

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

I.A.(IB) No. 461/KB/2024  
in  
C.P. (IB) No. 1382/KB/2020

*An application under Section 60(5) of The Insolvency and Bankruptcy Code,  
2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;*

**In the matter of:**

UCO Bank

...FINANCIAL CREDITOR

Versus

Darjeeling Organic Tea Estate Private Limited

...CORPORATE DEBTOR

And

**In the matter of:**

ODAT-GmbH

...APPLICANT

Versus

1. CA Santanu Brahma, Interim Resolution Professional of Darjeeling Organic Tea Estates Private Limited.
2. The Committee of Creditors of Darjeeling Organic Tea Estates Private Limited.

...RESPONDENTS

**Date of pronouncement of order: 30.04.2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearances (via Video Conferencing/Physical):**

Ms. Purti Gupta, Adv.                   ] For the Petitioner  
Mr. Pratik Ghosh, Adv.                 ]

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Mr. Santosh Kr. Roy, Adv. ] For the Financial Creditor  
Ms. Rituparna Sanyal, Adv. ]  
Ms. Zeba Khan, Adv. ]  
Ms. Muskan Saha, Adv. ]

Mr. Shaunak Mitra, Adv. ] For the Resolution Professional  
Mr. Dripto Mazumdar, Adv. ]  
Mr. Manas Das, Adv. ]  
Mr. Chandan Mohata, Adv. ]

**O R D E R**

**Per: D. Arvind, Member (Technical)**

1. The Court congregated through a hybrid mode.
2. Heard, Ld. Counsels for the parties present.
3. This application has been filed by ODAT-Gmbh (hereinafter referred to as 'Applicant') against Shantanu Brahma an Interim Resolution Professional of Darjeeling Tea Estate Limited (hereinafter referred to as 'Respondents) seeking direction/order that resolutions passed by the CoC in the first, second and third CoC be set aside and fresh voting in respect of the said resolutions be directed. The Applicant also seeks direction that Resolution Professional should be restrained from progressing with the implementation of Resolutions passed till fresh voting in this regard thereto is conducted.

**4. Factual Matrix:**

- 4.1. The Applicant ODAT was considered as a Financial Creditor but as a "related party" by the Resolution Professional and was

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allowed to participate in the CoC meetings with no voting powers  
Upon an application this Tribunal passed an Order in IA  
1649/KB/2023 holding that the Applicant is a “related party”  
and consequently entitled to participate in CoC meetings with no  
voting rights.

- 4.2. Upon an appeal against the said order in Appeal No.1683 of 2023 dated 13<sup>th</sup> February, 2024, Hon'ble NCLAT set aside the Order passed by us directing the IRP to include the appellant in the Committee of Creditors and also provide voting rights to the Applicant proportionate to the amount of claim admitted in the CIRP, In the interim before this order could be passed by Hon'ble Appellate Tribunal, on 21.12.2023, an interim order was passed holding that any decision taken by the CoC shall abide by the result of the appeal.
- 4.3. This application seeks to cancel all the resolutions passed in CoC 1, 2 & 3 to be set aside and fresh voting be ordered.
- 4.4. During the course of hearing we were informed by the Counsel for the respondents that they have filed an appeal against the Order of the Hon'ble NCLAT before the Hon'ble Supreme Court and the matter is pending for disposal. However, the IRP has

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already included the Applicant in the CoC with appropriate voting rights in proportionate to the amount claimed.

- 4.5. The Ld. Counsel for the respondents submits that in the absence of specific direction from the Hon'ble NCLAT the question of setting aside the resolutions passed in earlier CoC meetings does not arise.

**5. Findings:**

- 5.1. We find that there is no specific direction from the Hon'ble NCLAT to set aside the previous Resolutions passed in earlier CoC meetings. The interim order relied by the Ld. Counsel has merged with the Final order passed by the Hon'ble NCLAT in appeal No.1683 of 2023.
- 5.2. We have also carefully perused the resolution passed in the previous meetings. No expression of interest has been obtained yet from anyone. So far and whatever resolutions that were passed in these meetings are administrative in nature such as appointment of Interim Resolution Professional, appointment of certain professionals, advocates to conduct CIRP process and constitution of Committee. Now is that Constitution of Committee (CoC) has been corrected by including the Applicant with voting

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rights, as per the direction of the Hon'ble NCLAT the resolution passed to that effect stand modified already. If at all the Applicant is still aggrieved with other administrative resolutions he can always call for another CoC meeting and suggest replacement of professionals appointed. When IRP/RP can be replaced with the majority of 66% in terms of Section 27 of IBC the same holds good for replacement of other professionals appointed, if at all the Applicant desires.

6. Thus, no prejudice would be caused to the Applicant by not cancelling the resolutions earlier passed, in any case.
7. Therefore, we find no merits in this Application and, accordingly, dismissed.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 30<sup>th</sup> April, 2024**

SG, Steno