



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**
*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical/ Video – Conferencing/ Hybrid Mode)*

**I.A.No.184/2024 in
C.P.(IB)No.197/BB/2022**
U/s. 60(5) of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s Triveni Education Society - Financial Creditor

Versus

M/s Sovereign Industries Ltd. - Respondent

In the matter of:

1. Mr. Shivkumar Malaghan

Suspended Board of Director
Resident at 674, Padmavati Colony
Ward No.2, Mudhol, Bagalkot,
Karnataka – 587 313

- Applicant No.1

2. Mr. BN Arakeri

Suspended Board of Director
Having Residential Address at:
Police Station Road, Padmavati Colony,
Mudhol -587313 Bagalkot

- Applicant No.2

Versus

1. Resolution Professional,

Mr. Ritesh R. Mahajan
Having Address at,
B-203, Devgiri, Ganeshmala, Sinhabad Road,
Pune, Maharashtra – 411 030

- Respondent No.1

2. The Karnataka State Cooperative Apex Bank Ltd.

Through its General Manager



R/o. at No.1 Head Office, Uthunga,
Pampamahakavi Road,
Chamarajpet – 560 018

- Respondent No.2

**3. The Kanara District Central
Cooperative Bank Ltd**

R/o. at XHWG+J6F, Dattatreya Temple St.,
Next to SLN Rice Mart, DNR Layout,
Malleshwara,
Bengaluru – 560 003

- Respondent No.3

4. The Belagavi DCC Bank Ltd

Through its CEO,
R/o. at XHWG+J6F, Dattatreya Temple St.,
Next to SLN Rice Mart, DNR Layout,
Malleshwara,
Bengaluru – 560 003

- Respondent No.4

5. Bajpe Vyavasaya Seva Sahakari Bank (N)

Through its CEO,
R/o. XVJP+H32, Bajpe Proper,
Mangaluru, Karnataka – 574 142

- Respondent No.5

6. S.C.D.C.C. Bank Ltd,

Through its DGM,
R/o. at Kodialbail Branch,
Uthkrushta Sahakari Soudha,
Kodialbail, Mangalore – 575 003

- Respondent No.6

**7. The Vijayapura District Central Co-op Bank Ltd.,
Vijayapura (Bijapur)**

Through its General Manager,
R/o. at Kittur Channamma Nagar,
Sholapur Road,
Vijaypur – 586 103

- Respondent No.7

8. Kodagu DCC Bank

Through its General Manager,
Head office at G.T. Circle,
Madikeri – 571 201

- Respondent No.8

9. M/s Shri Dutt India Private Limited



Through its Directors
R/o. at No.205, Second Floor,
P S Aviat New Town Road, Atghora Chinar Park,
Rajarhat, Kolkata,
West Bengal – 700 136

- Respondent No.9

Date of Order: 01st January, 2025

Coram: 1. Hon'ble Shri K.Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicants : Shri Abhishek Anand with
Ms. Shankari Mishra, Mr. Madhur .K
For the RP : Shri Rohit Gupta, Shri Raghuram Cadambi,
Shri Theerthesh B.S.
For the R-2 to 8 : Shri Srinivasa Raghavan, Sr. Counsel with
Shri A.S.Vishwajith
For the SRA : Shri C.K.Nandakumar, Sr. Counsel with
Shri Shrishail Naval Gund, Mr. Viraj.P

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Application has been filed on 27.02.2024 on behalf of Mr. Shivakumar Malaghan and Mr. B.N.Arakeri (hereinafter referred to as the Applicants), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') *inter alia* seeking the rejection of the Resolution Plan. The Applicants constitute the suspended Board of Directors of the Corporate Debtor. Among various grounds mentioned in the Application, it is submitted that Respondent No. 1-8 had ceased to have authority (*functus officio*) at the time the Resolution Plan was approved on 17.01.2024 and 18.01.2024.
2. Brief facts of the application are stated herein below:
 - a) The Company Petition filed by M/s. Triveni Education Society under Section 7 of the Code read with Rule 4 of the Insolvency &



Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor before the Hon’ble NCLT was admitted by the Hon’ble NCLT vide its order dated 28.03.2023. Mr. Konduru Prasanth Raju was appointed as the Interim Resolution Professional (“IRP”) with directions to perform all his functions contemplated under the Code and to conduct the CIRP of the Corporate Debtor till the appointment of a Resolution Professional.

- b) In the First COC Meeting of the Corporate Debtor held on 15.05.2023, the IRP Mr. Konduru Prasanth Raju was replaced by Respondent No. 1 Mr. Ritesh R. Mahajan as Resolution Professional (hereinafter “RP”) with a 75% voting by COC Members. It is relevant to submit that the COC had voted by 100% to run the Corporate Debtor as a going concern.
- c) The Respondent No.1 had conducted 2nd CoC on 22.06.2023 whereby he had placed an agenda for appointment of two independent sets of IBBI Registered Valuers and further placed an agenda for payment of extra for performance - linked incentive fee for timely resolution. Both the Agendas of the Respondent No. 1 were unanimously approved by the CoC Members of the Corporate Debtor. It is further relevant to submit that the COC had further decided the eligibility criteria for Prospective Resolution Applicant and date of publication of Form-G as 01.07.2023.
- d) Subsequently, the Resolution Professional issued FORM-G on 1.07.2023, inviting Prospective Resolution Applicants (“PRA”) for the Corporate Debtor, with the deadline for receiving Expressions of Interest (EOI) from the PRA set for 18.07.2024.
- e) During the 4th COC Meeting held on 26.09.2023, discussions and deliberations were held regarding the Resolution Plan submitted by the PRAs. It is important to note that during this stage, the COC requested Respondent No.9 to obtain approval from the Competition Commission of India, as required by Section 31 of the IBC, 2016.



Respondent No. 9 indicated that they would provide a legal opinion suggesting that such mandatory approval was unnecessary. However, it is crucial to highlight that no such legal opinion was ever furnished by Respondent No. 9 to the COC. Despite this, the COC proceeded to approve the plan put forth by Respondent No.9, displaying deliberate disregard for this omission. This situation suggests collusion between the COC and Respondent No.9, granting undue advantage to the latter to circumvent legal provisions.

- f) Subsequently, on 18.12.2023, during the 5th COC Meeting convened by the Resolution Professional, it was communicated that an email dated 15.12.2023 had been received from Respondent No. 2. The email requested the RP to solely discuss agenda item No. 10, which pertained to the extension of the CIRP period by 60 days, and to defer the discussion on other agenda items until 04.01.2024. It was apparent that Respondent No. 2 was cognizant of the limitation that no further agenda items could be addressed once the CIRP timeline had expired. The COC, recognizing its *functus officio* status, sought the rescheduling of other agenda items to 04.01.2024. Relevant portion of the COC is reiterated herein below:

“The Chairman placed the e-mail dated 15.12.2023 received from Apex Bank which stated that the RP is requested to conduct the 5th COC meeting of M/s Sovereign Industries Limited scheduled on 18.12.2023 at 12 PM on only one agenda i.e. agenda No.10, EXTN of CIRP period by 60 days and reschedule the other agenda items to 04.01.2024”

- g) Simultaneously, the Respondent No. 1, in blatant disregard of the law, put forth an agenda seeking the exclusion of the CIRP period and sought an extension of the CIRP period for 60 days from the expiry date of 22.12.2023. It is pertinent to mention that the Respondents were well aware that Respondents No.2-8 would become *functus officio* after the CIRP expiry, rendering them unable to approve the resolution plan. Consequently, all agenda items were



deferred to the COC meeting scheduled for 4.1.2024, operating under the assumption that the application for extension would be granted prior to this date.

- h) Immediately thereafter the Respondent No. 1 on 10.01.2024, after expiry of the CIRP Period and no extension being granted under Section 12 of the Code to extend the CIRP by the Adjudicating Authority, conducted 6th COC Meeting to discuss the terms and conditions for the challenge mechanism to provide opportunity to the PRAs to improve the bids. In fact the Respondent No. 1 in gross misconduct and in complete disregard to its duties enshrined under the Code to maximize the assets of the CD, proposed to the CoC of the CD that republishing of FORM G will waste the time of the COC and therefore the same should not be entertained by the COC.
- i) Subsequently, in flagrant haste and contravention of the Code, Respondent No.1, fully aware that the Corporate Insolvency Resolution Process (CIRP) period had expired on 22.12.2023, convened the 7th COC Meeting on January 17 and 18, 2024, for the approval of the Resolution Plan by the COC. It is pertinent to note that no such plan could have been ratified by the COC until an extension, as stipulated under Section 12, had been granted. Respondent No.1, in collusion with the COC and fully cognizant of the COC's lack of authority to approve the plan, sanctioned the Resolution Plan of Respondent No.9, blatantly disregarding the law. In fact, the Resolution Professional, Committee of Creditors (COC), and the Respondent No. 9 colluded with each other, and through the COC had become *functus officio*, proceeded to approve the plan, an action beyond the authority of the COC.
- j) The collusion among the Respondents in approving the Resolution Plan of Respondent No. 9 is very apparent, in complete violation of Section 12 of the code, is subject to nullification as the Committee of Creditors (COC) lacked the authority to approve the Resolution



plan during the COC meetings convened on January 17th, 2024, and January 18th, 2024.

- k) It is further submitted that the COC had followed Swiss challenge Mechanism for approval of the Resolution Plan. It is submitted that the Respondents in connivance with each other without considering the fact that M/s. Ugar Sugar Works Ltd had emerged as the H1 bidder selected the plan of Respondent No.9. It is further submitted that the rejection of plan of Ugar Sugar was without any reasons.
 - l) Moreover it is submitted that the Explanatory documents outlining the challenge mechanism were not adhered to during the approval of Respondent No.9's plan, thereby giving undue advantage to the Respondent No.9.
 - m) In light of the above, the applicants submit that the resolution plan of Respondent No.9 should be rejected and RP should be directed to conduct a fresh CoC meeting for voting on the Resolution Plan.
- 3.** The RP/Respondent No.1 has filed its Statement of Objection vide diary no.1802 on 19.03.2024 wherein it is submitted that the applicant has created obstruction and failed to extend cooperation to the RP in resolving the insolvency of the CD. There were letters and emails issued to him from time to time but there was no proper response due to which the RP filed an application under Section 19(2) of the Code on 16.11.2023. The RP submits that the application under Section 19(2) was listed along with the present application on 01.03.2024 but the applicant did not make any appearance and no response is filed till date which shows the conduct of the applicant.
- 4.** The RP submits that the primary contention of the applicant is that the Resolution Plan has been approved without obtaining extension of this Tribunal under section 12 of the Code; the Resolution Plan has been approved when the CIRP period was not subsisting, and along with CoC, the applicant had become *functus officio*. The RP states that the



contention of the applicant is not only contrary to the Code and Regulations but also to the facts as demonstrated below.

5. Pertinently, the CD was admitted into CIRP by this Tribunal vide order dt.28.03.2023. The CIRP period of 180 days expired on 24.09.2023. The Applicant herein thus filed an application bearing I.A.No.731/2023 before this Tribunal seeking extension of CIRP period beyond 90 days. The Hon'ble Tribunal allowed the aforesaid I.A. vide order dt.23.11.2023 thereby granting extension of CIRP period up to 22.12.2023.
6. Before the expiry of 270 days the applicant convened the 5th CoC meeting on 18.12.2023 when the CoC approved the resolutions for extension of CIRP period by 60 days from 22.12.2023 as well as for exclusion of 25 days from the CIRP period. The Applicant thereafter on 22.12.2023 preferred an application bearing I.A. No.46/2024 seeking exclusion of 25 days from the CIRP period thereby extending the CIRP period to 17.01.2024; which was allowed on 30.01.2024. This Tribunal also granted extension of CIRP period by 30 days thus partly allowing I.A. No.47/2024 and extending the CIRP period until 17.02.2024 on 30.01.2024.
7. Pertinently, the Resolution Plan was put to vote and voting got concluded on 01.02.2024 when the Resolution Plan of one Shri Dutt India Private Limited was approved with 99.22 % majority. It is therefore submitted that the CIRP has been conducted and the Resolution Plan has been approved pursuant to the orders of this Hon'ble Tribunal.
8. The RP contends that the present application is nothing but an attempt to derail the CIRP. The applicants are acting in collusion with Ugar Sugar Works Ltd. which is the other PRA. The same is clear from the fact that Ugar has entered into contract to sell the CD with the Applicant. It is for this reason that the Applicants did not raise any objection during the 6th and 7th CoC meetings to the Applicant conducting the meetings. They did



not even raise any objection after the challenge process was concluded and the Resolution Plans were out to vote. It was only after the SRA's resolution plan was approved and Ugar Sugar's was rejected that the applicant preferred the present application alleging procedural lapses in the CIRP when all the steps were undertaken in the presence of the Applicant.

9. The connivance of the Applicant with Ugar Sugar is also apparent from their objection in the present application is against the Plan of Shri Dutt India Pvt Ltd. and not the Resolution Plan of Ugar Sugar. The Applicant has taken objection to the Resolution Plan of SRA inter alia on the contention that approval of CCI was not obtained. At the same time, the applicants contending that the Resolution Plan of Ugar Sugar ought to have been approved while the same too did not have any approval of CCI.
10. Even otherwise, the contention of the applicant is untenable and contrary to the well settled law laid down by the Hon'ble NCLAT as well as Hon'ble Supreme Court that the commercial wisdom of CoC in approving a plan and rejecting another plan is non-justiciable. The same was held in the decision of ***K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150*** by the Hon'ble Supreme Court.
11. The Respondents No.2 to 8 have also submitted their statement of Objection vide diary no.2100 on 03.04.2024. The Respondents state that present Application has been preferred by the suspended directors of the Corporate Debtor seeking rejection of the Resolution Plan of Shri Dutt India Pvt. Ltd. which has been approved by 99.22% of the CoC on the purported ground that IBBI (Insolvency Resolution Process for Corporate Persons), 2016 ('CIRP regulations') have not been complied with. However, the Applicants have in fact preferred the present Application because the Resolution Plan of one Ugar Sugar Ltd. has been rejected since Ugar Sugar is nothing but an alter ego of the promoters as demonstrated herein below. The Applicants in fact devised the plan of



taking over the Corporate Debtor through Ugar Sugar immediately prior to admission of the CD into corporate insolvency resolution process (CIRP). In other words, the Resolution Plan of Ugar Sugar is a Plan of the Applicants. Therefore, upon rejection of the Resolution Plan of Ugar Sugar, the Applicants have preferred the present Application raising frivolous objections to the CIRP.

12. The Applicants have on one hand sought rejection of the Resolution Plan on the ground that CIRP Regulations have not been complied with and on the other hand, the Applicants have themselves not acted in accordance with the Code and Regulations and have not co-operated with the Resolution Professional in providing the information required by the Resolution professional during the CIRP of the Corporate Debtor despite repeated reminders on account of which the Resolution Professional has preferred an Application under Section 19(2) against the Applicants before this Tribunal. It is pertinent to note that the Applicants have deliberately neither filed a reply to the said Application nor entered appearance for the same when the Application was listed before this Hon'ble Tribunal on 1.03.2024 and at the same time the Applicants have filed the present Application and are pursuing the same to obstruct approval of the Resolution Plan by this Hon'ble Tribunal.
13. Pertinently, immediately before admission of the Corporate Debtor into CIRP on 28.03.2023, the Applicants on 25.03.2023 entered into an agreement for transfer of the entire Corporate Debtor to Ugar Sugar Limited for an amount of Rs. 24 crores. During CIRP, Ugar Sugar at first filed a claim with the Resolution Professional for Rs. 24 crores under the pretext that the transfer was under process and was not concluded, and also submitted a Resolution Plan for the Corporate Debtor. It is thus clear that Ugar Sugar had submitted the Resolution Plan for the promoters and is nothing but an alter ego of the promoters. It is also pertinent to note that Ugar Sugar had also paid for shareholding of the Corporate Debtor in the aforesaid agreement which would render Ugar Sugar



ineligible to submit a Resolution plan, however, the Resolution Professional has failed to take any steps to assess the eligibility of Ugar Sugar to submit a Resolution Plan on account of the aforesaid due to which Ugar Sugar continued to be the Prospective Resolution Applicant (PRA).

14. The challenge process for the Resolution Plans was going to be conducted on 17.01.2024 and one day before that Ugar Sugar addressed an e-mail to the Resolution Professional claiming that IEM has been transferred to it. It is clear that the same was done only to create suspicion in the minds of the Prospective Resolution Applicants (PRAs) about the ownership of IEM of the Corporate Debtor to cause them to withdraw from the process. Thereafter, challenge process was concluded on 18.01.2024 and the Resolution Plans were put to vote from 23.01.2024 to 1.02.2024 when the Plan of Ugar Sugar was rejected and that of Shri Dutt India Pvt. Ltd. was approved. Thereafter, the Applicants preferred the present Application raising frivolous objections. It is thus clear that since the Resolution Plan submitted by Ugar Sugar was not approved, the Applicants have preferred the present Application raising false allegations that the CIRP has been conducted in violation of the CIRP Regulations.
15. Moreover, few days before admission of the Corporate Debtor into CIRP, the Applicant also sold the land on which the Corporate Debtor has been operating its manufacturing plant to a third party namely Bhagwant Narayan Naik, that too after the Petition was reserved for Orders. The said Party did not file any Application before this Tribunal until after the Resolution Plan of Ugar Sugar got rejected. Before that, the said party preferred a Civil Suit one day before the challenge mechanism was to be conducted. The same was clearly done only to instill fear in the minds of the PRAs to help the promoters achieve the objective of getting the Resolution Plan of Ugar Sugar approved.



- 16.** Respondent No.9 has also filed their statement of objection vide diary no.1747 on 18.03.2024. R-9 avers that the applicant does not have locus to challenge the Resolution Plan as there is a patent contradiction in the Applicant's case. On the one hand the applicant avers that the entire CIRP process has to be rejected as it took place between 22.12.2023 to 30.01.2024 because the CoC was functus officio. On the other hand, the applicant contends that Ugar Sugar's Resolution Plan which has also gone through the same process in the same time period-deserves to be accepted.
- 17.** Additionally, the Respondent No.9 submits that on bare perusal of the order passed by this bench dt.30.01.2024 demonstrates that it relates back to 22.12.2023 wherein the entire period from 23.12.2023 to 30.01.2024 is considered to be a part of the CIRP period. The relevant extract of the order is produced below:

"I.A. No.46 of 2024:

- 1. The present application has been filed by Mr. Ritesh R. Mahajan, Resolution Professional (RP) of the Corporate Debtor u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking for exclusion of 25 days from the CIRP period of the CD i.e. from 16.05.2023 till 09.06.2023, thereby extending the period of CIRP till 17.01.2024.*
- 3. In the circumstances, and for the reasons mentioned in the Application, the instant I.A. is hereby allowed by granting the exclusion for a period of 25 days i.e., from 16.05.2023 to 09.06.2023 from CIRP of the CD thereby extending the period till 17.01.2024.*

I.A.No.47 of 2024:

- 1. The present application has been filed by Mr. Ritesh R. Mahajan Resolution Professional of the Corporate Debtor u/s 12(2) of the Insolvency and Bankruptcy Code, 2016 and Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 r/w Rules 11 and*



15 of the NCLT Rules 2016 seeking extension of CIRP period of the CD by further 60 days from 18.01.2024 to 18.03.2024.

3. During the course of hearing Ld. Counsel for the applicant submitted that they require only 30 days extension for the completion of CIRP process.

4. In the circumstances and for the interest of justice the instant I.A. is partly allowed by extending the CIRP period of the CD only by further 30 days i.e. from 18.01.2024.”

- 18.** Accordingly, the Hon'ble NCLT granted an extension of 25 days in the CIRP period which extended the CIRP period to 17.01.2024 i.e. the 25th day from 22.12.2023 to 17.01.2024. Additionally, this Tribunal also granted extension of CIRP period by 30 days from 18.01.2024 to 17.02.2024.
- 19.** Finally, assuming for the sake of argument that the conduct of CoC in the period from 23.12.2023 to 30.01.2024 was irregular, such irregularity by itself does not vitiate the approval of the Resolution Plan by the CoC. As the CIRP period ultimately stood extended from 23.12.2023 up to 17.02.2024, any defect in the conduct of the CoC meetings stood cured. The bidding between the resolution applicants has happened in a transparent manner using a challenge mechanism. The CoC decisions have been carried out through a democratic process. That being so any irregularity, if at all, is not a “material irregularity” in the conduct of the CIRP process.
- 20.** The Applicant has filed a rejoinder to the objection of Respondent No.9 vide diary no.5717 on 07.10.2024 wherein the applicant submits that the reply filed by Respondent No.9 is denied as false and misleading. It is submitted that R-9 in its reply has nowhere denied the submissions of the Applicant that the CoC was in fact conducted when there was no order of Ld. NCLT for granting extension to R-9 to proceed with the CIRP of the CD. Furthermore, R-9 has not given any reasons for such haste for



conducting CIRP and voting on the plan when there was no extension order from the Ld, NCLT. Furthermore, R-9 was fully aware that the CIRP had expired on 22.12.2023 and that the CoC had become functus officio, convened the 7th CoC on 17th and 18th January 2024 for the approval of the Resolution Plan by the CoC in association with R. No.1. Indeed, it is pertinent to note that no such plan could have been ratified by the CoC until an extension as stipulated under Section 12 had been granted. R.9 also in collusion with the CoC and fully cognizant of the CoC's lack of authority to approve the plan hastily sanctioned the Resolution Plan of R.9 thereby blatantly disregarding the law.

- 21.** The Applicant also submits that R-9 in collusion with RP had not approached the court with clean hands and had played fraud on the Court by submitting to the Hon'ble Tribunal that the extension is required for completion of the CIRP. Moreover, in reality the plan of R.9 was already approved by the CoC in the 7th CoC meeting and the CIRP had come to an end. The RP had also not apprised to the Hon'ble Tribunal of the fact that the Plan was approved thereby misleading the Hon'ble Tribunal.
- 22.** It is further submitted that the RP, CoC and SRA i.e. R-9 colluded with each other, fully cognizant of the fact that the Hon'ble NCLT had not granted any extension and recognizing that the COC had become functus officio proceeded to approve the plan an action beyond the authority of the CoC which is liable to be set aside.
- 23.** Heard the Ld. Counsels for the Petitioner and the Respondent and perused the pleadings on record.
- 24.** On the perusal of the facts and circumstances of the incumbent interlocutory application, at the outset this Tribunal takes note of the fact that the Applicants herein are suspended Directors of the Corporate Debtor. It is a well settled principle that the suspended board of directors



do not have the locus standi to object to the approval of the resolution plan which has been approved by the majority of the CoC members. Reliance is placed on various landmark decisions given by **Hon'ble NCLAT in the cases of Ramesh Kesavan v. CA Jasin George, Company Appeal (AT)(CH) Ins No. 422/2023 vide order dt.10.01.2023 and Ravi Shankar Vedam vs. Tiffins Bartyes Abestos and Paints Limited and Others 2023 SCC Online NCLAT 274 vide order dt.13.06.2023** to reiterate the extant principle of law that ex-promoter/shareholders have no locus standi to challenge the resolution plan which is already approved by CoC. Further, it is observed that the matter of Ravi Shankar Vedam (supra) went in appeal to the **Hon'ble Supreme Court in C.A.No.5516/2023, wherein the Hon'ble Apex Court dismissed the said appeal and upheld the decision of Hon'ble NCLAT**. Therefore, following the ratio of these judgements, this Tribunal is of the considered opinion that the Applicants being the Suspended Board of Directors cannot challenge the Resolution Plan once it is approved by the CoC. Therefore, on this short point itself this Application is liable to be dismissed *in limine*.


25. Further, without prejudice to the above, even if the Application is considered on merits, the Applicants have also objected to the Resolution Plan on the ground that the approval of the plan took place after the expiry of CIRP timeline when the CoC along with RP was *functus officio*. This Tribunal notes that the Applicant's contention is completely baseless and devoid of merits as this Tribunal vide order dt.30.01.2024 had granted exclusion of 25 days and extension by 30 days in the CIRP period from 22.12.2023 to 17.02.2024 vide Interlocutory Applications bearing I.A.No.46 of 2024 and 47 of 2024. Since the COC approved the Resolution Plan on 01.02.2024 when the voting for the approval of the plan was concluded, the same is in order.
26. Coming to the facts and circumstances of the instant application, we note that the 180 days of the CIRP period expired on 24.09.2023 and before



the expiry of 270 days, the RP sought an application for extension of the CIRP period in time on 22.12.2023. Based on the Application for exclusion and extension of the CIRP period filed on 22.12.2023 in I.A.Nos.46 & 47/2024, the extension and exclusion were granted vide this Tribunal Order dated 30.01.2024. After granting of exclusion of 25 days, the 270 days' period was to expire on 17.01.2024, after which another extension of 30 days was granted from 18.01.2024 vide Order passed in I.A.No.47/2024. In fact, as would be revealed from the order of this Tribunal in I.A.No.47/2024, the RP's Counsel sought an extension only for 30 days more; as against the available period of 60 days for reaching the limit of 330 days. Therefore, the RP and the CoC have completed the CIRP process well before exhausting the maximum allowable time period of 330 days. Since the Resolution Plan was approved on 01.02.2024, there is no substance in the objections raised by the **Applicants, who, in any case, do not have locus at all to file such objections**. It is also pertinent to mention here that getting the relevant information from the CD was stalled deliberately, due to non-cooperation of the Suspended Directors of the CD to keep the CIRP proceedings at bay, or to hinder its smooth progress.

- 27.** In this connection we refer to the decision of Hon'ble Supreme Court in **Committee of Creditors of Essar Steels through Authorised Signatory v. Sathish Kumar Gupta & Ors. (2020) 8 SCC 531** wherein at Para 127, it was observed as under:

“..on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to the factors owing to which the fault cannot be



ascribed to the litigants before the Adjudicating Authority and/or the Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days.

- 28.** Considering the judgement of the Hon'ble Apex Court mentioned above and the principle emerging out of it, it is seen that the Hon'ble Apex Court has allowed the extension for completion of CIRP even beyond 330 days, in case there is only a short period required for completing the resolution process, i.e. it is at an advanced stage. The Hon'ble Apex Court has observed that it is in the interest of all the stakeholders that the Corporate Debtor is put back on its feet, instead of it being sent for liquidation. This is the underlining principle of IBC, 2016 and the philosophy behind the enactment of the Code, according to which, the ultimate objective is the resolution of the Corporate Debtor, and not its liquidation. While the Hon'ble Apex Court in the above judgement of Essar Steel (Supra) has granted liberty to the Adjudicating Authority to extend time even beyond 330 days, in this instant case, the RP and the CoC have not exhausted even the prescribed period of 330 days, but have completed the approval and filing of the Resolution Plan within 330 days.
- 29.** The Hon'ble Apex Court has also pointed out that when the time taken in the process cannot be attributed to the litigants, in that case, due to the tardy process before the Adjudicating Authority, there is a justification for giving extra time. In this case, it is observed that since the Suspended Directors of the Corporate Debtor had repeatedly and deliberately delayed the submission of the relevant information, documents and details to the Resolution Professional on one pretext or the other, the entire process took some extra time. It is a matter of record that there was a setback in the progress in the CIRP initially, wholly because of non-cooperation on part of the Suspended Directors. When



the Resolution Professional approached the Corporate Debtor for information/documents and other details on taking over the control of the Corporate Debtor after the admission of the CIRP; the General Manager of the Corporate Debtor stationed at the premises of the Corporate Debtor declined to give any information, documents etc. This was on the excuse that all the relevant documents and registers are damaged because of floods, for which no documentary evidences and details like copy of FIR, insurance claim etc. consequent to the flooding of the premises was furnished and placed on record. In such a case, the Applicants being the Suspended Directors of the Corporate Debtor cannot now come up with such frivolous applications; whereas they have themselves devised a plan to somehow stall the process and put obstacles in smooth progress of the CIRP. Thus, the grounds on which the instant application is filed is untenable and erroneous.

- 30.** It will not be out of place to mention here that the Suspended Directors have repeatedly been found to have been placing hindrance in the smooth progress of the CIRP, as is corroborated by the Order passed by this Tribunal on 22.10.2024 in I.A.No.167/2024, in the same Company Petition, dismissing the I.A. It is hereby pointed out that the Hon'ble NCLAT, Chennai in Company Appeal (AT) (CH) (Ins.) No.394/2024 vide Order dated 21.11.2024 has upheld the Order passed by this Tribunal in I.A.No.167/2024.
- 31.** It is rather unusual, strange and quite irregular to find that these Suspended Directors/Applicants herein are actively promoting the Resolution Plan submitted by Ugar Sugar Limited, by objecting to the Plan submitted by SRA. On the one hand, they have repeatedly objected to the plan of the SRA and even stated that the approval of the CCI was not taken by it; but at the same time, they have taken repeatedly advocating the case of Ugar Sugars Limited, even when this Company also is not having the approval of the CCI, as has been pointed out by the R.P. It is also rightly pointed out by the Resolution Professional that the



Applicant did not raised any objection during the 6th and 7th CoC meetings, and in fact, has started raising the objections only after the Resolution Plan of Ugar Sugar Limited was rejected. It was contended by the Respondent Nos.2 to 8 & 9 also that the objections have been raised only because of the rejection of the Plan of Ugar Sugar Limited, and therefore, it appears that the Applicants/Suspended Directors were in fact in league or having some collusive purpose with Ugar Sugar Limited. In the objections filed by the Resolution Professional along with Respondent Nos.2 to 8 & 9, they have flagged some of the other actions on the part of the Suspended Directors to put obstacles in the smooth progress of the CIRP, towards the end of arriving at the resolution of the Corporate Debtor.

- 32.** Moreover, the RP has correctly cited the judgement of the Hon'ble Supreme Court in the case of *K. Sashidhar* (Supra), in which, it was held that the commercial wisdom of CoC in approving a Resolution Plan and rejecting another Plan is not justiciable. Therefore, in so far as the decision taken to approve the Plan submitted by the SRA, over that of Ugar Sugar Limited is concerned, the commercial wisdom of the CoC is to take precedence as has been decided by the Hon'ble Apex Court in this case. Therefore, the Applicants contentions in this regard is liable to be rejected.
- 33.** Therefore, in conclusion, the Application is liable to be rejected on the following points, based on the above analysis:
 - i. Primarily and most importantly, there is no locus of the Suspended Directors to challenge the approval of the Resolution Plan; as has been decided in various judgements cited above.
 - ii. Even on merits, and without prejudice to the above point regarding the Locus of the Suspended Management, the plan has been submitted for approval well within the extended time limit granted by this Tribunal, and within even less than the prescribed time limit of 330 days under the Code. Moreover, the conduct of the



Suspended Directors in not giving the requisite details/documents and non-cooperation with the Resolution Professional was a major hindrance in the smooth progress of the CIRP.

- iii. The Suspended Directors actively propagating the cause of the Plan submitted by Ugar Sugar Limited is totally untenable and unacceptable.

34. Hence, in light of the principle laid down by the Hon'ble NCLAT regarding the locus standi of the Suspended Board of Directors as well as the discussion above on other issues, we do not find any merit in the present Application.

35. Accordingly, for the reason stated above, **I.A.No.184 of 2024 is hereby dismissed.**

-Sd-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-

K.BISWAL
MEMBER (JUDICIAL)