtor as well as have ensured its continued business operations in accordance with law and the allegations contrary thereto in terms of the instant application deserve to be dismissed in *limine, qua* the Resolution Professional.

**5. Submissions of the learned Senior Counsel appearing on behalf of the Respondent No. 2 i.e. the successful Resolution Applicant in I.A. (IB) No. 1497/KB/2022 are summarised hereinunder:**

5.1. The Competition Commission of India's approval is directory and not mandatory for approval of the Resolution Plan by the Committee of Creditors. The Respondent No. 2 does not have the approval of the CCI as on date.

5.2. It is submitted that Form I on 27 September 2022 and the receipt of the Form I was acknowledged by the CCI on 27 September 2022<sup>4</sup>.

5.3. The learned Senior Counsel led us through page 13 paragraph 24 of the Compilation which is given hereunder:

*“24. In the instant matter, it appears that the information provided in Form I may not be sufficient to carry out comprehensive analysis and further information may be required, in absence of which, there*

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<sup>3</sup> MANU/NC/2368/2022

<sup>4</sup> Page 1 of the Compilation



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*may be a possibility of an incorrect assessment. Even if the Parties are asked to remove discrepancies and provide additional information under Regulation 14 and/or Regulation 5(4) of the Combination Regulations, the same may involve substantial time and even with that, the Commission may still not have the requisite information to undertake comprehensive assessment or may be able to have requisite information only after further exchanges between the Parties, which may affect the overall timelines for assessment adversely and hinder proper inquiry of the Proposed Combination. Moreover, it may be noted that the instant case is an IBC matter and time is the essence in such matters.”*

5.4. The learned Senior Counsel led us through the clause 4(d) of the letter sent by the CoC on 28 October 2022 which is given hereunder:

*“(d) Satisfaction of all the condition precedents identified in the Resolution Plan, including approval from the Competition Commission of India (CCI), for implementation of the Resolution Plan.”*

5.5. Form II was filed on 02 November 2022 under section 6(2) of the Competition Act, 2002. The Competition Commission of India sent notices on 17 November 2022 stating certain defects in the Form II which were clarified by the Respondent No. 2 on 23 November 2022.

5.6. The CCI sent further notices seeking for requisite information from the Respondent No. 2 on 24 November 2022, the queries and the requisites were submitted on 08 December 2022.

5.7. The CCI raised certain queries on 28 December 2022, the queries and the requisites were submitted on 02 January 2023.

5.8. Thereafter no query or update was received from the CCI, the Respondent No. 2 sent an email on 20 January 2023, requesting the CCI to expediate the matter.



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- 5.9. On inspection of the website of the CCI, it came to the knowledge of the Respondent No. 2 that Form II was under review before the CCI.
- 5.10. The learned Senior Counsel submitted that since no further response has been received from CCI, it can be presumed that the CCI has accepted the Form II.
- 5.11. The learned Senior Counsel further submitted that nothing more is required and the approval from the CCI is pending due to lack of quorum of the CCI and the Respondent No. 2 has taken all the steps required. The delay in obtaining the CCI approval is not attributable to the Respondent No. 2.
- 5.12. The learned Senior Counsel led us through section 6(2A)<sup>5</sup> of the Competition Act, 2002 and submitted that the period of 210 days' as envisaged in section 6(2A) of the Act commences from 03 November 2022 i.e. from the date on which Form II was filed the timeline of 210 days has not expired and the same will expire on June 2023.
- 5.13. Mr. Kapoor submitted that as per section 22 of the Competition Act, 2002, that the quorum for any meeting of the CCI shall be of three members. The learned Senior Counsel submitted that 25 October 2022 was the last date when the quorum of the CCI ceased to be complete.
- 5.14. The learned Senior Counsel placed reliance on *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors.*<sup>6</sup>, (para 127), wherein the term "mandatorily" has been struck down with respect to the timeline.

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<sup>5</sup> (2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier.

<sup>6</sup> (2020) 8 SCC 531



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- 5.15. The learned Senior Counsel led us through section 31(11)<sup>7</sup> of the Competition Act, 2002, wherein it is envisaged that if the CCI does not pass an order till or on expiry of a period of 210 days from the date of notice, then such combination shall be deemed to have been approved by the CCI.
- 5.16. Hence, the successful Resolution Applicant has to wait till the time the CCI gives approval to the successful Resolution Applicant after the quorum of CCI is formed or for 210 days to be completed as per the statutory provisions.
- 5.17. The learned Senior Counsel submitted that till approval of the Resolution Plan may be kept in abeyance till such time as the approval is received from CCI after the quorum is formed and CCI can proceed with its deliberation or till such time till the expiry of 210 days which shall mean that there is deemed approval from the CCI.
- 5.18. It is further submitted that the learned Senior Counsel for trade unions/workmen relied on the judgment of the Hon'ble Supreme Court in *Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC)*<sup>8</sup>, specifically provides that a conditional resolution plan cannot be approved by the NCLT. It is submitted that in *Ebix supra.*, the Hon'ble Court dealt with conditions / contingencies imposed by the resolution applicant himself wherein he could withdraw his plan. However, here the plan is not contingent on any such condition imposed by AGI Greenpac. It merely awaits CCI approval as required by law. Further delay is also being caused due to lack of

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<sup>7</sup> (11) If the Commission does not, on the expiry of a period of [ninety working days from the date of publication referred to in sub-section (2) of section 29], pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

<sup>8</sup> (2022) 2 SCC 401



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quorum. Therefore, the judgment of Hon'ble Supreme Court in *Ebix supra*. is not applicable to the present fact situation and therefore, no useful reliance can be placed by trade unions/workmen on the said judgment.

5.19. Mr. Bachawat has argued that the Applicant has no locus standi and the time is yet to come for rejection of the application for Resolution Plan and the said application is pre-mature.

5.20. The CoC, under its commercial wisdom has accepted the Respondent No. 2's Resolution Plan after duly considering the lack of approval at that stage by the CCI. The decision of the CoC in approving the Resolution Plan was its commercial decision which needs no interference by the Applicant.

**6. Submissions of the learned Senior Counsel appearing on behalf of the Workmen in I.A. (IB) No. 1497/KB/2022 are summarised hereinunder:**

6.1. The learned Senior Counsel submitted that the Workers' Union have serious objections to the Resolution Plan of AGI Greenpac Limited, the Successful Resolution Applicant. The Resolution Plan is illegal, being in contravention of the proviso to Section 31(4) of IBC and non-compliant under section 30(2)(e) and is thus liable to be rejected by this Adjudicating Authority.

6.2. The Workers' Union have filed the applications for setting aside the Resolution Plan of AGI Greenpac *inter-alia*, on the grounds that the Resolution Plan has been illegally favoured and approved by the CoC for their unjust enrichment by wiping out the interest of all other stakeholders, and in gross violation of RFRP provisions which envisaged that mandatory CCI approval shall be obtained prior to approval of Plan by CoC and by ignoring the fact that there was another eligible Resolution Applicant who had secured CCI approval and further that AGI Greenpac Limited is disqualified to



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be a resolution application in the present CIRP under section 29A Code.

6.3.Mr. Saha's first contention is the contravention of proviso to section 31(4) of Code renders the Resolution Plan illegal and untenable; Conditional Resolution Plan cannot be approved. The Resolution Plan admittedly lacks the mandatory approval from CCI required under the proviso to section 31(4) of the Code and is thus, non-compliant under section 30(2)(e) of the Code.

6.4.It has been conceded by AGI Greenpac that without CCI approval, the Resolution Plan cannot be approved. In any event, a Conditional Plan cannot be approved without CCI approval, approval of Plan would be conditional, which is not permissible. The learned Senior Counsel placed reliance on Ebix (supra.) (paragraphs 168, 172, 181, 195).

6.5.Without CCI approval, the Resolution Plan is neither feasible nor viable and feasibility and viability is a mandatory requirement under regulation 39(3) of the CIRP Regulations. There is no guarantee that CCI approval will be granted, deemed or otherwise.

6.6.In an attempt to overcome this position, it has been argued by AGI Greenpac that the timeline in the proviso to section 31(4) of the Code is directory and not mandatory, that is to say, CCI approval can be obtained even after CoC's approval. However, such argument is utterly misconceived because the Resolution Plan is now being considered by the Adjudicating Authority on merits. It is nobody's case that the Plan can be approved without CCI approval. In short, because the CCI approval has admittedly not come on the day of consideration of the Plan, the Resolution Plan must be rejected.

6.7.AGI Greenpac is now effectively seeking sine die adjournment of the matter till June, 2023, i.e. end of 210 day period after which, according to AGI Greenpac, as per section 6(2A) and section 31(11)



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of the Competition Act, 2002, there will be deemed approval of the Plan by CCI under the Competition Act.

6.8. CIRP of the Corporate Debtor started on 21 October 2021 and the extended period ended on 07 November 2022 (300 days). Thus, if the matter is adjourned sine die or kept in abeyance till June, 2023 as prayed for, the total timeline would be more than 587 days.

6.9. Section 12 of the Code mandates an outer time limit of 330 days in a CIRP. It is well settled that the 330 day timeline can be extended only in extraordinary circumstances and not for the mere asking. The bogie of a pending litigation or approval cannot be taken as an excuse in perpetuity. There is no such extraordinary circumstance in the instant case. Rather, AGI Greenpac has acted negligently, waiting till the very last moment i.e. 03.11.2022, after the Resolution Plan approval by COC to file application in Form-II with CCI, that too, in a manner of suppression and distortion of material facts. There is no explanation for such delay and negligence. In fact, another Resolution Applicant, Independent Sugar in the same matter as applied for and obtained requisite CCI approval well within time. AGI Greenpac is also guilty of misrepresenting before the COC on 28.10.2022 that it expected to get CCI approval by end-November, 2022, whereas its application in Form-1 had already been rejected as 'Invalid' before that date and the fresh application in Form-II was yet to be made.

6.10. The learned Senior Counsel placed reliance on *Innoventive Industries v. ICICI Bank* (2018) 1 SCC 407 at para 60 and *Tata Consultancy Services U. S.K. Wheels Lid.* (2022) 2 SCC 582 at paras 22, 24.

6.11. The argument of AGI Greenpac/SRA based on "deemed approval" under Competition Act, 2002 after 210 days (i.e. on 14 June, 2023) is contrary to Code and cannot be accepted. If this



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Adjudicating Authority is made to wait for expiry of the 210 days period (till June, 2023), the CIRP timeline would be stretched to 587 days. There is also no guarantee that CCI will not reject the application before the end of 210 day period.

- 6.12. AGI Greenpac has suppressed the fact that their earlier application to CCI in Form-I was rejected by CCI on 21.10.2022 for misrepresentation of facts and that the subsequent application was filed only on 03.11.2022 after the Plan was approved by COC.
- 6.13. The Corporate Debtor will be forced into liquidation if the CCI rejects the combination of the Corporate Debtor with AGI Greenpac.
- 6.14. The Resolution Professional has acted with material irregularity in unilaterally changing the requirement in the Request For Resolution Plan ("RFRP") of obtaining CCI approval before consideration of Plan by the COC. The RFRP clearly mandated that a resolution plan which envisaged a combination within the meaning of section 5 of the Competition Act, 2002 had to obtain prior approval of the CCI before such plan could be considered or passed by the CoC.
- 6.15. However, the Resolution Professional by way of an email dated 25th August, 2022 addressed to the Resolution Applicants, purported to (without authority) grant relaxation to the Resolution Applicants to procure approval from the CCI post the approval of the Plan by the CoC but before filing of the application for Plan approval before the Hon'ble Adjudicating Authority. Apart from the fact that the RFRP terms could not and ought not have been relaxed/changed by RP midway, anyhow even the changed term is not complied with because admittedly even at the time of filing the Plan approval application (and even till date) there is no CCI approval.



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6.16. Evidently, this was a deliberate misrepresentation because AGI Greenpac's application in Form-I had already been rejected as 'Invalid' on 21.10.2022 (before the COC meeting) and the subsequent Form-II was filed only on 03 November 2022.

6.17. Hence, the Resolution Plan of AGI Greenpac should not be approved.

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**7. Submissions of the learned Senior Counsel appearing on behalf of the Applicant i.e. the successful Resolution Applicant in I.A. (IB) No. 628/KB/2022 are summarised hereinunder**

7.1.The learned Counsel submitted that the Applicant has received approval from the CCI on 15 March 2023 wherein the CCI has approved the combination of AGI Greenpac Ltd. bearing Registration No. C-2022/11/983 pertaining to the acquisition of the Corporate Debtor. An order has been passed by the CCI which contains various details about the modification which has been accepted by the CCI.

7.2.It is submitted that the modification pertains to the divestiture of the Rishikesh plant of the Corporate Debtor and will only take place subsequent to the completion of the takeover.

7.3.It is submitted that the modification is in consonance with the Resolution Plan. The relevant clauses from the Resolution Plan in this regard are as below:

*"3.3 Proposed turnaround plan*

*...Post the Effective Date, the Resolution Applicant shall have the sole right to evaluate and decide to shutdown / dispose off any units / plants of the Corporate Debtor as it may deem fit, if the viability of those units / plants cannot be determined. In this regards, the Resolution Applicant / Corporate Debtor shall not be required to obtain any prior consent from the Financial Creditors or any other stakeholders. ..."*

*"4.3.7 Assets*



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*(i) On and from the Effective Date, the Resolution Applicant and/or its nominee shall have unhindered rights, access and possession of all the Assets of the Corporate Debtor, wherever situated, with a right to deal with them in the manner as deemed fit by the Resolution Applicant..”*

7.4.The learned Senior Counsel submitted that after taking over the Corporate Debtor, the Applicant has unhindered rights to deal with the assets of the Corporate Debtor as it deems fit, hence there is no question of any impact of the modification on the Resolution Plan, as the modification only occurs post the takeover of the Corporate Debtor.

7.5.It is submitted that the Applicant now has approval from the CCI and hence the Resolution Plan submitted by the AGI Greenpac Ltd. is in compliance with the Code.

7.6.It is further submitted that one of the unsuccessful Resolution Applicants have argued that the Resolution Plan should be sent back to the CoC for re-consideration, in view of the modifications of the CCI. However, the argument is misconceived as the unsuccessful Resolution Applicant has wrongly assumed that the modification of the CCI impacts the Resolution Plan. The learned Senior Counsel reiterated that the CCI’s modifications have no impact on the Resolution Plan.

**8. Submissions of the learned Senior Counsel appearing on behalf of the Applicant i.e. the Resolution Professional in I.A. (IB) No. 701/KB/2023 are summarised hereinunder:**

8.1.The learned Senior Counsel submitted that the Applicant, has, *inter alia*, conducted the CIRP of the Corporate Debtor including conducting meetings of the Committee of Creditors, issued the Information Memorandum, invited resolution plan from each of the prospective resolution applicants, as well as examined each resolution plan.



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- 8.2. Upon satisfaction of the requirements of section 30(2) of the Code having been complied with, the Applicant has conducted the process of inter-se bidding thereby ensuring maximization of the value of the assets of the Corporate Debtor whilst balancing the interest of all stakeholders, including employees and workmen. The Applicant has presented the compliant plans to the Committee of Creditors who, in their commercial wisdom evaluated each of the resolution plans, including the business proposals therein, and have voted upon each of the resolution plans in accordance with the terms of the Code.
- 8.3. Upon the voting having been concluded, the Applicant took note of the voting outcome and declared the successful resolution applicant. Subsequent thereto, the applicant has filed an application for approval of resolution plan, being I.A. No. 1401/KB/2022 which is pending consideration of this Hon'ble Adjudicating Authority.
- 8.4. The instant interim application, being I.A. No. 701/KB/2023 has been filed in view of the liberty sought for by the Applicant in I.A. No. 1401/KB/2022, being the application for approval of the resolution plan, at paragraph "x" thereto to file the approval obtained by the Competition Commission of India in favour of the Successful Resolution Applicant. The Successful Resolution Applicant vide email dated 20 March 2023 apprised the Applicant of the communication received from the Competition Commission of India approving the proposed combination subject to compliance of modifications offered voluntarily by the successful resolution applicant vide submissions dated 10<sup>th</sup> March 2023 read with two submissions made separately dated 14<sup>th</sup> March 2023.
- 8.5. The Applicant has filed I.A. No. 701/KB/2023 in discharge of his duties and as a matter of compliance to place the approved resolution plan before the Adjudicating Authority together with all its compliances for consideration and approval of this Adjudicating



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Authority. The Applicant, in terms its interim application has also sought for placing the detailed order passed under Section 31(1) of the Competition Act, 2002.

**9. Submissions of the learned Senior Counsel appearing on behalf of the Applicants i.e. H.N.G. Karmchari Union and H.N.G. Mazdoor Union in IVN. P. (IB) No. 24/KB/2022 are summarised hereinunder:**

9.1.The learned Senior Counsel submitted that during the course of argument of I.A. (IB) No. 628/KB/2023 on 19 April 2023, a purported communication dated 15 March 2023 issued by the CCI has been disclosed which states that "*CCI approval has been granted subject to modifications voluntarily offered by AGI Greenpac Limited on 10th March, 2023 and two modifications separately offered on 14th March, 2023.*"

9.2.It is submitted that I.A. (IB) No. 628/KB/2023 is not maintainable. Such disclosure ought to be made by the Resolution Professional who is the facilitator of the present CIRP and who has filed application being IA (IB) No. 1401/KB/2022 for approval of the said Plan.

9.3.It is submitted that IA (IB) No. 1497/KB/2022 has been reserved by this Adjudicating Authority on 09 February 2023 wherein issue of CCI approval is involved. Unless the said application is decided first, consideration or maintainability of the said application is not permissible under law. The modifications voluntarily offered by AGI Greenpac Limited on 10 March 2023 and two modifications separately offered on 14 March 2023 whereupon the said communication has been issued are required to be disclosed before this Adjudicating Authority, for consideration for approval of the Plan and adjudication of IA (IB) No. 1401/KB/2022.

9.4.The regulations 25 and 26 of the CCI (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations,



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2011 are relevant, which may kindly be considered by this Adjudicating Authority.

9.5. In view of the regulations 25 and 26 it can be ascertained *inter-alia*, that "the said modifications shall be carried out by the parties to the combination / AGI Greenpac within the period as may be specified by the Commission and the parties to the combination / AGI Greenpac shall, upon completion of modification, file a compliance report for the actions required for giving effect to the combination before the Secretary of CCI within seven days of such completion".

9.6. The said modifications will have direct effect and impact on the nature and structure of the Resolution Plan already approved by the CoC on 28 October 2022.

9.7. It is further submitted that AGI Greenpac Ltd. is avoiding disclosing the said modifications before this Adjudicating Authority, however, it was stated by the learned Senior Counsel of AGI Greenpac Limited during the hearing on 19 April 2023 that the same pertain to affairs of the Corporate Debtor post approval and disinvestment.

9.8. It is therefore crystal clear that the modifications suggest closure of the Plant/ Unit wherein the employees affiliated to applicants' Union are working for a long time. In the event of closure of the relevant Plant/ Unit, the employees affiliated to applicants' Union shall be prejudiced and suffered.

9.9. Furthermore, the modifications amount to modification of the Resolution Plan already approved by the CoC on 28 October, 2022, which is not permissible in view of the decision in *Ebix Singapore supra*. Para-223.

9.10. The modifications post approval of the Plan are in violation of the CIRP procedure and the same ought not to be done in view of the decision in SREI Multiple Asset Investment Trust Vision India



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Fund v. Deccan Chronicle Marketeers & Ors. (Civil Appeal Nos).  
1706 of 2023, Para-24.

- 9.11. Since the CCI has granted the approval in a combination notification, approval order is a public document as the order is uploaded on the CCI website. Although the order of approval has not been uploaded on CCI website till date. There is no justifiable reason for AGI Greenpac Ltd. to avoid disclosure of the said purported modifications before this Adjudicating Authority.
- 9.12. The Applicant's Unions had filed an objection against the Combination Notification C-2022/11/983 filed by AGI Greenpac Limited on 03 November 2022 and the CCI had acknowledged the said Obiection and issued a communication dated 23 February 2023. On coming to know about the said CCI approval, the Applicant Unions have on 31 March 2023 applied for certified copy of the said order dated 15th March 2023.
- 9.13. However, it is stated that the Workers Union have serious objections to the Resolution Plan of AGI Greenpac Limited as the said Plan is illegal, being in contravention of the proviso to Section 31(4) of IBC and non-compliant under Section 30(2)(e) and is liable to be rejected by this Adjudicating Authority and also on the grounds that the Plan has been illegally favoured and approved by the CoC for their unjust enrichment by wiping out the interest of all other stakeholders, and in gross violation of RFP provisions which envisaged that mandatory CCI approval shall be obtained prior to approval of Plan by CoC and by ignoring the fact that there was another eligible Resolution Applicant who had secured CCI approval and further that AGI Greenpac Limited is disqualified to be a resolution application in the present CIRP under Section 29A of IBC.



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**10. Submissions of the learned Senior Counsel appearing on behalf of the Applicants in IVN. P. (IB) No. 26/KB/2022 are summarised hereinunder:**

- 10.1. The learned Senior Counsel submitted that it is now the case of the Successful Resolution Applicant i.e. AGI Greenpac Limited that after its Resolution Plan was approved by CoC and after filing of the same for approval before this Adjudicating Authority, modifications have been carried out to comply with Competition laws.
- 10.2. Firstly, the details of the modifications have not been disclosed by the Successful Resolution Applicant or by the Resolution Professional. Secondly, it is settled law that after a Resolution Plan is approved by the CoC and submitted to Adjudicating Authority for approval, no modification of any sort is permissible. The learned Senior Counsel placed reliance on *Ebix Singapore supra*. at paras 221-223). In other words, any modification of the Resolution Plan or any of its terms after CoC approval would be a nullity and no such modification can be allowed or taken into consideration even by the Adjudicating Authority.
- 10.3. However, this is exactly what the Successful Resolution Applicant in collusion with the Resolution Professional is wrongfully attempting to do i.e. to push through the "modified" Plan without notice to affected stakeholders including the Workers.
- 10.4. At the time of hearing, even the Resolution Professional was reluctant to and in fact, did not disclose to anybody what the "modifications" were.
- 10.5. At the outset, such disclosures ought to have been made by the Resolution Professional who is supposed to be a neutral officer for the purpose of facilitating the present CIRP of the Corporate Debtor. That apart, the Resolution Professional has already filed an application being IA (IB) No. 1401/KB/2022 seeking approval of



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the said (unmodified) resolution plan submitted by AGI Greenpac Limited and purportedly approved by the CoC.

10.6. Any modifications to the Plan will have a direct effect and impact on the nature and structure of the Resolution Plan already approved by the Committee of Creditors (CoC) on 28th October, 2022, which is pending for approval of this Hon'ble Tribunal in IA(IBC/1401/2022 filed by the Resolution Professional. This is without prejudice to the fact that the Resolution Plan itself is illegal and a nullity for breach of proviso to section 31(4) and on other grounds.

10.7. The learned Senior Counsel submitted that the modifications incorporated by AGI Greenpac Limited in the Resolution Plan post filing of the same for approval before this Adjudicating Authority, has been deliberated upon by the CoC till date or been disclosed to the members of CoC for consideration. Learned Senior Counsel appearing for AGI Greenpac is avoiding to disclose the said modifications before this Hon'ble Tribunal, and has in this regard, only made a vague submission that the same pertain to "affairs of the Corporate Debtor" and "disinvestment".

10.8. It is further submitted that since the approval that was sought from CCI was as regards the Resolution Plan, it is evident that any modifications would be in the Resolution Plan itself or directly relatable to the Plan and no such modification would be permissible under the provisions of Code. The learned Senior Counsel placed reliance on Ebix Singapore supra. paras 221-223 and SREI Multiple Asset Investment Trust Vision India Fund supra. at Para 22.

10.9. It is also apprehended from such submission that the modifications suggest closure of the Plant/ Unit wherein the employees affiliated to applicants' Union have been working for a long time. In the event of closure of the relevant Plant/ Unit, the



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employees affiliated to applicants' Union shall be gravely prejudiced and will suffer immensely.

***Subsequent event***

11. When I.A. (IB) No. 1497/KB/2022 was reserved for orders and the order was under preparation, two I.A.'s i.e. I.A. (IB) No. 628/KB/2023 (e-filed on 30 March 2023 and hard copy filed on 10 April 2023) and I.A.(IB) No. 701/KB/2023 (e-filed on 12 April 2023 and hard copy filed on 19 April 2023), came to be listed on 19 April 2023. I.A. (IB) No. 628/KB/2023 has been filed by AGI Greenpac Limited who is the Successful Resolution Applicant and I.A.(IB) No. 701/KB/2023 has been filed by the Resolution Professional. These two I.A.s have been filed to place on record a communication dated 15 March 2023 purported to be the approval of the Competition Commission of India ("CCI").

12. These two I.A.s were taken up for consideration, heard and reserved for orders on 19 April 2023 and the parties were permitted to file brief notes of submissions.

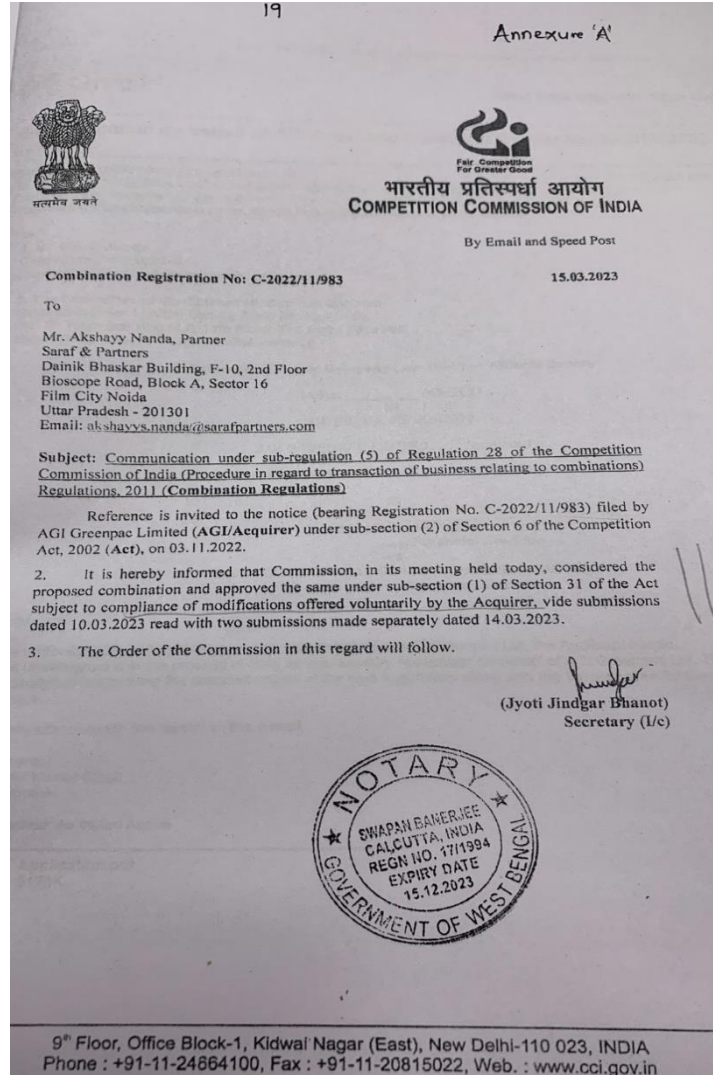
**13. *Analysis and Findings.***

13.1. When I.A. (IB) No. 628/KB/2023 was taken up for consideration on 19 April 2023, learned Counsel appearing for Independent Sugar Corporation Limited, the H2 bidder argued that this communication of the CCI dated 15 March 2023 cannot be taken on record when IA 1497/2022 is reserved for orders. It was further argued that the communication mentions in paragraph 2 that approval is subject to compliance of modification offered voluntarily by the acquirer and at paragraph 3 it mentions that the order of the CCI is to follow and hence it does not constitute approval for the purpose as required under section 31(4) of the Code. The communication dated 15 March 2023 is scanned hereunder.



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13.2. Per contra learned Senior Counsel appearing on behalf of the successful Resolution Applicant, AGI Greenpac Limited, argued that this is an approval for all intents and purposes as required under section 31(4) of the Code and therefore the Resolution Plan submitted by the H1 Bidder is complete and compliant in all aspects and deserves to be approved.

13.3. Now coming to the objection raised regarding consideration of I.A. (IB) No. 628/KB/2023 and I.A. (IB) No. 701/KB/2023 when I.A. (IB) No. 1497/KB/2022 was heard and reserved before these I.A.s were filed, we would like to rely on the law laid down by the



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
COURT-I

I.A. (IB) No. 1497/KB/2022, I.A. (IB) No. 628/KB/2023  
and I.A.(IB) No. 701/KB/2023 in C.P. (IB) No. 369/KB/2020

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Hon'ble Supreme Court in *Om Prakash Gupta v. Ranbir B. Goyal, MANU/SC/0035/2022* wherein it was held that

*“However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the Rules of procedural law so that the opposite party is not taken by surprise.”*

13.4. H2 Bidder had sought for rejection of the I.A. (IB) No. 1401/KB/2022 filed for approval of the Resolution Plan as its main contention was that the successful Resolution Applicant/H1 Bidder does not have the approval of CCI. It is pertinent to note here that the H1 Bidder had applied for the approval before the CCI and had filed Form I on 27 September 2022 and the receipt of the Form I was acknowledged by the CCI on 27 September 2022<sup>9</sup>. The communication from the CCI dated 15 March 2023 has a direct bearing upon the reliefs sought in I.A. (IB) No. 1497/KB/2022 and thus it becomes appropriate to take it on record in terms of the above judgement of Hon'ble Supreme Court and to serve the ends of justice. Thus, we decide to take on record this communication dated 15 March 2023.

13.5. After taking the communication dated 15 March 2023 sent by the CCI on record, the second issue that arises for consideration in view of the arguments of the successful Resolution Applicant and

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<sup>9</sup> Page 1 of the Compilation



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the H2 bidder is whether this communication amounts to approval of the CCI for the purposes of section 31(4) of the Code or not. It is pertinent to mention here that subsequently, while submitting the brief notes of submissions, AGI Greenpac Limited has filed the order passed by the CCI dated 15 March 2023 which was available in the website of the CCI.

13.6. A perusal of paragraph 2 of this communication of CCI dated 15-03-2023 shows that CCI approved the combination of the successful Resolution Applicant and the Corporate Debtor and hence, we are of the considered opinion that there is approval by the CCI as required under section 31(4) of the Code and therefore the objection to it as such is hereby rejected.

13.7. In view of the approval granted by the CCI though subsequently, however, before the approval of the Resolution Plan by this Adjudicating Authority, **I.A. (IB) No. 1497/KB/2022 is liable to be rejected and the same is dismissed accordingly.**

13.8. Further the reliefs sought in I.A. (IB) No. 628/KB/2023 and I.A. (IB) No. 701/KB/2023 are allowed to the extent of placing the communication dated 15 March 2023 from the CCI. **I.A. (IB) No. 628/KB/2023 and I.A. (IB) No. 701/KB/2023 is disposed of accordingly.**

13.9. Resolution professional is directed to furnish the instant communication before the CoC, to apprise them of the development and the CoC shall take note of the compliance of modification offered voluntarily by the acquirer in terms of the approval of the CCI dated 15 March 2023.

14. List the application I.A. (IB) No. 1401/KB/2022 filed for approval of Resolution Plan along with the other I.A.s on 09 June 2023.



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15. The Registry shall e-mail copy of this order to the Counsel on record for the Applicant and for the Respondents, and the Resolution Professional, for information and for taking necessary steps.
16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Order pronounced on the 28<sup>th</sup> day of April 2023.

GGRB[LRA]