

**Company Appeal (AT) (Ins) No. 619 of 2025 &
I.A. No. 2401 of 2025**

IN THE MATTER OF:

Versus

Present:

For Respondent : Mr. Sumant Batra, Mr. Sarthak Bhnadari and Ms. Nidhi Yadav, Advocates for RP.

J U D G M E N T

ASHOK BHUSHAN, J.

2. Brief facts necessary to be noticed for deciding the Appeal are:

Company Appeal (AT) (Ins.) No.619 of 2025

04.10.2022. Resolution Plan submitted by Prospective Resolution Applicants were put to vote and the Resolution Plan submitted by M/s JM Hydraulics Solutions Pvt. Ltd. was approved by the Committee of Creditors (“**CoC**”) as well as by the Adjudicating Authority vide order dated 29.04.2024.

- ii. The Successful Resolution Applicant (“SRA”) – JM Hydraulics Solutions Pvt. Ltd. Deposited the Bank Guarantee, which was found to be forged. The Resolution Professional (“**RP**”) filed an IA No.3762 of 2024 for recall of the order dated 29.04.2024, which IA was allowed on 19.12.2024 and the order dated 29.04.2024 was recalled. The Adjudicating Authority while recalling the order dated 29.04.2024, remitted the matter back to the CoC to take fresh steps in the direction of resolution of the CD. The Adjudicating Authority directed the process to be completed within 60 days.
- iii. In pursuance of the order, the CoC decided to not to publish Form-G and decided to maintain eligibility of all existing PRAs, excluding JSSI Hydraulics Pvt. Ltd. in accordance with the order of the Adjudicating Authority dated 19.12.2024. The Resolution Plans were asked to be submitted.
- iv. The Appellant was Suspended Director of the CD, having not permitted to file the Resolution Plan in view of the order

dated 19.12.2024, filed an Application before the Adjudicating Authority being IA No.362 of 2025 for correcting the mistake in the order, wherein in the order it was held that CD is ineligible, whereas the eligibility was to attach only to the SRA, who had submitted forged Bank Guarantee.

- v. On 27.01.2025, Application filed by the Appellant for rectification of the order dated 19.12.2024 was allowed. In consequence of which, the CD also became entitled to submit the Resolution Plan.
- vi. On 29.01.2025, the RP provided the request for Resolution Plan along with evaluation sheet and undertaking template to the Appellant and the Appellant was asked to submit a Resolution Plan by 03.02.2025. On 02.02.2025, the Appellant pointed out certain disparities in the Information Memorandum. The Appellant on 05.02.2025 again wrote to the RP to allow him 10-15 days time to submit the Resolution Plan.
- vii. The Adjudicating Authority vide order dated 13.02.2025 on the Application filed by the RP, excluded 20 days time from 19.12.2024 to 08.01.2025.
- viii. The Appellant who did not submit the Resolution Plan within the time, filed an Application before the Adjudicating Authority being IA No.856 of 2025 seeking a direction for extension of period for submission of Plan, which Application

came to be rejected by the impugned order by the Adjudicating Authority. Aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Mrinal Harshwardhan, learned Counsel appearing for the Appellant; Shri Sumant Batra, learned Counsel appearing for the RP; and Shri Abhishek Anand, learned Counsel appearing for SRA.

4. Learned Counsel for the Appellant submits that the Appellant was wrongly held ineligible to submit the Resolution Plan vide order dated 19.12.2024 passed by Adjudicating Authority, although order intended ineligibility only on the SRA, i.e. JM Hydraulics Solutions Pvt. Ltd., which error could be corrected only on 27.01.2025. Thereafter, the Appellant ought to have been allowed 30 days time for submission of Resolution Plan as per provisions of Regulation 36B(5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"). After rectification by the order dated 27.01.2025, the Appellant was provided the request for submitting the Resolution Plan along with evaluation sheet only on 29.01.2025, hence, the Appellant has only short period of five days before submission of the Resolution Plan, which was not in accordance with the Regulation 36B, sub-regulations (3) and (5). The CD being MSME, the Appellant was entitled to submit a Resolution Plan. The RP has adopted a process, which is not in accordance with the CIRP Regulations. The Adjudicating

Authority committed error in rejecting IA No.856 of 2025 filed by the Appellant.

5. Learned Counsel for the RP refuting the submissions of learned Counsel for the Appellant submits that immediately after the order dated 27.01.2025 was passed, the CoC Meeting was convened on 28.01.2025 and 29.01.2025. The CoC decided to give opportunity to Promoters, to submit a Resolution Plan by 03.02.2025 with EMD of Rs.2 crores. Sunrise Industries, which has submitted a Resolution Plan was also allowed the same time. The period of 60 days allowed by the NCLT was expiring on 17.02.2025. The Appellant did not submit the EMD, whereas another Prospective Resolution Applicant - Sunrise Industries has submitted the EMD and Resolution Plan. The Appellant raised queries with regard to discrepancies in the Information Memorandum. The RP communicated to the Appellant expressing inability to extend the timeline for submission the Plan. It is submitted that the Appellant was not a serious Resolution Applicant, since he neither deposited the EMD, nor submitted the Resolution Plan. The submission of the Appellant that he was entitled for award of 30 days' time as per Regulation 36B, cannot be accepted as the present was not a case of fresh start of insolvency by issuing of Form-G and according to the order of Adjudicating Authority, the entire process was to be completed within 60 days. The submission of the Appellant that he was entitled to grant of 30 days time, cannot be accepted.

6. Learned Counsel for the SRA also supported the impugned order and submitted that the Appellant having not submitted the EMD or Resolution Plan, cannot pray for extension of time, when time limit was granted by the Adjudicating Authority for completion of the entire process.

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

8. By order dated 19.12.2024, earlier order approving the Resolution Plan of JM Hydraulics Solutions Pvt. Ltd. was recalled. The Adjudicating Authority after recalling the approval of the Resolution Plan, remitted the matter to the CoC to take fresh steps. It is useful to extract following part of the order dated 19.12.2024, which is as follows:

“Taking the holistic view and to substance the object of IBC, 2016, we remit the matter back to CoC to take fresh steps, in the direction of resolution at Insolvency of the corporate debtor. It is left to the commercial wisdom of CoC that what steps it would be taking in the direction. It is made clear that a fresh process is not completed within 60 days from today the corporate debtor would be deemed as dissolved. IA-3762/2024 & IA-5751/2024 stands disposed of. It is made clear that it would be for CoC to evolve the way forward in the matter to in exercise its commercial wisdom. However, JSSI Hydraulics Pvt. Ltd. which led to present situation would not be eligible to submit any plan.”

9. Consequent to the order of the Tribunal dated 19.12.2024, the 7th Meeting of the CoC was held, where the CoC decided to call Resolution Plans from all eligible Prospective Resolution Applicants. In the order dated 19.12.2024, it was held that JSSI Hydraulics Pvt. Ltd. is not eligible

to submit the Plan, was rectified and corrected by Adjudicating Authority by its order dated 27.01.2025. After the said order dated 27.01.2025 was passed by Adjudicating Authority, effect of which is that the CD became eligible to submit a Resolution Plan and the CoC in its Meeting dated 28.01.2025 decided to invite the CD also, to file a Resolution Plan by 08:00 PM of 03.02.2025. An email dated 28.01.2025 was sent to the Appellant, informing that Resolution Plan should be accompanied along with payment of EMD of Rs.2 crores and the Appellant was communicated by the email to submit the Plan by 03.02.2025. The Appellant did not submit the Plan by 03.02.2025 and wrote an email asking for certain clarifications. The Appellant sent email on 02.02.2025, pointing out certain disparities between certain figures i.e. mentioned in the Information Memorandum, which was replied by RP on 03.02.2025. On 05.02.2025, the Appellant again sent request for extension of Resolution Plan by 10-15 days. The Resolution Plan, which was submitted, came to be considered by the CoC in its 13th Meeting held on 17.02.2025. In pursuance of e-voting the Resolution Plan of SRA was approved with 100% vote share and an Application under Section 30, sub-section (6) read with Section 31 of the IBC for approval of the Plan was filed, being IA No.17 of 2025 was filed, which is pending consideration.

10. We may need to notice the observations of the Adjudicating Authority. In paragraph-7 of the order, the Adjudicating Authority observed following:

“7. In any case, the prayer made in the application is for extension of period of period for submission of resolution plan. One may say that the prayer is not for extension of period of CIRP but is for extension of time for submission of resolution plan by the Applicant. Ideally, when the statutory period of CIRP has not expired, it may be open to the PRA concerned, to move an application for extension of the period for submission of resolution plan. But in such case where statutory period of CIRP is over and the request made for extension of period for submission of plan, take the period of CIRP beyond the statutory period (including the one not extended by this Tribunal), in such cases the application filed by PRA, would not be maintainable and is liable to be dismissed. Ordered accordingly.”

11. The submission, which has been much pressed by learned Counsel for the Appellant is that the Appellant was entitled for 30 days' time for submission of Resolution Plan as per Regulation 36B, sub-section (3). It is further submitted that any modification/ changes made to the RFRP shall be deemed as fresh issue as per Regulation 36B. Regulation 36B (1), (3) and (5) are as follows:

“36B. Request for resolution plans. (1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to -

(a) every prospective resolution applicant in the provisional list; and

(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

(3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).

(5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3). ”

12. The present is a case where process of issuance of Form-G had commenced on 04.10.2022, under which all Prospective Resolution Applicants were allowed time as per Regulation 36B. The process, which commenced after the order dated 19.12.2024 was not direction for start of a fresh process by issuance of fresh Form-G, rather Adjudicating Authority has remitted the matter to CoC and it was left to the commercial wisdom of the CoC to take steps. The Adjudicating Authority further held that if steps are not completed within 60 days, the CD would be deemed to be liquidated. The CoC in its 7th Meeting held on 13.01.2025, resolved to invite PRAs, who had submitted the Resolution Plans in the previous round. The CD was also not eligible to submit the Resolution Plan, in view of the order dated 19.12.2024 and CoC decided to seek Resolution Plan from three Resolution Applicants, who had submitted the Resolution Plans in the previous round. In Agenda Item No.5, following was observed:

“In view of the aforesaid discussion, 100% CoC member represented by SBI and Canara Bank were of unanimous view that JM Hydraulics Private Limited and JSSI Hydraulics Private Limited both should not be allowed to submit the resolution plan and RP should seek the resolution plan from 3 Resolution Applicants who had submitted the resolution plan in the previous round.”

13. As noted above after order dated 19.12.2024 was corrected on 27.01.2025, the Appellant was also invited to submit the Resolution Plan.

In pursuance of the decision of the CoC taken on 28.01.2025 to extend the date for submission of the Plan as 03.02.2025, the Appellant was asked to submit the Resolution Plan by 03.02.2025 along with EMD. The present is a case where the Appellant has not submitted the Resolution Plan within the time allowed by the CoC. In view of the order dated 19.12.2024, as noted above, the process, which was carried on by the CoC, was not the process for issuance of fresh Form-G and inviting Expression of Interest and Resolution Plans, and the decision was taken to invite Resolution Plans from existing PRAs only. We, thus, are of the view that provisions of Regulation 36B, sub-regulation (3) are not attracted, nor the CoC was obliged to grant 30 days time to Resolution Applicants to submit the Resolution Plan. In the Minutes dated 13.01.2025, timelines were fixed for Resolution Plan to be submitted by 20.01.2025, which timeline was fixed in view of only 60 days' time allowed by the Adjudicating Authority, i.e. upto 17.02.2025. The timelines, which was provided by the CoC in its Minutes dated 13.01.2025, clearly indicate that there was no question of following Regulation 36B, sub-regulation (3) by allowing one month's time for submission of Resolution Plan. We, thus are of the view that submission of the Appellant that Appellant was entitled for 30 days' time for submission of the Resolution Plan from 29.01.2025, when it received the email for submission of the Resolution Plan, cannot be accepted. Had the Appellant desirous of submitting the Plan by submitting the requisite EMD of Rs.2 crores it could have been done by the Appellant within the time allowed, when the Adjudicating Authority on 19.12.2024 has left the matter to the commercial wisdom of

the CoC to take steps in the process. The timeline was to be fixed by the CoC and the CoC having extended the time for submitting the Plan to 03.02.2025, which was extended both for Appellant as well as other PRAs, we do not find any error in the order of Adjudicating Authority rejecting the Application filed by the Appellant, praying for extension of timeline for submission of the Plan by the Appellant. In IA 856 of 2025, the Appellant has prayed for following reliefs:

- “a. Allow the present Application and direct the Respondents to extend the timeline for submission of the Resolution Plan, and/or;
- b. Permit the Applicant to submit a Resolution Plan for resolution of the Corporate Debtor;
- c. Direct the Respondent No. 1/ RP to place the Resolution Plan proposed to be submitted by the Applicant before the CoC of the Corporate Debtor;
- d. Pass an ex parte ad-interim order directing the Respondents not to consider and approve any resolution plans submitted by other PRAs till the adjudication of the present Application; and
- e. Pass any other orders in favour of the applicant to secure the ends of justice.”

14. The CoC having already extended the time till 03.02.2025 for the Appellant to submit the Resolution Plan, the prayer of the Appellant to extend further time for submission of the Plan, could not have been accepted. It was the decision of the CoC for grant of timeline and for completion of process by 17.02.2025 as per the direction of the Adjudicating Authority. The CoC did not commit any error in extending the time to the Appellant till 03.02.2025 for submission of the Resolution Plan. The Appellant having not submitted the Resolution Plan within the

time allowed by the CoC, the Application filed by the Appellant for further extension of time was rightly rejected by the Adjudicating Authority.

15. We do not find any error in the order of the Adjudicating Authority rejecting the Application filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed. Pending IAs, if any are also disposed of. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

NEW DELHI

2nd May, 2025

Ashwani