

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1478 of 2024 &
I.A. Nos. 5505 of 2024

(Arising out of Order dated 03.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench (IB)-183(PB)/2024)

IN THE MATTER OF:

Saurabh Kumar Pandey,
Suspended Director
(Proplarity Infrastructure Pvt. Ltd.)
Son of Sh. Surya Kumar Pandey
A-401, Rohtas Presidential Tower
Vibhuti Khand Lucknow UP-226010.

... Appellant

Versus

1. M/s. Ambica Enclave Pvt. Ltd.
2. M/s. Siddhant Diagnostic Pvt. Ltd.
3. M/s. Divya TIE-UP Pvt. Ltd.
4. M/s. Kusum Enclave Pvt. Ltd.
All having its corporate office at
23, Jagganthpuri Colony
Rath Yatra, Mahmoorganj Road, Varanasi
Through their Authorised Representative
Mr. Nirmal Kumar Jain
5. Proplarity Infrastructure Pvt. Ltd.
Under CIRP
Through Vinod Kumar Chaurasia
B-022, Pragati Vihar Hostel,
Lodhi Road, New Delhi-110003.

... Respondents

Present:

**For Appellant : Mr. Abhishek Anand and Mr. Sugam Mishra,
Advocates.**

**For Respondent : Mr. Sunil Fernandes Sr. Advocate with Mr.
Anjaneya Mishra, Mr. Nidish Gupta, Ms. Rajshree
Chaudhary, Ms. Diksha Dadu Advocates for
Intervener.**

Mr. Krishnendu Datta Sr. Advocate with Mr. Aditya Nayyar, Ms. Niharika Sharma, Advocates for Intervener in IA- 5505 of 2024.

Mr. Alok Tripathi, Advocate for Respondent.

Mr. Nidish Gupta, Mr. Alok Tripathi, Advocates for R-1 to 4.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Iswar Mohapatra, Mr. Kunal H., Advocates.

Mr. Vinod C., Advocate for IRP.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by the suspended Director of the Corporate Debtor – Proplarity Infrastructure Pvt. Ltd. has been filed challenging the order dated 03.07.2024 passed by National Company Law Tribunal, New Delhi, Principal Bench admitting Section 7 Application filed by the Financial Creditors (Respondent Nos.1 to 4 herein). The Appellant aggrieved by the order has come up in this appeal.

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

- (i) Respondent Nos.1 to 4 claiming to be Financial Creditors of the Corporate Debtor alleging that as per Loan Agreement dated 13.10.2016, total amount due and in default is Rs.10,21,07,880/-, filed Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) in April 2024. The Adjudicating Authority issued notice to the Corporate Debtor on the Application. The

Adjudicating Authority noticed in the order that notice having been issued it deemed to be served on the Corporate Debtor and since no one appeared, hence proceeded to consider the Application on merits and passed an order of admission on 03.07.2021.

- (ii) In pursuance of the order dated 03.07.2021, the Interim Resolution Professional (“**IRP**”) issued a publication on 12.07.2024 inviting claims and 23.07.2024 was the last date for submission of the claim. Claims were filed by Respondent Nos.1 to 4 and other claimants, claiming that they are Financial Creditors. The IRP provisionally admitted the claims and constituted the Committee of Creditors (“**CoC**”) on 25.07.2024 and filed the report of constitution of CoC before the Adjudicating Authority. An email was also sent to the Appellant and other Financial Creditors on 26.07.2024, informing about constitution of the CoC.

3. The Appellant, suspended Director of the Corporate Debtor filed this Appeal on 29.7.2024, which came for consideration before this Tribunal on 31.07.2024, on which date, following order was passed:

“31.07.2024: Ld. Counsel for the appellant submits that Section 7 application have been admitted by the impugned order and in pursuance of which a Committee of Creditors have already been constituted. It is submitted that appellant has settled with all 4

applicants and one other person who has filed the Section 7 application but the RP has admitted two persons as Members of CoC who according to the appellant are related party. The said submission is opposed by one of the CoC Members who seeks liberty to file an application for impleadment.

Let the application for impleadment be filed by tomorrow.

List on 05.08.2024.

In the meantime, meeting of CoC be adjourned after 05.08.2024.”

4. IA No.5734 of 2024 has been filed by M/s Creta Infrastructure Pvt. Ltd. and IA No.5505 of 2024 has been filed by M/s Proplarity Infratech Pvt. Ltd., seeking impleadment in the Appeal. The Appellant has filed reply to both the IAs. We permit the Applicants to intervene in the Appeal.

5. We have heard Shri Abhishek Anand, learned Counsel for the Appellant; Shri Sunil Fernandes, learned Senior Counsel appearing on behalf of Intervenor; Shri Krishnendu Datta, learned Senior Counsel has also appeared for Intervenor in IA No.5505 of 2024; and Shri Alok Tripathi, learned Counsel has appeared for Respondent Nos.1 to 4.

6. Shri Abhishek Anand, learned Counsel for the Appellant submits that Section 7 Application was filed by Respondent Nos.1 to 4 claiming to be Financial Creditors, with whom the Appellant has entered into settlement on 26.07.2024 and under which settlement, the Appellant has to make payments to the Financial Creditors. Respondent Nos.1 to 4, having settled the matter, there is no occasion to continue with the CIRP on their instance. It is

submitted that IRP hurriedly constituted the CoC, without proper verification. The last date for receiving the claim being only 23.07.2024, he constituted the CoC on 25.07.2024 on the basis of provisional admission without proper verification. Claims submitted by M/s Certa Infrastructure Pvt. Ltd. and M/s Proplarity Infratech Pvt. Ltd. were claims submitted by 'related parties', which claims were also barred by time, but the IRP has hurriedly included them into the CoC. It is submitted that CoC has not been properly constituted as the Appellant has already settled with Respondent Nos.1 to 4 and another Financial Creditor, i.e. Mr. Kshitij Jain. Both M/s Certa Infrastructure Pvt. Ltd. and M/s Proplarity Infratech Pvt. Ltd. being related parties, cannot become part of the CoC. The learned Counsel for the Appellant has submitted that M/s Proplarity Infratech Pvt. Ltd. has filed return on 31.05.2016, where it was declared that Corporate Debtor was a related party. It is submitted that Corporate Debtor did not file any return after 21.03.2018. As per the balance sheet of the Corporate Debtor, M/s Proplarity Infratech Pvt. Ltd. is holding 1,40,000 shares, i.e. 93.33%.

7. Learned Counsel appearing for the Intervenor, M/s Certa Infrastructure Pvt. Ltd. submits that the Intervenor is in no manner related to the Corporate Debtor. The Intervenor has advanced unsecured loan to the Corporate Debtor of Rs.2,12,00,000/- and the Corporate Debtor, in the last balance sheet of the year 2018 has acknowledged the said disbursement. The learned Counsel for the Intervenor has also referred to Agreement dated 25.10.2017 executed

between the Appellant and one Mr. Satyendra Singh Tomar, whereby the parties have decided to part their ways, which clearly means that Intervenor is not related party.

8. Learned Counsel appearing for the Intervenor – M/s Proplarity Infratech Pvt. Ltd. submits that the Intervenor has held 1,40,000 shares in the Corporate Debtor and 1,39,000 shares were sold to Mr. Ajay Singh, which was also approved by the Board of Directors of the Corporate Debtor in meeting dated 25.10.2017 and 1,000 shares were sold to Mr. Sandeep Kumar, after approval of the Board Meeting dated 16.01.2018 and in general now it is not holding any shares in the Corporate Debtor and it is not a related party. It is submitted that IRP has constituted the CoC on 25.07.2024, where voting share of the Applicant is 43.91%. No settlement can be entered by the Appellant without approval of the CoC. The claim of the Appellant that it has settled with the Financial Creditors and CIRP be closed is without any basis.

9. Shri Abhijeet Sinha, learned Senior Counsel appearing for IRP submits that IRP has not acted hurriedly and after receiving the claim it sent the email to M/s Proplarity Infratech Pvt. Ltd. enquiring the relationship of the Intervenor and the Corporate Debtor and reply was received from the Intervenor on 25.07.2024 that they are not related party. It is submitted that the report of the constitution of the CoC has been submitted by the IRP before the Adjudicating Authority on 25.07.2024. Both the intervenors being

Member of the CoC, the claim of settlement by Appellant, cannot be accepted. The IRP has never been informed of any settlement by the Appellant.

10. We have considered the submissions of learned Counsel for the parties and have perused the records.

11. There is no dispute between the parties that after initiation of CIRP on 03.07.2024, publication was made on 12.07.2024 inviting claims. The IRP constituted the CoC on 25.07.2024 and submitted Report on 26.07.2024. In the affidavit which has been filed by the IRP in this Appeal, the IRP has brought on the record the report submitted by him before the Adjudicating Authority for constitution of the CoC. One of the Annexure to the report contains the List of CoC as on 23.07.2024. It is useful to extract the said list, which is part of the report, which is as follows:

Name of the corporate debtor : Proplarity Infrastructure Pvt. Ltd. Date of commencement of CIRP: 03rd July 2024 (Order received on 09.07.2024) List of members of committee of creditors as on : 23rd July, 2024 LIST OF COMMITTEE OF CREDITORS AS ON 23RD JULY 2024									
Sr. No.	Name of Creditors	Identification no.	Date of receipt	Amount claimed	Amount of claim Provisionally admitted	Nature of claim	Amount covered by security interest	% of voting share in CoC	Amount under verification
1	M/s. Ambica Enclave Pvt. Ltd.	FC-1	23.07.2024	1,13,34,246.00	1,13,34,246.00	Secured	34,81,237	1.29	1,13,34,246.00
2	M/s. Divya-Tie-up Pvt. Ltd.	FC-2	23.07.2025	7,79,66,657.00	7,79,66,657.00	Secured	1,80,54,817	8.85	7,79,66,657.00
3	M/s. Kusum Enclave Pvt. Ltd.	FC-3	23.07.2026	13,09,00,000.00	13,09,00,000.00	Secured	3,42,14,984	14.85	13,09,00,000.00
4	M/s Siddhant Diagnostic Pvt. Ltd.	FC-4	23.07.2027	19,81,38,624.00	19,81,38,624.00	Secured	3,35,72,962	22.48	19,81,38,624.00
5	Proplarity Infratech Pvt. Ltd.	FC-5	23.07.2028	38,69,38,934.20	38,69,38,934.20	Secured	38,69,38,934	43.91	38,69,38,934.20
6	Creta Infrastructure Pvt. Ltd.	UFC-01	23.07.2024	6,43,93,336.63	6,43,93,336.63	Unsecured	-	7.31	6,43,93,336.63
7	Kshitij Jain	UFC-02	23.07.2024	1,15,86,849.00	1,15,86,849.00	Unsecured	-	1.31	1,15,86,849.00
Total				88,12,58,647	88,12,58,647			100.00	88,12,58,647.83

12. The submission has been advanced by learned Counsel for the Appellant that the Appellant has settled with Respondent Nos.1 to 4, who were the Applicants under Section 7 Application and further he has settled with one Mr. Kshitij Jain, who has also filed the claim. There is no dispute that CoC was constituted on 25.07.2024, in which CoC both the Intervenors, i.e. M/s Creta Infrastructure Pvt. Ltd. and M/s Proplarity Infratech Pvt. Ltd. were part of the CoC. The vote share allocated to M/s Proplarity Infratech Pvt. Ltd. was 43.91% and vote share of M/s Creta Infrastructure Pvt. Ltd. is 7.31%. The Appellant is challenging the inclusion of both the above Intervenors in the CoC on the ground that they are related party and their claim has wrongly been admitted.

13. The present Appeal has been filed challenging admission order under Section 7. The debt and default on the part of the Corporate Debtor is not even questioned, which is an admitted fact. Hence, apart from challenging the order of admission, we need not enter into issues sought to be raised by the Appellant that both the Intervenors are related party and their claims have wrongly been admitted. The issue regarding they being related party and their claims have wrongly been included, are issues, which need to be raised by the Appellant before the Adjudicating Authority by filing appropriate application under Section 60, sub-section (5) of the IBC. We, thus, are of the view that the ends of justice will be served in giving liberty to the Appellant to file an appropriate application before the Adjudicating Authority, questioning the

admission of claim of M/s Certa Infrastructure Pvt. Ltd. and M/s Proplarity Infratech Pvt. Ltd., including the challenge to their inclusion in the CoC, which issues need to be decided by Adjudicating Authority after hearing the parties.

14. Learned Counsel for the Appellant has expressed apprehension that disposal of the application may take time and, in the meantime, IRP may proceed to conclude the CIRP to the prejudice of the Appellant. The learned Counsel for the IRP himself has submitted that IRP shall hold his hands from convening any meeting of the CoC for a period of 10 days, during which the Appellant may file appropriate application.

15. In the facts of the present case, we are of the view that ends of justice will be served in disposing of this Appeal in following manner:

- (I) The order passed by Adjudicating Authority dated 03.07.2024 is not interfered with.
- (II) The Appellant is given liberty to file an appropriate application under Section 60, sub-section (5) of the IBC, challenging the inclusion of M/s Certa Infrastructure Pvt. Ltd. and M/s Proplarity Infratech Pvt. Ltd. in the CoC and admission of their claims, which application may be filed within a week from today.
- (III) For a period of two weeks, the IRP shall not convene the meeting of the CoC. The IRP shall be entitled to convene the meeting of the CoC after two weeks from today, subject to any order or

directions passed by Adjudicating Authority in the application to be filed by the Appellant, as above.

The Appeal is disposed of in above terms. All pending IAs are also disposed of. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

9th September, 2024

Ashwani