

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 727-728 of 2023

[Arising out of order dated 12.04.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench in IA No.1394 of 2022 and IA No. 823 of 2020 in CP (IB) No.515 (CHD) of 2019.]

IN THE MATTER OF:

**Sita Chaudhary
(Suspended Director of Haryana Telecom Limited)
House No. N-102, Panchsheel Park,
New Delhi – 110 017** **...Appellant**

Versus

**Haryana Telecom Limited
(through Resolution Professional)
Unit No.110, First Floor, JMD Pacific Square,
Sector-15, Part-II, Gurugram, Haryana – 122001** **...Respondent No.1**

**Abhimanyu Singh Mehlawat
(Successful Resolution Applicant)
H. No.1036, IFFCO Colony,
Sector-17B, Gurugram,
Haryana – 122001** **...Respondent No.2**

**Committee of Creditors (CoC)
Through Parivartan Investment Finance Company,
SCO-21, ICC Road,
Madhuban Colony, Rajpura,
Patiala, Punjab** **...Respondent No.3**

Present:

Appellant: **Mr. Aadil Singh Boparai, Mr. Sumer Singh Boparai,
Mr. Sidhant Saraswat, Advocates**

For Respondents: **Mr. Abhishek Anand, Mr. Karan Kohli, Advocates
for RP with Sanyam Goel, RP in person
Mr. Abhijeet Sinha, Mr. Saikat Sarkar, Mr. Naman
Joshi, Ms. Ritika Vohra, Advocates for CoC
Mr. Sumesh Dhawan, Advocate**

J U D G M E N T

[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 two orders dated 12.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) in IA No. 1394 of 2022 and IA No. 823 of 2020 in CP (IB) No.515 (CHD) of 2019. By the impugned order passed in IA No.823 of 2020 (hereinafter referred to as “First Impugned Order”), the Adjudicating Authority had approved the Resolution Plan of the Corporate Debtor. By the impugned order passed in IA No. 1394 of 2022 (hereinafter referred to as “Second Impugned Order”), the Adjudicating Authority dismissed this IA filed by the present Appellant seeking direction for rejection of the Resolution Plan and dismissal of IA 823/2020. Aggrieved by these impugned orders, the present appeal has been filed by Smt. Sita Chaudhary, the suspended director of the Corporate Debtor.

2. The background facts of the case which are necessary to be noticed for deciding this appeal are as outlined below: -

- An Agreement was executed between Haryana Telecom Ltd.-Corporate Debtor and Parivartan Investment and Finance Company - Financial Creditor, whereby Corporate Debtor agreed to redeem the Debentures of the value of Rs. 5,00,00,000/-.
- The Corporate Debtor re-issued the Non-Convertible Debentures (“**NCD**” in short) and an agreement was executed between the Financial Creditor and the Corporate Debtor to extend the date of redemption to 31.12.2010. By execution of subsequent agreements, the period of redemption was extended up to 31.12.2020. As per the

redemption agreements, the Corporate Debtor was to pay 12% interest for the extended period but the Financial Creditor waived off the interest from time to time.

- The Financial Creditor, however, issued notice to the Corporate Debtor demanding interest payment by 30.04.2019. The Corporate Debtor agreed for the payment of interest for the period 01.04.2018 to 31.03.2019 @ 12% by 30.04.2019 and to be paid quarterly thereafter.
- Reminder letters were issued by the Financial Creditor to the Corporate Debtor for interest payment on 25.02.2019, 31.03.2019, 20.04.2019, 03.05.2019 and 15.05.2019.
- Smt. Sunaina Singh is grand-daughter of Smt. Sita Chaudhary, who is suspended Director of the Corporate Debtor. Sunaina Singh was Director of the Corporate Debtor but she resigned as Director of the Corporate Debtor on 25.03.2019 and since then has not been continuing as Director of the Corporate Debtor.
- Insolvency proceedings under Section 7 of IBC were initiated against the Corporate Debtor vide Financial Creditor's application dated 25.09.2019. The Adjudicating Authority vide its order dated 07.02.2020 admitted the Section 7 petition and initiated CIRP against the Corporate Debtor.
- Following initiation of CIRP, Resolution Professional – Respondent No.1 was appointed. The Committee of Creditors (“**CoC**” in short) was constituted by the Resolution Professional in terms of Section 21 of IBC and the Financial Creditor was inducted as sole member into the Committee of Creditors.

- The Resolution Professional published the Invitation for Expression of Interest in Form-G on 24.06.2020.
- In the 4th CoC Meeting on 19.07.2020 the Resolution Professional apprised the CoC that it had received Expressions of Interest from five prospective Resolution Applicants. The CoC also approved the appointment of a professional to assist Resolution Professional in carrying out due diligence of the prospective Resolution Applicants in terms of Section 29A of IBC.
- In the 7th CoC meeting, the Resolution Professional apprised the CoC members that due diligence of Resolution Plans as received from three prospective Resolution Applicants had been undertaken.
- After due deliberations, the CoC found the resolution plan submitted by Mr. Abhimanyu Singh Mehlawat as H-1, Resolution Plan of Pankaj Sachdeva as H-2 and the Resolution Plan submitted by One City Infrastructure Pvt. Ltd. as H-3.
- In the 9th CoC meeting, the Resolution Professional apprised the CoC that H-1 Resolution Applicant had filed Addendum to the Resolution Plan and increased the Plan from Rs. 20.10 crore to 25.14 crore as final offer. The Resolution Professional further apprised the CoC that Resolution Plans of H-1 and H-2 is legally compliant but Resolution Plan of H-3 is not legally compliant.
- The resolution plan submitted by Mr. Abhimanyu Singh Mehlawat was approved by the CoC in its 9th meeting dated 31.10.2020 with 100% voting share. Mr. Abhimanyu Singh Mehlawat, the Successful Resolution Applicant (“**SRA**” in short) is present Respondent No. 2.

- An Operational Creditor-Raj Babar filed an application bearing I.A. No. 344 of 2020 on 01.09.2020 challenging the constitution of the CoC and seeking removal of the Financial Creditor from the CoC on the ground of being a related party of the Corporate Debtor. I.A. No. 344/2020 was dismissed by the Adjudicating Authority vide its Order dated 05.03.2021.
- An unsuccessful resolution applicant - One City Infrastructure Private Limited - also filed IA No. 728 of 2020 seeking reconstitution of CoC on account of Financial Creditor being a related party of the Corporate Debtor. The Adjudicating Authority disposed of IA No. 728 of 2020 on 02.11.2021 in terms of the order dated 05.03.2021 in IA 344/2020.
- Challenging the above order dated 02.11.2021, the unsuccessful resolution applicant preferred an appeal bearing CA (AT) (Ins) No. 1065 of 2021 before this Tribunal. The order of the Adjudicating Authority in IA 728/2020 was affirmed by this Tribunal and the appeal was dismissed vide order dated 14.07.2022.
- The Resolution Professional filed application bearing No.823 of 2020 before the Adjudicating Authority seeking approval of the Resolution Plan. The IA 823 of 2020 was allowed on 12.04.2023 wherein the resolution plan was approved by the Adjudicating Authority.
- The Appellant had filed a suit bearing no.C.S.(OS) 589 of 2021 before the Hon'ble Delhi High Court for declaration, permanent and mandatory injunction, rendition of account and cancellation of the gift deed of the Appellant to Sunaina Singh. The Hon'ble Delhi High Court on 29.07.2022 passed an interim order and granted injunction in

favour of the Appellant which order has been appealed by Sunaina Singh which appeal is pending consideration.

- Basis the interim relief granted by the Hon'ble Delhi High Court, the Appellant filed IA 1394 of 2022 before the Adjudicating Authority seeking rejection of the resolution plan and directions to the Resolution Professional for constituting a fresh CoC.
- The Adjudicating Authority has dismissed IA 1394/2022 on 12.04.2023 on the ground that issues raised by the Appellant therein have already been decided in earlier proceedings. Aggrieved by this order, the Appellant has come up in appeal praying for the following reliefs: -
 - a) *Pass an order setting aside the impugned order dated 12.04.2023 passed by the Adjudicating Authority dismissing the IA 1394 of 2022.*
 - b) *Pass an order setting aside the impugned order dated 12.04.2023 passed by the Adjudicating Authority dismissing the IA 823 of 2020.*
 - c) *Pass an order directing the Respondent No.1 to reconstitute the Committee of Creditors.*
 - d) *Pass any other orders as this Hon'ble Appellate Tribunal may deem fit and proper in the interest of justice.*

3. The Learned Counsel for the Appellant making his submissions contended that the Adjudicating Authority had dismissed the IA 1394/2022 without appreciating the fact that fraud and coercion was writ large in the proceedings in CP(IB) 515/2019. This is validated by the findings of undue influence, coercion and fraud on the part of Sunaina Singh and her associates over the Appellant as held by the Hon'ble Delhi High Court in its order dated

29.07.2022 in C.S.(OS) 589 of 2021. It was pointed out that the Appellant was unaware of the CIRP proceedings as she was not in control of her own faculties and was subjected to undue control of Sunaina Singh. Besides asserting that the initiation of CIRP proceedings were vitiated by fraud, it was submitted that Sunaina Singh in furtherance of her conspiracy orchestrated a debt and default by exercising undue influence upon the Appellant. She had got the waiver of interest for extended period of debentures revoked and thereafter got the revocation of the interest waiver unscrupulously accepted by the Corporate Debtor by exercising undue influence over the Appellant. When the revocation of interest waiver was made, Sunaina Singh was acting as a Director of the Corporate Debtor. It was vehemently contended that Sunaina Singh's subsequent resignation from the Corporate Debtor was a smokescreen to enable her to participate in the CoC as the sole financial Creditor to control the entire CIRP process and usurp the assets of the Corporate Debtor. It was emphatically asserted that the resignation of Sunaina Singh from the Corporate Debtor on 25.03.2019 after orchestrating the default requires to be examined in light of the Order dated 29.07.2022 of the Hon'ble Delhi High Court and the allegation of related party has to be looked into in terms of Section 5(24)(h) of the IBC.

4. It was also argued that the Financial Creditor was the only member in the CoC and thus enjoyed the power and authority to unilaterally approve the Resolution Plan. The commercial wisdom of the CoC was compromised as the Sunaina Singh as director of the sole financial creditor had vested interest in getting the Resolution Plan of the SRA/Respondent No. 2 approved as SRA was a business partner of her husband. It was on this count the Appellant had sought reconstitution of the CoC but the Adjudicating Authority failed to

appreciate their prayers while passing the two impugned orders. It was also submitted that the Resolution Plan does not attempt to revive the Corporate Debtor or maximise its assets but is an attempt to conduct liquidation of the assets of the Corporate Debtor.

5. Learned Counsels appearing for the Resolution Professional, CoC as well as the SRA have opposed the submissions of the Learned Counsel for the Appellant. As their submissions overlap, the same are encapsulated together. It was stated that the reliance placed by the Appellant on the Hon'ble Delhi Court order dated 29.07.2022 is highly misplaced as the said order was passed in a totally different set of facts and circumstances. The said order being relied upon by the Appellant is interim in nature and relates to a matter wherein neither the Corporate Debtor nor the Financial Creditor were a party. It is further submitted that Sunaina Singh cannot be said to be related party to the Corporate Debtor as she had resigned from the Board of Corporate Debtor on 25.03.2019 whereas application under Section 7 was filed six months thereafter and admitted on 07.02.2020. Thus, Sunaina Singh not being a related party, there was no error in the constitution of the CoC with Financial Creditor as the only member of the CoC. The same issue of Sunaina Singh being a related party of the Corporate Debtor and need for reconstitution of the CoC was raised by an Operational Creditor of the Corporate Debtor in IA 344/2020 which was considered by the Adjudicating Authority and rejected vide its order dated 05.03.2021. Thereafter, an unsuccessful resolution applicant had filed application bearing IA No. 728 of 2020 seeking similar reliefs which also stood dismissed and appeal preferred against this decision of the Adjudicating Authority before this Tribunal was also dismissed vide Order dated 14.07.2022. Thus, the issue of the Financial

Creditor not being a related party of the Corporate Debtor having already attained finality, it was vehemently contended that since the instant Appeal raises similar grounds it deserves to be dismissed on this ground alone.

6. It was also submitted that the Appellant's prayer for setting aside the order of the Adjudicating Authority dated 12.04.2023 in IA 823 of 2020 approving the Resolution Plan submitted by the SRA lack proper foundation. The same can be set aside only if the Appellant is able to demonstrate before this Tribunal that their case falls within the grounds enumerated in Section 61(3) of the IBC which it has failed to do. It was argued that the intent of the Appellant in preferring the present company petition is to indirectly challenge the order dated 07.02.2020 passed by the Adjudicating Authority whereby CIRP was initiated against the Corporate Debtor. Having not challenged the CIRP admission order within the statutory period of 30 days, this is a ploy to extend the limitation period under the garb of challenging the Resolution Plan. With the sole intent to derail the entire CIRP it was submitted that the Appellant is seeking to achieve something indirectly which otherwise could not have been achieved directly.

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

8. The broad questions which need to be answered are as follows: -

- (i) With the previous adjudication of IA 344 of 2020; IA 728 of 2020 and in the light of the decision of this Tribunal in CA (AT) (Ins.) 1065 of 2021 dated 14.07.2022 upholding the constitution of CoC and this matter having attained finality,

whether the issue of sole financial creditor being related party to the Corporate Debtor can be raised again at this stage.

- (ii) Whether the benefit of findings of the Hon'ble Delhi High Court in its order dated 29.07.2022 in CS(OS) 589/2021 regarding the Appellant being under undue and coercive influence of Sunaina Singh which in turn purportedly vitiated the CIRP proceedings was not available before the Adjudicating Authority and the Appellate Authority.
- (iii) Whether the Appellant not having challenged the CIRP admission order or the constitution of CoC within 30 days from the date of the passing of the relevant orders by the Adjudicating Authority is now entitled to raise these issues belatedly at this stage when the resolution plan came up for approval.
- (iv) Whether cogent grounds have been made out by the Appellant in terms of Section 61(3) of IBC for challenging the order approving the resolution plan and whether the Appellant under the pretext of contesting the approval of the resolution plan has attempted to indirectly challenge the CIRP admission order dated 07.02.2020.

9. Before we seek to answer the above questions, we may recapitulate some of the significant events and related dates which are going to have a bearing on the determination of the above questions. Sunaina Singh resigned as Director of the Corporate Debtor on 25.03.2019. The CIRP of the Corporate Debtor commenced on 07.02.2020 and the CoC was constituted on 29.02.2020. The resolution plan submitted by SRA - Abhimanyu Singh

Mehlawat was approved by the CoC in its 9th meeting dated 31.10.2020. The IA No. 344/2020 challenging the constitution of the CoC and seeking removal of the Financial Creditor from the CoC on the ground of being a related party of the Corporate Debtor was dismissed by the Adjudicating Authority on 05.03.2021. IA No. 728 of 2020 seeking reconstitution of CoC on account of Financial Creditor being a related party of the Corporate Debtor was disposed by the Adjudicating Authority on 02.11.2021 and appeal preferred thereto was dismissed by this Tribunal on 14.07.2022. The Hon'ble Delhi High Court on 29.07.2022 passed an interim order on civil suit - C.S.(OS) 589 of 2021 filed by the Appellant for declaration, permanent and mandatory injunction, rendition of account and cancellation of the gift deed which order is presently under challenge. IA 823 of 2020 filed by the Resolution Professional for approval of the resolution plan was allowed on 12.04.2023 by the Adjudicating Authority. IA No. 1394 of 2022 seeking rejection of the resolution plan and directions to the Resolution Professional for constituting fresh CoC was dismissed on 12.04.2023 by the Adjudicating Authority.

10. The questions outlined at Sl. Nos. (i) and (ii) at Para 6 being inter-related, we wish to deal with them conjointly. The Learned Counsel for the Appellant has pressed the submission that it is an erroneous interpretation to hold that the issue of the Financial Creditor being a related party of the Corporate Debtor has attained finality following the decision of this Tribunal in Company Appeal (AT) (Ins.) 1065 of 2021 and that of the Adjudicating Authority in IA 344 of 2020 and IA 728 of 2020 as both the adjudicatory and appellate authority did not have the benefit of the findings of the Hon'ble Delhi High Court in C.S. (O.S.) 589 of 2021 of undue influence and coercion by Sunaina Singh over the Appellant while considering the matter. They were not

apprised of the true facts regarding the fraudulent acts of Sunaina Singh and her husband. It was submitted that the Hon'ble Delhi High Court vide its order dated 29.07.2022 held that the Appellant was accustomed to act under the advice and directions of Sunaina Singh and that undue influence and coercion exercised over the Appellant by Sunaina Singh coincided with the time period of the CIRP proceedings before the Adjudicating Authority. It was pressed that the allegation of related party therefore requires to be looked into afresh in terms of Section 5(24)(h) of the IBC and the act of resignation of Sunaina Singh from the Corporate Debtor on 25.03.2019 has to be re-examined both in the light of the Hon'ble Delhi High Court order dated 29.07.2022. In support of their contention, attention was also adverted to the exception carved out by the Hon'ble Apex Court in ***Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd. & Ors (2021) 3 SCC 475*** where the related party divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC to sabotage the CIRP.

11. Making rival submissions, it has been contended by the Learned counsel of the Respondents that the orders of the Adjudicating Authority dated 05.03.2021 and 02.11.2021 dismissing I.A. No. 344 of 2020 and I.A. No. 728 of 2020 by holding that the Financial Creditor is not a related party of the Corporate Debtor is well-reasoned. That the Adjudicating Authority had made cogent findings stands validated by the fact that this Tribunal in its orders dated 14.07.2022 in Company Appeal (AT) (Ins.) 1065 of 2021 had affirmed these findings. Hence the issue having already attained finality, the instant appeal deserves to be dismissed. It was also contended that the reliance placed by the Appellant on the Hon'ble Delhi Court order dated

29.07.2022 is misconceived as the said order was passed in a totally different context and in totally different set of facts and circumstances. Moreover, the said order being relied upon by the Appellant is interim in nature and relates to a matter wherein neither the Corporate Debtor nor the Financial Creditor were a party.

12. At this juncture, it may be useful for us to have a look at how this Tribunal had dealt with the allegation of Financial Creditor being a related party of the Corporate Debtor as raised by the Appellant in Company Appeal (AT) (Ins.) 1065 of 2021. It may be constructive to especially focus on whether this Tribunal in its findings had taken note of the judgment of Hon'ble Supreme Court in **Phoenix** supra and the statutory provisions contained in Sections 5(24) and 21(2) of the IBC which have been relied upon by the Appellant.

13. We find that this Tribunal in Para 9 of its judgment dated 14.07.2022 in CA (AT) (Ins.) 1065 of 2021 has adverted to the **Phoenix (supra)** and observed as follows: -

“9. The ratio which can be culled out from the above judgment is that the Financial Creditor who is praesenti is not related party cannot be debarred from being a member of the CoC. The exception to the above proposition is that in case where the related party Financial Creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to

Section 21(2), to consider the former related party creditor, as one debarred under the first proviso. Following has been laid down in Para 103 of the judgment:-

“103. Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso.”

14. After noticing the **Phoenix** ratio, we find that this Tribunal in the same judgement has also noticed at length the relevant provisions of IBC as contained in Section 5(24) [including Section 5(24)(h)], Section 5(24A) and Section 21(2) and recorded its findings in Para 16 of the said order as reproduced: -

“16. The fact that Smt. Sunaina Singh on 01.01.2019 requested the Corporate Debtor for redemption of non-convertible debentures and the fact that Smt. Sunaina Singh was a Director of the Corporate Debtor when non-convertible debentures were issued by the Corporate Debtor and held by Financial Creditor i.e. 13.01.2016, in view of the law laid down by the Hon’ble Supreme Court in ‘Phoenix ARC Pvt. Ltd.’ (supra) are not relevant criteria to hold Financial Creditor as related party to the Corporate Debtor. Only exception which has been laid down in

Para 103 of the judgment of Hon'ble Supreme Court in 'Phoenix ARC Pvt. Ltd.', as extracted above and noted by us is that where the Financial Creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party. When we look into the Application I.A. No. 728 of 2020 and even rejoinder filed in the said Application, there is no averment that one of the Director of the Financial Creditor, Smt. Sunaina Singh ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors. There being no foundation in the I.A. No. 728 of 2020 making any averment which can be looked into to find out whether present is a case which can be said to be an exception to related party being in praesenti as laid down by the Hon'ble Supreme Court in Para 103 of the judgment in 'Phoenix ARC Pvt. Ltd.'.

17. At this stage, we may also refer to order dated 05.03.2021 passed by the Adjudicating Authority in I.A. No. 344 of 2020. One Mr. Rajiv Babbar, who was an Operational Creditor has also filed an Application being I.A. No. 344 of 2020 making same allegations against the Financial Creditor alleging that Smt. Sunaina Singh being Director who has resigned on 25.03.2019 is related party and Financial Creditor cannot be part of the CoC. Adjudicating Authority dealt the issue elaborately in Para 10, which is to the following effect:-

“10. From the above, it is clear that though Mrs. Sunaina Singh was a Director of the third respondent/financial creditor on an earlier point of time but either on the date of filing of Section 7 application or on the date of initiation of the CIR Proceedings i.e. the date of admission of CP, she was not the Director of the third respondent/financial

creditor, since she had admittedly resigned as a Director from the corporate debtor on 25.03.2019. The financial creditor/third respondent is not a holding, subsidiary or associate company of the corporate debtor. The averments made or documents filed on behalf of the applicant do not show that any of the Directors of the corporate debtor have in any manner interfered in the working of the financial creditor/third respondent in the ordinary course of business of that the Directors of the corporate debtor in any way advise/instruct the Directors of the financial creditor/third respondent or vice versa. In the absence of the same, it cannot be stated that the third respondent/financial creditor is a related party to the corporate debtor. Mere relationship between Mrs. Sunaina Singh and Mrs. Sita Chaudhary i.e. granddaughter and grandmother without there being sufficient evidence to show that both of them are working conjointly on aid and advise of each other shall not disentitle the third respondent/financial creditor to be the COC Member either under Section 5(24) or/and Section 21(2). In view of our finding that the applicant failed to show that the third respondent/financial creditor is a related party to the corporate debtor, there is no need of delving upon the various decisions cited by both sides.”

18. The Adjudicating Authority has also elaborately noticed the judgment of Hon’ble Supreme Court in ‘Phoenix ARC Pvt. Ltd.’ and made following observations in Para 14:-

“14. The Hon’ble Apex Court held that, in a given case, if it is established that the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the COC and to sabotage the CIRP, by diluting the vote share of other creditors or otherwise, can be debarred from the COC, though the

said financial creditor was not a related party as on the date of filing of the CP. But in the present case, since the applicant failed to establish any such intention on the part of the third respondent, the decision of the Hon'ble Apex Court is also not applicable.”

19. Although order dated 02.11.2021 rejecting the I.A. No. 728 of 2020 is not an elaborate order, the elaborate order having been passed earlier on 05.03.2021, the reasoning given in order dated 05.03.2021 can be looked into to find out the reason given by the Adjudicating Authority for rejecting application filed by the Appellant. We are, thus, satisfied that present is a case where Smt. Sunaina Singh in praesenti was not a related party having resigned six months prior to filing of Section 7 Application. There is no averment or material on record to show that Smt. Sunaina Singh has resigned to cease to be Director of the Corporate Debtor with the sole intention of participating in the CoC and to sabotage the CIRP, by diluting the vote share of other creditors or otherwise. Present is not a case covered by exception as elaborated in Para 103 of judgment of Hon'ble Supreme Court in 'Phoenix ARC Pvt. Ltd.' (supra). We, thus, are satisfied that no error has been committed by the Adjudicating Authority in rejecting I.A. No. 728 of 2020 filed by the Appellant. In result, the Appeal is dismissed.”

15. From the foregoing paragraphs of this Tribunal's findings, it is amply clear that this Tribunal on 14.07.2022 came to the categorical conclusion that Sunaina Singh was not a related party having resigned much before the filing of Section 7 application and that her case was not covered by the exception carved out in **Phoenix** (supra) judgment. We also note that this order of 14.07.2022 was not challenged by the Appellant and to that extent has attained finality.

16. The only issue at hand before us now is the allegation raised by the Appellant that the benefit of findings of the Hon'ble Delhi High Court dated 29.07.2022 was not available to this Tribunal while passing its orders. Be that as it may, this contention lacks substance as we find that the Adjudicating Authority while passing the second impugned order in IA No. 1394/2022 has dwelled at length on the findings of the Hon'ble Delhi High Court dated 29.07.2022 before coming to the conclusion that the financial creditor in the present case is not a related party of the corporate debtor, which is as reproduced below: -

"10. In the present case, the applicant has mainly relied on the interim reliefs in the order of the Hon'ble Delhi High Court dated 29.07.2022, granted in favour of the applicant, i.e. Ms. Sita Chaudhary, and the injuncting director of the financial creditor, i.e. Ms. Sunaina Singh and Associates from transferring and siphoning off the assets of the family assets of late Devinder Singh Chaudhary, i.e. the husband of the applicant. The details of the shareholding pattern and these companies, which were under dispute before the Hon'ble High Court, mentioned on pages 71 to 13, have been perused. We note that the name of the corporate debtor, i.e. Haryana Telecom Limited, does not feature anywhere in the said order of the Hon'ble Delhi High Court even though the list of defendants contains the names of as many as seven companies in which late Shri. Davinder Singh Chaudhary had substantial shareholdings. It is also noted that the applicant has got very negligible shareholding in the corporate debtor.

11. We note that in the present case, the CIRP was initiated on 07.02.2023, and the applicant being suspended director was in complete knowledge of the facts right from the beginning. Resolution proceedings in the case of the corporate debtor under the IBC are in progress. Despite the same, the present application is being filed when the Resolution Plan is placed before this Authority for approval. The reference to Ms. Sunaina Singh, Director of the financial creditor in the order of the Hon'ble Delhi High Court, on which much reliance

has been placed by the applicant, is in the context of the distribution of the assets of late Devinder Singh Chaudhary, who happened to be the husband of the plaintiff in that application i.e., Ms. Sita Chaudhary. Prima facie, the only connecting link between the case before the Hon'ble Delhi High Court and the present application is the plaintiff/applicant, Ms. Sita Chaudhary, who happens to be one of the directors of the suspended Board of the corporate debtor. Even if, for the sake of argument, the allegation of wielding undue influence is accepted, the decision by the Delhi High Court was delivered in a totally different context of inheritance of a third party's estate. We do not find any reason to allow it to cast any shadow over the initiation of CIRP by order of this Adjudicating Authority, as the same has been initiated after considering the debt and default committed by the corporate debtors. The present applicant has not been able to show any ground for disputing the debt and default committed by the corporate debtor resulting in the initiation of the CIRP.

12. We further note that the issues of the financial creditor being a related party of the corporate debtor and the re-constitution of CoC in the matter of the corporate debtor have been adjudicated by this Adjudicating Authority by its order dated 05.03.2021 in IA No. 344/2020, and order dated 02.11.2021 in IA No. 728/2020, and the prayers have been rejected.”

17. It is the case of the SRA and the Financial Creditor that the decision of the Hon'ble Delhi High Court is interim in nature and is presently under challenge. It is also their contention that the subject matter before the Hon'ble Delhi High Court for its consideration was different in that it related to declaration, permanent and mandatory injunction, rendition of account and cancellation of the gift deed by the Appellant to Sunaina Singh. The determination of these issues by the Hon'ble High Court can at best be for the purposes for which the suit was filed in the Hon'ble High Court and not for deciding on the sustainability of the CIRP proceedings.

18. Having regard to the material facts on record which shows that Sunaina Singh resigned as Director of the Corporate Debtor on 25.03.2019 while the Section 7 application was filed on 25.09.2019 and CIRP of the Corporate Debtor commenced on 07.02.2020, we are satisfied with the above findings in the second impugned order that Sunaina Singh was not a related party of the Corporate Debtor having resigned much before the filing of section 7 application. Though Sunaina Singh was a Director of the Corporate Debtor at earlier point of time but as on the date of filing of Section 7 application or on the date of admission of CIRP, she was not the Director of the Corporate Debtor since she had admittedly resigned as a Director from the Corporate Debtor on 25.03.2019. We are also convinced that the Adjudicating Authority while passing the second impugned order was fully abreast of the findings of the Hon'ble Delhi Court and has recorded detailed findings as to why these findings are distinguishable and inapplicable in determining the issue of Financial Creditor being a related party of the Corporate Debtor.

19. In answering the questions outlined at para 6(i) and (ii) above, in our considered opinion, there is no force in the contention of the Appellant that the findings of the Hon'ble Delhi High Court in the context of related party allegation have been missed out by the Adjudicating Authority. The issue of sole financial creditor not being a related party to the Corporate Debtor has been well settled with due consistency both by the Adjudicating Authority and this Tribunal after noticing the relevant provisions of IBC and Phoenix judgment and cannot be reagitated at this stage now.

20. This now brings us to questions poised at paras 6 (iii) and 6 (iv) above, which we propose to deal together. It is the case of the Appellant that debt

and default was orchestrated by exercising undue influence over the Appellant by Sunaina Singh. At the time of admission of the Section 7 petition, Sunaina Singh was giving instructions to the Counsel of the Appellant and made her forcefully sign pleadings and the Appellant being under duress and coercion could not raise objections to the initiation of CIRP proceedings. On the other hand, rival contention has been made that the Appellant was conscious and aware of the initiation of CIRP proceedings and having failed to challenge the said CIRP admission order within the statutory period of 30 days, Appellant is now attempting to extend the limitation period under the garb of challenging the Resolution Plan. Thus, the Appellant wants to achieve something indirectly which otherwise it would not have been achieved directly.

21. It is trite law that under the IBC, once a debt becomes due or payable, in law and in fact, and there is incidence of non-payment of the said debt in full or part thereof, CIRP may be initiated by the Financial Creditor. The Adjudicating Authority only has to determine whether a default has occurred, i.e., whether the debt was due and remained unpaid. Once this is established, the CIRP has to be initiated against the Corporate Debtor. The Adjudicating Authority following this mandate of Section 7(5) of IBC had admitted the section 7 application on 07.02.2020 and initiated the CIRP against the Corporate Debtor. The CIRP admission order could have been challenged and an appeal filed within 30 days from the date of passing of the order. Admittedly, the Appellant never challenged the CIRP order. Thereafter the CIRP proceedings had commenced and CoC was constituted on 29.02.2020. Even the constitution of CoC was not questioned within the prescribed period. The statutory scheme of the IBC makes it clear that though the erstwhile

Board of Directors are not CoC members, yet they have a right to participate in each and every meeting held by the CoC including right to discuss all the resolution plans presented in such meetings. In the present case too, pursuant to the constitution of CoC, notice of meetings of the CoC were duly sent to the Appellant. Despite service of notices upon the Appellant, it is clear that the Appellant chose neither to attend the meetings of the CoC and participate in the deliberations therein but never raised any objection on the CIRP process in spite of having knowledge of the ongoing CIRP.

22. It has been contended by the Appellant that the commercial wisdom of the CoC was compromised as the Sunaina Singh the director of the sole financial creditor had vested interest in the Resolution Plan of the Respondent No. 2. It is also contended that Sunaina Singh had resigned from the Corporate Debtor with the intention to participate in the CoC as the sole Financial Creditor so as to control the entire CIRP process and usurp the assets of the Corporate Debtor. Hence it is the plea of the Appellant that there is a need to reject the resolution plan as approved by the Adjudicating Authority vide the first impugned order.

23. The rival submissions made is that the Appellant has attempted to indirectly challenge the CIRP admission order dated 07.02.2020 under the pretext of contesting the approval of the resolution plan. It is contended that the Appellant on the one hand is asserting fraudulent initiation of CIRP and on the other hand wants reconstitution of the CoC. In doing so, the Appellant is blowing hot and cold, and the sole intention of the Appellant is to derail the CIRP proceedings and cause hindrance in successful implementation of the Resolution Plan which goes against the twin objectives of the Code of maximization of the value of the assets and time-bound insolvency resolution.

24. The present prayer of the Appellant to set aside the order approving the resolution plan submitted by the SRA can only be sustained if grounds mentioned under Section 61(3) of the IBC are met. This therefore brings us to the question whether cogent grounds have been made out by the Appellant in terms of Section 61(3) of IBC for challenging the first impugned order dated 12.04.2023 of the Adjudicating Authority approving the resolution plan.

25. To arrive at our findings, we may therefore glance through the relevant portions of the first impugned order approving the resolution plan. In para 11 of the first impugned order, the Adjudicating Authority has categorically held that the CoC evaluated all the resolution plans submitted by the PRAs in terms of Regulation 39 of the IBBI (CIRP) Regulations as per the Evaluation Matrix to identify the best resolution plan. We also notice that the Adjudicating Authority has observed at paras 33 and 34 of the first impugned order that :

“33. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

34. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the Code and complies with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.”.

26. Undisputedly, in the statutory framework of IBC, the grounds on which the decision of approval of the resolution plan by the CoC can be interfered

with by the Adjudicating Authority has been set out in Section 31 read with Section 30 of IBC. In terms of Section 31 of IBC, the scope of enquiry by the Adjudicating Authority is confined to scrutinizing whether Section 30(4) has been complied with or not. In the present case, the CoC after considering the viability and feasibility of the resolution plan has approved the same with 100% vote share thereby fairly and squarely meeting the conditionalities laid down in Section 30(4) of the IBC. In the present case, the Resolution Professional after approval of the plan by the CoC filed an application before the Adjudicating Authority seeking approval of the Resolution Plan under Section 31 of the IBC. After detailed deliberations on feasibility and viability of Resolution Plan, the Adjudicating Authority has clearly recorded in the first impugned order that on examination of the resolution plan it has found that no provision of law appears to have been contravened and that there is compliance to Regulations 38 and 39 of CIRP Regulations, 2016.

27. The Appellant has also prayed for rejecting the resolution plan of the SRA on the ground that the SRA is a related party having a business relationship with the husband of the Director of the sole Financial Creditor of the Corporate Debtor. We are inclined to agree with the rival contention that relief cannot be granted on the basis of mere bald assertions assailing the commercial wisdom of the CoC which has approved the resolution plan without placing any material on record to show under which clause of Section 5(24) of the IBC the SRA can be considered to be a related party or how the SRA would be ineligible to submit a resolution plan under Section 29A of the IBC.

28. We are of the considered view that the CoC has done due diligence and evaluated the matrix in approving the resolution plan of the SRA and the sole

member of CoC having 100% voting share has already approved the plan in their commercial wisdom as contemplated under the law. The Appellant has failed to point out any material irregularity or contravention of any provision of law by the CoC in approving the plan. That being the case, 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 rejecting the resolution plan unless it is found it to be contrary to the express provisions of law or there is sufficient basis which establishes material irregularity. There can be no fetters on the commercial wisdom of CoC and the supremacy of commercial wisdom of CoC has been reaffirmed time and again by the Hon'ble Supreme Court in a catena of judgements including **K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150 ; Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531; Maharashtra Seamless Limited v. Padmanabhan Venkatesh (2020) 11 SCC 467; Kalpraj Dharamshi v. Kotak Investment Advisors Limited, (2021) 10 SCC 401 and Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director (2021) 9 SCC 657.**

29. Thus, to summarise our findings on the questions raised at para 6(iii) and (iv) we are of the clear view that the scope of interference with an order approving the resolution plan is very limited. The approved resolution plan can only be challenged before the Appellate Authority on limited grounds in terms of Section 61 (3) of the IBC. However, the Appellant has failed to make out a case of applicability of any such limited grounds. The IBC provides for an initiation of timely resolution of the corporate debtor and in the instant case the resolution plan of the SRA having already been approved by the CoC

and the Adjudicating Authority, it cannot now be open to interference on the ground that the CoC was not properly constituted. When the Appellant did not challenge the CIRP admission and constitution of CoC at the right point of time, it cannot raise the matter belatedly and make it a ground for rejection of the duly approved resolution plan. When the CoC has approved a Resolution Plan by 100% voting share after considering its feasibility and viability, such decision of CoC is a commercial decision and it is settled law that commercial wisdom of CoC in approving the Resolution Plan is not to be interfered in the exercise of jurisdiction of judicial review either by the Adjudicating Authority or by this Tribunal in the exercise of its appellate powers. We are of the view that the Adjudicating Authority did not commit any error in approving the resolution plan and therefore concur in the first impugned order of the Adjudicating Authority approving the resolution plan.

30. In view of the foregoing discussions and conclusions, we do not find any error in the first impugned order dated 12.04.2023 approving the Resolution Plan and in the second impugned order of the same date dismissing IA No. 1394 which sought rejection of the Resolution Plan. In result, the present appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 09.11.2023

PKM