

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 281 of 2024

[Arising out of Order dated 04.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court-II,) in I.A. (IB) No. 1054/KB/2023]

IN THE MATTER OF:

Kanoria Energy & Infrastructure Limited

(Erstwhile A Infrastructure Limited) Hamir Garh

Bhilwara RJ 311025 In

...Appellant

Versus

1. **Mr. Avishek Gupta,**
Erstwhile Resolution Professional Sarga Hotel
Private Limited,
[Under Cirp] Ck-104, Sector 2 Salt Lake Kolkata
West Bengal – 700091
2. **J.C. Flowers Asset Reconstruction Pvt. Ltd.,**
Representing the COC for Sarga Hotel Pvt. Ltd.,
12th Floor, Crompton Greaves House, Annie
Besant Road, Worli, Mumbai – 400030
3. **Shriram Multicom Pvt. Ltd.,**
61/29/N3, N.S.B. Road, Raniganj – 713347,
Dist. Burdwan.

...Respondents

For Appellant: Mr. Krishnamohan Menon and Ms. Mehak Joshi
and Ms. Yamini Gupta, Advocates

For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Pooja Mahajan, Ms. Shruti Pandey, Ms. Shreya Mahalwar, Ms. Namrata Sarogi and Mr. Kartik Pandey, Advocates for R-1/RP

Mr. Gopal Jain, Sr. Advocate with Raunak Dhillon,
Ms. Madhavi Khanna and Mr. Nihaad Dewan,
Advocates for R-2

Mr. Sidhartha Sharma, Mr. Arjun Sharma and Ms.
Shalini Bora, Advocates for SRA

Cont'd.../

J U D G M E N T

ASHOK BHUSHAN, J.

1. This Appeal by Unsuccessful Resolution Applicant has been filed challenging the Order dated 04th January, 2024 passed by the National Company Law Tribunal, Kolkata Bench, Court II, in I.A. No. 1054/KB/2023 by which Order, the Adjudicating Authority has approved the Resolution Plan submitted by Respondent No. 3-Shriram Multicom Pvt. Ltd. Appellant aggrieved by the said order has come up in this Appeal.

1. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

- Corporate Insolvency Resolution Process (**CIRP** in short) of the Corporate Debtor-Sarga Hotel Pvt. Ltd. commenced vide Order dated 11.02.2020. Form-G was issued by Resolution Professional in response to which Appellant submitted his 'expression of interest'.
- On 30th September, 2022, Appellant submitted a Resolution Plan. Appellant on 11th April, 2023 submitted a revised signed resolution plan, three other resolution applicants also submitted their revised signed resolution plans on 11th April, 2023.
- On 12th CoC meeting held on 12th April, 2023, signed revised resolution plans were opened. On 3rd May, 2023, all resolution applicants including the Appellant were asked to submit a revised signed resolution plans after incorporating the legal comments

without changing the commercial offer as submitted on 11th April, 2023 by 05th May, 2023. On 04th May, 2023, Appellant sought extension of time for resubmission of Resolution Plan till 11th May, 2023. Appellant again sent an email requesting for extension of time for submissions of resolution plan till 07th May, 2023. Time for receipt of revised resolution plans were extended upto 08th May, 2023. On 08th May, 2023, Resolution Professional requested the Appellant to submit a Resolution Plan within the stipulated timeline however Appellant did not submit its revised signed resolution plan. Resolution Professional received revised signed resolution plan from three other Resolution Applicants.

- On 19th May, 2023, the 13th CoC meeting was held in which CoC was apprised of receipt of revised final signed plan from three Resolution Applicants whereas final signed resolution plan was not received from the Appellant by 08th May, 2023. The signed resolution plan submitted by Appellant on 11th April, 2023 was considered for evaluation. It was decided that four resolution plan including the signed resolution plan of appellant dated 11th April, 2023 shall be put for voting in the next CoC Meeting scheduled for 24th May, 2023. One day before the CoC meeting i.e. on 23rd May, 2023, RP received an email by 10:52 PM by which Appellant unilaterally proposed to revise its commercial offer. On 24th May, 2023, 14th CoC Meeting was held during which the CoC was informed about the email dated 23rd May, 2023 received from Appellant. CoC duly considered the email dated 23rd May, 2023 of

the Appellant and decided to consider appellant's resolution plan as submitted on 11th April, 2023. All plans were put to e-voting on the basis of result of e-voting the Resolution Plan submitted by Shriram Multicom Pvt. Ltd. was approved with 100% vote share.

- On 2nd June, 2023, RP filed an application I.A. No. 1054/KB/2023 for approval of the Resolution Plan. On 26th June, 2023, RP by email informed the applicants other than successful resolution applicant that earnest money and bank guarantee will be returned after the approval of resolution plan. Shriram Multicom Pvt. Ltd. was also informed. On 21st August, 2023, the Appellant filed an I.A. No. 1470 of 2023 seeking a direction to consider its resolution plan by RP and to place it before the CoC. I.A. No. 1470 of 2023 was heard by the Adjudicating Authority and by the Order dated 09th November, 2023, Application was rejected. By the impugned order dated 04.01.2024, I.A. No. 1054/KB/2023 has been allowed and the Resolution Plan submitted by Respondent No. 3 has been approved. Aggrieved by the said order, this Appeal has been filed.

2. We have heard Shree Krishnamohan Menon, Learned Counsel for the Appellant, Shree Ramji Srinivasan, Learned Sr. Counsel appearing for Resolution Professional and Mr. Gopal Jain for Respondent No. 2-J.C. Flower Asset Reconstruction Ltd. representative of CoC and Mr. Siddharth Sharma, Learned Counsel for SRA.

3. Learned Counsel for the Appellant challenging the Impugned Order submits that the resolution plan approved by the CoC is not in accordance with law. It is submitted that resolution plan submitted by

the Appellant as revised through email sent on 23rd May, 2023 had offered higher offer of Rs. 310 Crores as compared to the resolution plan of Respondent No. 3 but the CoC did not consider the higher value offered by the Appellant and approved the Resolution Plan of Respondent No. 3. It is submitted that constitution of CoC is also under challenge as RARE Asset Reconstruction Limited filed an application challenging the action of the Resolution Professional ousting the RARE Asset Reconstruction Limited from the CoC. An I.A. No. 822 of 2022 was filed which I.A. was rejected by the Adjudicating Authority against which C.A.(AT) Ins. No. 1304 of 2023 has been filed which is pending consideration. It is submitted that COC itself being not properly constituted, approval of the resolution plan cannot be valid. The Appellant has also filed an I.A. No. 1470 of 2023 seeking a direction to RP to place the resolution plan before the CoC to consider the revised resolution plan dated 23rd May, 2023 which application was illegally rejected by the Adjudicating Authority against which C.A.(AT) Ins. No. 1689 of 2023 has been filed by the Appellant.

4. Learned Counsel for the Resolution Professional refuting the submissions of the Appellant submits that Appellant was only one Resolution Applicant whose resolution plan was duly considered by the CoC in its 14th CoC meeting and the resolution plan of Respondent No. 3 has been approved by the 100% vote share. The Appellant being unsuccessful resolution applicant has no right to maintain this Appeal. Unsuccessful Resolution Applicant does not have any right to challenge the approval of the resolution plan. It is submitted that I.A. which was

filed by the Appellant being I.A. No. 1470 of 2023 seeking a direction to consider the resolution plan of the Appellant as revised on 23rd May, 2023 has also been rejected by the Adjudicating Authority against which Appeal has been filed by the Appellant which is pending. It is submitted that the allegations regarding the constitution of CoC are unfounded. It is submitted that Resolution Professional on account of valid reasons has taken a decision to oust the RARE Asset Reconstruction Limited from the CoC which decision of the RP was upheld by the Adjudicating Authority, thus, the submission of the Appellant that constitution of CoC is not valid has no basis. It is submitted that there is no averment or allegation that resolution plan approved, submitted by Respondent No. 3 is non-compliance of the provision of Code. It is submitted that approval of the resolution plan is in the domain of the decision of the CoC which commercial wisdom cannot be interfered with by the Adjudicating Authority. It is well settled that the Adjudicating Authority has limited jurisdiction to interfere with order approving the resolution plan, only limited ground for interference is that when resolution plan violates any provision of Section 30(2) of the Code. There is not even allegation or any averment or ground in the appeal that resolution plan approved by the CoC violates any provision of Section 30(2) of the Code.

5. The CoC has also supported the approval of the resolution plan and submits that present Appeal has been filed on the same ground on which appeal has already been filed being C.A.(AT) Ins. No. 1689 of 2023. The plan of Appellant has been duly considered by the CoC in its 14th CoC meeting held on 24th May, 2023 and the resolution plan of the

Respondent No. 3 being approved, there is no right in the Appellant to challenge the commercial wisdom of the CoC and decision of the CoC cannot be questioned by the Appellant.

6. We have considered the submissions of Learned Counsel for the parties and have perused the record.

7. Present Appeal has been filed against the Order of the Adjudicating Authority approving the Resolution Plan submitted by the Respondent No. 3. The Appellant was only one of the Resolution Applicant whose plan was also considered by the CoC in its 14th CoC meeting held on 24th May, 2023 but the plan of Respondent No. 3 was approved with 100% vote share of CoC. Appellant whose plan was also considered and not approved by the CoC cannot be said to be aggrieved by the approval of the Resolution Plan of Respondent No. 3. It is well settled that commercial wisdom of CoC in approving the resolution plan is not to be interfered by the Adjudicating Authority in its judicial review and limited ground for interference with the resolution plan is only when resolution plan violates or is in non-compliance of Section 30(2) of the Code. The Appellant has no such right that its resolution plan should be approved by the CoC which proposition has already been laid down by the Hon'ble Supreme Court in **Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta**, (2019) 2 SCC 1. The Appellant has also filed an application being I.A. No. 1470 of 2023 seeking a direction to RP to place the Resolution Plan of the Appellant before the COC which I.A. was rejected by the Adjudicating Authority vide its order dated 09th November, 2023 against which C.A.(AT) Ins. No. 1689 of 2023 has been filed by the Appellant, we by our

separate order passed of the date has already dismissed C.A.(AT) Ins. No. 1689 of 2023 upholding the order of the Adjudicating Authority rejecting I.A. No. 1470 of 2023.

8. We do not find any ground in this Appeal warranting any interference with the order of the Adjudicating Authority dated 04th January, 2024 by which the Adjudicating Authority has approved the Resolution Plan. The CoC after considering the Resolution Plan of the Appellant and all other Resolution Applicants has approved the resolution plan of Respondent No. 3 with 100% vote share which resolution plan has ultimately been approved by the Adjudicating Authority on 04th January, 2024. We do not find any ground to interfere with the order dated 04th January, 2024. There is no merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

**NEW DELHI
29th February, 2024**

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