

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 656 of 2024 &
I.A. No. 3315 of 2024

(Arising against the impugned order dated 04.03.2024 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench-I in I.A. 503 of 2024 in C.P. (IB) No.137/MB/2023)

IN THE MATTER OF:

Dushyant Dave,

Erstwhile Resolution Professional

M/s Altius Digital Pvt. Ltd.

Add: 1101, Dalamal Towers, Nariman Point Mumbai,

Maharashtra-400021.

Email: dushyant.dave@decoderesolvency.com

...Appellant

Versus

Gospell Digital Technology Co. Ltd.

Add: 802, Filix Commercial Complex Opp Asian Paints,

LBS Marg, Bhandup West, Mumbai, Maharashtra-400078

China Add: Gospell Industrial Park,,Guanshandong

Street, Chenzou City, Suxian District-423000.

...Respondent No. 1

M/s Asha Apartments Pvt. Ltd.

Add: 14C, Maharshi Debendra Road, Kolkata, West

Bengal-700007.

Email: mondalpradipoffice@googlemail.com

...Respondent No. 2

Insolvency and Bankruptcy Board of India

Through its Executive Director Jithesh John

Add: 2nd Floor, Jeevan Vihar Building, Parliament Street,

New Delhi, 110001

Email: jithesh@gov.in

...Respondent No. 3

Present:

For Appellant: **Mr. Nakul Mohta, Mr. Ayush Kashyap, Mr. Videh Vaish, Mr. Lalit Mohan, Ms. Megha Jain, Advocates.**

For Respondents: **Mr. Sandeep Bajaj, Mr. Mayank Biyani, Mr. Sharath Sampath, Ms. Kavya Singh, Advocates.**

Cont'd.... /

J U D G M E N T
(27th September, 2024)

INDEVAR PANDEY, MEMBER (T)

This appeal arises from the order dated 04.03.2024, passed by the National Company Law Tribunal, Mumbai Bench-I, the Adjudicating Authority (in short '**AA**'), in response to the application titled *Gospell Digital Technologies Private Limited, vs. Dushyant Dave & Anr.*, bearing IA No. 503/2024 in CP (IB) No.137/MB/2023. Gospell Digital Technologies Private Limited is the Operational Creditor (in short '**OC**') of M/s Altius Digital Private Limited, the Corporate Debtor (in short '**CD**'), which is undergoing Corporate Insolvency Resolution Process (in short '**CIRP**'). The appeal has been filed by Dushyant Dave, the erstwhile Interim Resolution Professional (in short '**IRP**') of the CD, under Section 61(1) of the Insolvency and Bankruptcy Code, 2016, (in short '**Code**'), against the impugned order of AA, vide which Shri Dave was removed as IRP and Shri Arun Kisanlal Bagadia was appointed as IRP.

2. The appellant has challenged the impugned judgment on the grounds that it is unreasoned, arbitrary, and biased, having improperly disregarded the commercial wisdom of the Committee of Creditors (in short '**CoC**'). The AA's interference with CoC decisions and unwarranted remarks that tarnish the appellant's professional reputation are also contested. The appeal questions the legal validity of removing the appellant as the IRP.

3. The brief facts of the case are as follows:

- (i) The Respondent No.1 in the present case, Gospell Digital Technology Co. Ltd. (OC) filed a petition u/S 9 of the Code against M/s Altius Digital Private Limited (CD). M/s Altius Digital Private Limited, was admitted in CIRP on **December 19, 2023**. The Appellant, Shri Dushyant Dave, was appointed as the IRP from a list provided by the Insolvency and Bankruptcy Board of India (in short '**IBBI**').
- (ii) The IRP issued a public announcement on December 23, 2023, inviting creditors of the Corporate Debtor to submit their claims by January 4, 2024. On January 2, 2024, Gospell Digital Technology Co. Ltd. submitted its claim totaling Rs.144,85,99,458.13. This claim was verified and subsequently admitted by the IRP on 11th January 2024 establishing Gospell Digital as the pre-dominant Operational Creditor. On the same day, IRP also verified and admitted the claim of another Operational Creditor M/s Babosa Corporation of Rs.1,07,289/-.
- (iii) On January 5, 2024, M/s Asha Apartments Pvt. Ltd./Respondent No.2 submitted an incomplete claim, asserting itself as a financial creditor of the Corporate Debtor. However, the submission lacked the necessary documentation, prompting the IRP to request additional documents for proper verification.
- (iv) The IRP filed the list of creditors and a report certifying the formation of the CoC with the AA on January 12, 2024. The CoC was composed solely of operational creditors, with Gospell Digital Technology Co. Ltd.

- holding 99.99% voting rights in proportion to its admitted claim. The first CoC meeting was held on January 19, 2024, where the agenda included confirmation of Dushyant Dave as the Resolution Professional (in short '**RP**') and ratifying the appointment of the Insolvency Professional Entity (in short '**IPE**'). CoC did not ratify the appointment of IRP as RP, the appointment of IPE was also not ratified. The CoC further requested for e-voting to decide on Dave's appointment. During the e-voting process, conducted from January 23 to 25, 2024, Gospell Digital again voted against Dave's confirmation as RP and against the ratification of the IPE's appointment.
- (v) On January 24, 2024, Respondent No.2 updated and submitted its claim in proper form, and the IRP immediately accepted it as the sole financial creditor. On January 25, 2024, Respondent No.2 was inducted into the CoC with 100% voting rights by the IRP. In the second CoC meeting held on January 30, 2024, Asha Apartments Pvt. Ltd., as the sole financial creditor, confirmed Dushyant Dave as the RP with 100% of the vote. However, the resolution to approve the fees for the IPE was not passed, and the RP was instructed to renegotiate the terms of the fees.
- (vi) Gospell Digital/ Respondent No.1 on February 6, 2024, filed an Interlocutory Application No. 503/2024 before the AA, challenging the decisions made in the second CoC meeting and seeking Shri Dave's removal as RP. Respondent No.1 questioned IRP's impartiality,

particularly regarding the verification of Asha Apartments Pvt. Ltd./ Respondent No.2 claim, which had fundamentally altered the CoC's composition, pushing out operational creditor Gospell Digital/Respondent No.1 from the CoC. On February 20, 2024, the AA directed the Appellant Gospell Digital to implead Asha Apartments Pvt. Ltd. as a respondent in the case. After hearing arguments from both parties, the tribunal ruled on March 4, 2024, in favor of Gospell Digital. The tribunal expressed concerns about Dushyant Dave's impartiality in handling Asha Apartments Pvt. Ltd.'s claim and their inclusion in the CoC. The AA found that the resolutions passed in the second CoC meeting, including Dave's confirmation as RP and the appointment of Decode Resolvency International Pvt. Ltd. as the support entity, were questionable. It set aside these resolutions and appointed Mr. Arun Kisanlal Bagadia as the new RP, with a monthly fee of Rs. 2,00,000/- plus GST, effective from March 11, 2024. The Appellant was directed to hand over all records and documents to the incoming RP.

- (vii) The impugned order passed by the AA on March 4, 2024, addressed multiple concerns raised against the IRP. The AA found that the IRP had acted in a manner that compromised the integrity of the CIRP process. Specifically, the AA highlighted his handling of the inclusion of M/s Asha Apartments Pvt. Ltd. as a financial creditor, which significantly altered the composition of the Committee of Creditors (CoC).

(viii) The AA observed that the verification of Asha Apartments' claim was premature and flawed, as the claim was still under review at the time of its inclusion in the CoC. Despite this, Shri Dave proceeded to update the list of creditors, giving Asha Apartments 100% voting rights in the CoC. This decision was made without the due diligence expected of an RP and was deemed to be against the principles of natural justice.

(ix) Furthermore, the AA criticized Dave for conducting the second CoC meeting on January 30, 2024, under these questionable circumstances, where decisions were made based on the new CoC composition, leading to his confirmation as the RP. AA found these actions to be prejudiced and concluded that Dave had failed to maintain the impartiality required of his position, raising doubts about his ability to effectively manage the CIRP.

4. As a result, AA ordered the replacement of Dushyant Dave with Arun Kisanlal Bagadia as the new RP, emphasizing the need for impartial and diligent conduct in the administration of insolvency proceedings. The tribunal also set aside the resolutions passed in the second CoC meeting, underlining the significance of these procedural lapses in undermining the CIRP process. The relevant Paras 22, 23, 24 and 25 of the order dated 04.03.2024 are reproduced below:

22) The Applicant also drew our attention to the agenda Item of Second CoC Meeting, where at the Resolutions for Appointment of Respondent No. 1 as Resolution Professional

and support entity were taken up. We note that at the Second CoC meeting the Applicant was also present and the Respondent No. 1 informed CoC that the proposal from the Applicant suggesting name of the Insolvency Professional Mr. Arun Kisanlal Bagadia, has been received. We further note that the Applicant objected to the inclusion of Asha Apartment Pvt. Ltd. as Financial Creditor in CoC with 100% voting Share.

23) It may not be out of place to note that the Resolution appointing the Respondent No. 1 was put to vote by show of hands despite the Resolution to appoint him as the Resolution Professional was already voted out in the First CoC meeting. Needless to say, the Respondent No. 1 continued as IRP as no RP was appointed in that meeting. Further, the Resolution to appoint M/s Decode Resolvency International Pvt. Ltd., IPE as support entity was put to vote despite the Resolution to appoint them as support entity was already voted out in the First CoC meeting.

24) It is not in dispute that the claim of Asha Apartment Pvt. Ltd. is stated to be in verification and Respondent No. 1 submitted that he shall take appropriate decision in relation to genuineness in due course. However, this bench has the serious concern in relation to the impartiality of the decision in respect of Asha Apartments Pvt. Ltd. in the light of

Respondent No. 1 despite having been voted out was voted in by the same Financial Creditor. We deem it appropriate the proprietary of placing the Resolution for his appointment as Resolution Professional and appointment of M/s Decode Resolvency International Pvt. Ltd., IPE as support entity before the reconstitution of CoC is in itself questionable. Accordingly, we set aside the Resolution passed in 2nd CoC meeting appointing the Respondent No. 1 as Resolution Professional and M/s Decode Resolvency International Pvt. Ltd., IPE as support entity. We deem it appropriate to appoint Insolvency Professional Mr. Arun Kisanlal Bagadia as a Resolution Professional of the Corporate Debtor for a fee of Rs. 2,00,000/- per month plus GST and discharge the Respondent No. 1 with effect from 11.03.2024. The Respondent No. 1 is directed to handover all the records whatever available with him in the physical and electro format to the incumbent Resolution Professional.

25) The incoming Resolution Professional shall take final decision on the claim submitted by Asha Apartments Pvt. Ltd. within Thirty (30) days and re-constitute the CoC, if required. Till such time, the CoC as constituted initially shall function and take decisions. The business carried out at 3rd CoC meeting, if any, shall not be given effect to, if any. The

incumbent Resolution Professional shall pay the fees of the Outgoing IRP at the rate of Rs. 2,00,000/- per month plus out of pocket expenses after verification thereof if not already approved by the CoC.

Submissions of the Appellant

5. Counsel for the Appellant argued that the AA's interference with the CoC's commercial wisdom is both unjust and beyond the tribunal's jurisdiction. He asserts that his appointment as RP was confirmed with 100% voting approval by the sole financial creditor, Asha Apartments Pvt. Ltd., in the second CoC meeting. According to him, the tribunal's intervention in the commercial decisions of the CoC violates established legal principles, that protect the CoC's discretion in such matters. Furthermore, he contends that the tribunal's judgment is unreasoned and biased, and its remarks have unjustly damaged his professional reputation. He also points out that the tribunal did not have adequate grounds to question his impartiality or his verification of Asha Apartments Pvt. Ltd.'s claim, which was conducted in accordance with the law.

6. The counsel for the appellant submitted that there were significant procedural lapses by the respondent in the present case under the Insolvency and Bankruptcy Code (IBC), citing *Edelweiss Asset Reconstruction Co. Ltd. v. Mohit Goyal*, 2022 SCC OnLine NCLAT 4609. The appellant argued that such lapses are not merely procedural but are fundamental errors that impact the overall validity of the proceedings.

7. The counsel for the appellant further contends that their right to a fair hearing was violated. He supported his argument by referring to *State Bank of India v. Ajai Kumar Srivastava*, (2021) 2 SCC 612. The appellant draws on this judgment to assert that the principles of natural justice were breached, as they were not afforded a sufficient opportunity to present their case.

8. The appellant further highlighted the respondents' failure to meet their contractual obligations. In this regard he cited *Katra Realtors (P) Ltd. v. Rajesh Ramnani*, 2024 SCC OnLine NCLAT 302. The appellant draws a parallel between the respondents' actions and the contractual failures observed in the aforesaid case. By doing so, he emphasized that the respondents' breach of contract is a pivotal issue that justifies their claims and supports their position in the dispute.

9. The appellant further highlighted the lack of transparency and due diligence in the management of stressed assets by the respondents, citing *Stressed Assets Stabilization Fund v. Piyush Periwal*, 2024 SCC OnLine NCLAT 185. This judgment is used to support the claim that the respondents did not fulfill their legal obligations regarding the management of such assets. The appellant argues that this lack of due diligence is a significant factor that undermines the respondents' legal standing and further strengthens the appellant's case.

10. Furthermore, the appellant points to the failure of the respondents to adhere to strict legal standards required of government bodies, referencing *Hari Narayan Tewari v. Cantonment Board, Ramgarh Cantonment*, 2024 SCC OnLine SC 1643. This case illustrates the respondents' non-compliance with established

legal norms, which the appellant argues weakens their case and demonstrates a disregard for necessary legal protocols.

11. Lastly, the appellant cites *Joginder Singh & Anr v. Surinder Singh (Dead) By LRs & Ors, 1995 Supp (4) SCC 413* to show that the respondents overlooked crucial legal principles regarding property rights and inheritance. This judgment is presented to reinforce the appellant's position by demonstrating that the respondents' actions are inconsistent with established legal precedents in similar disputes.

12. In light of the above, the Appellant has prayed this Appellate Tribunal to:

- a. Allow the present Appeal;
- b. Set aside the Impugned order dated 04.03.2024 and appoint the Appellant as the RP of the CD as per the voting in the 2nd CoC meeting; and/or
- c. Pass any other/further order/s as deemed fit and proper in the facts and circumstances of the present matter.

Submissions of the Respondents

13. In his reply the counsel for the Respondent No. 1/ Gospell Digital Technology Company Ltd. stated that the Appellant's initial plea sought to overturn this order and to be reinstated as the Resolution Professional (RP) based on the outcomes of the Second Committee of Creditors (CoC) Meeting. However, during the hearing on August 1, 2024, the Appellant shifted his stance, focusing

on expunging specific remarks made about his conduct by the AA, rather than pursuing reappointment.

14. The counsel further stated that the Respondent No. 1 filed a Company Petition (IB) No. 137/MB/ 2023 under Section 9 of the code against the Corporate Debtor on December 14, 2022 in NCLT, Mumbai. The notice in the petition was issued on February 17, 2023. A Loan Agreement for Rs. 2 crores were executed on April 15, 2023, by the Corporate Debtor in favour of M/s Asha Apartments/Respondent No.2 after the issuance of notice under Section 9 of the Code. Over the next six months, Respondent No. 2 disbursed Rs. 1.15 Crore to the Corporate Debtor.

15. The counsel for Respondent No. 1 further submitted that he had informed the Appellant during CoC's meetings that Respondent No. 2 had been declared an accommodation entry operator by the Hon'ble Gujarat High Court. The bank statements of Respondent No. 2 showed Rs.32,618/- on 05.04.2023. On 10.05.2023 an amount of Rs. 21 lakhs was deposited in the account of Respondent No.2 and the same was instantly transferred to the account of CD.

16. The counsel further stated that the Loan Agreement required the Corporate Debtor to pay 18% annual interest on the principal, plus an additional 2% for late payments, but no payments were made.

17. The counsel stated that on October 4, 2023, the NCLT reserved its order on the Company Petition (IB) No. 137 (MB) of 2023 for initiating CIRP proceedings against the CD. It is seen, that immediately thereafter, a Deed of Hypothecation

was executed on October 12, 2023, by Mr. BK Sancheti Director of CD in favour of Respondent No. 2. The CIRP petition was admitted on December 19, 2023, and Mr. Dushyant Dave was appointed as IRP. A public announcement was made on December 23, 2023, setting a deadline for claim submissions as January 4, 2024.

18. Counsel for Respondent No. 1 submitted that he has filed a claim for Rs.144 Crore on January 2, 2024. On 10.01.2024 the appellant sought certain additional documents from R-1 for verification of its claim. Subsequently, the claim was verified and admitted by the appellant. The Appellant filed the Certification for Constitution of the CoC and List of Creditors on January 12, 2024, before the AA. The first CoC meeting was thereafter scheduled for 19.01.2024 with e-voting scheduled to commence from 20.01.2024 at 12 P.M. and to conclude on 22.01.2024 at 12 P.M.

19. During the First CoC Meeting, voting was initially conducted by show of hands. The Appellant subsequently decided to switch to e-voting without providing the link in a timely manner. Respondent No. 1 voted against the Appellant's appointment as RP and also against support entity proposed by the appellant. On January 24, 2024, Respondent No. 1 requested a second CoC meeting to appoint a new RP.

20. The counsel submitted that the Respondent No.2 filed Form-C dated 03.01.2024 claiming a sum of Rs. 1.24 crore (approx.) which was received by the appellant on 24.01.2024. On January 25, 2024, the Appellant reconstituted the

CoC, excluding Respondent No. 1, and scheduled the Second CoC Meeting for January 30, 2024. In this meeting, Respondent No. 2, with 100% voting rights, approved the Appellant's reappointment as RP, but did not approve the proposal for the support entity's fees. The counsel further stated that Respondent No. 2's claim, received on January 24, 2024, was admitted on February 3, 2024, following the Second CoC Meeting. The aforesaid exercise of the appellant was in direct contravention of Regulations 13 & 17 of the CIRP Regulations, which provides that CoC can be constituted only after due verification and admission of the claims received.

21. The counsel for Respondent No.1 submitted that the Appellant, thereafter circulated the Minutes of the second CoC Meeting held on 30.01.2024, wherein the Appellant admitted that it was in the process of verifying the claims of the alleged Financial Creditor i.e., Respondent No.2 and surprisingly the claims of the Respondent No.1 were also placed under verification. It is pertinent to mention herein that the Respondent No.2 was given 100% voting share, despite its claims still being under verification.

22. The counsel further stated that the Claim of the Respondent No.2, alleged Financial Creditor, was admitted by the Appellant only on 03.02.2024 i.e. after the conclusion of the 2nd COC Meeting on 30.01.2024. The Respondent No. 1 sent email dated 03.02.2024 objecting to the illegalities committed by the Appellant as well as complaining about the conduct of the Appellant.

23. The Respondent No.1 stated that the Appellant acting in a high-handed manner only to get himself reappointed, after being voted out in the 1st COC meeting. That various proceedings have been initiated against the Appellant before the IBBI during his previous assignments.

24. The Respondent No. 1 further stated that Respondent No.2/Asha Apartments had preferred an independent appeal bearing CA (AT) (INS.) No. 915 of 2024, against the impugned order, which was disposed of on May 9, 2024. The coordinate bench of this Tribunal did not find any fault with AA's order in the present matter. The Appellant in the present case was impleaded as Respondent No. 2 in the aforesaid proceedings.

25. In light of the above, the Respondent No.1 contended that the impugned order is devoid of any error and that the remarks made by the AA should not be expunged. It is prayed that the current appeal be dismissed with exemplary costs in favour of Respondent No. 1.

26. The counsel for Respondent No.2 did not make any submission nor did he file any written submission.

Analysis and Findings

27. We have heard the counsels in detail and examined the records submitted by the parties.

28. The date wise sequence of events in this case is very crucial to understand the actions by various parties and their legal implications. The sequence of various events is as follows:

Date	Event
14.12.2022	The Respondent No. 1 Gospell Digital Technologies Co. Ltd. files the Section 9 Company Petition (IB) No. 137 (MB) of 2023 against the CD for Rs. 144 Crores.
17.02.2023	Notice issued in the petition.
15.04.2023	Loan agreement for Rs. 2 crores signed between CD and Asha Apartments/ Respondent No. 2.
04.10.2023	NCLT reserves its order in the aforesaid company petition.
12.10.2023	Deed of hypothecation signed between CD and Respondent No. 2.
19.12.2023	NCLT allows the CIRP Petition and the appellant appointed as IRP.
23.12.2023	Public announcement for claim submission, last date fixed as 04.01.2024.
02.01.2024	Respondent No. 1 files a claim for Rs. 144 crores as Operational Creditor.
11.01.2024	Respondent No.2 files an incomplete claim to IRP.
12.01.2024	Appellant admits the claim of Respondent No. 1 and files the certification for constitution of CoC and list of creditors before AA.
19.01.2024	First CoC meeting wherein confirmation of appointment of appellant and the Insolvency Professional Entity was put to vote.
23.01.2024	The e-voting link was shared Gospell Digital voted against the appellant as the RP and also against the ratification of the support entity's appointment
24.01.2024	Respondent No.2 submitted an updated claim through Form C.
25.01.2024	Updated list of creditors, which included the Respondent No.2 was filed by the IRP before the Tribunal wherein the claim of Respondent No. 2 was admitted and CoC was constituted with Respondent No. 2 as sole member.
30.01.2024	Second CoC meeting was held with Respondent No. 2 as the Sole Financial Creditor with 100% voting rights. CoC approved the resolution appointing appellant as the RP.

29. We observe that following the issuance of notice by the Adjudicating Authority (AA) in the CIRP petition on 17.02.2023, the Corporate Debtor (CD) executed a loan agreement with Respondent No. 2 on 15.04.2023, wherein Respondent No. 2 was designated as a Financial Creditor to infuse funds into the CD. However, at that time, no assets of the CD were hypothecated in favor of Respondent No. 2.

30. Further, it is noted that the AA reserved its order on the CIRP petition on 04.10.2023, and immediately thereafter, a deed of hypothecation was executed between the CD and Respondent No. 2 on 12.10.2023.

31. Upon admission of the CIRP petition and the subsequent appointment of the Interim Resolution Professional (IRP) by the AA, the IRP filed a report on 12.01.2024, concerning the constitution of the Committee of Creditors (CoC) to AA. The relevant paras 3,4, and 5 of the same are reproduced below:

“3. As on January 04, 2024 the IRP has received the following claims that have been verified in accordance with the Code and the rules and regulations made thereunder:

S. No.	Name of Creditor	Address of Creditor	Category of creditor	Amount claimed (INR)
1	Gospell Digital Technologies Co. Ltd..	Gospell Industrial Park, Guanshandong Street, Chenzhou City, Suxian District, Hunan, China - 423 000.	Operational Creditor	1,44,85,99,458
2	M/s Babosa Corporation	Building No. A3, Unit No. 101, Babosa Industrial Park,	Operational creditor	1,07,289

		Saravali Village , Bhiwandi- 421 302		
	Total			1,44,87,06,747

It is pertinent to note that, the present Composition of CoC has been arrived at in accordance with the list of creditors.

4. In view of the above, the undersigned has constituted the Committee of Creditors comprising of the creditors as mentioned above based on the information available as on date with the IRP in accordance with Section 21(1) of the Code. Accordingly, in compliance with Regulation 17 of CIRP Regulations, the undersigned has called for the first meeting of the Committee of Creditors on January 19, 2024.

5. In view of the above and in compliance with Regulation 17(1) of the CIRP Regulations, the undersigned certifies the constitution of the Committee of Creditors in compliance with Regulation 17 of CIRP Regulations.”

(Emphasis supplied)

32. The appellant's filing before the AA clearly shows that by 04.01.2024, the deadline for submission of claims, only two creditors had submitted their claims, both of which were verified and admitted by the appellant (IRP).

33. During the first CoC meeting, the IRP disclosed that on 05.01.2024, he received a claim from Asha Apartments, asserting its position as a Financial Creditor of the Corporate Debtor, and that the verification of the claim was still

ongoing. This information was not included in the report submitted to the AA regarding the constitution of the CoC. However, in his submission in appeal it is stated that an incomplete claim from Asha Apartments was recorded as having been received on 11.01.2024.

34. It is further observed from the appellant's petition that the claim of Respondent No. 2, in Form-C, was received by the IRP on 24.01.2024. The claim was verified on the same day and on 25.01.2024, the Appellant filed an I.A with AA for reconstitution of CoC. It is also noted that M/s Asha Apartments Pvt. Ltd. was inducted as the sole Financial Creditor, with 100% voting rights in the CoC, by the appellant acting as the IRP, despite the fact that he had already been voted out as the IRP of the CD by the then-existing CoC. The appellant failed to mention before AA that he has already been voted out by the CoC.

35. We note that despite the differing dates reflected in various documents, it is evident that the claim of Asha Apartments/Respondent No. 2 was received after the stipulated deadline for the submission of creditor claims.

36. On 25.01.2024 the appellant filed an I.A. with the AA, wherein he informed the Tribunal that based on further claims, he has reconstituted the Committee of Creditors. The relevant paragraphs from the I.A. are reproduced below:

"2. The Applicant in discharge of his duties made a public announcement as per Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") intimating the public in general

and the creditors of the Corporate Debtor in particular of the initiation of Corporate Insolvency Resolution Process ("CIRP") and inviting claims from the creditors of the Corporate Debtor. The same was published on December 23, 2023 in Free Press Journal (English) and Navashakti (Marathi). The last date for submission of claims was on January 04, 2024.

3. The Applicants submits that as on January 04, 2024 he had received claims form two Operational Creditors being, Gospell Digital Technologies Co. Limited and M/s Babosa Corporation. The Applicant in discharge of his duties under Regulation 17 of CIRP Regulations had filed the Report of constitution of the Committee of Creditors and list of creditors on January 12, 2024 bearing filing no 2709138078742022. Accordingly, the Applicant convened the First (1 st) Meeting of the Committee of Creditors on January 19, 2024.

4. The Applicant submits that he, thereafter, received a claim under Claim form C of CIRP Regulations from a Financial Creditor, Asha Apartments Private Limited, on January 24, 2024. In pursuance of the said receipt, the Applicant verified the said claim and ascertained that the claim was valid and thus, was accepted. In light of the developments the Applicant submits that as on January 25, 2024 he has received the following claims that have been verified in accordance with the Code and the rules and regulations made thereunder:

S. No.	Name of Creditor	Address of Creditor	Category of creditor	Amount claimed (INR)
1	Asha Apartments Private Limited	14-C, Maharishi Debendra Road, Kolkata, West Bengal- 700007	Financial Creditor	1,24, 15,987.95
2	Gospell Digital Technologies Co. Limited	Gospell Industrial Park, Guanshandong Street, Chenzhou City, Suxian District, Hunan, China - 423 000.	Operational Creditor	1,44,85,99,458.00
3	M/s Babosa Corporation	Building No. A3, Unit No. 101, Babosa Industrial Park, Saravali Village, Bhiwandi- 421 302.	Operational Creditor	1,07,289.00
	Total			146, 11,22, 734. 95

It is pertinent to note that, the present Reconstitution of CoC has been arrived at in accordance with the updated list of creditors also filed herewith.

5. In view of the above, the undersigned has reconstituted the Committee of Creditors comprising of the creditors as mentioned above based on the information available as on date with the IRP in accordance with Section 21 (1) of the Code. In view of the above and in compliance with Regulation 17 (1) of the CIRP Regulations, the undersigned certifies the reconstitution of the Committee of Creditors in compliance with Regulation 17 of CIRP Regulations.”

37. It is observed from the aforesaid petition of appellant that the claim of Respondent No. 2 in Form-C was received by IRP on 24.01.2024. It is also seen

that M/s Asha Apartments Pvt. Ltd. was inducted as Sole Financial Creditor with 100% voting rights in the Committee of Creditors by the appellant as IRP at a stage when he was already voted out as IRP of the CD by the existing CoC. At no point the appellant informed the AA about the fact that first CoC has not approved his proposal for ratification as RP, rather they have voted him out.

38. We now examine the minutes of the second CoC meeting held on 30.01.2024. Agenda item No. B refers to the revised list of creditors and change in the constitution of the CoC the relevant extracts of the minutes of the second CoC meeting are extracted below:

“B. To take note of the revised list of creditors and change in constitution of the COC (refer slide no. 6)

1. The IRP stated that in accordance with Regulation 6 of CIRP Regulations had published Form A, intimating the public at large and the creditors of the Corporate Debtor in particular of initiation of CIRP against and Corporate Debtor and inviting claims from the Creditor of the Corporate Debtor. The last date for the submission of claims as per Form A was January 04, 2024.

2. The IRP on January 24, 2024 received a claim under claim Form C from a Financial Creditor, Asha Apartments Private Limited. Accordingly, the IRP accepted the claim and filed for an updated list of creditors and reconstitution of the COC with Hon'ble NCLT on January 25, 2024. The financial creditor could produce the copy of the charge

created on the assets of the CD in the MCA records as well as the transfer of the funds to the CD account in the bank statement of the financial creditor.

3. The IRP in compliance with Regulation 12 and 13 of CIRP Regulations is under the process of verifying the claims received by him. Mentioned below are the details of the said claims as received by IRP and their treatment thereof:

(Emphasis supplied)

S. No	Name of Creditor	Type of Creditor	Date of receipt of claim	Amount claimed (INR)	Status of claim
1	Asha Apartments Private Limited	Financial	24.01.2024	1,24,15,987/-	Under verification
2	Gospell Digital Technologies Co. Limited	Operational	02.01.2024	1,44,85,99,458/-	Under verification
3	M/s Babosa Corporation	Operational	05.01.2024	1,07,289/-	Under verification
	Total			146,11,22, 734/-	

4. Accordingly, the voting share of the COC has been modified as mentioned hereinbelow:

S. No.	Name of Creditor	Type of Creditor	Voting share
1	Asha Apartments Private Limited	Financial	100%
2	Gospell Digital Technologies Co. Limited	Operational	Not applicable
3	M/s Babosa Corporation	Operational	Not applicable
	Total		100%

39. We observe that the appellant had submitted before AA on 25.01.2024 that the claim of Respondent No. 2 as Financial Creditor has been duly verified and admitted, whereas in the minutes of the second CoC meeting held on 30.01.2024, it is shown that the claims of Asha Apartment Pvt. Ltd./ Respondent No. 2. Gospell Digital Technology Co. Ltd./ Respondent No. 1 and M/s Babosa Corporation (OC) were still under verification by the IRP. In spite of this the IRP reconstituted the CoC.

40. We reach at following conclusions regarding the conduct of appellant (IRP) in the issue of reconstitution of CoC:

- (i) The claim of Asha Apartments/ Respondent No. 2 was received after 04.01.2024 the last date of submission of claims by creditors of the CD. There are two dates mentioned by appellant in his submission before us i.e. 05.01.2024 and 11.01.2024. The aforesaid claim was defective.
- (ii) The claim in Form-C was submitted by Respondent No. 2 on 24.01.2024.
- (iii) The claims of Gospell Digital Technology Co. Ltd./ Respondent No. 1 and M/s Babosa Corporation as Operational Creditors were received in time and admitted by the IRP as per his own affidavit before AA on 12.01.2024.
- (iv) On 25.01.2024, in an application before the AA, the Appellant stated that he has received another claim of Financial Creditor M/s Asha Apartment, the same has been examined and verified and its in order, Accordingly, all three claims were found in order and have been duly admitted. He further

stated that CoC has accordingly been reconstituted with M/s Asha Apartments/ Respondent No. 2 as a Sole Financial Creditor with 100% voting share.

- (v) According to the minutes of the second CoC meeting held on January 30, 2024, the IRP stated that all three claims were under verification. Despite this, the CoC was reconstituted with Asha Apartments as the sole financial creditor with 100% voting share. The agenda items that were previously rejected during the first CoC meeting, which pertained to the removal of the IRP and the Insolvency Professional Entity (IPE), were reintroduced in the second CoC meeting. With the support of Respondent No. 2, now the sole member of the CoC, the IRP secured his own reappointment.

(Emphasis supplied)

41. The discussion in previous paras shows that the actions of the appellant IRP are not bona fide in the present matter. He has been very biased in his approach in this matter, particularly after the first CoC meeting where a decision was taken to remove him and appoint a new RP. Prima facie he seems to be guilty of perjury as he has stated before AA on record that the claim of Asha Apartments has been accepted by him on 25.01.2024 and accordingly he has reconstituted the CoC. Whereas in the minutes of the second CoC held on 30.01.2024, he has stated that the claims of all three creditors are under 'verification' category. It should be mentioned that the claim of Respondent No.1 was admitted and informed by him to AA on 12.01.2024 itself. This clearly suggests that the

Respondent No.2 was introduced as the Financial Creditor, without proper verification to ensure that the Committee of Creditors consisted solely of financial creditor who would appoint the IRP as RP and further allow him to conduct the CIRP process in tandem with the newly introduced sole member of CoC.

42. This position is further confirmed in second meeting of CoC when the new CoC comprising solely of Respondent No.2/Asha Apartments, confirms the appointment of Appellant as RP.

43. The repeated attempts to confirm himself as the RP, after being rejected by the CoC, contravenes the provisions of Section 22 of The Code. This is seen as an abuse of his position as IRP to influence the CoC in his favor and maintain control over the insolvency resolution process, disregarding the CoC's commercial wisdom.

44. When there are no financial creditors, the CoC should be constituted with operational creditors as per **Regulation 16 of IBBI (CIRP) Regulations, 2016**. Initially, the CoC included only operational creditors, with Gospell Digital Technology Co. Ltd. holding a 99.99% voting share. The inclusion of Asha Apartments, without proper verification, violated the CIRP regulation and effectively removed Respondent No.1/Operational Creditor from CoC with a claim of Rs. 145 Crore approx. by the Financial Creditor, who had provided a loan of Rs. 1.24 crore in the CoC.

45. The appellant has referred to several Judgment of Hon'ble Supreme Court and this Tribunal to support their argument. These are discussed here:

- (i) The appellant has cited **Edelweiss Asset Reconstruction Co. Ltd. v. Mohit Goyal**, 2022 SCC OnLine NCLAT 4609, where this Tribunal upheld the Committee of Creditors' (CoC) decision to reject a Rs. 600 crore resolution plan, emphasizing non-interference in commercial wisdom. The ratio of the Judgment (supra) does not apply to the present case as it focuses on the IRP's conduct in CIRP proceedings where there are serious questions about impartiality and fairness of IRP leading to the replacement of IRP by NCLT. The impugned order has nothing to do with commercial wisdom of CoC, rather it's about impartiality and fairness in conduct of CIRP process, which is squarely within the domain of NCLT.
- (ii) The Judgment of Hon'ble Supreme Court in **SBI v. Ajai Kumar Srivastava**, (2021) 2 SCC 612, is again identical to Edelweiss (supra) and relates to approval of resolution plan and the powers of CoC regarding the same.
- (iii) The Judgment of this Tribunal in the **Stressed Assets Stabilization Fund v. Piyush Periwal**, 2024 SCC OnLine NCLAT 185, involved the CoC retaining the RP with a majority vote, wherein a request was made by Operational Creditor to remove the RP due to his inefficiency. This Tribunal upheld the decision of CoC to retain the RP stating that unless there is a conflict of interest or evidence of misconduct, the CoC's decision to retain the RP should not be interfered with. In the present

case the misconduct of IRP and questions about his impartiality and fairness in conduct of CIRP are the issue. Therefore, the ratio laid down by the Judgment (supra) does not apply in the present case.

- (iv) In **Katra Realtors (P) Ltd. v. Rajesh Ramnani**, 2024 SCC OnLine NCLAT 302 decided by this Tribunal, the focus was on procedural compliance in CoC meetings, and it was CoC's conduct which was in question. The present case on the other hand deals with the IRP's conduct in CIRP proceedings.
- (v) The Judgment of Hon'ble SC in **Hari Narayan Tewari v. Cantonment Board, Ramgarh Cantonment**, 2024 SCC OnLine SC 1643, pertains to natural justice in administrative law, and does not relate to the IBC.
- (vi) Lastly, the Judgment of Hon'ble SC, **Joginder Singh & Anr v. Surinder Singh (Dead) By LRs & Ors**, 1995 Supp (4) SCC 413, relates to inheritance law and is not relevant to present matter.

46. On the other hand, we have seen the precedent set by this Tribunal in **Jayanta Banerjee v. Shashi Agrawal and Ors., Company Appeal (AT) (Insolvency) No. 348 of 2020**, wherein it was held that the creditors whose claims are still under verification cannot be included in the Committee of Creditors (CoC) meetings. This principle is vital for maintaining the procedural integrity of the CIRP and ensuring the CoC is properly constituted based on verified claims.

47. Based on the discussion above, we find that the conduct of the RP in the instant CIRP proceeding seems to be premediated, biased and authoritarian in clear violation of the core objectives and principles of the Code, which seeks to ensure fair and transparent insolvency proceedings. The facts and circumstances presented above clearly reveal the Appellant's abuse of authority, demonstrating both overreach and bad faith; further compromising the integrity and trust that is essential to the insolvency resolution process. The appellant has not been transparent even in his submissions to AA and had hidden the fact that CoC has decided to remove him. Keeping these in view, we find no flaw in the decision of the AA regarding replacement of IRP and fully endorse the same.

48. Another important issue to be examined in this matter is the role of Financial Creditor Asha Apartments who is Respondent No.2 here. The role of Asha Apartments/ Respondent No. 2 needs scrutiny as the company provided credit to the CD after petition for initiating CIRP was filed against the CD, which subsequently led to it becoming the sole Financial Creditor with 100% voting rights in CoC.

49. Asha Apartments Pvt. Ltd. entered into a loan agreement with the Corporate Debtor on April 15, 2023. This was done after a CIRP petition was filed against the CD by the Respondent No.1 for a claim of Rs. 145 Crore. on 14.12.2022. The notice in the matter was issued on 17.02.2023. The loan agreement for Rs. 2 crores was signed shortly thereafter. Additionally, a Deed of Hypothecation was executed in favor of Asha Apartments on 12.10.2023, which

was after the NCLT had reserved its order on the company petition on 04.10.2023. These agreements were made after insolvency proceedings had been initiated, leading to concerns about the legitimacy of the financial debt claimed by Asha Apartments and its subsequent participation in the CoC.

50. We also note that, the loan agreement stipulated an interest rate of 18% per annum but it appears no payment has been made by Respondent No. 2 to the Corporate Debtor to date.

51. It was also pointed out that the R2 company was known as entry operator from Kolkata and its conduct has been investigated by Income Tax Authorities in the past.

52. Our attention was invited to the judgment of the Hon'ble Gujarat High Court in **Special Civil Application No. 17786 of 2018, Navnidhi Dyeing and Printing Mills Pvt. Ltd. vs. Assistant Commissioner of Income Tax, Circle 1(1)(2), Ahmedabad**, wherein the court noted prima facie findings from the Assessing Officer indicating that Asha Apartments Private Limited appears to be a shell company based in Kolkata, controlled by Mr. Manoharlal Nangalia. Mr. Nangalia admitted to providing accommodation entries through shell companies to various beneficiaries in exchange for commission. The relevant para 18 of the Judgment (supra) is reproduced below:

“18. In the present case, the Assessing Officer has considered the materials on record which would, prima facie, suggest that during the year under consideration there was a huge hike in the amount

of the share capital and share premium of the assessee company. The assessee received the amount of share capital and share premium from the Kolkata based shell companies, namely, Prime Vyapaar Pvt. Ltd. and Asha Apartments Pvt. Ltd. respectively. The Assessing Officer, prima facie found, based on the materials on record and the information received, that total share capital of Rs.40 lakh was received during the year under consideration. On verification of the details of the investors companies, it was found, prima facie, that the same was controlled by one Kolkata based accommodation entry provider, namely Manoharlal Nangalia. In a statement recorded by the department, Manoharlal Nangalia is said to have admitted to the fact that his main business is to provide accommodation entries through shell companies to various beneficiaries in lieu of commission.”

53. In light of these concerns and the timing of the transactions, there are significant doubts regarding the legitimacy of the dealings between the Corporate Debtor and Asha Apartments Pvt. Ltd. The inclusion of Asha Apartments as a Financial Creditor and the sole member of the Committee of Creditors (CoC) raises serious questions about the fairness and impartiality in the CoC's composition. This issue is particularly critical given that Respondent No. 1 has a substantial claim of approximately Rs. 145 crores, while Asha Apartments' claim amounts to Rs. 1.24 crores, which arose only after the CIRP proceedings were initiated and notices were issued by AA.

54. We have come across several cases under IBC, wherein the Operational Creditor with a large claim files for CIRP proceedings against CD. There are no financial creditors at this stage. Corporate Debtor at this stage introduce friendly entities, as Financial Creditor with a loan which is a fraction of claim of OC. These claims are admitted by the IRP/RP as Financial Debt. Once included in the CoC, such financial creditors become part of CoC and get voting right and in turn manage the CIRP proceedings in collusion with IRP/RP. With the voting power entirely concentrated in FC, the OCs receive minimal payouts during the resolution process. By inflating or fabricating the presence of certain financial creditors, distressed companies can tip the scales in favor of a particular resolution plan, leaving genuine operational creditors sidelined. In more extreme cases, these creditors are completely excluded from the recovery, despite their legitimate and often overdue claims. This case seems to be following the same pattern.

55. We have also seen the Judgment of a Principal Bench of this Tribunal dated 09.05.2024 in the appeal filed by Asha Apartment Pvt. Ltd. /Respondent No.2 wherein **Company Appeal (AT) (Ins.) No. 915 of 2024 in Asha Apartments Pvt. Ltd. vs. Gospell Digital Technology Co. Ltd.** In this appeal the same impugned order was under challenge in regard to keeping the claim of Asha Apartments as Financial Creditor on hold till final decision of the new RP. The relevant portions of the order in para 2 to 6 are reproduced below:

2. This Appeal has been filed against the order dated 04.03.2024 passed in IA No.503 of 2024. The Adjudicating Authority by impugned order has appointed new Resolution Professional and has issued following directions in paragraphs 24 and 25:-

“24) It is not in dispute that the claim of Asha Apartment Pvt. Ltd. is stated to be in verification and Respondent No. I submitted that he shall take appropriate decision in relation to genuineness in due course. However, this bench has the serious concern in relation to the impartiality of the decision in respect of Asha Apartments Pvt. Ltd. in the light of Respondent No. 1 despite having been voted out was voted in by the same Financial Creditor. We deem it appropriate the propriety of placing the Resolution for his appointment as Resolution Professional and appointment of M/s Decode Resolvency International Pvt. Ltd., IPE as support entity before the reconstitution of CoC is in itself questionable. Accordingly, we set aside the Resolution passed in 2nd CoC meeting appointing the Respondent No. I as Resolution Professional and M/s Decode Resolvency International Pvt. Ltd., IPE as support entity. We deem it appropriate to appoint Insolvency Professional Mr. Arun Kisanlal

Bagadia as a Resolution Professional of the Corporate Debtor for a fee of Rs. 2,00,000/- per month plus GST and discharge the Respondent No. 1 with effect from 11.03.2024. The Respondent No. 1 is directed to handover all the records whatever available with him in the physical and electro format to the incumbent Resolution Professional.

25) The incoming Resolution Professional shall take final decision on the claim submitted by Asha Apartments Pvt. Ltd. within Thirty (30) days and reconstitute the CoC, if required. Till such time, the CoC as constituted initially shall function and take decisions. The business carried out at 3rd CoC meeting, if any, shall not be given effect to, if any. The incumbent Resolution Professional shall pay the fees of the Outgoing IRP at the rate of Rs. 2,00,000/- per month plus out of pocket expenses after verification. thereof if not already approved by the CoC.”

3. Counsel for the Appellant submits that more than two months’ period was over but the claim of the Appellant was not verified.

4. Resolution Professional who appears in person submits that the process of verification is still on since he has not received the

relevant records from the suspended directors of the corporate debtor. He submits that he is in the process of filing an application under Section 19.

5. We have no doubt that in view of the direction issued by the Adjudicating Authority that the Appellant's claim shall be verified as per the records of the corporate debtor. It shall be open for the Resolution Professional to file an appropriate application and take steps and complete the verification as directed the Adjudicating Authority as early as possible. The Adjudicating Authority has not made any observations in the order regarding merits of the claim of the appellant and the Resolution Professional shall proceed to verify the claim as per the records available as early as possible preferably within the period of two months.

6. The Appeal is disposed of.

56. We would therefore not like to make comments regarding the eligibility of Asha Apartments as Financial Creditor at this stage, since a decision in the matter is pending.

57. In conclusion, we find that the conduct of the appellant has not been neutral and impartial in the aforesaid CIRP proceedings. He had tried to conduct CIRP in such a manner to keep himself as RP by prematurely admitting the claim of Respondent No.2 as Financial Creditor and reconstituting the IRP. The

Respondent No.2 in turn helped him by appointing him as RP. This conduct goes against the objectives of the Code. If such conduct and collusive practices are allowed to continue, the entire edifice of IBC would collapse. This would enable entry of erstwhile promoters through back door in the CD.

58. We believe that the conduct of Appellant as IRP has not been neutral and impartial. He has conducted the CIRP proceedings in violation of IBC provisions. We therefore direct Insolvency & Bankruptcy Board of India (IBBI) to investigate the role of Appellant in the present CIRP proceedings and take further necessary action as per existing provisions of IBC and relevant regulations.

59. In view of the above finding, we uphold the decision of AA. The appeal is dismissed. Pending I.As, if any, are closed. There is no order as to costs.

60. The Registry is directed to send a copy of this order to Chairperson, IBBI for necessary action.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

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