NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1803 of 2024

[Arising out of the Impugned Order dated 28.02.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-II in I.A. No. 188 of 2024 in CP (IB) No. 995 of 2018]

In the matter of:

Pratham Expofab Private Limited
Through Brij Bhushan Gupta (Director)
Reg. Office: Flat No. 251-B, 1st Floor,
LIG Flats, Pocket-12, Jasola,
New Delhi 110025

...Appellant

Versus

1. **Mr. Anil Matta, Resolution Professional,**
Regn. No. IBBI/IPA-001/IP-P00223/2017-18/10422
Registered Office:
Matta & Associates, 308, RG Trade Tower,
Plot No. B-7, Netaji Subhash Place,
Pitampura, Delhi, 110034

...Respondent No.1

2. **Mr. Navneet Arora AR,**
FC in Class of Corporate Debtor

...Respondent No.2

3. **M/s. One City Infrastructure Pvt. Ltd.**
Successful Resolution Applicant,
8D, Hansalaya 15, Barakhamba Road,
New Delhi – 110001.

...Respondent No.3

Present:

For Appellant : Mr. Mrinal Harsh Vardhan, Mr. Kailash Ram, Advocates.

For Respondent : Mr. Sumant Batra, Ms. Anuja Dethia, Mr. Rishabh Govila, Mr. Srikant Singh, Ms. Nidhi Yadav, Mr. Sarthak Bhandari, Advocates.

Mr. Rishabh Nangia, Advocate for R-3/SRA.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 28.02.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-II) I.A. No. 188 of 2024 in CP (IB) No. 995 of 2018. By the impugned order, the Adjudicating Authority has dismissed IA No. 188 of 2024 filed by the Appellant seeking to place a settlement proposal under Section 12A of IBC before the Committee of Creditors (**"CoC"** in short) and to permit withdrawal and suspension of the Corporate Insolvency Resolution Process (**"CIRP"** in short) of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant who is the suspended director of the Corporate Debtor.

2. To outline in brief the salient factual matrix of the present case at hand, the Corporate Debtor-M/s Primrose Infratech Pvt. Ltd. was admitted into CIRP on 21.01.2018. M/S One City Infrastructure Pvt Ltd submitted their resolution plan dated 24.01.2020 with the RP in respect of the Corporate Debtor under CIRP. The resolution plan along with the Addendum as submitted by them was approved by the CoC in the 8th CoC meeting held on 06.02.2020 with 80.84% voting share. The result of the voting was circulated to the CoC on 14.02.2020. The Respondent No.1-Resolution Professional (**"RP"** in short) filed IA No. 1489

of 2020 seeking the approval of the Adjudicating Authority to the resolution plan dated 30.01.2020 along with an Addendum dated 07.02.2020 submitted by the M/S One City Infrastructure Pvt Ltd-Successful Resolution Applicant (**"SRA"** in short). While the IA No. 1489 remained pending for adjudication before the Adjudicating Authority, the Suspended Directors of the Corporate Debtor filed their objections to the resolution plan vide IA No. 5634 of 2023 in July 2023. Thereafter, on 11.01.2024, the suspended director of the Corporate Debtor filed IA No. 188 of 2024 before the Adjudicating Authority with the prayers to allow the Appellant to place a settlement proposal under Section 12A of the IBC read with CIRP Regulations 30A before the CoC for deliberation and voting and to allow consequential withdrawal and suspension of CIRP of the Corporate Debtor. On 23.01.2024, the IA No. 188 of 2024 was allowed by the Adjudicating Authority and RP was directed to place the settlement plan before the CoC alongwith directions to the Appellant to deposit Rs 1 Cr into the CIRP account of the Corporate Debtor before the RP would call a meeting of the CoC to examine their proposal. The order of the Adjudicating Authority dated 23.01.2024 was challenged by SRA-Respondent No. 3 before this Tribunal. This Tribunal on 28.02.2024 allowed the appeal and set aside the order of 23.01.2024 granting liberty to the SRA to file its objections before the Adjudicating Authority in respect of IA No. 188 of 2024. The order of this Tribunal was challenged by the Appellant before the Hon'ble Supreme Court vide Civil Appeal No. 5161 of 2024 which was dismissed on 26.04.2024. Thereafter, IA No. 188 of 2024 was heard by the Adjudicating Authority on 05.08.2024 alongwith the objections filed by the SRA and orders were reserved. The Adjudicating Authority after holding that

the resolution plan of the SRA was at the stage of consideration by the Adjudicating Authority and the suspended management not having shown their bonafide in their earlier settlement proposals on 28.08.2024, dismissed IA No. l88 of 2024. Aggrieved by the said impugned order, the present appeal has been preferred by the ex-director of the Corporate Debtor.

3. We have heard Shri Mrinal Harsh Vardhan, Ld. Advocate appearing for Appellant, Shri Sumant Batra, Ld. Advocate for the RP and Shri Rishabh Nangia, Ld. Advocate representing Respondent No.3-SRA.

4. Assailing the impugned order, it has been contended by the Ld. Counsel for the Appellant that Section 12A of IBC read with CIRP Regulation 30A provides scope for submission of multiple settlement proposals particularly when the resolution plan of the SRA has not attained finality. The Appellant has also raised questions on whether resolution plan which is approved by the CoC can be subjected to further amendments as has happened in the present case which tantamount to amendment of the resolution plan which impermissible under law. Reliance has been placed on the judgment of this Tribunal in ***Shaji Purushothaman Vs Union Bank of India & Ors.*** in ***CA(AT) No. 921 of 2019*** (‘***Shaji***’ in short) wherein, according to the Appellant, it was held by this Tribunal that the settlement proposal given by the suspended director under Section 12A of IBC can be examined by the CoC to find whether the settlement proposal is better than resolution plan. Reliance has also been placed on the judgement of ***Brilliant Alloys Pvt. Ltd. Vs S. Rajagopal and Ors. (2022) 2 SCC 544*** (‘***Brilliant Alloys***’ in short) wherein the Hon’ble Supreme Court has held that CIRP Regulation 30A is directory in nature and has to be read in conjunction

with the statutory provision contained in Section 12A of IBC which renders it clear that Section 12A settlement proposal can be filed at any stage. It is also contended that the Adjudicating Authority failed to appreciate that the commercial wisdom of the CoC is supreme and therefore the CoC can accept a settlement proposal even after approval of resolution plan by the CoC. There is no cap on the number of times a settlement proposal can be placed or at what stage a CIRP proposal can be submitted. The Adjudicating Authority by dismissing IA No. 188 of 2024 had curtailed the right of the CoC to apply its commercial wisdom to consider a better settlement proposal submitted by the Appellant under Section 12A of the IBC as compared to the resolution plan approved by the CoC.

5. It is also the case of the Appellant that the Adjudicating Authority failed to appreciate that the resolution plan dated 30.01.2020 submitted by the SRA has not attained finality and already been subjected to several amendments. It is the contention of the Appellant that the RP has one-sidedly permitted the SRA to revise its plan several times even after its approval by the CoC which is impermissible in law. On the other hand, the Appellant was not afforded opportunity to submit their settlement proposal. It is also contended that this Tribunal in ***Sukhbeer Singh Vs Resolution Professional, Maple Realcon Pvt. Ltd. & Ors.*** in ***CA(AT)(Ins) No. 259 of 2019*** has observed that the promotors can settle the matter with all creditors by presenting a proposal which the RP is bound to place before the CoC. Reliance was also placed on the judgment of this Tribunal in ***Mr. Gulab Chand Jain Vs Mr. Ram Chandra D. Choudhary Resolution Professional of Vijay Timber Industries Pvt. Ltd.*** in which it was

held that even after approval of resolution plan by the CoC and its submission before the Adjudicating Authority, the CoC may change its mind and pass a resolution to liquidate the Corporate Debtor. Thus, the CoC is competent to determine which course of action is best, whether it be approval of the resolution plan or by way of a settlement proposal under Section 12A or by opting for liquidation.

6. Refuting the contentions and arguments submitted by the Appellant, the Ld. Counsel for Respondent No. 3-SRA submitted that the RP had issued EOIs thrice in Form-G. The resolution plan of the SRA had been approved by the CoC on 06.02.2020 with majority vote share. It was contended that upon approval of resolution plan by the CoC, it could not have considered a settlement proposal in view of the decision of this Tribunal in ***Hem Singh Bharana Vs Pawan Doot Estate Pvt. Ltd.*** in ***CA(AT)(Ins) No. 1481 of 2022*** ('***Hem Singh Bharana***' in short) which decision has been subsequently upheld by the Hon'ble Supreme Court in ***Civil Appeal No. 443 of 2023***. It was also contended that this Tribunal had again held in ***Nehru Place Hotels and Real Estates Pvt. Ltd. Vs Sanjeev Mahajan & Ors.*** in ***CA(AT)(Ins) No. 1715-1716 of 2023*** ('***Nehru Place Hotels***' in short) that a settlement proposal under Section 12A cannot be put before the CoC after the CoC has approved the resolution plan and this judgment has also been upheld by Hon'ble Supreme Court in ***Civil Appeal No. 602-603 of 2024***. With the approval of the resolution plan by the CoC, the plan became *inter se* binding between the CoC and the SRA and hence no settlement proposal of the suspended management could have been considered at this stage.

7. It was also pointed out that the RP had filed IA No. 1489 of 2020 under Section 30(6) of the IBC seeking approval of the resolution plan by the Adjudicating Authority which has been pending for 5 years filed by the suspended management and that dilatory tactics adopted by the suspended management by filing frivolous applications has delayed adjudication of plan approval application.

8. It was also pointed out that the settlement proposal submitted by the suspended management was the result of a collusion of the suspended management with an unsuccessful resolution applicant which was seeking a backdoor entry to take over the Corporate Debtor at the cost of innocent home buyers. Allowing such proposals to be submitted by ineligible or unsuccessful resolution applicants would cause derailment of CIRP. It was also pointed out that the motive behind submitting the Section 12A proposal was not to satisfy the dues of the creditors but to wriggle out of all statutory dues, litigations, delay charges and penalties. Such reliefs and concessions are not contemplated under Section 12A of IBC.

9. Similar views have been echoed by the Ld. Counsel for the Respondent No. 1-RP that once the CoC had approved the resolution plan, it does not have jurisdiction or authority to consider a settlement proposal proposed by the suspended management. Reliance has been placed on the judgements of this Tribunal in ***Hem Singh Bharana*** judgment supra and the ***Nehru Place Hotels*** judgment supra which judgements have been subsequently affirmed by the Hon'ble Apex Court.

10. It has also been contended that the suspended management has been making repeated attempts to dislodge the CIRP process even after the approval of the plan by the CoC. Immediately after constitution of CoC, the suspended management had filed an application seeking withdrawal of CIRP on account of settlement between the Corporate Debtor and the Operational Creditor. This application had been dismissed by the Adjudicating Authority on 08.04.2019 on the ground that once CoC is constituted, Section 9 petition cannot be withdrawn by confining only to settling the claims of the operational creditor. The suspended management had again filed the second application seeking withdrawal of CIRP on which an opportunity was granted to place their settlement proposal before the CoC. However, the settlement proposal having been rejected by the CoC in the 9th meeting with 80.22% vote share, the Adjudicating Authority took note of the same on 28.02.2020 and only directed that the voting details may be communicated to the Appellant as desired by them. The present IA No. 188 of 2024 is the third attempt by the suspended management to derail the CIRP process. The Adjudicating Authority after holding that the resolution plan of the SRA was at the stage of consideration by the Adjudicating Authority and the suspended management not having shown their bonafide in their earlier settlement proposals on 28.08.2024 had dismissed IA No. l88 of 2024. The endeavour of the Appellant is therefore nothing but another attempt in the series of obstacles trumped up to subvert the revival of the Corporate Debtor. Thus, the applications for withdrawal/settlement proposals of the Appellant were clearly vexatious in nature and filed with the ulterior motive of delaying the process of plan approval by the Adjudicating Authority.

11. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

12. The short point for our consideration is whether in the attendant facts and circumstances, there is any infirmity in the impugned order in denying the Appellant yet another opportunity to submit a Section 12A proposal when the resolution plan of the SRA is at the stage of consideration by the Adjudicating Authority and the Appellant purportedly not having shown bonafide in their previous settlement/withdrawal proposals.

13. Having delineated the issue for consideration, we would like to begin by taking notice of how the Adjudicating Authority has dealt with the matter. The relevant excerpts of the impugned order is as reproduced below:

> *"8. A comprehensive look at the factual aspects and the orders previously passed in the matter makes it clear that right from the inception of CIRP in question, the erstwhile directors had made several attempts to invoke the provisions of Section 12A of the Code.*
>
> *9. In any case, an application for withdrawal in terms of Section 12-A of the Code could have been made only if CoC approved the proposal with a 90% voting share. The relevant provisions of the Code read as under:*
>
> ***"12A. Withdrawal of application admitted under section 7, 9 or 10.***
>
> *The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."*
>
> *10. In the present case, the Applicant has approached this Adjudicating Authority seeking our direction to the COC to consider resorting to process as per the above provision of law.*

11. In this context, we note that this Adjudicating Authority has already dismissed two applications filed by the ex-Directors under Section 12A of IBC, 2016. Furthermore, the CoC has once considered one such proposal in its meeting held on 19.02.2020 and rejected the same.

12. As we are now at the stage of consideration of the resolution plan, it is not deemed apt to give yet another opportunity to the Applicant to file a proposal under Section 12A as applicants have not shown bonafide for settlement earlier and it is just a repeated process to derail the approval of the Resolution Plan application."

14. From perusal of the impugned order, it is clear that the Adjudicating Authority has taken notice that the suspended management had also made attempts previously to invoke the provisions of Section 12A and these proposals after consideration by CoC and/or the Adjudicating Authority had been rejected. The Adjudicating Authority has also observed that at the present stage when the resolution plan is under consideration, it is not deemed apt to give yet another opportunity to the Applicant to file a proposal under Section 12A besides noting that Section 12-A of the IBC stipulates that any such proposal needs 90% voting share of the CoC.

15. It is however the case of the Appellant that the statutory provisions of IBC and the Regulations framed thereunder are designed to allow flexibility for the suspended directors to resolve the insolvency process by facilitating settlement and withdrawal of CIRP at any stage. It has also been emphatically asserted that the Hon'ble Supreme Court in ***Brilliant Alloys*** supra has held that CIRP Regulation 30A which is directory in nature has to be read in conjunction with the statutory provision contained in Section 12A of IBC which renders it clear that 12A settlement proposal can be filed at any stage. It is also contended that the Adjudicating Authority failed to appreciate that the commercial wisdom of

the CoC is supreme and therefore the settlement proposal should have been directed by the Adjudicating Authority to the CoC for its consideration as CoC can accept a settlement proposal even after approval of resolution plan by the CoC. It was also vociferously argued that the interpretation of Regulation 30A done by this Tribunal in ***Hem Singh Bharana*** judgment is contrary to the ratio set by the Hon'ble Supreme Court in ***Brilliant Alloys Limited.*** Similarly, the view taken by this Tribunal in ***Nehru Place Hotels*** judgment that settlement proposal under Section 12A cannot be submitted after issue of EOI is inconsistent with the findings of the Hon'ble Supreme Court in ***Brilliant Alloys*** judgment.

16. Per contra, it is the contention of the Respondents that the present settlement proposal contained in IA No. 188 of 2024 is nothing but another attempt in the series of obstacles trumped up to subvert the revival of the Corporate Debtor. This application for settlement of the Appellant was clearly filed with the ulterior motive of delaying and derailing the process of plan approval by the Adjudicating Authority.

17. Before we go into the merits of the rival contentions raised by the Appellant and the Respondents, we need to see how many times settlement proposals had been received from the suspended management and the fate met by these proposals in juxtaposition to when the resolution plan was received from Respondent No.3 and the outcome of deliberations and voting thereon by the CoC.

18. We notice that for the first time IA No. 315 of 2019 had been filed by the suspended director seeking withdrawal of CIRP in view of their settlement with

the Operational Creditor which was rejected by the Adjudicating Authority on 08.04.2019 on the ground that Section 9 petition cannot be withdrawn by the Corporate Debtor by confining only to settling the claims of the operational creditor. This order was challenged by the Appellant vide CA(AT)(Ins) No. 564 of 2019 which was dismissed by this Tribunal on 24.05.2019 which order has since attained finality.

19. Subsequently, another IA No. 1511 of 2019 was filed by the suspended director invoking Section 12A of the IBC for withdrawal of the CIRP process on which the compromise proposal was directed to be placed before the CoC by the Adjudicating Authority. It was however left to the CoC by the Adjudicating Authority to accept the proposal of the suspended director and that in case their proposal received the approval of 90% of the members of CoC, the suspended director would be entitled to seek termination of the resolution plan. Pursuant to the order dated 14.01.2020 of the Adjudicating Authority, the suspended director gave the 12A proposal dated 08.02.2020 to the RP. The same was considered by the 8th and 9th meetings of the CoC on 19.02.2020 and it was decided by CoC with 80.22% vote share that the 12A proposal was not feasible or commercially viable. Following the decision of the 9th CoC meeting, the Adjudicating Authority dismissed IA No. 1511 of 2019. It is significant to note that the Adjudicating Authority on 14.01.2020 while directing that CoC may consider the proposal under Section 12A had also observed that the CIRP process "*has been impeded at every stage by filing of such applications*".

20. This brings us to IA No. 188 of 2024 by which the Appellant has fielded yet another settlement proposal before the Adjudicating Authority. Though, the

Adjudicating Authority while considering IA No. 188 of 2024 had initially directed the RP to place the settlement proposal of the suspended management before the CoC for its decision, this order had been set aside by this Tribunal and the matter remanded back to the Adjudicating Authority. It may be pertinent to note that this Tribunal while giving its directions had held that the Adjudicating Authority ought to have given an opportunity to the SRA to submit a response to IA No. 188 of 2024 and left it open for the Adjudicating Authority to decide IA No. 188 of 2024 alongwith the objections of the SRA, if any, in accordance with law. This decision of this Tribunal was also challenged by the Appellant before the Hon'ble Apex Court but was upheld by the Hon'ble Supreme Court in Civil Appeal No. 5161 of 2024 dated 26.04.2024. The Adjudicating Authority having reconsidered the IA No. 188 of 2024 rejected the settlement proposal which has been assailed by the Appellant which is presently before us for consideration. It is pertinent to note that while rejecting this settlement proposal, the Adjudicating Authority had observed that it was not satisfied with the bonafide of the Appellant and looked upon the settlement proposal as a repeated process to derail the approval of the Resolution Plan application.

21. Having arrived at the conclusion that the Appellant had indeed submitted multiple settlement proposals, this brings us to the question whether the Adjudicating Authority could have precluded the consideration of the 12A proposal of the Appellant by the CoC on the ground that the resolution plan was under consideration of the Adjudicating Authority. For proper appreciation of this issue at hand, it may be useful at this stage to firstly go through the minutes of the 9th CoC meeting of 19.02.2020 which is as extracted here-under:

“AGENDA ITEM NO: 6

To consider and approve the application/proposal under section 12(A) of IBC 2016 dated 08/02/2020 filed on behalf of the suspended director, to allow withdrawal of application admitted under section 9 of IBC, 2016 and suspension of ongoing CIRP.

“…..RP also informed that CoC/Home Buyers in the 8th CoC, expressed that since the proposal of suspended directors have not been received as per time frame it cannot be kept on waiting, it is not to be considered or put to vote and this is as per the commercial wisdom the CoC, how Rs. 126 crore project can be built by infusing Rs. 2 Crores, when other party is infusing upfront of Rs.15 Crores as per commitment, last CoC was held on 24/01/2020 and after almost 2 weeks, there is no concrete proposal of suspended directors.

It was reiterated by CoC/Home Buyers as stated in the Minutes of 8th CoC that as per commercial wisdom of CoC the 12 A proposal is not feasible or commercially viable they are not interested in 12 A and do not want any e-voting on the same.

……..

It was also informed that during course of hearing, Advocate of suspended director Mr. Mrinal Harsh Vardhan raised the concern that application/proposal of the suspended directors has not been put to vote. RP informed the Hon'ble Bench that as per the e voting concluded on 13/02/2020, the CoC has voted with 80.84% in favour of the Resolution Plan of One Group M/s One City Infrastructure Pvt Ltd and APM City Infrastructure Pvt Ltd. (consortium member) and keeping in view the decision of CoC taken at 8th CoC that as per commercial wisdom of CoC the 12 A proposal is not feasible or commercially viable, they are not interested in 12 A and do not want any e-voting on the same.

AGENDA ITEM NO 06 FOR E-VOTING: To consider and approve the application/ proposal under section 12(A) of IBC 2016 dated 08/02/2020 filed on behalf of the suspended director to allow withdrawal of application admitted under section 9 of IBC 2016, and suspension of ongoing CIRP.

To consider and approve the application/ proposal under section 12(A) of IBC 2016 dated 8/02/2020 filed on behalf of the

suspended director, to allow withdrawal of application admitted under section of IBC 2016, and suspension of ongoing CIRP.

Since the members representing 80.22% of the voting rights dissented to the matter, the decision on the item stands **"FAILED/NOT PASSED"."**

(Emphasis supplied)

It is clear therefore that 80.22% of the CoC members had already voted against the settlement proposal dated 08.02.2020 of the Appellant. The 8th CoC meeting had also concluded that the 12A proposal is not feasible or commercially viable. The settlement proposal, therefore, stood clearly rejected by the CoC pursuant to deliberations in the 8th and 9th CoC meetings.

22. It is equally significant to note that around the same time when the settlement proposal dated 08.02.2020 of the Appellant had been rejected, Respondent No. 3 had submitted their resolution plan dated 24.01.2020 with the RP. The resolution plan along with the Addendum as submitted by the Respondent No. 3 was approved by the CoC in the 8th CoC meeting held on 06.02.2020 with 80.84% voting share. The result of the voting was circulated to the CoC on 14.02.2020 and the 9th CoC meeting had noted the approval of the resolution plan of the SRA with CoC having voted with 80.84% in favour of the plan. It is the case of the Respondents that once the resolution plan has been accepted by the CoC, it becomes binding and irrevocable as between the CoC and the SRA.

23. This brings us to the counter contention of the Appellant that in terms of the judgement of the Hon'ble Supreme Court in ***Brilliant Alloys supra,*** CIRP Regulation 30A being directory in nature and the said regulation when read in

conjunction with the statutory provision contained in Section 12A of IBC, it becomes clear that Section 12A settlement proposal can be filed at any stage. Per contra, the Respondents No. 1 and 3 have relied on the judgement of this Tribunal in ***Hem Singh Bharana judgement*** and ***Nehru Place Hotels judgement*** supra that a settlement proposal under Section 12A cannot be put before the CoC after they have approved the resolution plan.

24. When we look at the ***Hem Singh Bharana judgement,*** we notice that this Tribunal had dealt with an analogous issue as to whether after approval of the resolution plan by the CoC which has been placed before the Adjudicating Authority for its approval, any 12A settlement proposal can be entertained deferring consideration of approval of the resolution plan by the Adjudicating Authority.

25. While dealing with the above issue, this Tribunal took special notice of proviso to Regulation 30A of the CIRP Regulations and the intendment of this proviso after noticing that Regulation 30A has been substituted by Notification dated 25.07.2019 to give effect to the provisions of Section 12A. It is pertinent to note that this notification of 25.07.2019 came into effect after the judgement of the Hon'ble Supreme Court in ***Brilliant Alloys supra*** which is of 14.12.2018. We now proceed to reproduce the relevant extracts of the ***Hem Singh Bharana judgement*** to find the basis of its conclusion that the Regulation 30A was framed in this manner as it was never intended that after approval of Resolution Plan by CoC, an application under Section 12A can be entertained. The relevant paras read as follows:

"14. Regulation 30A has been substituted by Notification dated 25th July, 2019 to give effect to the provisions of Section 12A, which was inserted in the Code by Act No.26 of 2018. Regulation 30A(1) (b) proviso provides:

> *"Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation."*

15. The intendment of the proviso is that there has to be special reason for making Application under Section 30A(1)(b), when it is filed after publication of invitation for Expression of Interest. The Regulation clearly indicate that when Expression of Interest' is issued inviting Resolution Plan, there has to be sufficient reason justifying withdrawal.

16. Regulation making Authority was well aware about the entire process under the Code, including approval of the Plan by the CoC and filing of the Application before the Adjudicating Authority for approval of the Resolution Plan. Had it intended that 12A Application can be entertained even after Resolution Plan is approved by the CoC, the proviso would not have confined to issue invitation for Expression of Interest, rather, it could have been conveniently mentioned that after approval of Resolution Plan Applicant should justify withdrawal. It was never intended that after approval of Resolution Plan by CoC, Application under Section 12A can be entertained. Hence, the Regulation is framed in that manner."

(Emphasis supplied)

26. The decision of this Tribunal in ***Hem Singh Bharana judgement*** has been subsequently upheld by the Hon'ble Supreme Court in ***Civil Appeal No. 443 of 2023***. The same ratio of ***Hem Singh Bharana*** judgement supra was echoed by this Tribunal in ***Nehru Place Hotels*** judgement supra that a settlement proposal under Section 12A cannot be put before the CoC after they have approved the resolution plan. Even this judgment has also been upheld by Hon'ble Supreme Court in ***Civil Appeal No. 602-603 of 2024***. When both ***Hem Singh Bharana and Nehru Place Hotels*** judgement have been upheld by

Hon'ble Supreme Court, the Appellant's contention of inconsistency of these two judgements with ***Brilliant Alloys*** judgement supra does not have any merit especially because the latter judgement had been pronounced on 14.12.2018 which date is anterior to the substituted Regulation 30A notification of 25.07.2019. The Appellant has therefore clearly misconstrued and misapplied the ratio of ***Hem Singh Bharana***. Even the judgment of this Tribunal in ***Shaji Purushothaman vs. Union Bank of India & Ors.*** in **CA(*AT*)*(Ins)* No. *921 of 2019*** which has been relied upon by the Appellant also does not come to the rescue of the Appellant because the above observations were made out in the facts of that case wherein it had simply allowed liberty that the decision on entertaining a Section 12A application could be done by the CoC and as such this Tribunal did not lay down any binding ratio that after approval of the Plan an Application under Section 12A ought to be entertained.

27. In the present facts of the case, we notice that the CoC in its deliberations in the 8th and 9th CoC meetings had already put their stamp of approval on the resolution plan. Such opinion expressed by the CoC after due deliberations in the meetings through voting represents collective business decision and constitutes an expression of the CoC's commercial wisdom. And it is here that primacy of the commercial wisdom of the CoC comes into play. The Hon'ble Apex Court in its judgement in **"K. Sashidhar Vs. Indian Overseas Bank and Ors (2019) 12 SCC 150"** has held:

> *"52..... Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about*

the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their them of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

The paramount supremacy of the commercial wisdom of CoC has been upheld in a catena of judgments by the Hon'ble Supreme Court. It, therefore, needs no reiteration that we have to respect the well-settled principle of supremacy of the collective wisdom of the CoC.

28. Thus, having regard to the given facts and circumstances and keeping in view that supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon'ble Supreme Court, we are of the considered view that the suspended management cannot insist, impose or force the consideration of its settlement proposal by the CoC when the CoC in the exercise of its business decision has categorically decided against considering any such proposal from the Appellant. The decision of CoC is a business decision taken in the exercise of their commercial wisdom which is clearly not amenable to judicial review and hence the Adjudicating Authority committed no error in not issuing any directions to the CoC to consider the settlement proposal.

29. This brings us to the contention raised by the Appellant that the resolution plan has not attained finality since several changes have been made to the resolution plan after its approval by the CoC. This argument has been repelled by the Respondents by stating that the addendum in the resolution plan were

not in the nature of revision of the plan but was made to make the resolution plan compliant under law. The Addendum were made with the objective to cater to the changes in the IBC. Explaining further, it was pointed that the first amendment was made after deliberations in the 12th CoC meeting of 26.08.2023 so as to enhance the corpus of funds for treatment of belated claims from Rs 2 Cr to Rs 10.94 Cr. The second Addendum dated 30.04.2024 since the claim of GNIDA has been held as that of a Secured Operational Creditor in terms of the judgment of the Hon'ble Supreme Court in the matter of ***Prabhjit Singh Soni Vs GNIDA 2024 SCC Online SC 122.*** The third amendment made on affidavit on 24.08.2024 was to fulfil the dues of the EPFO department within a period of 90 days as contemplated for other operational creditors under the resolution plan. At this stage, we do not wish to make any comments/observations on this issue as that would be premature and improper since the plan is pending consideration of the Adjudicating Authority.

30. We cannot be unmindful of the fact that the overarching objectives of the IBC as enshrined in the Preamble and articulated in the Statement of Objects and Reasons of this enactment is reorganization and insolvency resolution of corporate debtor in a time bound manner for maximization of the value of the assets. Thus, the said maximization has to be achieved within the timeline provided in the scheme. Speedy resolution is the essence of IBC. Time is a crucial facet of IBC proceedings and such proceedings cannot be subjected to indefinite delay as that would defeat the object of the statute. In the present facts of the case, we find that it has been more than 5 years since the Corporate Debtor was admitted into CIRP and nearly 4 years since the resolution plan of the SRA was

approved by the CoC in 2020. Therefore, when a resolution plan has already been received by the CoC and the CoC in the exercise of its commercial wisdom has decided to only consider this plan and has also rejected with majority voting the settlement plan given by the Appellant, no error has been committed by the Adjudicating Authority in disallowing further opportunity to the Appellant to submit a Section 12A proposal.

31. For the foregoing reasons discussed above, we find the Appeal to be devoid of merit. The Appeal is dismissed. The impugned order does not warrant any interference. Since the application submitted by the RP before the Adjudicating Authority for approval of the resolution plan of the SRA is pending adjudication for long, we are of the view that the Adjudicating Authority may proceed expeditiously to decide the same.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 05.11.2024

Abdul/Harleen