

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1020-1021 of 2024

[Arising out of order dated 02.05.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – III), in
IA/124/2024 in C.P. (IB)/566(MB)/C-III-2022]

IN THE MATTER OF:

1. Prem Trading Company

[Financial Creditor & Member of COC]

Though its Authorized Representative

Mr. Rakesh Chhaganlal Patel,

Residing at A-801, Rukshmani Height,

B/H, Balaji Hall, 150 Foot Ring Road,

Rajkot – 360004.

...Appellant No. 1

2. Parulben Rakeshbhai Patel

[Financial Creditor & Member of COC]

Though its Authorized Representative & spouse

Mr. Rakesh Chhaganlal Patel,

Residing at A-801, Rukshmani Height,

B/H, Balaji Hall, 150 Foot Ring Road,

Rajkot – 360004.

...Appellant No. 2

Versus

1. Ramchandra Dallaram Choudhary,

[Resolution Professional of Adico Forge Private Limited],

Having Office at – 9B, Vardan Tower,

Near Vimal House, Lakhudi Circle,

Navrangpura, Ahmedabad,

Gujarat – 380014.

...Respondent No. 1

2. Committee of Creditors

CoC of Adico Forge Private Limited,

Represented through HDFC Bank Limited,

Having office at 3rd Floor, Shivalik – 3,

above ICICI Bank,

Opp. Reliance Fresh, Drive-in-Cinema,

Thaltej, Ahmedabad – 380054.

Gujarat

...Respondent No. 2

3. M/s. Trinity India Forgetech Private Limited

[Successful Resolution Applicant]

Gate No.1425/2&3, Pune-Ahmednagar Road

Near Enkei Wheels Shikrapur Tal: Shirur
Pune Maharashtra – 412208.

...Respondent No. 3

Present:

**For Appellant : Mr. Puneet Thakur, Mr. A. Venayagam Dalan and
Mr. Gaurav Pal, Advocates.**

**For Respondents : Mr. Arpit Singhvi, Mr. Kunal Kannungo,
Advocates for RP.**

**Mr. Abhirup Dasgupta, Mr. Rohan Aggarwal and
Mr. Akshat Khetan, Advocates for R-3.**

WITH

Company Appeal (AT) (Insolvency) No. 1003-1004 of 2024

[Arising out of order dated 02.05.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – III), in
IA/124/2024 in C.P. (IB)/566(MB)/C-III-2022]

IN THE MATTER OF:

1. Sandeep Jayantilal Vadodaria,

Residing at “Sandeep”, 12-Yoginagar,
Opp. Akshar Mandir, Gondal,
Rajkot- 360311. Gujarat

...Appellant No. 1

2. Vishal Prakashchandra Modha,

Residing at “Shiv Krupa”,
10, Indra Prasthanagar Society,
Rajkot, Bhaktinagar,
Gujarat-360002.

...Appellant No. 2

3. Rakesh Chhaganlal Patel,

Residing at A-801, Rukshmani Height,
B/H, Balaji Hall, 150 Foot Ring Road,
Rajkot-360004.

...Appellant No. 3

Versus

1. Ramchandra Dallaram Choudhary,

[Resolution Professional of Adico Forge Private
Limited],
Having Office at- 9B, Vardan Tower,
Near Vimal House, Lakhudi Circle,
Navrangpura, Ahmedabad,
Gujarat- 380014.

...Respondent No. 1

2. Committee of Creditors,

CoC of Adico Forge Private Limited,
Represented through HDFC Bank Limited,
Having office at 3rd Floor, Shivalik- 3,
above ICICI Bank,
opp. Reliance Fresh, Drive-in- Cinema,
Thaltej, Ahmedabad-380054.
Gujarat

...Respondent No. 2

3. M/s. Trinity India Forgetech Private Limited

[Successful Resolution Applicant]
Gate No.1425/2&3, Pune-Ahmednagar Road
Near Enkei Wheels Shikrapur Tal: Shirur
Pune Maharashtra-412208

...Respondent No. 3

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Amanpreet Singh Rahi, Advocates.

For Respondents : Mr. Arpit Singhvi, Mr. Kunal Kannungo, Advocates for RP.

Mr. Abhirup Dasgupta, Mr. Rohan Aggarwal and Mr. Akshat Khetan, Advocates for R-3.

J U D G M E N T

ASHOK BHUSHAN, J.

These Appeals have been filed against the same Order dated 02.05.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, NCLT Mumbai Bench, Court – III) by which I.A. No. 124/2024 filed by Sandeep Jayantilal Vadodria and Ors. has been rejected and I.A. No. 5826/2023 filed by the Resolution Professional ('RP') for approval of the Resolution Plan has been allowed.

2. The aforesaid two Orders passed on the same date in I.A. No. 124/2024 and I.A. No. 5826/2023, have been challenged in these Appeals.

3. Brief facts of the case necessary to be noticed for deciding the Appeal are;

- i. Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor, Adico Forge Pvt. Ltd. commenced by the Order dated 23.06.2023 passed on an Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short 'The IBC' or 'The Code') by an Operational Creditor.
- ii. On 17.07.2023, Interim Resolution Professional ('IRP') made Public Announcement inviting claims. 'Form-G' was published in response to which, two Resolution Plans were received one by M/s. Saverni Neutech Pvt. Ltd. (submitted by consortium of three persons.) and another by M/s. Trinity India Forgetech Pvt. Ltd.
- iii. 13.11.2023 was fixed date for submission of Resolution Plan, which was extended to 17.11.2023.
- iv. M/s. Saverni Neutech Pvt. Ltd. submitted their Resolution Plan on 17.11.2023. M/s. Trinity India Forgetech Pvt. Ltd., also submitted its Plan.
- v. In the 6th Committee of Creditors 'CoC' Meeting held on 28.11.2023 and 7th Meeting held on 02.12.2023, Members of CoC suggested certain modifications and improvement in the Plan to both the PRAs.
- vi. In the CoC Meeting held on 12.12.2023 on request received from PRA, the date for submission of Plan was extended till 13.12.2023, which was further extended till 15.12.2023 at 12:00 Noon.

- vii. By 15.12.2023, M/s. Saverni Neutech Pvt. Ltd. did not submit any revised Resolution Plan. Resolution Plan which was already submitted by M/s. Saverni Neutech Pvt. Ltd. as well as Resolution Plan submitted by M/s. Trinity India Forgetech Pvt. Ltd. came for consideration in the 9th Meeting of the CoC.
- viii. Resolution Plan of M/s. Saverni Neutech Pvt. Ltd. was considered and CoC concluded that Plan of M/s. Saverni Neutech Pvt. Ltd. is not at all feasible and liable. Both the Resolution Plans were voted. Resolution Plan of M/s. M/s. Saverni Neutech Pvt. Ltd. was disapproved with 92.87% vote shares where the Plan of M/s. Trinity India Forgetech Pvt. Ltd. was approved with 92.87% share.
- ix. The RP filed an Application being I.A. No. 5826/2023, for approval of the Resolution Plan of M/s. Trinity India Forgetech Pvt. Ltd.
- x. On 18.12.2023, M/s. Saverni Neutech Pvt. Ltd. had sent an email asking for refund of the Earnest Money Deposit ('EMD') since it could not submit the revised Plan within the time and the Resolution Plan has already been approved. The EMD was returned by the RP.
- xi. On 30.12.2023, M/s. Saverni Neutech Pvt. Ltd. preferred an Application, I.A. No. 124/2024 praying for direction to the RP and the CoC to allow the Applicant to submit a revised Resolution Plan and further direction to RP and CoC to consider the revised Resolution Plan of the Applicant.

- xii. On 01.01.2024, I.A. No. 5826/2023 was listed on which Adjudicating Authority directed the Application be listed on 10.01.2024.
- xiii. A mention was made by Applicant, I.A. No. 124/2024 on 01.01.2024 before the Court, that it had filed an Application which was not listed.
- xiv. The Applicant's case is that the Adjudicating Authority orally directed the RP to consider the Resolution Plan of Applicant M/s. Saverni Neutech Pvt. Ltd.
- xv. The RP acting on the oral direction convened the Meeting of the CoC on 05.01.2024.
- xvi. On 05.01.2024, Learned Counsel for the Successful Resolution Applicant ('SRA') made a mention on basis of which the Application I.A.5826/2023 was listed on 05.01.2024, on which date, Adjudicating Authority was informed that CoC Meeting has been called on 05.01.2024 at 06:30 P.M. on the ground that oral direction was issued by Court on 01.01.2024 to consider the new Resolution Plan of the Applicant.
- xvii. Adjudicating Authority passed an Order 05.01.2024 directed the Resolution Professional not to conduct the CoC Meeting for consideration of any fresh Resolution Plan and the Application was directed to be listed on 10.01.2024.
- xviii. In view of the Order of the Adjudicating Authority dated 05.01.2024, no Meeting of the CoC was held on 05.01.2024, nor Resolution Plan or Applicant M/s. Saverni Neutech Pvt. Ltd. was considered.

xix. Both the Applications I.A.124/2024 and I.A. 5826/2023 were heard by the Adjudicating Authority and by Impugned Order Application filed by the Applicant Sandeep Jayantilal Vadodria was rejected and Application filed by the RP for approval of the Plan has been allowed.

xx. Aggrieved by the said Order, Comp. App. (AT) (Ins.) No.1020-1021/2024 has been filed by the Prem Trading Company claiming to be a Financial Creditor challenging both the Orders and Comp. App. (AT) (Ins.) No.1003–1004/2024 has been filed by Sandeep Jayantilal Vadodria and two others who had filed I.A. No. 124/2024, challenging both the Orders dated 02.05.2024.

4. We have heard Mr. Puneet Thakar, Learned Counsel for the Appellant appearing in Comp. App. (AT) (Ins.) No.1020–1021/2024, and Mr. Abhijeet Sinha, Learned Sr. Counsel for the Appellant appearing in Comp. App. (AT) (Ins.) No.1003-1004/2024. Mr. Arpit Singhvi has appeared for the Resolution Professional and Mr. Abhirup Das Gupta appeared for the Respondent No. 3/SRA.

5. Mr. Abhijeet Sinha Sr. Advocate appearing for the Appellant submits that Application I.A. No. 124/2024 was filed by the Applicant seeking a direction to permit the Applicant to file the Resolution Plan which could not be filed by 15.12.2023 due to illness of one of the Members of the Consortium. It is submitted that on the oral Order passed by the Court on 01.01.2024, on mentioning made by Applicant, Adjudicating Authority directed the RP to consider the Resolution Plan of the Applicant for which RP had also convened a Meeting on 05.01.2024, for considering the revised Resolution Plan.

Applicant has also submitted revised Resolution Plan by 03.01.2024 and has resubmitted the EMD which was withdrawn on 18.12.2023. It is submitted that on 05.01.2024, Adjudicating Authority directed RP not to convene the Meeting on 05.01.2024, which Order was passed in violation of Principles of Natural Justice since the Applicant was not heard when the Order dated 05.01.2024 was passed for not convening the Meeting of the CoC. It is submitted that when the oral Order dated 01.01.2024 was passed on mentioning by the Applicant, the said Order could not have been varied without hearing the Applicant Sandeep Jayantilal Vadodria. It is submitted that Adjudicating Authority committed an error in rejecting I.A. No. 124/2024.

6. Learned Counsel for the Appellant appearing in Comp. App. (AT) (Ins.) No.1020-1021 of 2024 submits that Appellant was a Financial Creditor but who was not permitted to cast his vote in the Meeting held on 15.12.2023. Appellant was represented by its representative Rakesh Patel, who was not allowed to cast the vote on the ground that he is co-Resolution Applicant and there being conflict of interest. It is submitted that Financial Creditor, the Appellant was entitled to cast his vote on the Resolution Plan. Hence the Order approving the Resolution Plan deserves to be rejected.

7. Learned Counsel for the RP refuting the submissions of the Appellant submits that 15.12.2023 was last date of submitting revised Resolution Plan and the Appellant Sandeep Jayantilal Vadodria failed to submit the revised Resolution Plan within the time allowed. In the Meeting held on 15.12.2023, both the Plans, submitted by Sandeep Jayantilal Vadodria and 2 Ors. as well

Plan submitted by M/s. Trinity India Forgetech Pvt. Ltd. were considered deliberated and put to vote. The Resolution Plan submitted by M/s. Trinity India Forgetech Pvt. Ltd. was approved with 92.87% vote and other Plan submitted by M/s. Saverni Neutech Pvt. Ltd. was disapproved with 92.87% vote shares. It is submitted that Resolution Plan having approved on 15.12.2023 Minutes of which Meeting were also circulated by RP on 16.12.2023, the Resolution Applicant M/s. Saverni Neutech Pvt. Ltd. sent an email on 18.12.2023, asking for refund of the EMD, which EMD was refunded by the RP. Plan having already been approved on 15.12.2023, there was no locus in M/s. Saverni Neutech Pvt. Ltd. to file an Application I.A.124/2024 on 30.12.2023, praying for permitting it to file a revised Resolution Plan. It is submitted that although CoC Meeting was convened by RP on 05.01.2024, but in view of the Order dated 05.01.2024, neither Meeting was held nor the Plan of M/s. Saverni Neutech Pvt. Ltd. was considered. It is submitted that the CoC in its commercial wisdom having already approved the Plan on 15.12.2023, there was no occasion to permit M/s. Saverni Neutech Pvt. Ltd. to file revised Resolution Plan. M/s. Saverni Neutech Pvt. Ltd. was granted time for filing the revised Plan which time was extended also but revised Resolution Plan was never filed by M/s. Saverni Neutech Pvt. Ltd., hence it cannot file Application seeking direction to permit it to file revised Resolution Plan.

8. Learned Counsel for the SRA supported the Orders impugned passed by the Adjudicating Authority and submits that the Resolution Plan submitted by M/s. Saverni Neutech Pvt. Ltd. was considered and disapproved in Meeting dated 15.12.2023, in spite of opportunity, M/s. Saverni Neutech

Pvt. Ltd. did not file its revised Resolution Plan, hence the earlier Plan submitted by M/s. Saverni Neutech Pvt. Ltd. was considered, Plan of the SRA was approved with 92.87% votes. M/s. Saverni Neutech Pvt. Ltd. has withdrawn its EMD on 18.12.2023. There was no occasion for filing any IA on 30.12.2023, seeking direction to permit it to file a revised Resolution Plan. On 01.01.2024, the Application filed by the Applicant I.A. No.124/2024 was not even listed and no Order was passed on the Application filed by the Applicant. In any view of the matter, the Adjudicating Authority by subsequent Order passed on 05.01.2024 has directed that no fresh Plan be considered. No right can be said to be accrued to the Applicant for consideration of its Resolution Plan. The Order dated 05.01.2024 has never been challenged by the Appellant and the said Order has become final.

9. We have considered the submissions of the Counsel for the Parties and perused the record.

10. Two Resolution Plans were submitted in the CIRP of the Corporate Debtor, one by M/s. Saverni Neutech Pvt. Ltd., and other by M/s. Trinity India Forgetech Pvt. Ltd. Resolution Plan submitted by M/s. Saverni Neutech Pvt. Ltd. was Plan submitted by Consortium of three Applicants namely;

- i. Sandeep Jayantilal Vadodria.
- ii. Vishal Prakashchandra Modha.
- iii. Rakesh Chaganlal Patel.

11. Plan was submitted by both the Resolution Applicant by 17.11.2023. In the 6th CoC Meeting held on 28.11.2023, and the 7th CoC Meeting held on 02.12.2023 Members of the CoC suggested certain modifications and directed

both the Resolution Applicant to submit a revised Resolution Plan. Meeting of the CoC was held on 12.12.2023, where in Item No. 2, the CoC extended the time for submission of Resolution Plan till 13.12.2023 at 5:00 PM. Item No. 2, following was resolved:

“ITEM NO: 2

To discuss regarding Resolution Plans to be received from Resolution Applicants vs., M/s. Saverni Neutech & Others and Trinity India Forgetech Pvt. Ltd.

Resolution Professional apprised to the members of the CoC that the Prospective Resolution Applicants (PRAs) ask to extend the time for submission of Resolution Plan even though they were well informed in advance regarding the date of submission of Final Resolution Plan and the current status of CIRP end date.

Further, after deliberation CoC has decided to extend the time by Wednesday 13.12.2023, 5:00 PM, so the said agenda is deferred to be taken in the next CoC meeting.

Further, the authorized representative of HDFC bank was of the view that as CIRP period going to end on 20th December, 2023, they are not of the opinion to further extend the CIRP process beyond 180 days and accordingly they requested the RP to apprise the CoC to conclude the finalization of the appropriate resolution plan within the stipulated time period”.

12. The RP informed that time has been further extended till 15.12.2023 at 12:00 Noon, M/s. Saverni Neutech Pvt. Ltd. did not submit any revised Plan. In the Meeting held on 15.12.2023, the Resolution Plan submitted by M/s. Saverni Neutech Pvt. Ltd. as well as M/s. Trinity India Forgetech Pvt. Ltd. came for consideration. In the CIRP of the Corporate Debtor, there are three Members of the CoC; HDFC Bank Ltd., which had vote share of 92.87%, Prem Trading Company having vote share of 2.48% and Parulben Rakeshbhai Patel

4.65%, which has been noticed in Para 17 of the Order dated 02.05.2024 in

I.A. No. 5826/2023, which is as follows:

17. The list of Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:

Sr. No.	Name of Creditor	Voting Share %	Voting for Resolution Plan Voted for /Dissented /Abstained
1.	HDFC Creditor	92.87%	Voted for (Assented)
2.	Prem Trading Company	2.48%	The CoC member being Co-Applicant with RA cannot vote due to conflict of interest
3.	Parulben Rakeshbhai Patel	4.65%	The CoC member being Co-Applicant with RA cannot vote due to conflict of interest.
		100%	

13. The 9th CoC Meeting was held on 15.12.2023 at 5:00 PM, details of the Members of the CoC have been noticed in the beginning of the Minutes in following Orders:

“Details of the Members of the Committee of Creditors - Financial Creditors:

Sr. No.	Name of Financial Creditor	Name of Official & Designation	Mode of presence
1.	HDFC Creditor	1. Hiren Shukla (Asst Vice President) 2. Dhruvi Parikh (Legal Manager) 3. Akansh Mittal (Legal Manager)	Physically present

2.	<i>Prem Trading Company</i>	<i>Mr. Rakesh Patel</i>	<i>Present through Video conference (for agenda no.1,6,7 and 8)</i>
3.	<i>Parulben Rakeshbhai Patel</i>	<i>Mr. Rakesh Patel (Spouse of Creditor as Authorised Representative)</i>	<i>Present through Video conference (for agenda no.1,6,7 and 8)</i>

Note: *Mr. Rakesh Patel was present in the meeting for discussion and voting only on agenda no.1,6,7 and 8 and thereafter exited the meeting, since he is participating in the EOI process as co-resolution applicant with M/s. Saverni Neutech.”*

14. Item No. 3 of the Minutes was “to discuss on the Resolution Plan to be received from Resolution Applicant, namely; M/s. Saverni Neutech Pvt. Ltd. and M/s. Trinity India Forgetech Pvt. Ltd.”. In Item No. 2, brief on Resolution Plan of M/s. Saverni Neutech Pvt. Ltd. as well as M/s. Trinity India Forgetech Pvt. Ltd. were noticed total amount of Resolution Plan which was offered by M/s. Saverni Neutech Pvt. Ltd. ₹19,29,76,000/- whereas total amount of the Plan which was offered by M/s. Trinity India Forgetech Pvt. Ltd. ₹26,86,00,000/-. In the discussion of Item No. 2, following was noticed:

“ITEM NO: 2

To discuss on the Resolution Plans to be received from Resolution Applicants (PRAs) namely M/s. Saverni Neutech & Others and Trinity India Forgetech Pvt Ltd.

The RP informed the members of the CoC that after giving several opportunities for submission of Final Resolution Plan to both the Resolution Applicants viz. M/s. Saverni Neutech & Others and M/s. Trinity India Forgetech Pvt Ltd. (who submitted the Resolution Plan initially before negotiations to IRP), only one Final Resolution Plan is received today 15.12.2023 from M/s. Trinity India Forgetech Pvt Ltd. No final resolution plan is received from M/s. Saverni Neutech is received and so the resolution plan on hand that was submitted by them to IRP is required to be considered now for

approval purposes. The members of the CoC (HDFC Bank) agreed and took note of the same.

Discussion on the Resolution Plans

Brief on Resolution Plan of M/s. Saverni Neutech Pvt. Ltd. :

RP apprised on the relevant aspects of the Resolution Plan as under:

1. Total amount of Resolution Plan Rs. 19,29,76,000/-
2. Amount offered to Financial Creditors Rs.15,55,00,000
3. Amount offered to Operational Creditors Rs.2,24,00,000/- with no distribution method
4. CIRP cost allocated Rs.76,000/-
5. Amount offered to Workers / Employees Rs.1,50,00,000/-
6. The period for payment is 3 month from effective date.
7. Source of funds cited is internal accruals / bank finance.

Brief on Resolution Plan of M/s. Trinity India Forgetech Pvt. Ltd.:

RP apprised on the relevant aspects of the Resolution Plan as under:

1. Total amount of Resolution Plan Rs.26,86,00,000/-.
2. The period for payment is 15 days from approval date.
3. Distribution of amount as decided by the CoC and RP.
4. Source of funds is already available accumulated funds in the company.
5. All other queries as raised by the RP has been duly dealt with in this final resolution plan submitted along with Addendum to the Resolution Plan.”

15. The discussion on the feasibility and viability of Resolution Plan on M/s. Saverni Neutech Pvt. Ltd. was also considered and noted in following words;

“Discussion on Feasibility and Viability of the Resolution Plan of M/s. Saverni Neutech Pvt. Ltd.

Thereafter, the compliances of the Resolution Plan received from M/s. Saverni Neutech Pvt. Ltd. were discussed and the member of the CoC and RP stated as under:

1. The RP stated that Resolution Plan is received in the name of M/s. Saverni Neutech Pvt. Ltd. instead of the names in which EOI was submitted since the EOI was submitted in the name of Mr. Sandeep Vadodaria, Mr. Rakesh Patel and Vishal Modha as joint applicants.
2. The EMD amount of Rs.5 Crore to be submitted as per the minimum eligibility criteria was submitted late on 22.11.2023.
3. The Resolution Plan do not comply with Sec.30 (2)(a) and 30 (2)(b) of the Code.
4. The source of funds is mentioned as bank finance which indicates they have low financial independence to commit with resolution plan amount offered.
5. Provision with regards to PF dues and gratuity in the resolution plan as per the provisions of the code.
6. Even the time period for payment is 3 months from the effective date which is far more than time period of 15 days offered by Trinity India Forgetech Pvt. Ltd.
7. The plan amount offered is also on the lower side.

The RP further stated that even after several opportunities were given by the CoC members for timely submission of the final resolution plan through various email on 08.12.2023, 11.12.2023, 12.12.2023 and 14.12.2023, no Resolution Plan is received till date from M/s. Saverni Neutech with any revise offer amount and compliances as discussed during the negotiation process. The Authorised Representative of HDFC Bank agreed and stated that in view of the fact that CIRP period is ending on 20.12.2023, we cannot wait further for taking decision on approval of the Resolution Plan since enough opportunities have been given to both the Resolution Applicants and shall proceed for approval of resolution plan in order to ensure timely completion of CIRP. Further, apart from the compliance issues in the plan, he stated that looking at the plan amount and time period the Resolution Plan of M/s. Saverni Neutech is not at all

feasible and viable and therefore cannot be proceeded with and cannot be approved.”

16. Discussion of feasibility and viability of Resolution Plan of M/s. Trinity India Forgetech Pvt. Ltd. was also submitted. The Resolution was passed by the CoC to disapprove the Plan submitted by M/s. Saverni Neutech Pvt. Ltd., which was disapproved with 92.87% vote shares, whereas the Plan submitted by M/s. Trinity India Forgetech Pvt. Ltd. was approved by 92.87% vote shares.

17. Subsequent to the Minutes on 15.12.2023, the Resolution Professional filed an I.A. being I.A. No.5826/2023. The email was sent on behalf of M/s. Saverni Neutech Pvt. Ltd., which has been brought on the record by the RP in its Reply. Email was sent by Sandeep Jayantilal Vadodria to the RP for refund of the EMD, which is as follows:

“dear sir

we got to know that COC has proceed with the other party for adico forge cirp matter as we were unable to submit resolution plan on time.

i am sending you our bank details for a refund of EMD and Earnest money. money has been debited from the same account only.

please find attached photo details of cheque

thanks for support.

regards

sandeep.”

18. From the above email, two statements on behalf of the Sandeep Jayantilal Vadodria clear to be noticed that. Firstly, there is an acknowledgement that Resolution Applicant were unable to submit Plan on time and secondly, they have sent Bank detail for refund of the EMD. It was after receipt of the return of the EMD as an afterthought the I.A. No. 124/2024

was filed by Sandeep Jayantilal Vadodria and Ors. On 30.12.2023, in which Application following prayers were made:

“a) Your Lordship may be pleased to allow the present application;

b) Your Lordship may be pleased to direct the Respondent No. 1 i.e. Resolution Professional of Adico Forge Private Limited and Respondent No. 2 i.e. Committee of Creditors of Adico Forge Private Limited to allow the Applicant to submit the Revised Resolution Plan in accordance with Section 30 of the Insolvency and Bankruptcy Code, 2016;

c) Your Lordship may be pleased to direct the Respondent No. 1 i.e. Resolution Professional of Adico Forge Private Limited and Respondent No. 2 i.e. Committee of Creditors of Adico Forge Private Limited to consider the Revised Resolution Plan in accordance with Section 30 of the Insolvency and Bankruptcy Code, 2016 as submitted by the Applicant;

d) Pending the hearing of the present application, this Hon’ble Tribunal may be pleased to not approve any application for approval of resolution plan if filed by the Respondent No. 1 under Section 30(6) of the Insolvency and Bankruptcy Code, 2016;

e) Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice;”

19. The Applicant Sandeep Jayantilal Vadodria was well aware that Resolution Plan has already been approved by the CoC on 15.12.2023, and they could not file their revised Plan in time. When the Resolution Plan has been approved by the CoC contents of the Application itself notices that Resolution Applicant was well aware that Plan has to be submitted till 15.12.2023, but the ground given was that one of the Joint Resolution Applicants Mr. Sandeep Jayantilal Vadodria suffered from Lumbago which resulted into complete bed rest. In Para 11 of the Application following was stated:

*“11. The Applicant submits that the Respondents pursuant to the request made by the applicant along with other PRAs extended the last date for submission of Resolution Plan till 15.12.2023. It is submitted that in the interregnum, one of the joint Resolution Application i.e, Mr. Sandip Vadodaria suffered from Lumbago which resulted into complete bed rest and further on account of which Mr. Sandip Vadodaria suffered from backache and other physical problems, resulting that the applicants herein could not submit the revised resolution plan within 15.12.2023. The copy of Medical Certificate is attached herewith and marked as **ANNEXURE-J** to the present application.”*

20. From the sequence of the event, it is clear that Application was filed by Unsuccessful Resolution Applicant after approval of the Resolution Plan on 15.12.2023 of M/s. Trinity India Forgetech Pvt. Ltd. and after rejection of the Resolution Plan submitted by M/s. Saverni Neutech Pvt. Ltd.

21. Much emphasis has been laid by Learned Counsel for the Appellant Sandeep Jayantilal Vadodria that on an oral mention on behalf of the Applicant on I.A.124/2024 Court has already directed the RP to consider the Resolution Plan which oral direction was also taken note by the RP and Meeting of the CoC was convened on 05.01.2024, for consideration of the Resolution Plan of the Sandeep Jayantilal Vadodria. It is submitted that in pursuance of the email received from the RP revised Resolution Plan was also submitted on 03.01.2024 and EMD was also re-deposited on 04.01.2024. It is the case of the SRA and the RP that on an urgent mentioning the IA No.5826/2023 came to be listed on 05.01.2024 before the Adjudicating Authority and the Adjudicating Authority passed an Order on 05.01.2024, which is to the following effect:

***“I.A. 5826/2023** The above I.A. is listed on today’s board by urgent mentioning by the Successful Resolution Applicant. The SRA submits that the CoC*

*meeting has been called today at 3:30 PM on the ground that oral directions were given by this Court on 01.01.2024 to consider a new resolution plan for the purpose of value maximization. It is settled law that a new resolution plan cannot be considered after approval of a resolution plan in contravention of the CIRP Regulations. It appears that there was some confusion during the hearing on 01.01.2024. We direct the Resolution Professional not to conduct the CoC meeting for consideration of any fresh Resolution Plan. List this matter on **10.01.2024.**"*

22. When we look into the Order of the Adjudicating Authority passed on 05.01.2024, it is clear that the Adjudicating Authority itself has recorded that there was some confusion during the hearing on 01.01.2024. The Order dated 01.01.2024 has also been brought on record by the SRA along with its Affidavit in Reply, which Order reads as follows:

"I.A 5826/2023

1. Adv. Dipti Mundra for the applicant is present.

*2. List this matter on **10.01.2024.**"*

23. The Order passed on 01.01.2024 contained a direction to list the Application on 10.01.2024. The case of the Appellant is based on some oral Order passed on 01.01.2024 by the Court to consider the Resolution Plan of the Resolution Applicant, Sandeep Jayantilal Vadodria. When Order dated 05.01.2024 was passed by the Adjudicating Authority in I.A. No. 5826/2023, directing that Resolution Professional not to conduct the CoC Meeting for consideration of any fresh Resolution Plan, oral Order, if any, came to an end. Order dated 05.01.2024, was an Order passed in I.A. No.5826/2023 and was binding on all concern. Learned Sr. Counsel for the Appellant, Mr. Abhijeet Sinha has submitted that the said Order dated 05.01.2024 was passed in violation of Principle of Natural Justice since Applicant was not heard. It is

to be noted that Application I.A. No.124/2024 was neither listed on 01.01.2024, nor on 05.01.2024, the basis of any reliance on oral Order on 01.01.2024 is no more available when Order in writing has been passed by the Adjudicating Authority on 05.01.2024. The Order dated 05.01.2024 has not been challenged by anyone including the Sandeep Jayantilal Vadodria, and the said Order clearly supersedes any oral direction which is alleged by the Appellant.

24. Thus, the case of the Appellant on basis of oral direction on 01.01.2024 is no longer available after Adjudicating Authority passed categorical clear Order on 05.01.2024, that no new Resolution Plan needs to be considered by the Resolution Professional.

25. The submission of the Appellant on violation of the Principle of Natural Justice does not commend us in the facts of the circumstances of the present case.

26. From the Minutes of the 9th CoC Meeting held on 15.12.2023, as quoted above, it is clear that CoC on 15.12.2023, considered both the Resolution Plan i.e., Resolution Plans submitted by M/s. Saverni Neutech Pvt. Ltd. as well as the SRA M/s. Trinity India Forgetech Pvt. Limited. Resolution Plan of M/s. Trinity India Forgetech Pvt. Ltd. was approved with 92.87% vote shares and Resolution Plan of M/s. Saverni Neutech Pvt. Ltd. was disapproved by 92.87%, vote shares and the Plan which was earlier submitted by M/s. Saverni Neutech Pvt. Ltd. has considered and rejected. There is no occasion for M/s. Saverni Neutech Pvt. Ltd. to pray for further revised Resolution Plan when it failed to file Resolution Plan, according to its own case within the time

allowed as it reflected from the email dated 18.12.2023 sent by the Appellant themselves.

27. Adjudicating Authority did not commit any error in rejecting the Application I.A. No.124/2024 filed by Sandeep Jayantilal Vadodria. Insofar as the Appeal filed by the Prem Trading Company, one of the contentions raised is that Prem Trading Company who was Financial Creditor having 2.48%, vote shares was not permitted to vote. Suffice it to say that Authorised Representative of the Appellant Prem Trading Company, Rakesh Patel was present in the CoC Meeting, which is recorded in the Minutes as noted above. It has been noted that Rakesh Patel has voted only on the agenda 1, 6, 7 & 8, and thereafter he exited, he having participated in the EOI process as co-Resolution Applicant in M/s. Saverni Neutech Pvt. Ltd. and Rakesh Patel who was Authorised Representative of Financial Creditor was participating in EOI. He was rightly not permitted to vote. He rightly exited from the voting which was held on Item No. 2.

28. In any view of the matter, vote share of the Prem Trading Company is only 2.48% and vote share for Prem Trading Company was not considered in favour of the approval of the Plan and the Plan was approved by 92.87% vote shares of HDFC Bank Ltd. the largest Financial Creditor.

29. We do not find any merit in the Appeal filed by Prem Trading Company. In the CoC Meeting held on 15.12.2023, Prem Trading Company was represented by its Authorised Representative and the grounds which are sought to be raised in the Appeal are without any substance.

30. In result of above discussion, we do not find any error in the Order passed by the Adjudicating Authority rejecting I.A. No. 124/2024 and allowing I.A. No. 5826/2023 approving the Resolution Plan of M/s. Trinity India Forgetech Pvt. Ltd. which was approved with 92.87%, vote shares of the CoC in the 9th COC Meeting held on 05.12.2023.

There is no merit in any of the Appeals. Both the Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

23rd September, 2024

himanshu