



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.307,308 & 309

IA(Plan)/18(AHM)2024, IA/576(AHM) 2024, IA/900(AHM) 2024
in
C.P.(IB)/111(AHM)2022

Order under Section Sec 30

IN THE MATTER OF:

Fintech Restructuring LLP Through Mr.Niraj Kumar RP of
M/s. fairdeal Multifilament Pvt. Ltd

.....Applicant

.....Respondent

Order delivered on: 03/09/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
COURT-1, AHMEDABAD BENCH**

**IA(Plan)/18(AHM)/2024, IA/900/2024, IA/576/2024
In
CP(IB)/111(AHM)/2022**

[An application under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India, Regulations, 2016]

In the matter of ***M/s. Fairdeal Multifilament Private Limited.***

**FINTECH RESTRUCTURING LLP,
THROUGH MR. NIRAJ KUMAR,**
Resolution Professional of
M/s Fairdeal Multifilament Private Limited.

Having office at:

H. No. 47, GF, Type 3,
Block E, IARI Pusa Campus,
Delhi – 110012.

...Applicant/RP

Order Pronounced On: 03.09.2024

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For Applicant : Mr. Deep Bisht, Advocate, a.w.
: Mr. Nitesh Sinha & Mr. Niraj Kumar
: RP in person, Advocate.
For Applicant : Mr. Navin Pawha, Sr. Adv., a.w.



Mr. Pratik Thakkar, Adv. In
IA/900(AHM)/2024.

For Respondent: Mr. Vijay Patel, Adv. For R-2 and R-3.

ORDER
[Per: Bench]

IA(Plan) No. 18 of 2024:

1. This application is filed by the Resolution Professional of M/s Fairdeal Multifilament Private Limited bearing CIN: U25200GJ2014PTC079367, (Corporate Debtor) under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r.w. Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 seeking the following prayers:

- a) *Pass an order under sub-section (1) of section 31 of the Code for approval of the Resolution Plan submitted by the Successful Resolution Applicant i.e. M/s Parth Poly Coat Yarn Private Limited for the CIRP of the Corporate Debtor as approved by the committee of creditors under section 30(4) of the Code;*
- b) *Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors, members, employees and other stakeholders involved in the resolution plan in accordance with Section 31 (1) of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority;*



- c) *Approve the appointment of monitoring committee as stated in the Resolution plan approved by the committee of creditors;*
- d) *Approve and grant reliefs and directions sought under the Resolution plan by the Resolution Applicant;*
- e) *Pass such order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

2. It is stated that this Tribunal vide its order dated 21.02.2023 admitted the Corporate Debtor – M/s. Fairdeal Multifilament Private Limited, to Corporate Insolvency Resolution Process (“**CIRP**”) in Company Petition No. 111 of 2022, filed by a Financial Creditor – Mr. Sanjay Choudhary, Partner of M/s. Shree Nakoda Impex under Section 7 of the Code and thereby appointed Mr. Sachin Naveen Sinha as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor. The copy of the said order dated 21.02.2023 is attached at “**Annexure 1**” to the application.

3. It is stated that vide order dated 09.10.2023 passed in IA/450/2023 this Tribunal appointed M/s. Fintech Restructuring LLP as the resolution professional due to the reason that, there was a deadlock between the CoC on all important matters and IRP was not confirmed as RP and no new person was appointed as RP even after



passing of seven months period from the issuance of Form-G. The copy of the said order dated 09.10.2023 is attached at **“Annexure 3”** to the application.

4. The applicant published Form-G in newspaper on 07.11.2023 which is annexed at **“Annexure 7”** to this application. In the said Form-G the last dated for submitting the EOI was 23.11.2023 and in pursuance of the said publication the applicant received Five (5) EOI's. However the CoC in its 7th CoC meeting held on 11.12.2023 (The minutes of the 7th CoC meeting is annexed at **“Annexure 9 Colly”** to this application) resolved to extend the last date for submitting the EOI. As per the said resolution of the CoC, the applicant has issued another Form-G on 23.12.2023 which is annexed at **“Annexure 8”** to this application.

5. It is stated that, pursuant to publication of both the Form-G the applicant has received in total eleven Expression of Interest's and all the parties were found eligible and were emerged as Prospective Resolution Applicants. In furtherance of that the applicant issued



Information Memorandum, Evaluation Matrix and a Request for Resolution Plan to the CoC members and Prospective Resolution Applicants on 10.01.2024.

6. It is stated that out of Eleven PRA's, the applicant received Resolutions Plans from Three PRA's and the said plans were opened in presence of the PRA's in the 10th CoC meeting held on 21.02.2024. The Resolution Plans were received from the following Resolution Applicants:

- a) Mr. Manoj Sanklecha (Suspended Director/ Promoter of the Corporate Debtor);
- b) M/s. Parth Poly Coat Yarn Private Limited.
- c) Kanter Steel (India) Private Limited.

7. Further, The Resolution Plans submitted by the PRA's were discussed in 11th and 12th CoC meetings held on 06.03.2024 and 23.06.2024 respectively. Thereafter E-Bidding process was held on 29.03.2024 and was successfully completed. The report of E-Bidding process was presented to the CoC members in the 14th CoC meeting which was convened on 30.03.2024. The



minutes of the 11th 12th and 14th CoC meeting is annexed at **“Annexure 9 Colly”** to this application. Following was the result of the E-Bidding process held on 29.03.2024:

Sr. No.	Particulars	Bid Amount
1.	M/s. Part Poly Coat Yarn Private Limited.	9,36,00,000/-
2.	Mr. Manoj Sanklecha (Suspended Director) & Zabbarraj Sanklecha	9,26,00,000/-
3.	Kanter Steel (India) Private Limited	Non-Compliant

8. In its 15th CoC meeting held on 02.04.2024, the CoC deliberated in detail on the Feasibility and Viability of the plans submitted by the PRA's and CoC was of the view that the plan submitted by both the PRA's are viable and have provisions for effective implementation of the plan. In addition to that the CoC decided to re-negotiate the terms of the plan with both the PRA's and called both the PRA's to participate in the meetings of CoC for further negotiations and also granted them the liberty to submit revised plan on or before 03.04.2024. Mr. Manoj Sanklecha (Suspended Director) submitted



the revised plan for Rs. 9,76,00,000/- while M/s. Parth Poly Coat Private Limited did not submit any revised resolution plan. In furtherance of the same the applicant opened the E-Voting platform on 04.04.2024 and the E-voting was closed on 08.04.2024. The minutes of the 15th CoC meeting is annexed at **“Annexure 9 Colly”** to this application. The copy of the voting results is attached at **“Annexure 6”** of the Compliance Affidavit.

9. It is submitted that as per the results of E-Voting which was declared on 08.04.2024, the Resolution Plan dated 08.02.2024 as amended on 22.03.2024 (one time modification allowed by CoC), 30.03.2024 (taking into effect of e-bidding process) which is submitted by M/s. Parth Poly Coat Multifilament Private Limited is approved by a majority of 84.52%. In pursuance of that the Letter of Intent dated 09.04.2024 was issued by the Applicant. In response to that the SRA has furnished a Performance Guarantee dated 16.04.2024 for an amount of Rs. 1,84,00,000/- after adjusting the amount of Rs. 50,00,000/- which was furnished as EMD. The



Performance Guarantee is valid till 15.04.2025. The copy of the Performance Guarantee is attached at **“Annexure 12”** to this application. The voting result is attached at **“Annexure 6”** of the Compliance Affidavit.

10. Further during the hearing this bench has sought clarifications on certain queries vide order dated 12.06.2024. In response to which the applicant has filed compliance affidavit on 22.07.2024 bearing diary no. D 5685. In this compliance affidavit the voting results of the 15th CoC meeting held on 02.04.2024 in which the Resolution Plan submitted by M/s. Part Poly Coat Yarn Private Limited was approved and the detail of scores given by the CoC based on Evaluation Matrix is produced on record. The voting results of the 15th CoC are attached at **“Annexure 11”** of the compliance affidavit and the Scores given by the CoC is attached at **“Annexure 12”** of the compliance affidavit.

IA No. 900 of 2024:

11. The present Interlocutory Application is filed on 11.06.2024 vide diary no. E 1471 which is preferred by



Mr. Manoj Zabbarraj Shanklecha and Mr. Zabbarraj Shanklecha. Following are the reliefs which are being sought in this present IA/900/2024:

- a) *That this Hon'ble Adjudicating Authority may quashed and set aside the 15th meeting of committee of creditors held on 02.04.2024 along with its the voting results whereby the resolution plan submitted by Respondent No.2 I.e. Parth Poly Coat Yarn Pvt. Ltd. was approved in contravention of provisions of the Code;*
- b) *That this Hon'ble Adjudicating Authority may be pleased to set-aside the constitution of Committee of Creditor is being illegal;*
- c) *That this Hon'ble Adjudicating Authority may please to order an inquiry upon the resolution professional for allowing related parties in the COC;*
- d) *That this Hon'ble Adjudicating Authority may passed consequential orders for reconstituting proper committee of creditors on the basis of their evidence and not on the basis of mere affidavit of the unsecured financial creditors;*
- e) *That this Hon'ble Adjudicating Authority may be please to direct the respondent no.1 to place the resolution plan of the applicant for reconsideration before the committee of creditors, in the interest of justice;*
- f) *That this Hon'ble Tribunal may be please to pass any further necessary orders as the Hon'ble Tribunal deems fit in the interest of justice.*



12. This Interlocutory Application was heard on 20.08.2024, during the said proceeding Ld. Senior Advocate Navin Pawha appearing for the applicants has raised the objection of the applicant to the IA(Plan) no. 18 of 2024. The objections raised by the Ld. Senior Advocate are as followed:

- a) That the Corporate Debtor is a registered MSME and hence suspended management is eligible to submit resolution plan as per section 240A of IBC, 2016;
- b) That the Resolution Plan which was submitted by the erstwhile management was Financially Better than other plan, but the same was rejected.
- c) That in respect of proceeds from PUFE transactions, the plan submitted by the erstwhile management has provided that 100% of such proceeds will be allocated to the Financial Creditor. While on the other side SRA has provided that 80% of the PUFE proceeds will be allocated to SRA and 20% will be allocated to unsecured creditors.
- d) That the constitution of the CoC is illegal as persons who are related to the Corporate Debtor are made member of the CoC.
- e) That the extended period of CIRP process of the Corporate Debtor expired on 31.03.2024 and the plan was considered



on 02.04.2023 and voting was also conducted without any extension granted by the Adjudicating Authority.

- f) That the plan was considered and voted in the 15th CoC which was convened on 02.04.2024 but the last date for submission for the revised plan was 03.04.2024.

13. Further it is duly recorded in the pleadings of IA/900/2024 that the applicant and the respondent no. 2 had submitted their modified plans on 03.04.2024, while the CoC has already deliberated on the Resolution Plan in the 15th CoC meeting held on 02.04.2024. The relevant portion of the pleading is hereby reproduced:

“The applicants submit that the plans of the applicants as well as respondent no. 2 were submitted on 3rd of April 2024 while as per the 15th CoC Meeting held on 02.04.2024 the CoC has deliberated the resolution plans a day prior of its submission and thereafter, no deliberations on the resolution plan was done.”

14. Reply to the IA/900/2024 was filed by the respondent on 22.07.2024 vide diary no. D 5689 in which the following is provided:

“The revised plans were shared by the Resolution Professional with the CoC members at 5:12 pm on 03.04.2024 and then



after the resolution Professional opened the E-Voting platform at 12:00 noon on 04.04.2024.”

IA No. 576 of 2024:

15. This Interlocutory Application is filed on 09.04.2024 vide diary no. E 903 by the Resolution Professional of the Corporate Debtor i.e, M/s. Fintech Restructuring LLP. Following are the reliefs which are being sought in this present IA/576/2024:

- a) Condone the delay of filing the present application due to the reason mentioned herein above in para 12;*
- b) Pass and order and allow the second extension by extending the time-limit by 30 days from 31.03.2024 to 30.04.2024 for completion of Corporate Insolvency Resolution Process of the Corporate Debtor;*
- c) Pass any other order or orders as this Hon'ble Tribunal may deem fit and proper under the circumstances.*

16. It is pertinent to note that the period of 180 days has expired on 20.08.2023 and as a result of which in the 8Th CoC meeting which was convened on 31.01.2024, the committee had resolved to extend the CIRP period up till 30.04.2024 and this Tribunal vide order dated



28.02.2024 passed in IA/390/2024, has allowed the extension of CIRP period till 31.03.2024.

Analysis and Findings of this Tribunal:

17. It is noted that the Resolution Plan submitted by the Successful Resolution Applicant was approved with 84.52% majority by the CoC in its 15th meeting which was convened on 02.04.2024.
18. The E-Voting summary on Agenda item no. B2 of the 15th CoC meeting which was voted upon between 04.02.2024 to 08.04.2024, is as stated below:

Agenda item No.	Resolution Voted Upon	Yes (%)	No (%)	Abstain/Absent (%)	Total (%)
B2	To approve the Resolution Plan of M/s. Parth Poly Coat Yarn Private Limited.	84.52%	13.22%	2.26%	100%



19. It is pertinent to note that there are total 55 (Fifty Five) members in the CoC of the Corporate Debtor as on 02.04.2024 in accordance of the List of CoC members which is annexed at “Annexure 5” to the IA(Plan)/18/2024. And as per the minutes of the 15th CoC meeting convened on 02.04.2024 which is attached at “**Annexure 9 (Colly)**” to the IA(Plan)/18/2024, out of 55 (Fifty Five) members only 9 (Nine) members have attended the meeting. The List of members who were having a right to vote and also present in the 15th CoC meeting is as stated below:

Sr. No.	Name of the Creditors	Represented by	Voting Rights (%)
1.	Saraswat Co-operative Bank	Shri Videyash Dalvi & Shari Suresh Dabre	41.94523186
2.	Shree Nakoda Impex	Shri Sanjay Choudhary	7.389346532
3.	Shri Mukesh Jain	-	0.724177461
4.	Shri Prakashbhai Prajapati	-	0.253473372
5.	Shri Ashish Arora	-	4.365778206
6.	Shri Pankaj Bohra	-	0.696941414



7.	Shri Rakesh Kumar	-	Name does not appear in the list of CoC members as on 02.04.2024 (Annexure 5)
8.	Ms. Vidhi	-	0.889798962
9.	M/s. Scord Trading & Investment Co.	Shri Lalit Agrawal	1.456183458

20. As per Regulation 25(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, it is apparent that only the members of the committee who were present in the meeting when the discussion on the resolution was taking place, only those members have a right to cast their Vote on such a Resolution. The relevant portion of the Regulation is reproduced below.

Regulation 25(3):

“(3) The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.”

In this case, when the E-Voting Results which are appended at **“Annexure 11”** of the Compliance Affidavit



are perused by this bench, it was noted that a total of 50 (Fifty) members of CoC have voted in the E-Voting Process out of total 55 (Fifty Five) members. This implies that the members who were not present in the meeting of the 15th CoC have also voted in the E-Voting process, which is in violation of the regulation 25(3) as the members who were not present in the 15th CoC meeting also casted their vote in the E-Voting process conducted by the Applicant between 04.04.2024 to 08.04.2024.

21. Hon'ble National Company Law Appellate Tribunal in the matter of ***Tata Steels Limited Vs. Liberty House Group Pvt. Ltd. & Ors. (Company Appeal (AT) (Insolvency) No. 198 of 2018)*** held that, only those members who attended the meeting of the Committee Of Creditors can exercise its voting power and the members who were not present in the meeting, their voting shares cannot be counted. The relevant portion of the judgement is hereby reproduced:

"A member of the 'Committee of Creditors' who is not present in the meeting either directly or through Video Conferencing and thereby not considered its feasibility and viability and



such other requirements as may be specified by the Board, their voting shares, therefore, cannot be counted for the purpose of counting the voting shares of the members of the 'Committee of Creditors'. Therefore, we hold that only the members of the 'Committee of Creditors' who attend the meeting directly or through Video Conferencing, can exercise its voting powers after considering the other requirements as may be specified by the Board. Those members of the 'Committee of Creditors' who are absent, their voting shares cannot be counted."

In the present case when members other than the members who were present in the discussion at 15th CoC meeting have voted on the Resolution to approve the Resolution Plan. This Bench is of the opinion that this process is in violation of Regulation 25(3) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 and hence the voting done on the resolution to approve the Resolution Plan cannot be said to be valid voting as being non-compliant to the Regulation 25(3).

22. This bench perused the Details of Score given by the CoC on Evaluation Matrix which is produced through



“Annexure 12” to the Compliance Affidavit. It is noted that the Marking based on the Evaluation Matrix was done by the members of the CoC in the 15th CoC meeting which was held on 02.04.2024, whilst what is contradictory to this is that in the Minutes of 15th CoC, the Resolution Applicants were given a chance to submit any modification the Resolution Plan, if any by 03.04.2024. We have noted that, the Score to the Resolution Plans submitted by both the Resolution Applicant was given by the Members of CoC in the 15th CoC meeting which was convened on 02.04.2024. Hence we are an opinion that the marks on evaluation matrix could not have been allocated by the members of CoC prior to the last date till which the Resolution Applicants were granted the time to submit any modifications to the Resolution Plan. In this connection this bench has relied on judgement of Hon’ble National Company Law Appellate Tribunal in the matter of **Dr. Periasamy palani Gounder Vs. Mr. Radhakrishnan Dharmarajan & Anr. (Company Appeal (AT)(CH)(insolvency) No. 164 of 2021)** in which it is



provide that a Resolution Plan first has to be approved by the CoC and then it can be placed before NCLT for its approval. The relevant portion of the judgement is hereby reproduced:

“135. After "revision", the revised plan is never put to the vote. Instead, it is filed to NCLT directly, without any approval from the COC on the revised Resolution Plan. Sections 30(2), 30(4), 30(6) and Section 31 mandate that only a plan as approved by the 'COC' can be presented to the NCLT for its approval under Section 31. Such kind of procedural failure amounts to material irregularity and goes to the root of the matter, making the plan void and non-est in law, as it is trite law that where the law permits a thing to be done in a particular manner if the same is not done in that manner, the same is non-est in the eyes of the law.”

23. As per Regulation 39 (1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, modification in the Resolution Plan cannot be allowed for more than one time, The regulation is reproduced below:

Regulation 39(1A):



“(1A) The resolution professional may, if envisaged in the request for resolution plan-

(a) Allow modification of the resolution plan received under sub-regulation (1), but not more than once; or

(b) Use a challenge mechanism to enable resolution applicants to improve their plans.”

In the present case, both the Resolution Applicants were allowed one time modification by the CoC on 22.03.2024 and further the Resolution Plan was amended on 30.03.2024 (taking into effect of e-bidding process), which results in modification in the plan for more than one time, which is a non-compliance of Regulation 39 (1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016.

The irregularities observed are thus summarized as below:

a) Multiple revisions in the plan allowed in violation of Regulation 39(1A) of the CIRP Regulations.

b) Voting by members of CoC in violation of Regulation 25(3).



c) Non consideration of plan dated 03/04/2024 submitted by the applicant of IA/900/2024 by the CoC and marking on basis of the evaluation matrix was carried out by CoC on 02.04.2024, while the plan was received on 03.04.2024.

24. In lieu of the objections raised by the applicant in IA/900/2024, it is undisputed fact that the revised plan received by the Resolution Professional from the PRA's was shared with the CoC members at 5:12 pm on 03.04.2024, while the deliberation on the revised plan was under taken by the CoC members on 15th CoC meeting which was convened on 02.04.2024 a day prior to the day on which the revised plans were received and hence it can be construed that the CoC has never deliberated on the revised resolution plans which was received on 03.04.2024 which was the last date granted by CoC to the PRA's for submitting the revised plan.

25. In light of the above stated non-compliances in the process of approving a Resolution Plan, this Tribunal is not inclined to grant approval to the Resolution Plan



which is submitted by M/s. Parth Poly Coat Yarn Private Limited. The plan approval application being IA(Plan)/18/2024 is hereby rejected.

26. In light of the above discussion as there are irregularities in the process, we direct that the Corporate Insolvency Resolution Process of the Corporate Debtor be re-initiated from the stage of Issuance of Form-G. The process is to be completed within 90 days of the date of this order and the CIRP period of the Corporate Debtor is hereby extended to give effect to this order.

27. Furthermore, in the opinion of this Tribunal the present Resolution Professional i.e. Fintech Restructuring LLP, has not discharged their duty in line with the provisions of the Insolvency and Bankruptcy Code 2016 and its respective Regulations. In view of the same we are inclined to remove the present Resolution Professional i.e. Fintech Restructuring LLP and appoint **Mr. Ravindra Kumar Goyal** bearing registration no. **IBBI/IPA-001/IP-P-02019/2020-2021/13098** as the Resolution Professional of the Corporate Debtor i.e.



Fairdeal Multifilament Private Limited. The outgoing Resolution Professional is directed to hand over all the charge, assets, documents & records of the Corporate Debtor in their possession within 3 days to the incumbent Resolution Professional.

28. In outcome of the above stated findings **IA(Plan)/18/2024, IA/900/2024 and IA/576/2024** are hereby disposed off.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

RS

- Sd -

SHAMMI KHAN
MEMBER (JUDICIAL)