

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 849 of 2024

IN THE MATTER OF:

Rajesh Lallubhai Chitalia

...Appellant(s)

Versus

Brijendra Kumar Mishra & Anr.

...Respondent(s)

Present:

For Appellant : Mr. Utsav Trivedi, Ms. Manini Roy, Ms. Nandita Acharya, Advocates.

For Respondents :

O R D E R
(Hybrid Mode)

01.05.2024: Heard Learned Counsel for the Appellant. This Appeal is filed against the order dated 05.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-IV) in I.A. No. 545(MB) 2024 in CP (IB) No. 631(MB) 2021. By which I.A. No. 545 of 2024 filed by the Appellant- Suspended Board of Director and Promotor seeking following direction:

“a. This Honble Tribunal be pleased to direct the Respondent No.1 to convene the meeting of the Respondent No.2 and place before the Respondent No.2 the Revised Resolution Plan submitted by the Applicant and that the Respondent No.2 be directed to consider the Revised Resolution Plan of the Applicant;

b. This Hon’ble Tribunal be pleased to restrain Respondent No.2, by an order and injunction of this Hon’ble Tribunal, from passing any final decision in relation to the CIRP of the Corporate Debtor without considering the revisided Resolution Plan submitted by the Applicant.”

2. In the CIRP of the Corporate Debtor the Form-G was issued and all the persons giving expression of interest and RFRP to file the resolution plan. The

Appellant as well as other resolution applicant file the resolution plan. The Appellant requested for extension of time for submitting the resolution plan. On 6th CoC meeting, the decision was taken to submit revised resolution plan by all resolution applicant by 20.11.2023. By 20.11.2023, the Appellant also filed his revised resolution plan and thereafter on 06.01.2024 by an email another resolution plan was sent which was not considered hence the Applicant filed IA No. 545 of 2024 seeking direction which has been refused by the impugned order.

3. The Learned Counsel for the Appellant submitted that email dated 06.01.2024 by which a fresh improve financials were given they are nothing but revised resolution plan which ought to have been considered. It is submitted that Resolution Professional has jurisdiction to permit amendment of the plan by a resolution application once as per Regulation 39 of the CIRP Regulations, 2016.

4. We have considered the submissions of the Appellant and perused the record.

5. In para 4 of the order of the Adjudicating Authority following has been observed:

“4. In the 6th meeting, the CoC requested both the applicants to improve their resolution plans and submit the same on or before 20.11.2023. Thereafter, both the Resolution Applicants submitted their revised Resolution plans on 20.11.2023. Meanwhile, the applicant submitted another fresh resolution plan through mail dated 06.01.2024. The applicant filed IA-545 of 2024 before the Hon’ble NCLT Mumbai bench seeking directions to the Resolution Professional to place the resolution plan received through mail on 06.01.2024 before the CoC for its consideration and voting.”

6. From the aforesaid, it is clear that all the resolution applicant including the Appellant were given opportunity to improve their plan and file revised resolution plan by 20.11.2023. There is no dispute that revised resolution plan

was also filed by the Appellant before 20.11.2023. The email dated 06.01.2024 by which improve financials given by the Resolution Applicant/Appellant were not considered leading the applicant to file I.A. No. 545(MB) 2024. The CoC has granted permission to all resolution applicant to file revised resolution plan by 20.11.2023, it is not shown that the said date has been extended by the CoC to enable the applicant to file another resolution plan with improve financial. When the last date for filing for improved plan was 20.11.2023, we fail to see any reason entitling the Appellant to file a fresh plan on 06.01.2024. Admittedly, the email dated 06.01.2024 by which fresh plan was sent is with improve financial which is thus different from plan which was received on 20.11.2023.

7. Regulation 39 on which the Appellant has placed reliance does not give any entitlement to the Appellant to file a revised plan. The said Regulation is enabling to the Resolution Professional to permit modification of the plan once but that does not give any right to the Appellant to file a fresh plan on 06.01.2024.

8. We thus do not find any error in the order of the Adjudicating Authority rejecting the application. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

R.N./N.N.