

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 230 / 2025
(IA Nos. 663, 664 & 689 / 2025)

In the matter of:

JM Financial Asset Reconstruction Company Ltd.

(acting in its capacity as trustee of
Rail December 2024 Trust)

7th Floor, Cnergy, Appasaheb Marathe Marg,
Prabhadevi – 400025

.... Appellant

V

Mr. Venkatachalam,

Resolution Professional of

Raigarh Champa Rail Infrastructure Pvt. Ltd.

8-2-293/82/A/431/A, Road No. 22,

Jubilee Hills, Hyderabad,

Telangana, India – 500033

.... Respondent

Present:

For Appellant : Mr. PH. Arvindh Pandian, Senior Advocate
For Mr. Avinash Krishnan Ravi, Ms. Palak Nenwani &
Mr. Ronit Chopra, Advocates

For Respondent : Mr. Y. Suryanarayana & Mr. Tushar Nagar, Advocates

J U D G M E N T

(Hybrid Mode)

Per : Justice Sharad Kumar Sharma, Member (Judicial):

1. The challenge, in the instant Company Appeal (AT) (CH) (INS) No. 230 / 2025, as given by the Appellant is to the Impugned Order of 03.04.2025, as it has

been passed by the Ld. Adjudicating Authority on the Application IA (IBC) / 608 / 2025 in CP (IB) / 187 / 07 / HDB / 2020.

2. The consequential effect of the Impugned Order under challenge has been that, the directions has been given to the Resolution Professional (RP) to conduct and complete the challenge mechanism process amongst the Resolution Applicants as contemplated under Regulation 39 (1A) (b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

3. By virtue of the Impugned Order, the Ld. Adjudicating Authority has rejected the Application of the Resolution Professional to permit him to issue a fresh Form G to invite Expression of Interest (EoI) from new, interested and eligible prospective Resolution Applicants to submit their Resolution Plans, while continuing to retain the existing Resolution Applicants within the option given to them to participate in the challenge mechanism. It is the case of the Appellant that the rejection of his Application happens to de hors the basic principles of maximizing the value of assets of the Corporate Debtor.

4. The brief facts of the case is that, the CIRP process of the Corporate Debtor stood commenced with effect from 01.01.2021. The First Form G was issued on 24.08.2021, and as many as 9 Prospective Resolution Applicants had submitted their Expression of Interest. But, however, due to there being a bundle of litigations involving the Corporate Debtor and the decisions which were taken thereon, the process contemplated on the basis of the First Form G, as issued on

24.08.2021 remained pending and it could not be crystalized to be given a final shape, because no compliant Resolution Plan was received and most of the PRAs sought extension of time to submit the said Plans. Meanwhile, the Consortium comprising of NTPC, PFC & REC, requested RP for a permission to submit EoI and to participate in the Bidding process. This was allowed by CoC and later affirmed by Ld. NCLT on 05.06.2023, by extending time to submit EoI.

5. The EoI submission process remained pending till May'2024, because Ld. NCLT directed the RP of KMPCL (KSK Mahanadi Power Company Limited) not to receive any resolution pending adjudication of various proceedings seeking consolidation of CIRP of KMPCL, KWIPL & the Corporate Debtor herein. However, said Interim Order in respect of KMPCL was vacated on 05.04.2024 and fresh Form G was issued on 11.04.2024. Consequent to this, CoC of the Corporate Debtor extended last date of submission of Resolution Plans to 04.06.2024. In all, 5 Resolution Applicants submitted its Resolution Plan as on 04.06.2024, out of which, the Plan submitted by M/s. Medha Servo Drives Private Limited stood approved by CoC with 100% voting in favour.

6. Consequent to this, an Application was submitted before the Ld. Adjudicating Authority for the purposes of approval of the Resolution Plan. The same was heard and was reserved for final orders on 10.07.2024. However, before Ld. NCLT could pass any orders on the said Application, CoC on 23.10.2024 with the majority voting share of 78.59%, resolved to undertake the challenge

mechanism process, in accordance with the CIRP Regulations under I & B Code, 2016. In pursuance to this decision taken on 23.10.2024, the CoC also resolved to withdraw the Plan approval application already submitted, with liberty to file a fresh application depending upon the outcome of the ‘challenge mechanism process’ to be undertaken to which the Successful Resolution Applicant i.e. Medha, had consented upon. On filing of the Application to that effect, as above, the Ld. Adjudicating Authority, on 25.10.2024 dismissed the Application IA No. 16 / 2024 as withdrawn, with a liberty to file a fresh application in respect of the same subject matter.

7. However, instead of proceeding with the ‘challenge mechanism process’, as permitted by Ld. NCLT, the RP, based on the decision of CoC in its 43rd Meeting with 78.59% majority filed IA No. 388 / 2025, praying for limited reopening of the Bidding process of the Corporate Debtor and to enable submission of Expression of Interest from JSW Energy Limited, in order to achieve greater value maximization. This Application IA No. 388 / 2025 of the Resolution Professional was rejected by Ld. NCLT by the Order passed on 06.03.2025, observing thereof that the said proposal was found to be contrary to the principles of fairness and timelines of the CIRP process.

8. In the meantime, the JSW Energy Limited, itself had filed an Application seeking permission to participate in the CIRP process of the Corporate Debtor,

and requesting for the issuance of a fresh Form G. These were dismissed by Ld. NCLT on 17.12.2024.

9. JSW Energy Ltd. filed two more applications IA Nos. 39 & 40 / 2025 seeking permission to participate in the “challenge mechanism process” of the Corporate Debtor. These Applications were also dismissed by the Order of 02.04.2025, on the ground that, since JSW Energy Limited, was not even a Prospective Resolution Applicant in the CIRP process of the Corporate Debtor, the application seeking permission to participate in the challenge mechanism process of the Corporate Debtor is not tenable.

10. Pursuant to dismissal of his application being IA No. 388 / 2025 by Ld. NCLT on 06.03.2025, the RP convened 44th Meeting of CoC on 13.03.2025, to seek the way forward. The CoC with a voting of 78.59% in favour, resolved to issue fresh Form G and to invite EoI from new PRAs while retaining the existing Resolution Applicants with option given to participate in the challenge mechanism for the purposes to facilitate the maximization of the value of the Corporate Debtor.

11. Accordingly, the Resolution Professional filed the application being IA No. 608 / 2025 on 28.03.2025, seeking permission to issue fresh Form G and to invite Expression of Interest from new, interested and eligible Prospective Resolution Applicants in the interest of maximization of value of the Corporate Debtor.

12. However, Ld. Adjudicating Authority dismissed the said IA on 03.04.2025, by passing the Impugned Order on the grounds that the said application appears to be yet another attempt to facilitate entry of JSW as a Resolution Applicant in the CIRP process of the Corporate Debtor, and that when in response to request of CoC, liberty was already granted to withdraw the Plan approval application and to file a fresh application upon completion of challenge mechanism, the same is yet to be complied with and it may be complied with at the first instance.

13. The Ld. Counsel for the Appellant has argued that the manner in, which the Impugned Order has been rendered by the Ld. Adjudicating Authority goes contrary to the principle of the maximization of value of the assets of the Corporate Debtor and consequently, to the very spirit of the CIRP process.

14. He has further contended that the Impugned Order suffers from various legal vices, as it has been rendered without appreciating the merits of the application and without giving due recognition to rights and the commercial wisdom of the Committee of Creditors, the supremacy of which has been upheld by several Judgments of Hon'ble Apex Court and Hon'ble NCLAT, such as *Kalpraj Dharmishi & Anr. V. Kotak Investment Advisors Ltd. & Anr., Vistra ITCL (India) Pvt. Ltd. V. Torrent Investments Pvt. Ltd. & Ors., Jindal Stainless Limited V. Shailendra Ajmera & Ors.*

15. He has further argued that, no valid reasons has been assigned by the Ld. Adjudicating Authority in the Impugned Order, while dismissing the application IA No. 608 / 2025, and no material procedural irregularity in the proposal to issue a fresh Form G, inviting EoI has been pointed out and despite the aforesaid fact, directing the CoC to proceed with the challenge mechanism process by interfering with the commercial wisdom of the CoC indicates complete non-application of mind.

16. If the controversy is taken up and considered in its entirety, the relief as it was sought for in IA (IBC) / 608 / 2025, prima facie appears to meet the objective of maximization of value which is the basic objective of the I & B Code, 2016, in relation to the Corporate Debtor.

17. Further, the directions issued in the Impugned Order amounts to creating restrictions on the rights and commercial wisdom of the CoC to issue Form G in compliance of the provisions of the I & B Code, 2016, as issuance of fresh Form G is well within the powers and the ambit of exercise of powers granted to the CoC under the provisions of the I & B Code, 2016, as elaborated by the Judgments cited by the Appellant in his support.

18. It could be further seen that the Impugned Order happens to be contrary to its own finding recorded by the Ld. Adjudicating Authority, in the Order passed on 17.12.2024, by Ld. NCLT in the Application filed by JSW, where it was observed that, since the CoC has already decided not to entertain any fresh

Expression of Interest in its 36th & 38th Meetings, the Applicant cannot insist upon that, its prayers should be considered by the CoC. But, the same Ld. Adjudicating Authority, has ignored the implications of exercise of commercial wisdom of the CoC, in the Impugned Order, when CoC prayed for permission for issuance of fresh Form G and invitation of Expression of Interest from new, interested and Prospective Resolution Applicants.

19. In fact, the provisions of I & B Code, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, do not create any absolute legal embargo in resorting to the process of invitation of the fresh Form G and Expression of Interest, after the completion of submission of Resolution Plans and even after the voting is completed. The same is attempted to be established by the Ld. Counsel for the Appellant, by making a reference to a Judgment reported in *2022 SCC OnLine NCLAT 110 Vistra ITCL (India) Limited V. Torrent Investments Private Ltd. and Ors.*, and particularly, to the observation made by the Principal Bench in Para 60 of the aforesaid Judgment.

The said Para 60 is extracted below:-

“60. In view of the foregoing discussions, we, thus conclude that even after completion of Challenge Mechanism under Regulation 39(1A)(b), the CoC retain its jurisdiction to negotiate with one or other Resolution Applicants, or to annul the Resolution Process and embark on to re-issue RFRP. Regulation 39(1A) cannot be read as a fetter on the powers of the CoC to discuss and deliberate and take further steps of negotiations with the Resolution Applicants, which resolutions are received after completion of Challenge Mechanism.”

20. In the same Judgment, Principal Bench goes on to observe in Para 49 that, Section 30 (4) of I & B Code, statutorily contemplates approval of Resolution Plan by vote of not less than 60% of the voting shares of the Financial Creditors after considering its feasibility and viability which means CoC can explore options after the challenge mechanism. Similarly, in Para 50, it observes that use of expressions ``allow modification in Resolution Plan, but, not more than once'' or ``use a challenge mechanism to enable the Resolution Applicants to improve their Plans'', in Regulation 39 (1A) (a) & (b) envisages modifications and improvements to Resolution Plans at the instance of the Resolution Applicant. Going forward, it observes in Para 51 of Judgment (supra) that Regulation 39 (1A), in itself cannot prohibit any negotiation or any further steps of the CoC undertaken towards value maximization of the Corporate Debtor.

21. Almost a similar view has been taken in yet another Judgment rendered by the Principal Bench in the matters of ***Mr. Ramneek Goyal V. Sunil Bajaj & 4 Ors.*** The Principal Bench while referring to the decision of the CoC, to re-publish Form G has observed that it is useful for the purposes of maximization of value of the Assets of the Corporate Debtor. The relevant paragraphs in the said context is extracted hereunder:

``13. There can be no dispute to the law laid down by the Hon'ble Supreme Court that 330 days is the maximum period provided by the Code for the completion of CIRP. The present is a case where 300 days were expiring on 15.04.2021 and prior to expiry of the 300 days period, a decision was taken to re-publish Form-G. The CoC has reason to take a decision since

they received an email from Respondent No.1 offering higher value. The objective of the IBC is to maximize the value of the Corporate Debtor and decision taken by the CoC to re-publish Form-G cannot be faulted in the facts of the present case. We may in this regard refer to judgment of this Tribunal in *Vistra ITCL (India) Ltd. v. torrent Investments Pvt. Ltd. & Ors.* – (2023) Scc OnLine NCLAT 110 wherein this Tribunal while deciding the jurisdiction of CoC to re-issue RFRP held following in paragraph 60:

“60. In view of the foregoing discussions, we, thus conclude that even after completion of Challenge Mechanism under Regulation 39(1A)(b), the CoC retain its jurisdiction to negotiate with one or other Resolution Applicants, or to annul the Resolution Process and embark on to re-issue RFRP. Regulation 39(1A) cannot be read as a fetter on the powers of the CoC to discuss and deliberate and take further steps of negotiations with the Resolution Applicants, which resolutions are received after completion of Challenge Mechanism.”

14. The learned Counsel for the Appellant has placed reliance on the judgment of this Tribunal in *Dwarkadhish Sakhar Karkhana Limited v. Pankaj Joshi – Company Appeal (AT) (Insolvency) No.233 of 2021*. The judgment of this Tribunal *Dwarkadhish Sakhar Karkhana Ltd.* was a case where the order passed by the Adjudicating Authority accepting the Expression of Interest of *Dwarkadhish Sakhar Karkhana Ltd.* after due date was set-aside by the Adjudicating Authority vide order dated 01.03.2021, which order came to be challenged in the Appellate Tribunal. The facts in the above case, as noticed in paragraph 1 to 3, which are relevant is reproduced as below:

“1. The Adjudicating Authority (National Company Law Tribunal, Special Bench, Mumbai) by the impugned order dated 01.03.2021 allowed the Application of *Gangamai Industries and Constructions Ltd. (GIACL)* I.A. No. 1029 of 2020 in CP (IB) 2056/MB/2019, whereby the decision of CoC accepting the Expression of Interest (EOI) of *Dwarkadhish Sakhar Karkhana Ltd. (DSKL)* after due date, was set aside and deprecated the conduct of Resolution Professional (RP) *Pankaj Joshi*. Therefore, they have

filed these Appeals assailing the order. Both the Appeals are disposed of by this common Judgment.

2. Brief facts of the case are that, on 10.10.2019 the Adjudicating Authority passed an order in CP (IB) 2156/MB/2019 filed by Canara Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), thereby initiated CIRP of the Corporate Debtor 'KGS Sugar and Infra Corporation Ltd'. Accordingly, by the admission order, moratorium in terms of Section 14 of the IBC was declared and one Mr. Balady S. Shetty was appointed as the Interim Resolution Professional (IRP). The CoC in its first meeting, appointed Mr. Balady S Shetty as Resolution Professional. Mr. Shetty published the invitation of expression on 18.01.2020, wherein the last date for submission of EOI was 10.02.2020 and for submission of Resolution Plan, it was 05.04.2020. 3. Pursuant to the EOI, the RP Mr. Shetty received EOIs from 14 Prospective Resolution Applicants, out of which only four including GIACL met the eligibility criteria. Subsequently, by email dated 12.03.2020, DSKL submitted its EOI to Mr. Shetty. On the same day, Mr. Shetty informed DSKL that EOI was received after last date of submissions, therefore, it cannot be considered. Thereafter, on 23.03.2020, DSKL sent an email to the CoC Members to allow DSKL to submit EOI. On 02.04.2020, DSKL sent email to Mr. Shetty requesting to make necessary information available for submissions of Resolution Plan. On 03.04.2020, Mr. Shetty placed the request of submitting EOI by DSKL before the 07thCoC Meeting. After deliberation, the CoC passed the Resolution unanimously and thereby rejected the request of DSKL for submitting EOI. Mr. Shetty has communicated the decision to DSKL on 09.04.2020."

16. The present is not a case that EOI from Respondent No.1 has been received after the due date. Rather, a decision was taken to re-publish the Form-G, giving opportunity to all including the Appellant and Respondent No.1. Thus, the judgment of this Tribunal in Dwarkadhish Sakhar Karkhana Ltd. is clearly distinguishable."

22. It is to be noted that, the aforesaid two authorities have advocated that a decision of the CoC borne out of its commercial wisdom to re-publish Form G, in order to attract more PRAs and to increase participation in CIRP process, even after completion of the process of submission of Resolution Plans cannot be faulted, as by its very design, such action, by increasing competition, will further enhance value of the Corporate Debtor which is always in the interest of the object of the Act.

23. The aforesaid conclusion has been drawn in Para 21 of this Judgment which is extracted hereunder:

*“21. As observed above, the present is not a case that Resolution Plan submitted by Respondent No.1 by email before 15.04.2021 was considered on merits. **Rather, the CoC took a decision to issue fresh Form-G to give opportunity to all with the object of maximizing the value of Corporate Debtor.** The Adjudicating Authority had not committed any error in granting extension of 90 days period after expiry of 300 days to complete the process. Exclusion of time granted by Adjudicating Authority in the facts of the present case cannot be held to be erroneous and uncalled for.”*

24. Further, the Appellant has relied on the Judgment of NCLAT, Principal Bench dated 18.03.2024 in Ashdan Properties Private Limited V. Mamta Binani & Ors., where the Principal Bench in unequivocal terms has declared that CoC has the power to call for fresh Form G and permit other PRAs to participate even after submission of EoI. The relevant Paragraph is extracted below:-

“11. Regulation 36A which provide for Invitation for Expression of Interest also empowers the CoC to modify the invitation for Expression of

Interest. It is always open for the CoC to take a decision to not proceed on the Applications, EOI received and take a decision for issuance of fresh Form G and permit other applicants to participate. When no fresh Form G has been issued, it is not open for any new applicant to submit application before the Adjudicating Authority for being permitted to participate in the CIRP and submit Resolution Plan."

25. Further, we see no demerits in the Proposal of the RP as contained in the Application IA No. 608 / 2025 and in the decision of CoC to invite fresh EoI by issuing fresh Form G for the reason being that, inviting new PRAs to submit EoIs will certainly increase competition and in all likelihood, result in higher Bids, that since, the EoI is proposed to be reopened for everybody and not for JSW alone, it is fair and transparent and not discriminatory and that since, existing PRAs are proposed to be retained with option given to them to participate in challenge mechanism, it is also fair to the existing Resolution Applicants. Further, as the amount quoted by the higher Bidder ``Medha'', is proposed to be the Reserve Price, there cannot be any value erosion of the Corporate Debtor, if EoI process is reopened. The only snag that we can see as of now, is that, more time will be required to complete CIRP process. Since, timely resolution of insolvency is the essence of I & B Code, 2016, this can be taken care of by adhering to strict timelines.

26. For the aforesaid reasons, the Impugned Order of 03.04.2025 is hereby quashed and as a consequence, IA (IBC) / 608 / 2025 stands allowed. The relief as sought for, by the Resolution Professional, to be permitted to issue fresh Form

G and to invite Expression of Interest (EoI) from new and interested eligible Prospective Resolution Applicants is granted subject to the stipulations that the CIRP process has to be completed in a time bound manner as provided under the Code and Regulations framed thereunder.

27. It is made clear that the said directives as issued by us would be not de hors to the time frame required to be adhered to for completion of the CIRP process.

28. Subject to the aforesaid, the instant Company Appeal (AT) (CH) (INS) No. 230 / 2025 stands allowed. All pending Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

19/06/2025

SR / MS