NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 313 of 2024

[Arising out of Order dated 04.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Division Bench, Court-1 in I.A/ 764(AHM) 2021 in C.P. 563(AHM)2018]

IN THE MATTER OF:

Swan Energy Ltd. **....Appellant**

Vs.

Chandan Prakash Jain,
RP of E-Complex Pvt. Ltd. & Ors. **...Respondents**

For Appellant: **Mr. Krishnendu Datta, Sr. Advocate with Mr. Kumar Anurag Singh, Mr. Zain A. Khan, Mr. Dev Aaryan, Ms. Niharika Sharma, Advocates.**

For Respondents: **Mr. Ravi Raghunath, Advocate for R-1.**
Mr. Abhijeet Sinha, Sr. Advocate with Mr. Geet Ahuja, Advocate for R-2.
Mr. Nikhil Nayyar, Sr. Advocate with Mr. Shri Venkatesh, Mr. Suhael Buttan, Mr. Vineet Kumar, Advocates for R-4.

J U D G M E N T
(25th July, 2024)

Ashok Bhushan, J.

1. This Appeal by a Resolution Applicant has been filed challenging the order dated 04.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Division Bench, Court-1 by which order Adjudicating Authority while allowing IA No.764 of 2021 filed by the Resolution Professional for approval of the Resolution Plan which was submitted by the Respondent No.3- 'Invent Assets Securitization &

Reconstruction Private Limited' has approved the Resolution Plan which was submitted by Respondent No.4- 'Westend Investment and Finance Consultancy Private Limited' who was permitted to be substituted in place of 'Invent Assets Securitization & Reconstruction Private Limited' with the approval of the Committee of Creditors (CoC). Adjudicating Authority by impugned order has approved the Resolution Plan of Respondent No.4, aggrieved by which order this Appeal has been filed.

2. Brief facts of the case and sequence of the events necessary to be noticed for deciding this Appeal are:

2.1. Corporate Insolvency Resolution Process of the Corporate Debtor commenced vide an order dated 09.12.2020 on an application filed under Section 9. Resolution Professional on 17.05.2021 invited Expression of Interest in Form G. Request for Resolution Plan was issued by Resolution Professional on 18.06.2021 in response to which only one Resolution Applicant namely 'GSEC Ltd.' filed its plan. Other Resolution Applicant requested for further extension of time. After order dated 23.08.2021 passed by the Adjudicating Authority directing the CoC to consider Resolution Plan submitted by JSPL, CoC decided to give PRAs an opportunity to amend the Resolution Plan. The Resolution Plans were submitted by the Applicant, JSPL and the Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited'. All the Resolution Plans were considered in 20th CoC meeting held on 21.10.2021 on the basis of voting result, the plan submitted by Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' was approved with 72.97% votes. The

Resolution Professional after approval of the Resolution Plan submitted by the Respondent No.3 on 25.10.2021 filed IA No.764 of 2021 for approval of Resolution Plan. During the period IA No.764 of 2021 remained pending before the Adjudicating Authority for approval, RBI issued a Circular dated 11.10.2022 which provided that ARCs are currently not permitted to commence or carry on any business other than that of the securitization or asset reconstruction or the business referred to in Section 10(1) of the SARFAESI Act, without prior approval of the RBI subject to fulfilment of various/ certain conditions. The Respondent No.3 who was Asset Reconstruction Company was clearly not eligible to give Resolution Plan or to continue to be Resolution Applicant without prior approval of the RBI. On 14.12.2022, IA No.1 of 2023 in IA No.764 of 2021 was filed by Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' seeking substitution of its name as Resolution Applicant with that of Respondent No.4. On 09.04.2023, on request made by Respondent No.3, Adjudicating Authority allowed withdrawal of IA No. 1 of 2023 with liberty to move an appropriate representation before the CoC. Subsequent to the order dated 09.04.2023, CoC in its 26th meeting of the COC held on 05.05.2023 approved the Resolution Plan with modification that Respondent No.4 shall be substituted as Resolution Applicant in place of Respondent No.3. The Resolution to modify the Resolution Plan by substituting Respondent No.4 was approved by the CoC with 100% vote share. Resolution Professional on 05.06.2023 filed the Affidavit bringing on record the modified Resolution Plan for approval. Revised Form H was also submitted. The CoC asked for various clarification and modification from the Respondent No.4, who

submitted before the CoC required clarification and modification. On 01.09.2023, the Adjudicating Authority while hearing the application IA No.764 of 2021 directed the Resolution Professional to file the Request for Resolution Plan (RFRP) and to point out the relevant provisions in the RFRP whereby the Resolution Applicant could be changed after Resolution Plan was approved by the CoC. CoC in its 29th CoC meeting held on 12.09.2023 examined the feasibility and viability of the plan already approved and the Resolution Plan was again re-approved by the CoC by third time with 100% approval. On 20.10.2023, 30th CoC meeting was held where COC by appropriate voting resolved to amend RFRP and to include provision for substitution / replacement of the Resolution Applicant. On 24.11.2023, Resolution Professional filed another updated Form-H before the Adjudicating Authority. Adjudicating Authority after hearing the parties has passed the impugned order on 04.12.2023 approving the Resolution Plan as modified with Respondent No.4 as Resolution Applicant, aggrieved by which order this appeal has been filed.

3. We have heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant, Shri Abhijeet Sinha, Learned Senior Counsel for the CoC, Shri Nikhil Nayyar, Learned Senior Counsel for the Respondent No.4 and Shri Ravi Raghunath, Learned Counsel for the Respondent No.1.

4. Shri Krishnendu Datta, Learned Senior Counsel for the Appellant submits that the Adjudicating Authority committed error in approving a Resolution Plan in which Resolution Applicant after approval of plan by the CoC on 21.10.2021 has substituted the Resolution Applicant with

Respondent No.4 with the approval of the CoC which is clearly contrary to the entire scheme of the IBC and the CIRP Regulations 2016. It is submitted that the SRA i.e. Respondent No.3 whose plan was approved on 21.10.2021 became ineligible as Resolution Applicant, hence, the process of the CIRP ought to have been initiated afresh by issuance of fresh Form-G inviting the Resolution Applicants to submit the plan. On the basis of Resolution Process which culminated in approval of the plan by Respondent No.3 on 21.10.2021 no new Resolution Applicant can be substituted even after approval by the CoC. After approval of the plan on 21.10.2021, the CoC has no jurisdiction or authority to pass a Resolution for modification of approved Resolution Plan by substituting Respondent No.4 as new Resolution Applicant. Resolution Professional also acted contrary to the IBC scheme and the procedure as prescribed in the CIRP to permit Respondent No.4 to become Resolution Applicant and committed error in placing such modified plan for approval before the CoC and voting. Resolution Professional ought not to have made himself party to the illegalities which was being proceeded to be committed by the CoC in substituting a new Resolution Applicant with regard to the Resolution Plan which was approved of the Respondent No.3 as SRA. When SRA i.e. Respondent No.3 whose plan was approved became ineligible, even by any subsequent event, was not eligible to submit a Resolution Plan without the approval of the RBI and the entire process ought to have been initiated *de novo* giving opportunity to all Resolution Applicants including the appellant who had earlier filed Resolution Plan which was not approved in comparison with the Resolution Plan of the Respondent No.3. Adjudicating Authority itself on 01.09.2023 has asked the

Resolution Professional to file RFRP and to point out under which provision of RFRP, Resolution Applicant can be substituted or changed. Although RFRP was filed by the Resolution Professional but no clause in the RFRP could be pointed out where Resolution Applicant could be changed or substituted after plan has been approved. It is submitted that the CoC even proceeded to pass a Resolution on 20.10.2023 for amending the RFRP to include a provision for substitution/ replacement of Resolution Applicant. The entire process adopted by the Resolution Professional and the CoC were clearly contrary to the provisions of the CIRP Regulations 2016. Adjudicating Authority committed serious error in approving such modified Resolution Plan with new Resolution Applicant i.e. Respondent No.4 who had neither filed any EoI nor has filed any Resolution Plan in the process. Permitting the SRA to be changed after Resolution Plan of the SRA has been approved, is clearly impermissible and mockery of the entire CIRP process. According to Form-H which was submitted by the Resolution Professional, the CIRP of the corporate debtor had come to an end on 14.09.2021. Thereafter, Resolution Professional held 10th CoC meetings last being held on 20.10.2023 without any authority or jurisdiction. No meeting of the CoC could have been called after expiry of the period of the CIRP.

5. Shri Abhijeet Sinha, Learned Senior Counsel appearing for the CoC submits that there is no modification in the Resolution Plan which was approved on 21.10.2021 except the change of the Resolution Applicant who is none other than the sponsor company of Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited'. Respondent No.3 could not

have implemented the Resolution Plan in view of the RBI Circular dated 11.10.2022 hence for implementation of the Resolution Plan, Respondent No.3 was fully entitled to nominate an entity. It is submitted that the provision of the Resolution Plan clearly permits the Resolution Applicant to implement the plan through its subsidiary including the special purpose vehicle etc. Respondent No.4 has been substituted for the purposes of implementation of the plan which does not violate any provisions of the IBC and CIRP Regulations. It is further submitted that the applicant who was Unsuccessful Resolution Applicant has no locus to file the appeal. Appellant, a disgruntled PRA whose plan was considered and rejected by the CoC, cannot be allowed to challenge the Resolution Plan approved by the Adjudicating Authority. It is well settled that the commercial wisdom of the CoC in approving the Resolution Plan cannot be questioned before the Adjudicating Authority especially by a Resolution Applicant whose plan was considered and rejected. Appellant is not an aggrieved person within the meaning of Section 61 of the Code. There is no material irregularity in the process of the CIRP and the appeal deserves to be dismissed. It is further submitted that the applicant has filed an IA No.68 of 2023 challenging the Resolution Plan approved by the CoC on 21.10.2021 which application was withdrawn by the Appellant on 14.06.2023. Appellant cannot be allowed to raise any question regarding the Resolution Plan approved by the CoC.

6. Counsel for the SRA supporting the impugned order contends that the RFRP was never amended which has been specifically stated by the Resolution Professional in paragraph 20 of the Affidavit filed by the

Resolution Professional. It is submitted that the Respondent No.4 has been nominated to implement the plan. It is further submitted that the Respondent No.4- SRA has made payment of the requisite amount in terms of the approved Resolution Plan. New management has taken over the control of the corporate debtor. Resolution Plan having been implemented, the appeal has become infructuous. Object of the IBC is to revive the business of the corporate debtor which having been revived, no interference is called for in the impugned order.

7. Counsel for the Resolution Professional submits that he has to file revised Form-H due to the decision of the CoC where Respondent No.4 was substituted. Counsel for the Resolution Professional referred to the order of the Adjudicating Authority dated 18.10.2023 where an application filed by SKIL Infrastructure Limited against partial rejection of its claim of financial debt has been rejected. Another order dated 18.10.2023 has been referred to where Adjudicating Authority again took the view that SKIL Group was promoter and cannot be taken as member of the CoC. Revised Form-H has been filed on 28.06.2023 after approval of the modified Resolution Plan in 25th and 26th CoC meeting.

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

9. Counsel for the parties have relied on various judgments of the Hon'ble Supreme Court and this Tribunal which we shall refer to while considering the submissions in detail.

10. From the submissions of the Counsel for the parties and materials on record, following questions arises for consideration:-

(i) Whether after approval of the Resolution Plan of a Resolution Applicant by the CoC and filing of application before the Adjudicating Authority for approval of the Resolution Plan which is approved by the CoC, the CoC had any jurisdiction to substitute the SRA with another SRA who was not part of the CIRP process?

(ii) Whether CoC has jurisdiction to modify a Resolution Plan already approved by the CoC and submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC?

11. The above questions being inter-related are being taken together.

12. From the facts as noticed above, following facts and sequence are undisputed:-

(a) In the CIRP of the Corporate Debtor, CoC deliberated on the Resolution Plan received in the CIRP including the Resolution Plan of Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' and by its 20th CoC meeting held in October, 2021 and on the basis of result of e-voting held on 21.10.2021 approved the Resolution Plan of Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' with 72.97% votes.

(b) The Resolution Professional submitted the Resolution Plan before the Adjudicating Authority for approval by IA No.764 of 2021 on 25.10.2021 praying for approval of the Resolution Plan submitted

by the Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' approved by the COC with 72.97% voting share. Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' filed an IA No.1 of 2023 in IA No.764 of 2021 seeking substitution of its name with that of Respondent No.4 as SRA.

(c) On 19.04.2023, IA No.01 of 23 was permitted to be withdrawn with liberty to Respondent No.3 to submit a representation before the CoC. CoC in its 26th CoC meeting held on 05.05.2023 passed a resolution modifying the Resolution Plan submitted by Respondent No.3 by substituting Respondent No.4 as Resolution Applicant. Respondent No.1 filed an Affidavit bringing the modified Resolution Plan before the Adjudicating Authority for approval by its Affidavit dated 05.06.2023.

(d) On 01.09.2023, the Adjudicating Authority directed the Resolution Professional to file the RFRP and also point out the relevant provisions in the RFRP whereby the Resolution Applicant could be changed after the Resolution Plan is approved by the CoC. RFRP was filed by the Resolution Professional but no clause of RFRP could be pointed out or placed before the Adjudicating Authority which permits change of the Resolution Applicant after approval of the Resolution Plan.

(e) The Adjudicating Authority heard the IA No.764 of 2021 along with the Affidavit filed by the Resolution Professional and modified Resolution Plan placed before the Adjudicating Authority in which

SRA was substituted from Respondent No.3 to Respondent No.4. The Adjudicating Authority by the impugned order has approved the modified Resolution Plan i.e. Respondent No.4 as SRA.

13. Counsel for the Respondent has questioned the locus of the Appellant to file this appeal. We, thus, need to first consider the objections of the Respondents regarding the locus.

14. The submission of the Appellant in response to the objection regarding locus is that Appellant was Resolution Applicant in the CIRP process who had filed the Resolution Plan which was not approved by COC and plan of Respondent No. 3 was approved in 20th COC meeting. After filing of the application before Adjudicating Authority for approval of Resolution Plan of Respondent No. 3 by subsequent Resolution by the COC, SRA has been permitted to be changed from Respondent No.3 to Respondent No.4 and modified Resolution Plan as subsequently approved by the CoC has been approved. The submission is that when Respondent No.3 became ineligible as Resolution Applicant, the process of CIRP ought to have been initiated *de novo* from the stage of publication of Form-G to enable all Resolution Applicants including the Appellant to participate in the process to take their chance of being the SRA. Thus, Resolution Professional and the CoC adopted a process contrary to the IBC and CIRP Regulations 2016 which denied the right of the Appellant to participate in the process which became necessary after ineligibility of SRA. The above submissions of the Counsel for the Appellant does indicate that the Appellant is not questioning the commercial wisdom of the CoC by which it had approved the Resolution

Plan of Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited'. Thus, the present is not an appeal challenging the approval of the Resolution Plan of the Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' in which process Appellant's Resolution Plan was disapproved. The challenge of the Appellant is that after Respondent No.3 become ineligible being SRA, Resolution Professional and the CoC ought to have give an opportunity by issuance of fresh Form-G inviting all PRAs to submit afresh Resolution Plan which opportunity has been denied. Thus, the present is a case where Appellant is not placing his right on the basis of Resolution Plan which was submitted by him in the CoC and was not approved, rather the challenge in the appeal is on the process adopted by the Resolution Professional and the CoC contrary to the IBC and the CIRP Regulations 2016 in substituting a new Resolution Applicant in place of Respondent No.3, which is clearly contrary under Section 61(3) of the IBC. An Appeal is provided on the grounds mentioned therein which can be filed by any person aggrieved. Section 61(1) and 61(3) is as follows:-

> *"**61. Appeals and Appellate Authority.** - (1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*
>
> *xxx xxx xxx*
>
> *(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely: –*

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
(v) the resolution plan does not comply with any other criteria specified by the Board."

15. The grounds which have been raised in the appeal are the grounds which are fully covered by sub-section (3) of Section 61, hence, it cannot be said that the Appellant is not an aggrieved person with the impugned order. We, thus, reject the objection of the Respondent that the Appellant has no locus to file the appeal.

16. Now we proceed to consider the respective questions which have been framed by us, as above and the respective submissions of the parties.

17. The Resolution Professional has brought on record the Form-H dated 25.10.2021 which he has filed after approval of the Resolution Plan by the CoC on 21.10.2021. Paragraphs 3 and 4 of the Form-H refers to the Resolution Plan received from Invent Assets Securitisation and Reconstruction Pvt. Ltd. and approved by 72.97% of voting share, which reads as follows:-

"3. I have examined the Resolution Plan received from Resolution Applicant M/s Invent Assets Securitisation & Reconstruction Pvt. Ltd. and approved by Committee of Creditors (CoC) of E- complex Pvt. Ltd.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant M/s Invent Assets Securitisation & Reconstruction Pvt Ltd. has submitted an affidavit pursuant to section30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 72.97% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26."

18. IA No.764 of 2021 was filed by the Resolution Professional seeking approval of the plan submitted by Respondent No.3. Respondent No.3 itself has filed an IA No.1 of 2023 which IA was filed by the Respondent No.3 on 14.12.2022 seeking substitution of name of Respondent No.4 in place of Respondent No.3. IA was subsequently withdrawn by the Respondent No.3 which was permitted by the Adjudicating Authority vide order dated 19.04.2023. The order passed in IA No.1 of 2023 is as follows:-

> ***"IA/1(AHM)2023***
>
> *This IA has been moved by the Successful Resolution Applicant for substitution of Respondent No.2 as the Resolution Applicant as the holding company. At the outset, it is stated by the Ld. Sr. Counsel representing the Applicant that there is no approval so far from the CoC. In view of this, he seeks to withdraw this particular IA with liberty to move appropriate representation before the CoC.*
>
> *Accordingly, IA/1(AHM)2023 stands disposed of with liberty as above.*
>
> *List all other IAs on 08.05.2023."*

19. The above order indicates that the Adjudicating Authority did not express any opinion on the merits of the IA No.1 of 2023 rather Counsel appearing for the Respondent No.3 withdrew the application of its own with liberty to move an appropriate representation before the CoC. It is clear that the liberty was sought by Respondent No.3 itself. We are of the view that the said order passed on 19.04.2023 does not clothe the CoC to permit

substitution of Respondent No.4 in place of Respondent No.3. After taking aforesaid liberty the CoC proceeded to hold the meetings of the CoC and approved the modified Resolution Plan by substituting Respondent No.3 as SRA in place of Respondent No.3. The Resolution Professional along with its reply has brought revised Form-H as Annexure R-5 which was filed along with the Affidavit dated 28.06.2023. The Form H referred to 26th CoC meeting held on 05.05.2023, by which meeting the Resolution Plan was approved with 100% vote share received from Resolution Applicant- Westend Investment and Finance Consultancy Private Limited (Respondent No.4). It is useful to notice paragraphs 3, 4 and 5 of Form H which give details of Resolution Applicant modified as well as 100% voting by CoC:-

> *"3. I have examined the Resolution Plan received from Resolution Applicant* ***West End Investment & Finance Consultancy Private Limited****, and approved by Committee of Creditors (CoC) of E-complex Pvt. Ltd.*
>
> *4. I hereby certify that-*
>
> *(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.*
>
> *(ii) the Resolution Applicant West End Investment & Finance Consultancy Private Limited. has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

5. The list of financial creditors of the CD E-complex Pvt. Ltd. being members of the CoC and distribution of voting share among them is as under:
** The CoC has been re-constituted during the CIRP due to assignment of loan. The earlier CoC constituted is as mentioned below:-*

Sr. No.	***Name of Creditor***	***Voting Share (%)***
1.	*Citi Securities & Financial Services Pvt. Ltd.*	*72.97%*
2.	*Edelweiss Rural and Corporate Services Limited*	*23.38%*
3.	*The Karur Vysya Bank Ltd.*	*0.57%*
4.	*Union Bank of India*	*3.08%*

The reconstituted CoC members is as mentioned below:

Sr. No.	***Name of Creditor***	***Voting Share (%)***
1.	*Citi Securities & Financial Services Pvt. Ltd.*	*72.97%*
2.	*RKG Fund-I, A scheme of RKG Trust, category II AIF, managed by RKG Asset Management LLP*	*23.38%*
3.	*Prudent ARC LTD.*	*3.65%*

The list of financial creditors of the CD E-complex Pvt. Ltd. being members of the CoC and distribution of voting share as per modified resolution plan present in 26th CoC meeting held on 5th may, 2023 is as under:-

Sr. No.	***Name of Creditor***	***Voting Share (%)***	***Voting for Resolution Plan (Voted for/ Dissented/ Abstained)***
1.	*Citi Securities & Financial Services Pvt. Ltd.*	*72.97%*	*Voted for*
2.	*RKG Fund-I, A scheme of RKG Trust, category II AIF, managed by RKG Asset Management LLP*	*23.38%*	*Voted for*
3.	*Prudent ARC LTD.*	*3.65%*	*Voted for*
		100.00%	

20. The aforesaid clearly indicate that the CoC has approved the Resolution Plan in which Resolution Applicant has been substituted and modified as 'Westend Investment and Finance Consultancy Private Limited' which Resolution Plan was approved with 100% vote share and placed before the Adjudicating Authority along with the Affidavit. Another revised Form-H was filed by the Resolution Professional dated 24.11.2023 where details of Resolution Plan submitted by 'Westend Investment and Finance Consultancy Private Limited' details of shareholders' payments etc. has been provided.

21. One more submission which need to be noticed at this stage which was advanced by Counsel for the Respondent that Appellant had filed an IA No.68 of 2023 challenging the Resolution Plan approved by the CoC on

21.10.2021 which having been withdrawn on 14.06.2023, Appellant cannot be allowed to question the Resolution Plan now approved by the impugned order. Appellant had filed an IA No.68 of 2023 challenging the approval of the Resolution Plan dated 21.10.2021 which was withdrawn on 14.06.2023. The order dated 14.06.2023 by which application was withdrawn is to the following effect:-

> "***IA/68(AHM) 2023***
>
> *Learned Counsel for the applicant seeks permission to withdraw this application. The permission is granted.*
>
> *Accordingly, IA/68(AHM) 2023 stands dismissed as withdrawn."*

22. The withdrawal of application IA No.68 of 2023 has no effect on grounds which have been sought to be raised in the present appeal. Appellant is no more challenging the approval of Resolution Plan on 21.10.2021 in which Resolution Plan of Appellant was not approved. The challenge in the present appeal is to the subsequent events and resolution of the CoC culminating into approval of the plan by the Adjudicating Authority in the impugned order. Thus, the order dated 14.06.2023 can in no manner effect the rights of the Appellant to agitate the issue sought to be raised.

23. We may also notice the order dated 01.09.2023 which was passed by the Adjudicating Authority on the application IA No.764 of 2021. The order dated 01.09.2023 passed by the Adjudicating Authority is as follows:-

"IA/764(AHM) 2021

In compliance of the order dated 21.08.2023 the applicant / RP has filed affidavit vide dairy no 3312 dated 31.08.2023 which is taken on record.

We have heard Learned Counsel for the applicant as well as Learned Counsel for the CoC and Learned Counsel for the SRA.

Learned Counsel for the applicant/ RP is directed to file the RFRP and point out the relevant provisions whereby resolution applicant could be changed after Resolution Plan is approved. RP is also directed to place on record the relevant Resolution of CoC, where at the feasibility and viability of the Plan was duly verified by the CoC.

Liberty is given RP to hold one more CoC meeting if it is not clearly recorded in the previous meeting.

List for further hearing on 15.09.2023."

24. The order dated 01.09.2023 clearly indicate that the Adjudicating Authority has required the Resolution Professional to explain and place the relevant provisions of the RFRP under which Resolution Applicant could be changed after Resolution Plan was approved.

25. Counsel for the Appellant submitted that after the order dated 01.09.2023 meeting of the CoC was held on 20.10.2023 i.e. 30th CoC meeting where CoC has passed the resolution authorising the Resolution Professional to amend the RFRP which was approved with 100% voting

share. The Resolution Professional in its reply has brought on record minutes of the 30th CoC meeting dated 20.10.2023, which is as follows:-

> ***"Resolutions passed by the Committee of Creditors (CoC) of M/s E Complex Pvt. Ltd (Under CIRP)***
>
> *Further to the instructions from CoC members in the 30th CoC meeting held on 20.10.2023, the RP hereby put forth necessary Resolutions for consideration of CoC members for the voting by the member through email.*
>
> *"**RESOLVED THAT** that the COC members hereby authorize the Resolution Professional to amend the RFRP (Request for Resolution Plan) to include substitution/replacement of the Resolution Applicant if deemed necessary"*

Sr. No.	***Name of Creditor***	***Voting Share (%)***	***Assent***	***Dissent***	***Abstained***
1.	*Citi Securities & Financial Services Pvt. Ltd.*	*72.97%*	✓		
2.	*RKG Asset Management LLP (Manager of RKG Fund-I)*	*23.38%*			
3.	*Prudent ARC LTD.*	*3.65%*			
	Total	***100 %***			

26. However, Counsel for the CoC submitted that actually no amendments were made in the RFRP which is also admitted by the Resolution Professional. It is not case of either of the Respondents that RFRP permits change of the Resolution Applicant after approval of the Resolution Plan. CoC has approved the amendment of RFRP which was not actually done. Thus, the conclusion is inescapable that there was no

provision in the RFRP by which Resolution Applicant could be changed after approval of the Resolution Plan.

27. The CIRP process was conducted as per the CIRP Regulations 2016. Regulation 36 (B) provide for Request for Resolution Plan. Regulation 39 deals with approval of the Resolution Plan. Regulation 39(1)(B) provides as follows:-

> *"[**39-B. Meeting liquidation cost.-(**1) While approving a resolution plan under sub-section (4) of section 30 or deciding debtor under sub-section (2) to liquidate the corporate of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.*
>
> *(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).*
>
> *(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.*
>
> *(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.*

Explanation.- For the purposes of this regulation, "liquidation costs" shall have the same meaning regulation 2 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016."

28. The clear provision of the statute is that the Resolution Plan received from a person who does not appear in the final list of Prospective Resolution Applicants (PRAs) cannot be considered. In the present case, there is no dispute that the Respondent No.4 has never submitted a Resolution Plan and he was not included in the list of PRA. The CoC has no jurisdiction to approve the Resolution Plan treating it to be the plan of Respondent No.4 or to substitute Respondent No.4 as Resolution Applicant. The outcome of the CoC approval and filing of revised Form-H is that now the Respondent No.4 has become the SRA whose plan has been approved. The approval of the Resolution Plan of Respondent No.4 is clearly in breach of Regulation 39(1)(B).

29. Right from Request for Resolution Plan and mandatory contents consideration of the Resolution Plan, there are different stages for re-evaluation of the Resolution Plan and applicant who has not participated in any of the stages of CIRP process cannot suddenly be substituted as SRA to implement the plan of Corporate Debtor. We, thus, are of the opinion that substitution of Respondent No.4 in the Resolution Plan is contrary to the statutory scheme of the IBC read with CIRP Regulations 2016.

30. Counsel for the CoC as well as SRA has submitted that the Respondent No.4 is only implementing the Resolution Plan which implementation is fully permissible by subsidiary/ special purpose vehicle of the SRA. Counsel for the SRA has referred to Clause 1.1.4 to support his submission. Clause 1.1.4 (iii) & (viii) has been extracted in the reply of Respondent No.4 which are as follows:-

> *"(a)* ***Clause 1.1.4- Key steps of the Plan****:*
>
> *(iii)* ***Infusion of Equity:*** *A need-based amount up to a maximum of Rs. 26 lakhs (Indian Rupees twenty six lakhs only) (either in one or more tranches) shall be infused by RA (indirectly or directly, through its subsidiary(ies) / special purpose vehicle(s) / limited liability partnership/ nominees of the Resolution Applicant into the Company from its own funds, in consideration of which, the Monitoring Agency on behalf of the Company will issue to RA or its subsidiary(les)/ special purpose vehicle(s)/ limited liability partnership/ nominees of the Resolution Applicant, as the case maybe 2,60,000 (two lakh sixty thousand) equity shores of face value of Re. 10 (ten) each ("RA Equity Subscription Amount) constituting 26% (One Hundred Percent) of the issued and paid up equity share capital of the Company post cancellation of entire existing shareholding.*
>
> *All the corporate actions (if any) required to achieve the aforesaid events shall be taken by the Monitoring Agent acting on behalf of the Company and infusion of RA Equity Subscription Amount, the Company's issued and paid up equity share capital shall stand reduced to INR Cr (Indian Rupees One Crore only) held by RA directly or indirectly through subsidiary(ies)/special purpose vehicle/limited*

liability partnership firms including nominees and financial lenders of ECPL in the ratio 26:74 respectively.

Extinguishment of shares of Corporate Debtor will be done as per the Applicable Laws and accounting standards including through credit to Capital Reserve Account. The equity shareholding of the Corporate Debtor post cancellation of existing capital shall be as follows:

Category of shareholder	*% of Equity Shareholding*
RA directly or indirectly through subsidiary(ies)/ special purpose vehicle/ limited liability partnership firms including nominees	*26%*
Existing Promoter Group	*Nil*
Verified Financial Creditors	*74%*
Total issued, subscribed and Paid up Equity Capital	*100.00%*

(b) (viii) After completion of all the steps outlined above in this Plan, the shareholding of the Company shall be as follows:

Category of shareholder	*% of Equity Shareholding*
*RA directly or indirectly through subsidiary(ies)/ special purpose vehicle/ limited liability partnership firms including nominees** **For the purpose of implementation of this Plan, such subsidiary(ies)/ limited liability partnership firms, including nominees (if any) shall also remain in compliance with Section 29A of the IBC*	*26%*
Existing Promoter Group	*Nil*
Verified Financial Creditors	*74%*

Total issued, subscribed and Paid up Equity Capital	*100.00%*

31. Copy of the Resolution Plan has also been handed over by the Counsel for the CoC at a time of hearing. Clauses of Resolution Plan relied by CoC are under heading "Key steps of the plan".

32. When we look into the clauses of the Resolution Plan relied by Counsel for the CoC, the said is with regard to infusion of equity which can be infused by Resolution Applicant indirectly or directly through its subsidiary, special purpose vehicle, limited liability partnership nominee of Resolution Applicant into the company from its own fund. The clause for infusion of equity cannot be read to mean that SRA can nominate its nominee as SRA. Infusion of equity is entirely different from Respondent No.4 becoming the SRA. The above clause does not in any manner supports the submission of the Respondents. Another clause which has been relied is regarding Clause 6 (viii) i.e. "category of shareholders" which also in no manner support the submission of the Respondents that clause of Resolution Plan for which SRA be substituted by another SRA.

33. We have noticed that the Adjudicating Authority by its order dated 01.09.2023 directed the Resolution Professional to point out the clause of RFRP by which SRA can be changed after approval of the plan. It is not in dispute that neither there is any such clause in the RFRP nor such clause has been pointed out before us during hearing. Adjudicating Authority, however, after noticing of the facts in the impugned order has relied on the

judgment of this Tribunal in ***"Puissant Towers India Pvt. Ltd. vs. Neueon Towers Limited- Company Appeal (AT) (CH) (Ins.) No. 181 of 2022"*** dated 12.06.2023, paragraphs 9 to 12, to support its order. Judgment of this Tribunal which has been relied by the Adjudicating Authority was a case where Respondent No.3 herein- 'Invent Assets Securitization & Reconstruction Private Limited' was one of the co-applicant and Resolution Plan was rejected by the Adjudicating Authority holding that 'Invent Assets Securitization & Reconstruction Private Limited' cannot submit its Resolution Plan it being an Assets Securitization & Reconstruction Company against which Appeal was filed.

34. In the above case, 'Invent Assets Securitization & Reconstruction Private Limited' was a co-applicant and it was submitted before this Tribunal that co-applicant was not proposing to acquire any equity shareholding and that the other co-Resolution Applicants were to solely acquire the shareholding and run the business. The submission of the Appellant was noticed in paragraph 5, which is as follows:-

> *"5. The Learned Counsel for the 'Appellant also submitted that the ARC, though a Co-Resolution Applicant, was not proposing to acquire any Equity Shareholding and that the other Co-Resolution Applicants were to solely acquire the Shareholding and run the business and therefore at the very outset, the analogy drawn by the Adjudicating Authority is incorrect as facts are distinguishable. It is also submitted that the Appellant is an 'Aggrieved Person' as elucidated under Section 61(1) of the Code."*

35. This Tribunal took the RBI's response in the issue, which is noticed in paragraph 6 of the judgment which is as follows:-

> *"6. This Tribunal, vide Order dated 14/06/2022, deemed it appropriate to seek the view of RBI and therefore the Appellant filed IA No. 743/2022, seeking to implead 'RBI' and 'Long View Resources (HK) Private Ltd.', the Co-Resolution Applicants".*

36. Counsel for the RBI appeared before the Appellate Tribunal and submitted that it is not necessary to implead the RBI and further RBI submitted that prior approval is not required with regard to co-applicant. The said submission has noticed in paragraph 9 of the judgment of this Tribunal, which is as follows:-

> *"9. Without going into the aspect of whether RBI ought to be 'impleaded' or not, this Tribunal finds it relevant to place reliance on the submissions of the Learned Counsel regarding whether prior approval of RBI is required for participating as a Resolution Co-Applicant under the Code. It is submitted in Para 4 of the Notes of Submissions that ARC does not require prior approval of RBI for participating as a Resolution Co-Applicant. The relevant Paragraph is reproduced as herein:*
>
> > *"It is further submitted that an ARC does not require prior approval of RBI for participating as a 'resolution co-applicant' under IBC provided any of the activities undertaken by the ARC as part of the resolution plan*

> *submitted by it is not prohibited under SARFAESI Act. Hence, prima facie, when an ARC is a resolution "co-applicant", as is in the instant case, RBI's prior approval is not always required. Thus, there is no need to make RBI a party in the present appeal."*

37. This Tribunal based its judgment on the clarification given by the RBI that prior permission is not required, hence, allowed the appeal and directed for passing orders regarding approval of the Resolution Plan which finding is in paragraph 11:-

> *"11. Keeping in view, the clarification given by the Counsel for RBI that the 'prior permission' is not required, this 'Tribunal' is of the considered view that the Adjudicating Authority ought not to have rejected the Resolution Plan, more so, when the principal objective of the Code is that 'revival of the Corporate Debtor and Resolution'. Liquidation ought to be the last resort, keeping in view the scope and spirit of the Code."*

38. Reliance on the above judgment by the Adjudicating Authority is wholly erroneous. In the present case, 'Invent Assets Securitization & Reconstruction Private Limited' was sole Resolution Applicant and present is not a case that whether 'Invent Assets Securitization & Reconstruction Private Limited' should be permitted to be Resolution Applicant or not. The question is that whether in place of 'Invent Assets Securitization & Reconstruction Private Limited' another SRA can be substituted at the instance of 'Invent Assets Securitization & Reconstruction Private Limited'

with approval of the CoC. Thus, the judgment which has been relied by the Adjudicating Authority for approving the Resolution Plan is clearly distinguishable and does not support the submission of the Respondent in the present case.

39. Adjudicating Authority itself has noticed that RFRP does not contain any provision for change of SRA after approval of the plan. It glossed over the said issue and has not considered the issue apart from the above observations in paragraph 15(iii). Other discussion of the Adjudicating Authority in paragraph 50 are on the commercial wisdom of the CoC. Adjudicating Authority relied on the judgments of the Hon'ble Supreme Court in ***"K. Sashidhar v. Indian Overseas Bank and Ors.- (2019) 12 SCC 150"***, ***"Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors.- (2020) 8 SCC 531"*** and ***"Maharastra Seamless Ltd. vs. Padmanabhan Venkatesh & Ors.- (Civil Appeal No.4242 of 2019)"*** for coming to the conclusion that the commercial wisdom of the CoC cannot be interfered with. The Adjudicating Authority further observed that the CoC in its 30th CoC meeting has approved the plan with requisite majority. The issue which was raised and squarely has arisen for consideration is as to whether SRA can be changed after the approval of the Resolution Plan which has not been directly answered by the Adjudicating Authority and relying on the judgment of the Hon'ble Supreme Court regarding the commercial wisdom of the CoC, plan has been approved. We are of the view that the present is not a case where commercial wisdom of the CoC is sought to be impugned by the Appellant.

40. Appellant has submitted that the CoC could not have passed a resolution for substituting the SRA after approval of the plan. Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***"Ebix Singapore Private Limited vs. CoC of Educomp Solutions Limited and Anr.- (2022) 2 SCC 401"*** to support his submission that the Resolution Plan approved by the CoC is also binding and cannot be allowed to be modified or withdrawn. Counsel relied on paragraph 157 and 158 of the judgment which is as follows:-

> *"157. These are binding precedents. Absent a clear legislative provision, this Court will not, by a process of interpretation, confer on the adjudicating authority a power to direct an unwilling CoC to renegotiate a submitted resolution plan or agree to its withdrawal, at the behest of the resolution applicant. The adjudicating authority can only direct the CoC to re-consider certain elements of the resolution plan to ensure compliance under Section 30(2) IBC, before exercising its powers of approval or rejection, as the case may be, under Section 312. In State of A.P. v. P. Laxmi Devi, while determining the constitutionality of a statute, this Court observed that it should g be wary of transgressing into the domain of the legislature, especially in matters relating to economic and regulatory legislation. This Court observed: (P. Laxmi Devi case, SCC p. 751. para 80)*
>
> > *"80. As regards economic and other regulatory legislation judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of*

the statute because the court does not consist of economic or administrative experts. It has no expertise in these matters, and in this age of specialisation when policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the executive or legislative (sic legislature) and try to enforce its own views and perceptions." (emphasis supplied)

158. Judicial restraint must not only be exercised while adjudicating upon the constitutionality of the statute relating to economic policy but also in matters of interpretation of economic statutes, where the interpretative manoeuvres of the Court have an effect of transgressing into the law-making power of the legislature and disturbing the delicate balance of separation of powers between the legislature and the judiciary. Judicial restraint must be exercised in such cases as a matter of prudence, since the court neither has the necessary expertise nor the power to hold consultations with stakeholders or experts to decide the direction of economic policy. A court may be inept in laying down a detailed procedure for exercise of the power of withdrawal or modification by a successful resolution applicant without impacting the other procedural steps and the timelines under IBC which are sacrosanct. Thus, judicial restraint must be exercised while intervening in a law governing substantive outcomes through procedure, such as IBC. In this case, if resolution applicants are permitted to seek modifications after subsequent negotiations or a withdrawal after a submission of a resolution plan to

the adjudicating authority as a matter of law, it would dictate the commercial wisdom and bargaining strategies of all prospective resolution applicants who are seeking to participate in the process and the successful resolution applicants who may wish to negotiate a better deal, owing to myriad factors that are peculiar to their own case. The broader legitimacy of this course of action can be decided by the legislature alone, since any other course of action would result in a flurry of litigation which would cause the delay that IBC seeks to disavow."

41. Another judgment of the Hon'ble Supreme Court which need to be noticed is ***"SREI Multiple Asset Investment Trust Vision India Fund vs. Deccan Chronicle Marketeers and Ors.- (2023) 7 SCC 295"***. The Hon'ble Supreme Court in the above case had occasion to consider the judgment of the Ebix (supra) and has observed that no modification in the plan is permissible after approval by the CoC. Following observations has been made in paragraphs 23, 24 and 25:-

*"**23.** It clearly manifests from the record that the resolution plan was approved by the CoC with 81.39% of voting and it complied with the requirement as contemplated under Sections 30(2) and 30(4) IBC and so far as the exclusive right to use of brand names of "Deccan Chronicle" and "Andhra Bhoomi" is concerned, a specific reference was made in the resolution plan, and to be more particular in Clause 11.12 of the resolution plan.*

***24.** It clearly indicates that what was approved by the CoC with 81.39% of its voting is to the effect that the corporate*

debtor has a perpetual exclusive right to use the brands, namely, "Deccan Chronicle" and "Andhra Bhoomi" and it nowhere indicates regarding the right of ownership over the trade marks/brands, "Deccan Chronicle" and "Andhra Bhoomi" of the corporate debtor. But the adjudicating authority while adjudicating application IA No. 155 of 2018, apart from upholding the exclusive right to use the trade marks, "Deccan Chronicle" and "Andhra Bhoomi", made a further declaration that trade marks belong to corporate debtor DCHL under its order dated 14-8-2019 [Canara Bank v. Deccan Chronicle Holdings Ltd., 2019 SCC OnLine NCLT 32753] , which, in our view, was a modification/alteration in the approved resolution plan which indisputably is impermissible in law and this is what NCLAT in para 32 of its impugned order has observed as under : (Deccan Chronicle Marketeers case [Deccan Chronicle Marketeers v. Deccan Chronicle Holdings Ltd., 2022 SCC OnLine NCLAT 3484] , SCC OnLine NCLAT)

> *"32. In view of the law declared [**Ed.** : The reference appears to be to Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), (2022) 2 SCC 401 : (2022) 1 SCC (Civ) 586 and Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. (P) Ltd., (2021) 9 SCC 657] by the Hon'ble Supreme Court, applying the same to the present appeal, we have no hesitation to conclude that right or ownership, if any, claimed after approval of resolution plan by CoC is extinguished and if ownership of corporate debtor is declared over the trade marks, it would amount to modification or alteration of approved resolution plan by CoC which is impermissible. Hence, the order of adjudicating authority to the extent of declaring the ownership of corporate debtor over the trade marks "Deccan Chronicle" and "Andhra Bhoomi" is*

illegal and the adjudicating authority transgressed the jurisdictional limits. Consequently, the order passed in IA No. 155 of 2018 dated 14-8-2019 [Canara Bank v. Deccan Chronicle Holdings Ltd., 2019 SCC OnLine NCLT 32753] is liable to be set aside."

25. *This Court in Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC) [Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), (2022) 2 SCC 401 : (2022) 1 SCC (Civ) 586] , had held as under : (SCC pp. 541-42, paras 221-22)*

"221. The residual powers of the adjudicating authority under IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12-A IBC and Regulation 30-A of the CIRP Regulations and in the situations recognised in those provisions. Enabling withdrawals or modifications of the resolution plan at the behest of the successful resolution applicant, once it has been submitted to the adjudicating authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days' outer limit of the CIRP under Section 12(3) IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the corporate debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the adjudicating authority, irrespective of the content of the terms envisaged

by the resolution plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. Permitting such a course of action would either result in a downgraded resolution amount of the corporate debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of IBC.

222. If the legislature in its wisdom, were to recognise the concept of withdrawals or modifications to a resolution plan after it has been submitted to the adjudicating authority, it must specifically provide for a tether under IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the corporate debtor may be sent into liquidation by the adjudicating authority or otherwise, in the event of a failed negotiation for modification and/or withdrawal. These are matters for legislative policy."

(emphasis supplied)

42. The above judgment also supports that CoC after having approved the Resolution Plan could not have allowed to modify. There can be only one exception to aforesaid, where Resolution Plan violates any provision of Section 30(2) and the CoC takes a decision to delete the provision which are non-compliant to make the plan compliant. However, that is not an issue in the present case, hence, not required to be dealt any further.

43. Counsel for the Appellant has placed reliance on the judgment of this Tribunal in Company Appeal (AT) (Ins.) No. 333 of 2024- ***"UV Asset Reconstruction Company Ltd. & Anr. vs. Aircel Ltd. Through its Monitoring Committee"***. The above appeal was filed against order of the Adjudicating Authority by which an application filed by 'UV Asset Reconstruction Company Ltd.' for substituting another entity as SRA was rejected. Appeal was dismissed affirming the order of the Adjudicating Authority. In fact, the order of this Tribunal noticed the facts, submissions as well as the decision of the Adjudicating Authority and has expressed its agreement with the reasons given by the Adjudicating Authority for rejecting the application. The short order dated 01.03.2024 of this Tribunal is as follows:-

> *"**01.03.2024:** These two appeal have been filed against order of the same date 27.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II by which two I.As. filed by the Appellant for substituting another entity namely UV Stressed Assets Management Private Limited has been rejected. Appellant was the Resolution Applicant whose Resolution Plan was approved by order dated 09.06.2020. The Appellant filed an application praying for substitution of Resolution Applicant with another entity, which has been rejected by the Adjudicating Authority by the impugned order.*
>
> *2. Learned counsel for the Appellant submits that in view of the circular issued by the Reserve Bank of India, Asset Reconstruction Companies cannot be*

Resolution Applicant unless they have achieved certain net worth which the present Appellant has not. Reserved Bank of India has also issued show cause notice against the Appellant which matter has been taken before the Hon'ble Delhi High Court which is pending consideration. Learned counsel for the Appellant submits that the Appellant cannot be Resolution Applicant in view of the clouds on the eligibility of the Appellant, hence, he has prayed for substituting another Resolution Applicant.

3. The Adjudicating Authority after hearing learned counsel for the Applicants as well as learned counsel for the Monitoring Committee took the view that new Resolution Applicant cannot be brought in nor can be substituted with another Resolution Applicant and rejected the application. Learned counsel for the Appellant submits that the Appellant cannot be Resolution Applicant in view of the clouds on the eligibility on the Appellant, hence, the Adjudicating Authority ought to have been found certain via media with regard to implementation of the resolution or initiate fresh process.

4. We have heard the learned counsel for the Appellant as well as learned counsel for the Monitoring Committee.

5. The present Appeal has been filed against the order by which application filed by the Appellant has been rejected and we fully agree with the reasons given by the Adjudicating Authority for rejecting the application filed by the Appellant for substituting another Resolution Applicant in place of the Appellant. When plan of the Appellant as Resolution Applicant was approved, the Adjudicating Authority rightly refused to

substitute another Resolution Applicant, in which order no infirmity is found.

6. In so far as submission of the Appellant that some way forward has to be looked into. It is always open for the Monitoring Committee as well as the Appellant to make appropriate application before the Adjudicating Authority to find out a way forward and to proceed further and it is for the Adjudicating Authority to take call on said applications and decide the same in accordance with law. Subject to the liberty above, both the appeals are dismissed."

44. The above judgment does support the submission of the Appellant. Counsel for the Respondents sought to distinguish the above judgment on the ground that in the above case, it was after approval of the plan by Adjudicating Authority, application was filed to substitute the SRA and the present case is a case where approval by Adjudicating Authority has not yet been granted. When the SRA cannot be substituted, the above analogy shall also apply to the change of SRA after approval of the Resolution Plan by the CoC. Thus, the above judgment of this Tribunal in "UV Asset Reconstruction Company Ltd. vs. Aircel Ltd." fully supports the submission of the Appellant. The above judgment of this Tribunal has also been affirmed by the Hon'ble Supreme Court by its order dated 10.07.2024 in Civil Appeal (D. No.16938 of 2024)

45. In view of the aforesaid discussions, we are of the view that the Adjudicating Authority committed error in approving the Resolution Plan which was modified Resolution Plan substituting Respondent No.4 as SRA.

Order of the Adjudicating Authority is unsustainable and cannot be approved.

46. We have already noticed that as per Form-H submitted by the Resolution Professional, the CIRP period has come to an end on 14.09.2021. IA for extension and exclusion was filed on 13.09.2021. Item No.17 of Form H is as follows:-

Sl. No.	***Particulars***	***Description***
17.	*Date of Expiry of Extended Period of CIRP*	*14.09.2021 (IA for extension and exclusion is filed on 13.09.2021)*

47. We have noticed that despite the CIRP having come to an end, the CoC proceeded to hold the meeting and modify the Resolution Plan. We have already noticed above that CIRP of the Corporate Debtor has come to an end on 14.09.2021 but CoC thereafter continued for two years by holding several CoC meeting with object to change that SRA into another entity. We have already observed that the steps taken by the CoC and the Resolution Professional were subsequent to filing the application for approval of the Resolution Plan are not inconformity with the IBC and the CIRP Regulations 2016.

48. In the facts of the present case, we are of the view that one more time bound opportunity be given for finding out as to whether any other Resolution Applicants can revive the Corporate Debtor. We, thus, are of the view that by setting aside the order of the Adjudicating Authority approving

the Resolution Plan, we need to direct for issuance of fresh Form-G by the Resolution Professional and complete the entire process within 90 days from today. In result, we allow the appeal, set aside the order impugned dated 04.12.2023 passed in IA No.764 of 2021. We answer the questions in following manner:-

(i) After approval of the Resolution Plan of Respondent No.3 by the CoC on 21.10.2021 and after filing of the application for approval of the plan before the Adjudicating Authority, the CoC has no jurisdiction to substitute the SRA with another SRA who was not part of the CIRP process.

(ii) The CoC has no jurisdiction to modify the Resolution Plan already approved by the CoC and submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC with a caveat that in appropriate cases, under order of the Adjudicating Authority or COC on its own can pass a resolution for modifying the Resolution Plan to make it compliant of Section 30(2).

49. In result, the appeal is allowed with following directions:-

(i) The Order dated 04.12.2023 passed in IA No.764 of 2021 is set aside. The Resolution Professional and the CoC is directed to issue fresh Form G inviting Resolution Applicants and thereafter complete the entire process leading to approval of the Resolution Plan, if any, within 90 days.

(ii) In event, no Resolution Plan is approved as indicated above Resolution Professional may file an application for liquidation

under Section 33 of the IBC before the Adjudicating Authority who may consider and take appropriate decision in accordance with law.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali