

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1440 of 2024**

(Arising out of Order dated 03.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court V, New Delhi in IA No.2594/2023 in Company Petition No.(IB) – 1913/ND/2019)

**IN THE MATTER OF:**

Sanjeev Mahajan  
No.3, Ashoka Avenue  
Westened Greens, Rajokari,  
New Delhi – 110038

... Appellant

Versus

1. Indian Bank (Erstwhile Allahabad Bank)  
Through Authorized Representative  
Head Office at: 254-260,  
Avvai Shanmugam Salai, Pudupet,  
Gopalapuram, Chennai, Tamil Nadu 600014

Also At: SAM – Large Branch at 17,  
Parliament Street, New Delhi – 110001

2. Nimitaya Hotel & Resorts Pvt. Ltd.  
Through Resolution Professional  
Registered Office: No.6, Golden Gate,  
Westend Greens, Rajokari,  
New Delhi – 110038

3. Nehru Place Hotels and Real Estates Pvt. Ltd.  
Regd. Off : 8<sup>th</sup> Floor, Eros Corporate Tower,  
Nehru Place, New Delhi- 110019

... Respondents

**Present:**

**For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Nakul Mohta, Mr. Kumar Anurag Singh, Mr. Vinayak Bhandari, Mr. Zain A Khan, Ms. Riya Dhingra, Mr. Puneet Pathak, Advocates.**

**For Respondent : Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Kavitali, Ms. Likiw, Mr. R. P. Daida, Mr. Dinesh Sharma, Mr. Kushagra, Advocates for R1.**

**Mr. Manuj Nagrath, Mr. Navneet Gupta, Advocates  
for R-2 (RP).**

**Mr. Ajay Kumar, Mr. Pankaj Sethi, Mr. Vaibhav  
Tiwari, Mr. Vijayant Goel, Advocates for R-3.**

## **J U D G M E N T**

### **ASHOK BHUSHAN, J.**

This Appeal by Shareholder and Promoter of the Corporate Debtor Nimitaya Hotel & Resorts Pvt. Ltd. has been filed challenging order dated 03.07.2024 passed by National Company Law Tribunal, Court V, New Delhi, rejecting IA No.2594 of 2023 filed by the Appellant.

2. Brief facts and sequence of events giving rise to this Appeal need to be noted:

- (i) The Corporate Debtor has taken various financial facilities from the Indian Bank (erstwhile Allahabad Bank). Section 7 Application was filed by the Indian Bank being CP(IB) No.1913/2019, which Application was admitted by order dated 24.12.2021 passed by the Adjudicating Authority.
- (ii) The Appellant filed Company Appeal (AT) (Insolvency) No.03 of 2022, challenging order dated 24.12.2021 before this Tribunal. Company Appeal (AT) (Insolvency) No.03 of 2022 was disposed of by this Tribunal by judgment dated 04.07.2022, permitting the Appellant to file fresh application under Section 12-A to the

Interim Resolution Professional (“**IRP**”)/ Resolution Professional (“**RP**”) for placing it before the Committee of Creditors (“**CoC**”) containing offer of more than Rs.81 crores.

- (iii) After order dated 04-07-2022, the Appellant submitted settlement proposal, which was not approved by the CoC. An IA No.3410 of 2022 was filed by the Appellant in Company Appeal (AT) (Insolvency) No.03 of 2022. A Contempt Application was also filed by the Appellant alleging contempt of the order dated 04.07.2022. The Contempt Application was dismissed by this Tribunal by order dated 21.11.2022, however, IA No.3410 of 2022 was disposed of by this Tribunal observing that Appellant, who has submitted a settlement proposal is entitled to participate in the deliberations and negotiations undertaken by the Coc and the CoC can very well ask the Resolution Applicant to revise their Plan. Similarly, the Appellant can always be asked to revise his proposal to match the Resolution Applicant’s offer. IA No.3410 of 2022 was disposed of accordingly.
- (iv) After order dated 21.11.2022, the Appellant submitted a revised settlement proposal vide letter dated 25.11.2022, offering an amount of Rs.100 crores with the timeline for payment. The revised settlement proposal submitted by the Appellant dated 25.11.2022 along with the Resolution Plan submitted by the

Successful Resolution Applicant (“**SRA**”), came to be considered by the CoC in 13<sup>th</sup> CoC meeting held on 26.11.2022 and 14<sup>th</sup> CoC meeting held on 07.12.2022. The settlement proposal submitted by the Appellant as well as the Resolution Plan submitted by SRA was deliberated and decision was taken to put both the proposals for e-voting. The Resolution Plan of SRA as well as revised settlement proposal of the Appellant was placed for e-voting and as per the result of the e-voting declared on 08.01.2023, the Resolution Plan having value of 120.01 crores submitted by Nehru Place Hotels and Real Estates Pvt. Ltd. (Respondent No.3 herein) was approved with 100% vote share and the CoC by 100% vote share rejected the Settlement Plan of the Appellant.

- (v) After approval of the Plan by the CoC, the RP filed an Application before the Adjudicating Authority on 19.01.2023 for approval of the Resolution Plan. The 330 days period of CIRP as extended from time to time, came to an end on 28.01.2023. After approval of the Plan, the Appellant sent proposal dated 21.03.2023, submitting a proposal of Rs.118.25 crores. The RP forwarded the proposal submitted by the Appellant to the CoC.
- (vi) An IA No.259 of 2023 was filed by the Appellant in disposed of Company Appeal (AT) (Insolvency) No.03 of 2022, raising his grievance that Appellant has not been able to meet the Chairman-

cum-Managing Director of the Bank. This Tribunal vide order dated 03.02.2023, disposed of, IA No.259 of 2023 observing that it is open for the Applicant/ Appellant to make such application, as permissible in law, before the Adjudicating Authority for consideration of his grievance, if any. It was, however, observed that no case has been made out to pass any further order in IA No.259 of 2023. Against the above order dated 03.02.2023 passed by this Tribunal, the Appellant filed Civil Appeal No.1705 of 2023 before the Hon'ble Supreme Court, which Appeal was also disposed of on 20.03.2023, noticing the liberty granted by Appellate Tribunal to approach the National Company Law Tribunal.

- (vii) The proposal which was submitted by the Appellant after approval of the Resolution Plan of the SRA, was declined by the Indian Bank vide email dated 05.05.2023 to the Appellant. The Appellant filed IA No.2594 of 2023 before the Adjudicating Authority, wherein following prayers were made:

- “a) Allow the instant Application and direct the Respondent/ Competent Authority to negotiate, deliberate and take a decision on the settlement proposal U/s 12-A dated 21.03.2023 given by the Applicant and/or;

- b) Pass an ad-interim ex-parte stay on any further proceedings in the application bearing I.A. No. 1358/23 preferred by the Resolution Professional for approval of Resolution Plan pending before the Ld. Adjudicating Authority till the pendency of the present I.A. ; and/or;
  - c) Pass any further order(s) in the interest of justice.”
- (viii) IA No.2594 of 2023 was opposed by both the RP as well as SRA. The Adjudicating Authority has passed an order on 01.12.2023 in IA No.2594 of 2023, giving a last opportunity to the Appellant so that any acceptable settlement can be arrived. Order dated 01.12.2023 passed by Adjudicating Authority in IA No.2594 of 2023 was challenged by the SRA (Respondent No.3) by means of Company Appeal (AT) (Insolvency) Nos.1715-1716 of 2023, which Appeal was disposed of by this Tribunal on 08.01.2024, deleting the part of the order, by which opportunity was granted to the Appellant for arriving at any acceptable settlement. This Tribunal observed that Adjudicating Authority may proceed to decide IA No.2594 of 2023 as well as IA No.987 of 2023 filed for approval of the Resolution Plan.
- (ix) After the above order of this Tribunal dated 08.01.2024, the Adjudicating Authority heard the Appellant as well as RP and SRA on IA No.2594 of 2023 and by the impugned order, dismissed the

IA. Aggrieved by which order, this Appeal has been filed by the Appellant.

3. We have heard Shri Abhijeet Sinha, learned Senior counsel appearing for the Appellant; Shri Rajesh Kumar Gautam, learned Counsel appearing for Indian Bank; Shri Manju Nagrath, learned Counsel appearing for RP; and Shri Ajay Kumar, learned Counsel appearing for SRA.

4. The learned Counsel for the Appellant challenging the order rejecting IA No.2594 of 2023 submits that the Appellant, who is a Promoter and Shareholder of the Corporate Debtor, having offered an amount, which is higher to the Resolution Plan value of the SRA, the Bank acted arbitrarily in not accepting the said proposal. The email sent by the Bank of 05.05.2023 that amount offered by the Appellant is too low, does not reflect any consideration. It is submitted that the Corporate Debtor being MSME and the Appellant has been making repeated offers for settlement, which was not illegal, the same has not been accepted by the sole Member of the CoC, i.e., Indian Bank. It is submitted that the Adjudicating Authority in rejecting the Application has relied on the commercial wisdom of the CoC. With regard to rejection of the settlement proposal submitted by the Appellant, it is submitted that when the decision of CoC to reject the settlement offer given under 12-A is arbitrary, it is well settled that the said decision can be successfully challenged before the Adjudicating Authority. It is submitted that an arbitrary decision of the CoC cannot be saved in the name of commercial wisdom of the

CoC. It is submitted that sole Member of the CoC has not given any heed to the settlement proposal given by the Appellant, who is desirous of revival of the Corporate Debtor. It is submitted that IA No.2594 of 2023 was filed by the Appellant due to liberty granted by this Tribunal vide its order dated 03.02.2023 in IA No.259 of 2023.

5. Shri Rajesh Kumar Gautam, learned Counsel for the Indian Bank, refuting the submission of learned Counsel for the Appellant submits that Appellant's settlement proposal submitted under Section 12-A, which was submitted by letter dated 25.11.2022 was considered by the CoC, as per order passed by this Tribunal on 04.07.2022 and 21.11.2022 in 13<sup>th</sup> CoC meeting held on 26.11.2022 and 14<sup>th</sup> CoC meeting held on 07.12.2022. The Resolution Plan submitted by the SRA as well as the settlement proposal submitted by the Appellant of Rs.100 crores were put to vote and on the basis of e-voting, the result of which was declared on 08.01.2023, the Resolution Plan of SRA, which was a Plan value of Rs.120.01 crores was approved with 100% vote share of the CoC. The CoC having considered the settlement plan, after due deliberation has not accepted the settlement proposal of the Appellant, no grievance can be raised by the Appellant. It is submitted that Appellant in its settlement proposal has stated that on approval of Resolution Plan by the Adjudicating Authority, entire liability of the CD shall extinguish and the CD, its Promoter and Guarantors shall not be liable to make any further payments towards the outstanding amount to the Financial Creditor. It is submitted



that the Appellant in the appeal has concealed the aforesaid part of the offer by the Appellant and it was noticed by the CoC in its 14<sup>th</sup> meeting held on 07.12.2022. The CoC deliberated and duly compared both, the Resolution Plan as well as settlement proposal and found the settlement proposal not acceptable. It is submitted that after approval of Resolution Plan on 08.01.2023, there was no occasion for the Appellant to send further settlement offers as sent by the Appellant on different dates, including the offer made by letter dated 21.03.2023 for Rs.118.26 crores. It is submitted that the Resolution Plan having been approved and settlement proposal submitted by the Appellant being considered and deliberated, there is no right left to the Appellant to make repeated offers. More so, when an Application was already filed before the Adjudicating Authority for approval of the Resolution Plan, which was approved on 08.01.2023. It is submitted that the Bank vide its email dated 05.05.2023 to the Appellant, communicated that proposal dated 21.03.2023 for Rs.118.26 crores cannot be accepted. It is submitted that by different letters including letter dated 28.08.2023 and 10.10.2023, the Appellant made further proposals and on 10.10.2023, it has offered Rs.120 crores.

6. It is submitted learned Counsel for Respondent No.1 that the Appellant has engaged the Financial Creditor in several litigations. Two writ petitions were been filed before the Delhi High Court, which were dismissed. The Appellant has also come four times to this Tribunal by filing Appeals and

Applications. The Appellant has also filed Appeals to the Hon'ble Supreme Court at two occasions. It is submitted that the CoC has deliberated and considered the settlement proposal submitted by the Appellant and did not accept the same, there is no arbitrariness in the decision of the Bank. The amount due on the CD's is Rs.238 crores and by accepting the settlement proposal, the CoC could not have relinquished the obligation of the Promoters and Guarantors. There is no merit in the Appeal and the Appeal deserves to be dismissed. The learned Counsel for the Indian Bank has also filed an additional affidavit, which was permitted by this Tribunal.

7. The learned Counsel for the RP has filed an additional affidavit. Learned Counsel for the RP refuted the submissions of the Appellant and submitted that Appellant's revised settlement offer dated 25.11.2022 was placed before the CoC and deliberated on 13<sup>th</sup> and 14<sup>th</sup> CoC meetings and the settlement proposal of the Appellant was put to vote and was rejected with 100% vote share of the CoC on 08.01.2023. The Resolution Plan submitted by Respondent No.3 was approved with 100% vote share of the CoC. The period of 330 days, after expiry of the CIRP, came to an end on 28.01.2023 and after the CIRP period having come to an end, the settlement proposal of the Appellant having been considered and rejected, there is no right in the Appellant to submit repeated offers, after coming to know about the offer of SRA, which was approved on 08.01.2023. It is submitted that the offer, which was sent by the Appellant on 21.03.2023, was forwarded by the RP to the CoC

Member, which was declined on 05.05.2023. The order of this Tribunal dated 03.02.2023, did not entitle the Appellant to submit fresh settlement proposal and the offers sent thereafter are wholly unacceptable. IA No.2594 of 2023 filed by the Appellant has rightly been rejected by the Adjudicating Authority. It is submitted that this Tribunal while deciding Company Appeal (AT) (Insolvency) Nos.1715-1716 of 2023 in the matter of Nehru Place Hotels and Real Estates Pvt. Ltd. vs. Sanjeev Mahajan & Ors. has clarified the import of the order dated 03.02.2023, which does not entitle the Appellant to submit fresh proposal. It is submitted that there is no merit in the Appeal and the Appeal deserves to be dismissed.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. As noted above, the Appellant has earlier challenged the order dated 24.12.2021 admitting Section 7 Application in Company Appeal (AT) (Insolvency) No.03 of 2022. The Appellant in the Appeal has submitted OTS offer and was ready to give offer for the amount for which Bank was taking steps to transfer the debt to non-banking financial company. The Company Appeal (AT) (Insolvency) No.03 of 2022 was disposed of by order dated 04.07.2022 and following directions were issued in paragraph-15, which are as follows:

**“15.** In view of the foregoing discussions, we dispose of this Appeal with following directions:-

- (i) Appellant shall submit a fresh Application under Section 12A to the IRP/ RP for placing it before the CoC which contains an offer of more than Rs.81 Crores.
- (ii) The said Application shall be filed within two weeks from this date.
- (iii) The CoC shall consider the Application under Section 12A after obtaining approval of the Competent Authority of the Bank keeping into consideration the factors as have been mentioned in paragraph 14, as above.
- (iv) The CoC shall complete the process of taking decision on Section 12A Application within a period of two months from this date. For a period till CoC takes a decision on a proposal under Section 12A, CoC may not put any Resolution Plans, if any, to vote.”

10. Subsequent to the order of this Tribunal dated 04.07.2022, the Appellant again filed an IA No.3410 of 2022 in Company Appeal (AT) (Insolvency) No.03 of 2022 stating that the Appellant has submitted its settlement proposal, where the Appellant asked the CoC to disclose the Resolution Plan. It was pleaded by the Appellant that Appellant is not permitted to participate and negotiate with the CoC. IA No.3410 of 2022 was disposed of by this Tribunal on 21.11.2022 observing that proposal of Applicant under Section 12-A for settlement has naturally to be weighed against the Resolution Plans received in the process. While disposing of the Application, following observations were made in paragraph 15 by this Tribunal, which are as follows:

“15. The 06<sup>th</sup>, 07<sup>th</sup> and 08<sup>th</sup> CoC Meetings which have been brought on record in the Contempt Application clearly indicate the substantial part of discussions in the minutes of the CoC where with regard to the interpretation of the Order of this Tribunal dated 04.07.2022, there was divergence in the views of the Resolution Professional and the CoC with regard to the interpretation of the Order dated 04.07.2022. The Appellant has filed this Application with the prayers as noted above. The Order dated 04<sup>th</sup> July, 2022 contemplated that CoC while considering the Application under Section 12A was to keep in mind the factors as has been mentioned in paragraph 14 of the Judgment dated 04.07.2022. It has already been noticed in the Judgement that maximisation of the assets of the Corporate Debtor is one of the objectives and equally important is recovery of the financial dues of the Bank. The proposal of Applicant under section 12A for Settlement has naturally to be weighed against the Resolution Plans received in the process unless the Resolution Plans are opened and deliberated side by side with the proposal of settlement submitted by the Appellant, the objective as contemplated in paragraph 14(iii) cannot be achieved. We thus are of the view that the Order dated 04.07.2022 clearly entitled that the CoC to weigh the Resolution Plans as well as Settlement Proposal together.”

11. Subsequent to the order of this Tribunal dated 21.11.2022, 13<sup>th</sup> meeting of the CoC was held on 26.11.2022, where the CoC noticed the order dated 21.11.2022 of the Appellate Tribunal and also taken note of the revised

settlement proposal submitted by the Appellant (25.11.2022). The Appellant, who was present in the meeting, the CoC deliberated upon his proposal. The 14<sup>th</sup> CoC meeting was held on 07.12.2022. The Adjudicating Authority in the impugned order has noted deliberations of the CoC in 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> CoC meetings. It is useful to quote paragraph 13 of the impugned order, where the relevant extracts of the CoC has been noticed, which are as follows:

**“13.** In pursuance of Hon’ble NCLAT’s order dated 21.11.2022, the Applicant has submitted its revised Settlement Proposal on 25.11.2022 to the Respondents which was widely discussed and deliberated between the Applicant and the Respondent No. 1 in the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> CoC meeting held on 26.11.2022, 07.12.2022, 28.12.2022 and 09.01.2023 respectively. The relevant extract of minutes of the CoC meetings are reproduced below:

***13th CoC meeting dated 26.11.2022***

***Item No. A4- To take note of order of the Hon'ble NCLAT, New Delhi dated 21.11.2022 and consider the extension of 15 days or any other period as decided by CoC***

*" .... The CoC member, Indian Bank deliberated that apparently from the revised offer of the resolution Applicant, it can be ascertained that the financial creditor will receive Rs. 118 Crore approx. .. as per the plan which is quite higher than the proposal submitted by Mr. Sanjeev Mahajan (100 Cr.) .... Indian Bank also added that the order of the NCLAT, New Delhi dated 21.11.2022 has given an opportunity to the promoter and both the resolution Applicants to revisit their offer and renegotiate with the CoC and thereafter the CoC to take a decision and looking upon the revised values received, it is said that the revised proposal of the resolution Applicant-Nehru Place Hotels has increased their offer value by approximately of Rs. 5. 00 Crore in total.*

Mr. Sanjeev Mahajan deliberated upon his proposal and showed his bonafide intent, and his proposal is, "as in where is basis" ..... The CoC member, Indian Bank replied that in the present meeting itself he has been given an opportunity to revise the offer or deliberate upon same .... in case the promoter is willing to revise the offer, CoC will be happy to consider the same.

Indian Bank reverted that we are present in the meeting and discussing and negotiating on the proposal submitted by Mr. Mahajan, so the arrangement of funds should be provided to decided upon something as it is a very crucial aspect to any financial proposal .. " The RP deliberated that the deliberation upon the proposal have been held, and Mr. Mahajan can provide for the amount requested in the no lien account and provide a letter which confirms the arrangement of funds for payment of the financial value proposed. "

#### **14th COC meeting dated 07.12.2022**

Item No. A4- To discuss and evaluate the resolution plans submitted by the resolution Applicants along with the Settlement Proposal submitted by the promoter in accordance with the order of the Hon'ble NCLAT dated 21.11.2022

"Mr. N C Nehra representing Indian Bank (sole CoC member) requested the promoter Mr. Sanjeev Mahajan to deliberate on his Settlement Proposal submitted, whereby the chairperson added that the promoter may present his proposal and both the parties are present here for any negotiation, modification or clarification, as may be required and assistance needed from his side, same is always available.

... Further, he (Applicant) informed that he has visited the head office of the Indian Bank in Chennai on Monday and met the General Manager Mr. Ahluwalia for consideration of his proposal and deliberated upon his pros and cons of his proposal.

The Indian Bank again inquired the promoter, if he wishes to improve/revise his offer as he has been a party to all the CoC meetings

and is aware of the amount offered by the other two resolution Applicants to the financial Creditor, to which the promoter replied that he has submitted his best offer which is unconditional and the same is on as is where is ...

Indian Bank put forth that in case the Bank accepts the Settlement Proposal it will be releasing the guarantees held with the bank to the promoter which shall not be there in case of the resolution plan, therefore, upon comparison of the Resolution Plan and the Settlement Proposal, the Settlement Proposal given by the promoter is not in compete with the resolution plan received.

After detailed deliberation and discussion upon the feasibility and viability of the resolution plans as received from the resolution Applicants and the proposal of promoter u/s 12, CoC asked the RP to put all 3 proposals to vote."

**15th CoC meeting dated 28.12.2022**

Item No. A3: To take note of the minutes of the 14th CoC meeting held on 07.12.2022 which were circulated on 09.12.2022

" .. That Mr. Sanjeev Mahajan has made representation before the MD/MD Secretariat in view of which the CoC has asked the RP to call for a special meeting to take his inputs and listen to his view in respect of any negotiations for any improved offer of his settlement as stipulated under order of the Hon'ble NCLAT dated 21.11.2022.

At this juncture, the Chairman gave the opportunity to Mr. Mahajan to deliberate upon the Settlement Proposal as he has been requesting the bank to have a personal meet with competent authority and this CoC has been specially conveyed to give effect to the directions received by Mr. N C Nehra from his central office,

... The Coc further inquired whether Mr. Mahajan wishes to increase the upfront amount payable to the bank in lieu of the settlement or any further change in the payment timelines,



To this Mr. Mahajan replied that whatever they have submitted, they stand by their offer .. "

**16th CoC meeting dated 09.01.2023**

Item No. A5: To discuss the further course of action.

*"The chairperson informed the members of the CoC that, the e-voting on the agenda items as mentioned in 14th Coc meeting were concluded on 08.01.2023 and resolution Plan of Nehru Place & Hotels and Real Estates Private Limited was approved with 100% voting casted in favour of the resolution approving the resolution Plan.*

Upon non-acceptance of the Settlement Proposal of the promoter, Mr. Sanjeev Mahajan, the CoC member, Indian Bank deliberated that the promoter did not increase the plan value and only reduced the time period of its payment Plan. Further the CoC member submitted that several rounds of discussions were held with Mr. Mahajan and he requested the physical meeting with the CMD of the bank, the Indian Bank in 15th CoC meeting, had asked the promoter to improve his offer value, however, the promoter submitted that it is his final offer and do not wish to revise any terms and financial amount offered.

*Further, the representative of the CoC added that the value offered by the promoter is less than the average liquidation value of the corporate debtor as determined by the valuers, also the value is much less than the plan value offered by the resolution Applicant ..."*

After considering the aforesaid minutes of CoC meetings and considering the submissions of Learned Senior Counsel for the RP and Learned Counsel for the CoC, it emerges that the CoC in its meetings has considered the Settlement Proposal of the Applicant along with the Resolution Plans received from the Resolution Applicants after taking into the account all the factors which has been opined by the Hon'ble NCLAT in its order dated 04.07.2022 & 21.11.2022 and thereon in their commercial wisdom rejected the same after due deliberations."

12. When we look into the 14<sup>th</sup> CoC meeting, it is clear that at Agenda Item No.A-4, Resolution Plan submitted by Resolution Applicant along with settlement proposal submitted by the Appellant – Promoter came for consideration. It is useful to quote the following extract of 14<sup>th</sup> CoC meeting:

“...

The Indian Bank again inquired the promoter, if he wishes to improve/revise his offer as he has been a party to all the CoC meetings and is aware of the amount offered by the other two resolution Applicants to the financial Creditor, to which the promoter replied that he has submitted his best offer which is unconditional and the same is on as is where is ...

*Indian Bank put forth that in case the Bank accepts the Settlement Proposal it will be releasing the guarantees held with the bank to the promoter which shall not be there in case of the resolution plan, therefore, upon comparison of the Resolution Plan and the Settlement Proposal, the Settlement Proposal given by the promoter is not in compete with the resolution plan received.*

*After detailed deliberation and discussion upon the feasibility and viability of the resolution plans as received from the resolution Applicants and the proposal of promoter u/s 12, CoC asked the RP to put all 3 proposals to vote."*

13. From the above minutes, it is clear that Bank has also asked the Appellant whether he is ready to increase his offer, where the Appellant has intimated that he has submitted its best offer. The minutes of the 14<sup>th</sup> CoC also notices that the Bank noted in the minutes that if the Bank accept the settlement proposal, it will have to release the guarantees held with the Bank

to the Promoters, which shall not be there in case of Resolution Plan submitted by Respondent No.3 is approved. The minutes clearly record *“therefore, upon comparison of the Resolution Plan and the Settlement Proposal, the Settlement Proposal given by the promoter is not in compete with the resolution plan received”*.

14. In pursuance of the Resolution taken on 14<sup>th</sup> CoC meeting, e-voting was completed on both the Resolution on 08.01.2023 and as per the result of the e-voting, the Resolution Plan submitted by SRA was approved with 100% vote share, whereas the settlement proposal submitted by the Appellant was rejected with 100% vote share. It was after the approval of Resolution Plan on 08.01.2023, an Application was filed by the RP before the Adjudicating Authority for approval of the Resolution Plan. As noted above, after the approval of the Resolution Plan and rejection of settlement proposal of the Appellant by the CoC, an IA No.259 of 2023 was filed by the Appellant in the disposed of Company Appeal (AT) (Insolvency) No.03 of 2022 before this Tribunal, which IA came to be decided on 03.02.2023. In IA No.259 of 2023, following order was passed by this Tribunal on 03.02.2023:

**“03.02.2023:**

**I.A. No. 259 of 2023**

This Interlocutory Application has been filed by the Appellant in disposed of Company Appeal (AT)(Insolvency) No. 03 of 2022 which was disposed of by this Tribunal’s Judgment dated 04.07.2022. Subsequently, another order was passed by this Tribunal on

21.11.2022 in I.A. No. 3410 of 2022 filed by the Appellant. The Applicant/Appellant has come up with in this Application claiming that the Applicant/Appellant was not given opportunity to meet the Chairman-cum-Managing Director, who is the Competent Authority for considering the proposal of the Applicant/Appellant who is an MSME. By our order 21.11.2022, we have already made necessary clarification with regard to earlier judgment dated 04.07.2022.

Learned Counsel for the Bank submits that in accordance with the order passed by this Tribunal dated 04.07.2022 and 21.11.2022, all steps were taken by CoC. Learned Counsel for the Applicant submits that after 20.01.2023, the Applicant/Appellant has also made efforts to meet the Chairman-cumManaging Director, but he was unsuccessful. Learned Counsel for Bank submits that CoC has already approved the Resolution Plan during the pendency of this Application.

We are of the view that it is open for the Applicant/Appellant to make such application, as permissible in law, before the Adjudicating Authority for consideration of this grievance, if any. Learned Counsel for the Applicant/Appellant submits that he is making offer higher than the Successful Resolution Applicant, whose plan has been approved. It is open for the Applicant to place his plea, as admissible in law, before the Adjudicating Authority.

We are of the view that no case has been made out to make further order in I.A. No. 259 of 2023. Any Application filed by the Applicant shall be considered in accordance with law by the Adjudicating Authority.

**Contempt Case (AT) No. 07 of 2023**

Learned Counsel for the Applicant/Appellant submits that he does not want to prosecute the Contempt Application. Contempt Application is, therefore, closed.”

15. It appears after order dated 03.02.2023, the Appellant has sent various other proposals, which have been noted above, including the offer submitted on 21.03.2023 for an amount of Rs.118.26 crores, which was declined by the Indian Bank by communication dated 05.05.2023. It was thereafter, an IA No.2594 has been filed by the Appellant, which came to be decided by the impugned order by the Adjudicating Authority. We have already noticed the prayer in the IA, which were to set aside the decision of Indian Bank on the settlement proposal dated 21.03.2023 and stay further proceedings in IA No.987 of 2023, which was filed by the RP for approval of the Resolution Plan.

16. We have already noticed above that in IA No.2594 of 2023, an order was passed by the Adjudicating Authority on 01.12.2023, which came to be challenged by SRA by means of Company Appeal (AT) (Insolvency) Nos.1715-1716 of 2023, which Appeal came to be disposed of by this Tribunal on 08.01.2023, after hearing the learned Counsel for present Appellant, who Respondent No.1, in the said Appeal. In the above judgment, this Tribunal had occasion to refer to the order dated 03.02.2023 passed by this Tribunal in IA No.259 of 2023, it was observed by this Tribunal in its judgment dated 08.01.2024 that order dated 03.02.2023 cannot be read to mean that this Tribunal granted liberty to Respondent No.1 to submit any further proposal for settlement. It is useful to extract paragraphs 14 and 15 of the judgment, which are as follows:

**“14.** From the facts as noticed above it is clear that Resolution Plan of the Appellant was approved with 100% vote share and settlement proposal submitted by Respondent No. 1 under 12A of the Code was considered under the order of this Tribunal in 14th CoC meeting and rejected with 100% vote share on 08<sup>th</sup> January, 2023.

**15.** Learned Sr. Counsel for the Respondent No. 1 has placed reliance on order of this Tribunal dated 03.02.2023 passed in I.A. No. 259 of 2023. According to Respondent No.1 I.A. No. 259 of 2023 has been filed due to liberty granted by this Tribunal. When we look into the order dated 03.02.2023 of this Tribunal, it is clear that this Tribunal only observed that it is open to the Applicant (Respondent No. 1 herein) to make such an application as permissible in law for consideration of his grievance before the Adjudicating Authority. The Order dated 03.02.2023 cannot be read to mean that this Tribunal granted liberty to Respondent No. 1 to submit any further proposal for settlement. The Order dated 03.02.2023 can be read only to mean at best the Respondent No. 1 can raise his grievance by an application before the Adjudicating Authority. Application has been filed being I.A. No. 2594 of 2023 and prayer made to set aside the communication dated 06.05.2023 issued by the CoC rejecting his proposal. When we look into the Impugned Order, the Adjudicating Authority made following observations:

*“....CoC has already approved the Resolution Plan which is pending for consideration of this Adjudicating Authority. Suspended Management has filed certain applications proposing higher amount than proposed by the SRA for consideration of the CoC. Since, the matter is an old one, last opportunity is granted, so that any acceptable settlement can be arrived. If no settlement arises before the next date of hearing, the Resolution Plan will be heard on merits.....”*

17. When we look into the IA, which was filed by the Appellant being IA No.2594 of 2023, what is questioned by the Appellant is rejection of its proposal, which was submitted on 21.03.2023, enhancing its Plan value as Rs.118.26 crores. The submission, which has been pressed by Shri Abhijeet Sinha, is that the Adjudicating Authority in the impugned order has not considered the submissions, which was advanced by the Appellant on the ground that rejection of settlement proposal of the Appellant is in accordance with the commercial wisdom of the CoC and the same cannot be questioned before the Adjudicating Authority. The learned Counsel for the Appellant submits that it has been laid down by the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. and anr. vs. Union of India and Ors. – (2019) 4 SCC 17*** that an arbitrary decision of the CoC, rejecting proposal under Section 12-A can be challenged. The learned Counsel for the Appellant has referred to paragraph 83 of the judgment. The Hon'ble Supreme Court in the above judgment has held that if the Committee of Creditors arbitrarily rejects a just settlement and/ or withdrawal claim, NCLT, and thereafter NCLAT can always set aside such judgment. In paragraph 83, following was observed:

“83. The main thrust against the provision of Section 12-A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving *all* creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial

creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster.”

18. The question which needs to be considered in the present case is as to whether the decision of the CoC, not to accept the settlement proposal submitted by the Appellant, can be said to be an arbitrary decision. It is submitted that the revised settlement proposal, which was submitted by the Appellant on 25.11.2022, came to be considered in 13<sup>th</sup> and 14<sup>th</sup> CoC meetings. The revised settlement proposal, which has been brought on the record by RP as well as learned Counsel for Indian Bank, categorically states that on approval of settlement proposal submitted by the Appellant, there shall be no liability left with the CD or its Promoter/ Guarantors. It is useful to extract the following from the settlement proposal dated 25.11.2022, which is filed as Annexure R-1 to the additional affidavit filed by the Bank. Following was stated in the settlement proposal of the Appellant dated 25.11.2022:

“Needless to mention that upon approval and implementation of the present offer, the entire outstanding / debt of Bank as a whole shall stand discharged and no due shall remain recoverable, all legal



proceedings shall be withdrawn immediately on remittance of 25% of our offer amount. Payment of remaining INR 75 Crore on or before 31<sup>st</sup> March, 2023 the entire liability of CD shall stand extinguished. CD and/ or Promoters/ Guarantors shall not be liable to make any further payment towards the outstanding amount to the FC. The FC shall issue a letter confirming the closure of the loan Account.”

19. Thus, the settlement proposal submitted by the Appellant was with the condition that on approval of the same, liability of CD, Promoter and Guarantors shall stand extinguished, meaning thereby that the Bank has to release the personal guarantees of Promoter and Guarantors, which part of the proposal was duly considered in the 14<sup>th</sup> CoC meeting and relevant extract from 14<sup>th</sup> CoC meeting has already been extracted above, which indicates that the settlement proposal in which the Bank has to release the guarantees held with the Bank is not in compete with the Resolution Plan received. It is, thus, noted by the CoC that when the Resolution Plan of the SRA is approved, the personal guarantees be still with the Bank and it is submitted by the learned Counsel for the Bank that total amount due is Rs.238 crores, hence, CoC after due deliberations decided not to accept the settlement proposal and approved the Resolution Plan.

20. From the above, we are satisfied that the decision of the CoC, which was taken through e-voting declared on 08.01.2023, was well considered and deliberated decision, in which Appellant was given full opportunity. The

decision, which was taken with 100% vote share on 08.01.2023 to reject the settlement proposal of the Appellant, can in no manner be held to be arbitrary.

21. When the settlement proposal, which was submitted by the Appellant, which came to be considered by the CoC and was rejected, it is not open for the Appellant, after the approval of Resolution Plan of the SRA and after rejection of settlement proposal of the Appellant by CoC, to sent emails increasing his offer from earlier submitted settlement proposal. The RP has stated in the affidavit that period of 330 days of the CIRP has come to an end on 28.01.2023. The CIRP has come to an end and settlement proposal submitted by the Appellant was duly deliberated and rejected by 100% vote share, it is not open for the Appellant to submit offer increasing his settlement value, after approval of the Plan. We have also observed that order dated 03.02.2023, which was passed by this Tribunal in IA No.259 of 2023, filed in the disposed of Appeal, did not entitle the Appellant to file fresh proposal, nor any liberty was granted by this Tribunal to the Appellant to start filing fresh proposals after completion of the CIRP period and after rejection of the settlement proposal of the Appellant.

22. Learned Counsel for the Appellant has also placed reliance on the judgment of the Hon'ble Supreme Court in **Vallal RCK vs. Siva Industries and Holdings Ltd. and Ors. – (2022) 9 SCC 803**, where paragraph 83 of the **Swiss Ribbons Pvt. Ltd.** has also been quoted with approval. Paragraphs 19 and 20 of the above judgment are as follows:

**“19.** In *Swiss Ribbons (P) Ltd. v. Union of India* [*Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17] , one of the challenges made was with regard to validity of Section 12-A IBC. It was argued that the figure of 90% voting share was arbitrary. It was the contention that though the withdrawal was just and proper, the CoC could exercise the power arbitrarily to reject such a settlement. While rejecting the said contention, this Court observed thus : (SCC p. 87, para 83)

*“83. The main thrust against the provision of Section 12-A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster.”*

(emphasis in original)

**20.** It could thus be seen that this Court has found that if the CoC arbitrarily rejects a just settlement and/or withdrawal claim, the learned NCLT and thereafter the learned Nclat can always set aside such decision under the provisions of IBC.”

23. There cannot be any quarrel to the proposition laid down by the Hon'ble Supreme Court in the above case. If the CoC arbitrarily rejects a settlement proposal, the same can be interfered with in an appropriate case by the Adjudicating Authority as well as by this Tribunal. However, in the present case, the decision of not accepting the settlement proposal was well considered, as noted above. Hence, the above judgment of the Hon'ble Supreme Court in no manner helps the Appellant.

24. The learned Counsel for the Appellant has also referred to and relied on the judgment of the Hon'ble Supreme Court in ***Arun Kumar Jagatramka vs. Jindal Steel and Power Limited and Anr. – (2021) 7 SCC 474***, where while considering the provisions of Section 12-A and Regulation 30-A, following was observed by Hon'ble Supreme Court in paragraph 78:

“78. There is a fundamental fallacy in the submission. An application for withdrawal under Section 12-A is not intended to be a culmination of the resolution process. This, as the statutory scheme would indicate, is at the inception of the process. Rule 8 of the Adjudicating Authority Rules, as we have seen earlier, contemplates a withdrawal before admission. Section 12-A subjects a withdrawal of an application, which has been admitted under Sections 7, 9 and 10, to the requirement of an approval of ninety per cent voting shares of the CoC. The decision of this Court in *Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17]* (para 82 extracted above) stipulates that where the CoC has not yet been constituted, NCLT, functioning as the adjudicating authority, may be moved directly for withdrawal which, in the exercise of its inherent powers under Rule 11 of the Adjudicating

Authority Rules, may allow or disallow the application for withdrawal or settlement after hearing the parties and considering the relevant factors on the facts of each case. A withdrawal in other words is by the applicant. The withdrawal leads to a *status quo ante* in respect of the liabilities of the corporate debtor. A withdrawal under Section 12-A is in the nature of settlement, which has to be distinguished both from a resolution plan which is approved under Section 31 and a scheme which is sanctioned under Section 230 of the 2013 Act. A resolution plan upon approval under Section 31(1) IBC is binding on the corporate debtor, its employees, members, creditors (including the Central and State Governments), local authorities, guarantors and other stakeholders. The approval of a resolution plan under Section 31 results in a “clean slate”, as held in the judgment of this Court in *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta* [*Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] . Rohinton F. Nariman, J. speaking for the three-Judge Bench of this Court, observed : (*Essar Steel case* [*Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , SCC p. 615, para 105)

“105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In *SBI v. V. Ramakrishnan* [*SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , this Court relying upon Section 31 of the Code has held : (SCC p. 411, para 25)

*‘25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors,*

*takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.”*

*(emphasis supplied)”*

25. There can be no quarrel to the proposition laid down by the Hon’ble Supreme Court in the above case with regard to scheme under Section 12-A. The Hon’ble Supreme Court has held that a withdrawal under Section 12-A is distinguishable both from a Resolution Plan, which is approved under Section 31 and a scheme which is sanctioned under Section 230 of the Companies Act, 2013. We fail to see as to how the judgment of the Hon’ble Supreme Court in **Arun Kumar Jagatramka**’s case come to any aid to the Appellant in the facts of the present case.

26. In view of the foregoing discussions and our conclusions, we are of the view that Adjudicating Authority did not commit any error in rejecting IA No.2594 of 2023 filed by the Appellant. There is no error in the judgment of the Adjudicating Authority, the Appeal being devoid of merit is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

**NEW DELHI**

**20<sup>th</sup> August, 2024**

Ashwani