NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1611 of 2023

[Arising out of order dated 30.11.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench (Court- II) in IA No.3016 of 2023 in CP (IB) No. 1048 (ND)/2019]

IN THE MATTER OF:

Jaitnder Pal Singh Hanjra
Through its Authorized Representative
Ajay Nagpal
A-104, Shivalik, Near Sumitra Hospital
Sector-35, Gautam Budda Nagar, Uttar Pradesh-201301.

...Appellant

Versus

1. **Vivek Raheja**
   Resolution Professional of
   J.P. Engineers Private Limited
   JD-2C, 2nd Floor, Pitampura, Delhi-110034.

   ...Respondent No. 1

2. **Union Bank of India**
   603B, Konnectus Tower,
   Ajmeri Gate, Delhi.

   ...Respondent No. 2

3. **Axis Bank**
   6-3-879/B, 1st Floor, D. Pullareddy Building,
   Greenlands, Begumpet, Hyderabad-500016.

   ...Respondent No. 3

4. **ICICI Bank,**
   NBCC Place, Bhishm Pitamah Marg,
   Pragati Vihar, New Delhi-110003.

   ...Respondent No. 4

5. **Yes Bank**
   5A/15, Tilak Nagar, Near Subhash Nagar
   Metro Station, New Delhi-110018.

   ...Respondent No. 5

Present:

Appellant: **Mr. Abhijeet Sinha, Sr. Advocate with Mr. Kunal Godhwani, Mr. Aditya Shukla, Advocates.**

For Respondents: **Mr. KD Sharma, Advocate for R-1.**
Ms. Ekta Choudhary, Ms. Aditi Sharma, Mr. Divyank Dutt Dwivedi, Advocates for R-2.
Mr. Bharat Bhushan Sethi, Advocate (I.A. No. 171 of 2024).

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 30.11.2023 (hereinafter referred to as "**Impugned Order**") passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court- II) in IA No.3016 of 2023 in CP (IB) No. 1048 (ND)/2019 wherein the Resolution Professional had sought extension of the CIRP period of the Corporate Debtor by 60 days. By the impugned order, the Adjudicating Authority while allowing the CIRP extension of 60 days also directed the Resolution Professional to issue a fresh Form-G in the CIRP of the Corporate Debtor which was dehors the relief prayed for. Aggrieved by the impugned order, the present appeal has been filed by the Appellant.

2. The brief facts of the case are as outlined below: -

- The Corporate Debtor was admitted into CIRP by the Adjudicating Authority on 26.02.2020 on a Section 9 petition filed by the Operational Creditor.

- The Resolution Professional ("**RP**" in short) issued Form-G on 5 occasions seeking EOIs for submission of Resolution Plans. The CoC was constituted with Union Bank of India (84.90%), Axis Bank (6.48%), ICICI Bank (6.18%) and Yes Bank (2.44%).
- Three Resolution Plans were received. However, as none of these plans were approved by the CoC in its 20th and 21st meetings, the RP filed I.A. No. 3199 of 2022 seeking liquidation of the Corporate Debtor.
- While the I.A. No. 3199 of 2022 was pending before the Adjudicating Authority, the present Appellant sent an EOI to the RP on 09.01.2023 to allow submission of Resolution Plan. The Appellant was informed by the RP that CIRP period had ended on 18.06.2022 and that liquidation of the Corporate Debtor was pending consideration of the Adjudicating Authority.
- The Appellant filed I.A. No. 228 of 2023 before the Adjudicating Authority seeking permission to submit Resolution Plan. The Adjudicating Authority allowed the Appellant to submit Resolution Plan vide its order dated 16.01.2023. The Appellant submitted the Resolution Plan before the RP on 30.01.2023.
- On 04.02.2023, the RP had filed I.A. No. 886 of 2023 seeking rectification of the order dated 16.01.2023 of the Adjudicating Authority passed in I.A. No. 228 of 2023 which had wrongly recorded that no EOI proposal had been received, whereas in actuality, 03 Resolution Plans had been received which were all rejected by the CoC.

- The Adjudicating Authority instead of rectifying its order dated 16.01.2023 decided to recall the said order on 08.02.2023 on the ground that the factual backdrop espoused by the parties never existed.
- The Appellant challenged the order of the Adjudicating Authority dated 08.02.2023 in I.A. No. 886 of 2023 before this Tribunal. The Adjudicating Authority was directed by this Tribunal to adjourn the liquidation application on 21.02.2023. This Tribunal also set aside the order of 08.02.2023 and permitted consideration of the Resolution Plan filed the Appellant vide its order dated 25.04.2023.
- The Resolution Plan of the Appellant was duly deliberated by the CoC in its 23rd meeting held on 12.05.2023. The CoC in the same meeting decided not to consider any other Resolution Plan apart from the one submitted by the Appellant and inter-alia passed a resolution with 97.56% vote share seeking extension of CIRP period by 60 days.
- The RP accordingly filed I.A. No. 3016 of 2023 seeking extension of the CIRP period before the Adjudicating Authority.
- While I.A. No 3016/2023 was still pending, the 26th meeting of the CoC held on 23.08.2023 after due deliberations agreed to vote upon the resolution plan of the Appellant.
- The Adjudicating Authority on 30.11.2023 disposed of I.A. No. 3016 of 2023 by extending the CIRP period by 60 days. However, it also directed the RP to issue fresh Form-G to invite EOIs from other resolution applicants also and to complete the CIRP process within the extended period of 60 days.

- The Appellant has preferred this Appeal assailing the impugned order on the ground that the Adjudicating Authority directed the publication of fresh Form-G while the prayer made before the Adjudicating Authority was only for the purpose of extension of CIRP period by 60 days.

3. The Learned Sr. Counsel for the Appellant while making his submissions adverted attention to the orders of this Tribunal by which the recall order of the Adjudicating Authority dated 08.02.2023 was set aside and the CoC allowed to consider the Resolution Plan which had been submitted by the Appellant on 30.01.2023. It was also submitted that in pursuance to this Tribunal's orders, the Resolution Plan of the Appellant was deliberated at length in the 23rd CoC meeting held on 12.05.2023. The CoC in the said meeting decided to only consider the Resolution Plan of the Appellant. The CoC members in the said meeting had also considered the issuance of fresh Form-G and took a conscious decision not to consider any other Resolution Plan. The same meeting also decided to pass a resolution seeking extension of CIRP period by 60 days to enable consideration and voting on the plan submitted by the Appellant. It was asserted that this decision of the CoC was taken with 97.56% vote share and was in exercise of commercial wisdom of the CoC.

4. It was further added that the CoC in its 26th meeting held on 23.08.2023 again deliberated on the issue of fresh Form-G and rejected this proposition on the ground of being a time-consuming exercise. The CoC also concluded that the Resolution Plan of the Appellant was of a higher value in comparison to the plan submitted by earlier resolution applicants and hence decided to vote only on the Resolution Plan of the Appellant.

5. The Learned Sr. Counsel for the Appellant emphatically submitted that the CoC in its 23rd and 26th meeting had clearly decided, after holding detailed deliberations, not to re-run the CIRP process to avoid unnecessary delays and had resolved to extend the CIRP period by 60 days solely for the purpose of consideration of and voting on the Resolution Plan of the Appellant. Under such circumstances, when the RP filed I.A. No. 3016 of 2023, it was not justifiable on the part of the Adjudicating Authority to direct the issuance of Form-G as this decision was not in consonance with the commercial wisdom of the CoC. Moreover, this direction was not a relief prayed for by the RP and that this direction would jeopardise the strict and tight time-lines of the CIRP process. It was also contended that it is settled law that a relief or direction for which no prayer or pleading is made cannot be granted especially when there were no such compelling circumstances.

6. It was also contended that impugned order of the Adjudicating Authority directing republication of Form-G run foul of the stringent time-lines provided for conclusion of CIRP process under the IBC. The CIRP period of 330 days having already expired on 18.06.2022, allowing fresh EOIs would entail further negotiations which would render it improbable to complete the CIRP process within the period of 60 days and on this ground too, the impugned order was assailed.

7. The Learned Counsel for the Respondent No. 1/RP also submitted that the CoC in the 23rd meeting had resolved to file an application before the

Adjudicating Authority for extension of the CIRP time period by 60 days as this extension was required to enable consideration and voting on the resolution plan of the Appellant. It was added that since I.A. No. 3199/2023 had already been filed by the RP seeking liquidation of the Corporate Debtor and during its pendency, I.A. No. 3016/2023 was also filed seeking extension of time and as both the I.A's contained prayers in contradiction to each other, the CoC in its 25th meeting held on 01.08.2023 resolved to withdraw I.A. No. 3199/2023. This resolution for withdrawal of liquidation application was passed by the CoC with 97.56% votes.

8. It was also submitted by the Learned Counsel for the RP that during the hearing of I.A. No. 3016/2023, since an oral enquiry was made by the Adjudicating Authority from the RP whether a fresh Form-G be issued, this issue was put to discussion before the CoC members in the 26th meeting and after due deliberations, the CoC in the exercise of its commercial wisdom, decided not to publish any fresh Form-G. It was added that the minutes of the CoC meetings clearly makes a note that issue a fresh Form-G would be a time-consuming process and hence was not recommended. The CoC had also noted that the resolution plan value of the Appellant was better than the values offered by the erstwhile potential resolution applicants.

9. Echoing similar viewpoint, it was submitted by the Learned Counsel for the Union Bank of India/Respondent No. 2, being the majority vote share holder in the CoC, that it had been decided by the CoC in their 20th and 21st meetings to reject all 3 resolution plans received from resolution applicants as they were offering less than the liquidation value of the Corporate Debtor and to go ahead with liquidation of the Corporate Debtor. Even at the later stage, when the CoC in compliance to the directions of the Adjudicating Authority and this Tribunal chose to deliberate on the Resolution Plan of the Appellant, it had compared the enhanced value offered by them in comparison to the erstwhile resolution applicants and thereafter decided to put to consideration and voting only the Resolution Plan of the Appellant. The CoC had decided not to issue fresh Form-G as much time had already elapsed since the Corporate Debtor was admitted into CIRP and any issue of fresh Form-G would further add to the time-lag which would affect the NPV of the Corporate Debtor.

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

The narrow issue for consideration before us is whether the Adjudicating Authority was justified in passing the impugned order directing fresh issue of Form G in the facts of the present case when the CoC had already decided against this course of action.

11. For a proper appreciation of the issue at hand, it may be necessary to notice the sequence of events in the present case. The Corporate Debtor was admitted into CIRP by the Adjudicating Authority on 26.02.2020. The RP issued Form-G on 5 occasions following which three Resolution Plans were received. These plans were considered by the CoC in its 20th and 21st meetings and rejected as the value of the plans was not found optimal and it was decided to seek liquidation of the Corporate Debtor. However, while the I.A. No 3199 for liquidation was pending, the Adjudicating Authority allowed I.A.

No 228 filed by the Appellant on 16.01.2023 for consideration of their Resolution Plan by observing that: ***"We are conscious that that the object of the IBC, 2016 is to rescue the CD in distress. Thus, the plea put forth by the Applicant in the IA deserve to be accepted."***

12. The Adjudicating Authority however recalled this order on 08.02.2023. This recall order was subsequently challenged before this Tribunal. This Tribunal by its order dated 21.02.2023 directed adjournment of the liquidation application and by subsequent order on 25.04.2023 permitted the Appellant to file the Resolution Plan. The relevant excerpts of the order is as extracted below:

> *"2. Learned Counsel for the* ***Union Bank of India having 86% vote share submits that Union Bank has no objection if the plan submitted by the Appellant is considered.***
>
> *3. Learned Counsel for Appellant submits that* ***plan has already been submitted*** *in pursuance of the order dated 16.01.2023 on 30.01.2023.* ***Hence, there was no occasion to recall the order dated 16.01.2023.***
>
> *4. In view of the statement made by the Learned Counsel for the parties, we are of the view that plan having already been submitted there was no occasion for recall of the order 16.01.2023, moreover, only prayer made was to make certain corrections in the order dated 16.01.2023.* ***The order dated 08.02.2023 in so far as it recall the order dated 16.01.2023 is set aside.***
>
> *The Appeal is disposed of."*
>
> ***(Emphasis supplied)***

The above order therefore allowed consideration of the Resolution Plan of the Appellant which had already been submitted by the Appellant on 30.01.2023. It is also noticed that the majority share-holder in the CoC with 86% vote share had no objection to the consideration of the plan.

13. Thereafter, the Resolution Plan submitted by the Appellant was placed before the 23rd CoC meeting. The summary of the cured plan of the Appellant was shared with the CoC and thereafter the same was discussed by the CoC in the said meeting following which the Appellant was further asked to increase the plan value and offer the best possible plan as may be seen at Item No. 07 of the 23rd meeting of the CoC as placed at pages 86-87 of the Appeal Paper Book ("**APB**" in short).

14. The CoC members in the said meeting also considered the request received from erstwhile resolution applicants for reconsideration of their plans. However, the CoC after deliberations decided not to consider any other Resolution Plan as it would become an endless exercise besides leading to avoidable litigation. It also decided against issuance of fresh Form-G. The relevant portions of CoC deliberations as minuted at Item No. 8 is as below:

> *"**Item No. 08***
> ***To Discuss the mail received from Mr. Pankaj Saraogi***
> *The Chairman presented before the CoC the mail dated 09.05.2023 received from Mr. Pankaj Saraogi on behalf of "Consortium of Pankaj Saraogi and Ranjana Saraogi" who was a PRA pursuant to Form G dated 06.11.2021, requesting for re-consideration of his plan.........*
>
> *The Chairman invited suggestions of CoC on consideration of above stated applicants and **whether CoC wants to consider issuance of fresh Form G** for allowing the PRA to submit the revised/new plan. **Representative of UBI opined that this way it will be never ending process and one applicant or other will move to NCLT and will invite litigation.** The Chairman apprised the members that Mr. Saraogi has already approached the NCLT once for re-consideration of his plan. But his application was dismissed with cost. After detailed discussion and deliberations, **it was concluded by the CoC that only plan of Mr. Hanjra shall be considered in***

accordance with the appropriate NCLAT directions *obtained by PRA."*

(Emphasis supplied)

15. We further notice that the same meeting also taking cognizance of the fact that CIRP period had already expired in June, 2022 decided to pass a resolution seeking extension of CIRP period by 60 days to enable consideration and voting on the Resolution Plan submitted by the Appellant. This issue was deliberated as Item No.10 in the CoC, the relevant portions of the minutes being as reproduced below:

> *"**<u>Item No. 10</u>***
> ***<u>To approve for extension of CIRP period and seeking exclusion of time lost in litigation from CIRP period</u>***
> *The Chairman shall apprised the CoC members that the* ***330 days of CIRP period have expired on 18.06.2022 and the liquidation application was filed in June 2022. However, the same is pending adjudication.*** *As discussed in agenda item no. 6 above, the plan submitted by Mr. Jatindra Pal Singh Hanjra, through Authorized Representative, Mr. Ajay Nagpal is to be considered by CoC. The Chairman apprised the need to apply for extension of CIRP period and seeking exclusion of period lost in litigation.*
> *After discussion and deliberations, following resolution was proposed to be passed for approval by physical vote at the meeting:*
> *<u>Proposed Resolution</u>*
> *"**RESOLVED THAT** the **approval of the CoC be and is hereby accorded for seeking extension of CIRP period by another 60 days for consideration and voting on the plan submitted by PRA Mr. Jatindra Pal Singh Hanjra**, through Authorised Representative, Mr. Ajay Nagpal.*
> ***RESOLVED FURTHER THAT*** *the approval of the CoC be and is hereby accorded for filing suitable application before Hon'ble NCLT seeking exclusion of time lost in litigation i.e. from date of filing of liquidation application till date on which further extension of 60 days is granted by Hon'ble NCLT.*

> ***RESOLVED FURTHER THAT*** *Resolution Professional and is hereby authorised to file suitable application before Hon'ble NCLT to give effect to above stated resolution."*
>
> ***(Emphasis supplied)***

It is pertinent to note that the aforesaid resolution was approved by the CoC by 97.56% voting. Accordingly, an I.A. No. 3016 of 2023 was filed before the Adjudicating Authority seeking extension of the CIRP period.

16. While the I.A. No. 3016 of 2023 was pending before the Adjudicating Authority, the RP had convened the 26th CoC meeting on 23.08.2023 wherein the Resolution Plan of the Appellant was taken up for consideration. It is significant to note that the RP brought it to the notice of the CoC that during the ongoing hearing of I.A. No. 3016/2023, the Adjudicating Authority had orally enquired from the RP whether a fresh Form-G be issued to give chance to other potential resolution applicants to participate in the submission of plans. This oral suggestion made by the Adjudicating Authority was put to discussion as Item No. 5 in the 26th CoC meeting and the relevant minutes of the discussion rejecting the issuance of fresh issue of Form-G is as reproduced below:

*"**Item No. 05***
To apprise about the mails received from parties interested in submission of resolution plan.

…………………
*The representative of **Union Bank figured out the following reasons for not publishing the form G afresh**:*

1. *It will be a **time-consuming exercise and atleast 3 more months will be needed to re-run the process** of receipt and negotiation on the plan. Further, no specific directions of Hon'ble NCLT are there in this regard. In case, any such directions were given CoC will abide by them.*

2. *The* ***Hon'ble NCLAT vide order dated 25.04.2023*** *has only specifically referred to consideration of plan submitted by Mr. Jatinder P. Hanjra as allowed by order of Hon'ble NCLA T dated 16.01.2023.* ***There was no direction to consider plan of any other party or to publish form G.*** *In accordance with the prayer sought in appeal, submission of UBI, as captured in the order, also related to consideration of plan of Mr. Hanjra only. Thus no deviation from the intent of the order shall be made by considering plans of other applicants.*

3. ***Resolution plans of the earlier three PRAs were of a lower value than the resolution plan of offered by Mr. Hanjra.***

The values of the plans (without CAPEX and Contingency Reserve) as submitted by the earlier three PRAs and by Mr. Hanjra is as follows:

S.No.	*1*	*2*	*3*		*4*
Name of PRA	*Anuj Goyal*	*Vickey Gupta*	*Pankaj Saraogi and Ranjana Saraogi*		*Jatinder P. Hanjra*
			Original	*Revised*	
Secured FC (in Rs. Crore)	*7.00*	*10.55*	*14.15*	*18.10*	*19.00*
Unsecured FC (in Rs. Crore)	*0.00*	*0.40*	*0.30*	*0.30*	*0.25*
Operational Creditor (in Rs. Crore)	*0.00*	*0.10*	*0.10*	*0.10*	*0.25*
Plan Value (in Rs. Crore)*	*7.00*	*11.05*	*14.55*	*18.50*	*19.50*
Term of the plan	*12 months*	*12 months*	*9 months*	*6 months*	*3 months*

**CIRP cost as per actual in all plans*

While the initial value proposed by the HI in the plans received by the CoC pursuant to form G dated 06.11.2022 was Rs. 14.55 Cr., ***Mr. Hanjra has considerably enhanced the value of the plan and is offering a total of Rs 19.50 crore within 3 months period.*** *Out of the said amount, Rs. 19.25 Crore shall be available to the Secured Financial Creditors which as compared to the other plans available is on the higher side.*

Thus it was concluded that ***as the resolution plan of Mr. Hanjra is offering an enhanced value, CoC is of a view that the instant resolution plan should be considered, in view of Hon'ble NCLAT direction vide order***

dated 25.04.2023, for voting rather than issuing fresh Form G which will consume a lot of time and may not yield the desired results. *Further there is a chance that the existing PRA also may decide to withdraw the plan."*

(Emphasis supplied)

17. We notice that the 26th meeting of the CoC not only undertook an exercise to compare the resolution plans submitted by erstwhile applicants with that of the Appellant but discussed the Resolution Plan of the Appellant and decided that it could be put to e-voting by CoC members after CIRP extension is granted. The relevant discussions are as noted below:

> *"**Item No. 07***
> ***To discuss the cured Resolution Plan received from PRA Mr. Jatinder Pal Singh Hanjra.***
>
> ***………….***
>
> *The representative of Union Bank of India further requested Mr. Nagpal to increase the plan value to which Mr. Hanjra replied it to be the best offer as he has already revised the amount as compared to his original plan.*
> *After discussions and deliberations, the PRA offered the final amount.*
> ***With this increase in plan value, it was concluded that the plan submitted by Mr. Jatinder Pal Hanjra was legally compliant and finally negotiated at. It was discussed that the plan can be put to e-voting by CoC members.*** *At this juncture, the RP highlighted that as discussed in Item no. 6 above since the CIRP extension is yet not granted and Regulation 18(2) do not permit CoC to vote upon any resolution having impact on resolution plan, the voting on resolution plan cannot be conducted in the present circumstances.*
> *Thereafter, Mr. Ajay Nagpal took a leave from CoC.*
> *It was the concluded that final negotiation were done with the PRA and* ***once the exclusion/extension from Hon'ble NCLT is granted in IA 3016 of 2023, then only the resolution plan negotiated by the CoC will be put to vote****."*
>
> ***(Emphasis supplied)***

18. Soon after the 26th CoC meeting, the I.A. No 3016/2023 was disposed of by the Adjudicating Authority on 30.11.2023 by extending the CIRP period by 60 days. Vide this impugned order, "***in the interest of justice and maximization of the value of the Corporate Debtor***", it directed the RP to invite fresh EOI through wider publication of Form-G to enable any prospective resolution applicant to participate in the resolution process. It also directed that the completion of the process within 60 days extended period.

19. Given the facts and circumstances of the present case as narrated above, we find that despite lapse of four years, no resolution had fructified so far. Inspite of issue of Form G on five occasions, no viable resolution plans had cropped up compelling the CoC to recommend liquidation of the Corporate Debtor. However, on an application filed by the Appellant seeking consideration of their Resolution Plan, the Adjudicating Authority taking note that the object of the IBC is to rescue the Corporate Debtor in distress allowed the consideration of the Resolution Plan of the Appellant on 16.01.2023. The subsequent decision of the Adjudicating Authority on 08.02.2023 to recall its order of 16.01.2023 was set aside by this Tribunal. This Tribunal on 25.04.2023 taking note of the fact that Resolution Plan of the Appellant was already submitted and the majority member of the CoC holding 86% share had expressed its no objection to consider the same, allowed consideration of the Resolution Plan of the Appellant.

20. Thereafter, we notice that the CoC in its 23rd and 26th meetings took up consideration of the Resolution Plan of the Appellant. While doing so, it took note of the fact that during consideration of the IA for extension of time, an oral query had been made by the Adjudicating Authority as to whether the CoC is inclined to consider only the resolution plan of the Appellant. The CoC duly considered this aspect and came to the conclusion that despite 5 times Form-G having been issued, which did not bear any results, issue of any further round of Form-G would only add to delays and turn the CIRP clock back which would not be good for the health of the Corporate Debtor. It also noted that there were no express directions as such from the Adjudicating Authority for issue of fresh Form-G. The CoC therefore consciously decided not to re-open the process by adducing detailed reasons which have already been captured in Para 16 above.

21. This decision of the CoC not to issue fresh Form-G has been also canvassed by the Learned Counsels of the Appellant, RP and Union Bank of India. It has been contended by them that fresh publication of Form-G would run counter to the stringent time lines prescribed by the IBC for completion of the CIRP process. It has been contended by Learned Sr. Counsel for the Appellant that the impugned order by directing the issue of fresh Form-G ran contrary to the commercial wisdom of the CoC and that this relief not having been prayed for but granted *suo motu* by the Adjudicating Authority prejudicially affected the interests of the Appellant as well as cause delay in the CIRP process which would diminish the health and value of the Corporate Debtor.

22. It would be relevant and constructive to note the overarching objectives of the IBC as enshrined in the Preamble which reads as follows:

> *"An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership persons and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."*
>
> *(Emphasis supplied)*

The same aspirations resonate in the Statement of Objects and Reasons of this legislative enactment. The mandate and objective of the IBC clearly emphasizes reorganization and insolvency resolution of corporate debtor in a time bound manner for maximization of the value of the assets. Speed is the essence of IBC. The maximization of the value of the Corporate Debtor is also admittedly an object of the CIRP. However, the said maximization has to be achieved within the timeline provided in the scheme. Needless to add, there has to be a respectful balance and harmony between the twin objectives of timely resolution and asset maximization. The CoC members took cognizance of the fact that CIRP period of 330 days stood expired and now that a resolution plan has come up seeking to provide substantially much more than the liquidation value, it decided to consider only this plan and place it for voting once the Adjudicating Authority allowed the extension of the CIRP period for which an IA was pending before the Adjudicating Authority. The CoC while taking this decision had kept in mind the objective of the IBC of making the CIRP a time bound process. 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, allowing other potential resolution applicants by the Adjudicating Authority to paradrop afresh at this stage when CIRP period is over and that too contrary to the deliberations of the CoC, in our considered opinion, cannot be countenanced.

23. The CoC in its deliberations had also noted that the erstwhile resolution applicants had requested for consideration of their plans. We also notice that the CoC undertook an exercise to compare the resolution plans submitted by erstwhile applicants with that submitted by the Appellant and concluded that the plan value of the Appellant was distinctly better than the others. Clearly therefore all aspects of the plan including the plan value of the Appellant and other potential Resolution Applicants were in the knowledge of the CoC which on having been deliberated at length testifies the exercise of commercial wisdom by the CoC. This also shows that the CoC was well aware that the objective of IBC to ensure maximisation of the value of assets does not get defeated. As far as the plan value which was offered by the Appellant and the plan value which had been offered by other resolution applicants, evaluation of the same falls within the domain of commercial wisdom of CoC.

24. Such opinion expressed by the CoC after due deliberations in the meetings through voting is the 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 Adjudicating Authority cannot foist its own wisdom upon the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon'ble Supreme Court. 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."*

25. We may also notice a judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 3665-3666 of 2020 in the matter of "***Ngaitlang Dhar vs. Panna Pragati Infrastructure Private Limited & Ors.***" where in para 31, the following has been held:-

> "*31. It is trite law that 'commercial wisdom' of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the IBC. It has been consistently held that it is not open to the Adjudicating Authority (the NCLT) or the Appellate Authority (the NCLAT) to take into consideration any other factor other than the one specified in Section 30(2) or Section 61(3) of the IBC. It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that the decision of the CoC's 'commercial wisdom' is non justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) of the IBC. This position of law has*

been consistently reiterated in a catena of judgments of this Court, including:

(i) K. Sashidhar v. Indian Overseas Bank and Others

(ii) Committee of Creditors of Essar Steel India Limited Through Authorized Signatory v. Satish Kumar Gupta and Others,

(iii) Maharashtra Seamless Limited v. Padmanabhan Venkatesh and others,

(iv) Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another.

(v) Ghanashyam Mishra and Sons Private Limited Through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through the Director & Ors."

26. Ultimately it is the commercial wisdom of the CoC which operates to approve what is to be the best resolution plan. The Adjudicating Authority with the limited powers of judicial review available to it cannot substitute its views with the commercial wisdom of the CoC. In view of the above, we hold that the Adjudicating Authority has committed an error in directing the issuance of fresh Form-G while allowing the extension of the CIRP by 60 days when the CoC had deliberated at length on this issue and had decided against the option of having other potential resolution applicants from joining the fray.

27. In view of the foregoing discussion and conclusions, we set aside that part of the impugned order wherein the Adjudicating Authority has directed the RP to invite fresh expression of interest through wider publication of Form-G. We however affirm that part of the impugned order wherein the period of CIRP has been extended by 60 days. We further direct the RP to place the resolution plan of the Appellant before the CoC for consideration and voting and complete the CIRP within the extended period. The appeal is allowed with the aforesaid observations. With this, I.A. No. 171 of 2024 also stands disposed of on the above terms. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 16.02.2024

Ram N.