

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins.) No. 336 of 2020

(Arising out of the Order dated 07.02.2020 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 961 of 2019 in I.A. No. 32 of 2019 in C.P. (IB) No. 248/7/HDB/2017.)

IN THE MATTER OF:

EIH Limited

Registered Office at:

4, Mangoe Lane, Kolkata – 700001.

And

Corporate office at:

7, Shamnath Marg,

Delhi – 110054.

...Appellant

Versus

1. Subodh Kumar Agrawal

Former Resolution Professional of

Golden Jubilee Hotels Private Limited,

1, Ganesh Chandra Avenue,

3rd Floor, Room No. 301,

Kolkata – 700013.

...Respondent No. 1

2. Golden Jubilee Hotels Private Limited,

Through Successful Resolution Applicant

Survey No. 64, Beside Shilpakalavedika,,

Shilparamam, Madhapur,

Hyderabad, Telangana – 500081.

...Respondent No. 2

3. BREP Asia II Indian Holding Co II (NQ) PTE.

Ltd.

77, Robinson Road

#13-00 Robinson 77,

Singapore – 068896

Email: vijay.kaundal@srglaw.com

...Respondent No. 3

Present

For Appellants:

Mr. Abhijeet Sinha, Sr. Adv. with Mr. Arijit Mazumdar, Ms. Akanksha, Ms. Anushka Dey,

For Respondents: **Adv.**
Mr. Arun Kathpalia, Sr. Advocate with Mr.
Pankaj Vivek, Advocate for R-2

J U D G E M E N T

(11.12.2024)

NARESH SALECHA, MEMBER (TECHNICAL)

1. This appeal has been filed by EIH Limited who is the Suspended Promoter of the Corporate Debtor and operator of Hotel of Corporate Debtor i.e., against the Impugned Order dated 07.02.2020 passed in I.A. No. 433, 447 & 448/2018 & I.A. No. 321 of 2019 in CP (IB) No. 248/7/HDB/2017.

Subodh Kumar Agrawal is the Respondent No. 1 herein and former Resolution Professional of M/s Golden Jubilee Hotels Private Limited/ Corporate Debtor who is the Respondent No. 2 herein.

BREP Asia II Indian Holding Co. II (NQ) Pte. Ltd. is the Respondent No.3 herein who is the Successful Resolution Professional ('SRA') of the Corporate Debtor.

2. Heard the Counsel for the Parties and perused the records made available including the cited judgements.

3. The Appellant gave the overall background of the case and submitted that pursuant to the then Government of Andhra Pradesh's Request for Proposal ("RFP") for the construction and development of a five Star Hotel in Hitech City, Madhapur, Hyderabad on Build, Operate, Transfer ("BOT") basis on land owned by the State Government, a Development Agreement was executed with

the State Government by the successful bidder, Corporate Debtor/ Golden Jubilee Hotels Pvt. Ltd.

4. The Appellant stated that My Home Constructions Private Limited ("**MHG**"), VBC Finance & Leasing Limited ("**VBC**") and EIH Limited executed a Shareholders Agreement dated 05.08.2006 for the purposes of submission of tender documents to be submitted to Youth Advancement Tourism and Culture Department ('**YATCL**') and it was decided that MHG, will act as the Lead Developer, VBC as the Financial Significant Member and EIH as the Technical Member. The shareholders decided to form a Special Purpose Vehicle company by the name of Golden Jubilee Hotels Private Limited ("**GJHPL**"/"**Corporate Debtor**"). A Supplementary shareholder was executed on 09.06.2008 and a Restated Shareholders Agreement was executed on 28.08.2009.

5. It is the case of the Appellant that the Corporate Debtor entered into an independent agreement with the Appellant herein for enabling the Appellant to conduct the operations of the hotel Trident in its independent capacity subject to terms specified in Management Agreement Incorporating Technical Assistance Services ("Management Agreement") dated 5 August 2006 and License Agreement dated 5 August 2006, and a Development Agreement was executed between the Corporate Debtor and the Andhra Pradesh Govt. on 9 May 2007.

6. The Appellant further stated that the Hotel commenced commercial operations from 01.09.2013 and the Appellant has been exclusively operating and managing the Hotel in terms of the Management Agreement since then till date however certain disputes and differences arose between the Appellant and the Corporate Debtor and the Appellant initiated arbitration proceedings in October 2015.

7. The Appellant stated that after the constitution of the Arbitral Tribunal, Corporate Debtor issued a letter dated 26.03.2016 seeking to unilaterally terminate the Management Agreement. The Appellant responded to the said communication on 08.04.2016 rejecting the stand of the Corporate Debtor and stating that the said unilateral action of the Corporate Debtor was invalid and illegal and referred the issue of purported termination of the agreements to the Arbitral Tribunal as the arbitration proceedings were still pending. The Appellant submitted that by virtue of the Interim Orders given by the Arbitral Tribunal, the Appellant continues to operate and manage the Hotel under the Management Agreement and License Agreement.

8. The Appellant stated that during the proceedings before the Arbitral Tribunal, Bank of Baroda, a financial creditor of the Corporate Debtor, filed an application under Section 7 of the Code before Adjudicating Authority for initiating CIRP against the Corporate Debtor bearing CP (IB) No. 248/7/HDB/2017 (“Company Petition”) on 17.10.2017 and the Adjudicating

Authority vide Impugned Order dated 07.02.2018 admitted the Company Petition and declared moratorium against the Corporate Debtor and appointed Mr. Subodh Kumar Agrawal as Resolution Professional who is Respondent No. 1 herein.

9. The Appellant submitted that on 30.04.2018, the Respondent No. 1 invited Expression of Interest ("EOI") from prospective Resolution Applicants to submit a Resolution Plan and the last date for submission of EOI was 18.05.2018 and four Resolution Applicants submitted their bids on 25.06.2018.

10. The Appellant assailed the conduct of the Respondent No. 1, who tried to superimpose himself to conduct and operate the Hotel and aggrieved by the same the Appellant filed an application being I.A. No. 73 of 2018 in CP (IB) No. 248/7/HDB/2017 before the Adjudicating Authority in CP (IB) No. 248/7/HDB/2017 which was allowed by the Adjudicating Authority on 25 July 2018.

The Appellant submitted that aggrieved by the same the Respondent No. 1 filed an appeal before this Appellate Tribunal being *Subodh Kumar Agrawal vs. EIH Limited* Company Appeal (AT) (Ins) No. 483 of 2018 in which this Appellate Tribunal passed directions by way of Order dated 20.09.2018 that were to be followed during the period of moratorium for proper management of the Hotel to ensure that the Hotel remains an ongoing concern. The relevant portion of this Appellant Tribunal's earlier order reads as under :-

"Resolution Professional will run the management of the Corporate Debtor to ensure that the Company, particularly Hotel Trident remains ongoing concern. He will follow applicable provisions of the agreement in consonance with Insolvency & Bankruptcy Code, 2016 and Articles 6 & 7 and will obtain necessary guidelines from Respondent which has experience of running the hotel business. It will be open to the Respondent to advise the Resolution Professional to ensure that the hotel continues to be an ongoing concern. The Respondent will also extend full cooperation to the Resolution Professional or its authorised representative.

The person who is authorised to sign bank cheques of the Company including the cheques for purchase of day to day materials for the Hotel Trident will issue cheques only after authorisation of the Resolution Professional or any other person authorised by the Resolution Professional. The Resolution Professional may also authorise any officer or employ of Hotel Trident for aforesaid purpose. The cheques should be allowed to be encashed at an early date preferably within 48 hours to ensure that the hotel business does not suffer. The Resolution Professional should also make arrangement for payment of wages to the staffs, employees, current bills of Service Providers and tax etc. The Resolution Professional will not pay any debt to any of the Creditors which are of the period prior to the date of initiation 'Corporate Insolvency Resolution Process' (admission of the case). The bank account(s) of the

Corporate Debtor(s)/Company be allowed to be operated for day-today functioning of the Company such as payment of current bills of the suppliers, tax, wages of the employees'/workmen, water and electricity bills etc. apart from the observation as made above."

(Emphasis Supplied)

11. The Appellant assailed the Respondent No. 1 who in the CoC meeting held on 24.09.2018, indicated that the Appellant has conflict of interest as some of the resolution plans proposed for the continuance of the Appellant as the operator for the Hotel on an independent and separate basis. The Appellant stated that Respondent No. 1 advised the CoC that any proposal of Resolution Applicant which shows or indicate a preferential future operation of the Hotel by the Appellant, may invite disqualification of the EoI under section 29A of the Code. Aggrieved by such conduct of the Resolution Professional by way of which the resolution applicants were being compelled to disregard any plans of continuing with the Appellant as the operator of the Hotel, the Appellant filed an application being I.A. No 433 of 2018 in C.P. (IB) No. 248/7/HDB/2017 before the Adjudicating Authority, inter alia, praying for declaration and direction that the Respondent No. 1 is not entitled, in law to insist upon exclusion of the provision of continuing the Appellant as the hotel operator in the resolution plans submitted/ proposed to be submitted by resolution applicants.

12. The Appellant also filed an application being I.A. No 447 of 2018 is C.P. (IB) No. 248/7/HDB/2017 on 08.10.2018 before the Adjudicating Authority, inter alia, praying for declaration and direction that the independent rights of the Appellant as a Hotel Operator based on independent arm's length Management Agreement and License Agreement remain unaffected by CIRP of the Corporate Debtor and the said rights cannot be interfered in any manners by and through a Resolution Plan.

13. The Appellant also filed an application being I.A. No 448 of 2018 is C.P. (IB) No. 248/7/HDB/2017 before the Adjudicating Authority, inter alia, praying for direction to the Respondent No. 1 and CoC, to consider the Resolutions Plans submitted before them as originally proposed by staying the effect of all actions relating to treating any resolution plan as disqualified if it proposed the Appellant as an operator.

14. The Appellant submitted that the CoC on 21.12.2019, approved the Resolution Plan submitted by Respondent No. 3 with 68.26% votes and the same was placed before the Adjudicating Authority for its approval in terms of section 30(6) of the Code by way of I.A. No. 32 of 2019 and vide the Impugned Order dated 07.02.2020 the Adjudicating Authority approved the Resolution Plan despite the Resolution Plan suffering from various illegalities.

15. The Appellant assailed that Adjudicating Authority in holding that EIH being a promoter of the Corporate Debtor will be ineligible under Section 29 A

of the Code and therefore any Resolution Plan to include EIH as integral part of the Resolution Plan would vitiate the Resolution Plan. The Appellant submitted that the Adjudicating Authority failed to appreciate that Section 29A of the Code is applicable to a 'Resolution Applicant' and not to a third-party operator like him in the present case in the resolution plan and therefore the question of applicability of section 29A of the Code to the Appellant does not arise in as much as the Appellant is not a resolution applicant.

16. The Appellant stated that Adjudicating Authority should have appreciated that the Appellant was only being proposed as an operator of the Hotel without there being any ownership or management rights and hence even if assuming only for the sake of arguments that the Appellant is ineligible under section 29A of the Code, the same cannot disqualify the Appellant from being considered as an operator of the Hotel. The Appellant further stated that the Adjudicating Authority failed to appreciate that as per section 30(2)(e) of the Code, the Resolution Professional is only supposed to examine, if the resolution plans received by him, are in contravention of any law or not and the said provision could not mean that the Resolution Professional declare him as being ineligible under section 29A of the Code even though he has not submitted a resolution plan.

17. The Appellant stated that in view of the arbitration proceedings pending between the Appellant and the Corporate Debtor in which the issue of

termination of the Management Agreement is under consideration, the Adjudicating Authority should not have pre-empted the award by directing for an independent operator to be appointed. and the Adjudicating Authority failed to appreciate that the Appellant was providing services to the Corporate Debtor under a Management Agreement and not by virtue of being a 16% shareholder of the Corporate Debtor. The Appellant stated that he is not related to any of the Resolution Applicants including the SRA/ Respondent No. 3 herein.

18. The Appellant submitted that the Adjudicating Authority erred in equating the Appellant's shareholding in the Corporate Debtor and the proposal for its continuance as the Hotel operator to that of the case of *Chitra Sharma & Ors Vs. Union of India & Ors.* Writ Petition (Civil) No. 744 of 2017 wherein Jaiprakash Associates Limited was held ineligible under section 29A of the Code as it was the parent company of the Corporate Debtor viz., Jaypee Infratech Limited.

19. Concluding his arguments, the Appellant pleaded that the Impugned Order passed by the Adjudicating Authority deserves to be set aside.

20. Per contra, the Respondents the allegations of the Appellants labelling these as mischievous and misleading.

Pleadings of Respondent No. 1 & 2

21. The Respondents gave the background of the case and submitted that the Appellant is a shareholder holding 16% of the paid-up share capital of the Corporate Debtor and is a promoter and therefore, the Appellant falls under the category of connected persons under section 29A(j) of the Code and explanation 1(ii) provided there under.

22. The Respondents defended well- reasoned Impugned Order, holding that the Appellant being a promoter of the corporate debtor is ineligible under Section 29A of the Code, to have any association with the Successful Resolution Applicant under the Resolution Plan, being submitted by the Resolution Applicants in the light of provisions contained in section 29 A (j).

23. The Respondent stated that the Appellant rights as a service provider are circumscribed by the prerogative of the Successful Resolution Applicant whether to retain the Appellant as a Hotel Operator or not. The Adjudicating Authority has rightly held in the impugned order that it is the right and prerogative of the SRA to engage the services of the Appellant, if it so wishes. provided that the Appellant would be functioning as a "Hotel Operator" without any management rights over the affairs of the business of the Corporate Debtor.

24. The Respondents conceded that though the Appellant is not the resolution applicant, by virtue of its legal status as a promoter in the constitution of

Corporate Debtor, it is precluded from having any kind of association with the Resolution Applicant in any form under a Resolution Plan. The Respondent stated that the contract entered between the Appellant and the Corporate Debtor cannot be claimed as contract to continue in perpetuity.

25. The Respondents stated that as the provisions of the code will override the management agreement incorporating technical services entered between the corporate debtor and the Appellant and the Appellant cannot claim any kind of immunity from the application of the provisions of the code since a contract is an instrument is subservient to the provisions of the code.

26. The Respondents submitted that as per the provisions of section 29A(j) of the Code, it can be construed that said provisions prohibit the Resolution Applicant to continue with, the existing promoter as the Hotel Operator during the implementation period and subsequent period as mentioned under the resolution plan submitted by the SRA.

27. The Respondents stated that the Corporate Debtor has only one asset the Hotel built on the leased land provided by the Government. The Respondents stated that the contentions of the Appellant that the Hotel of the Corporate Debtor and the Corporate Debtor are two separate and independent entities is not only untenable as the Corporate Debtor earns its entire income only through the operations of the Hotel, even the Appellant is paid out of the income of the Hotel which is the income of the Corporate Debtor.

28. Concluding pleadings, the Respondents submitted that the Impugned Order merits no interference and the Appeal deserves to be dismissed.

Pleadings of Respondent No. 3/ SRA

29. The SRA stated that the nature of the relationship between the Appellant and the Corporate Debtor reveals that Appellant being the promoters shareholder of the Corporate Debtor had full control over the Corporate Debtor as the Appellant was entitled to appoint two directors on the Board of Directors of the Corporate Debtor and without the approval of the Appellant no major decisions could not have been taken by the Corporate Debtor. The SRA further stated that the Appellant had the absolute and sole discretion in management and operation of the Hotel and the bank accounts could be opened and operated by the Appellant and the Appellant had the exclusive powers to designate the signatories on such bank accounts, further the Appellant had full authority for the entire design of the Hotel including architecture, landscaping, interior design, etc.,

30. The SRA submitted that without the approval of the Appellant, the Corporate Debtor could not raise any finance which would create a charge over the Hotel and all contracts of employment and all leases and concessions, all purchase orders and agreement were to be executed by the Appellant, albeit in the name of the Corporate Debtor. The Appellant had the right to decide on the recruitment, appointment, etc., and to fix the emoluments of all employee and

the Appellant was entitled to fix all prices, rates and tariffs of the Hotel. The SRA stated that this proves beyond doubt that the Appellant was in full control of the management of the Hotel of the Corporate Debtor.

31. The SRA stated that in this background, upon occurrence of a default, Bank of Baroda, a financial creditor of the Corporate Debtor, filed the Company Petition (IB) No. 248/7/HDB/2017 under Section 7 of the Code for CIRP against the Corporate Debtor, which was admitted by the Adjudicating Authority by its Impugned Order dated 07.02.2018. The SRA submitted that the Resolution Plan was discussed in the meeting of the CoC held on 18.12.2018 and was put to e-voting before the CoC on 20.12.2018 and 21.12.2018 and the Resolution Plan was approved by the CoC with 68.26% of the total voting share of the CoC, voting in favour of the Resolution Plan. The Resolution Professional filed an application bearing I.A. No. 32 of 2019 seeking approval of the Resolution Plan and the Resolution Plan was approved by the Adjudicating Authority vide the Impugned Order dated 07.02.2020 after addressing objections raised by various stakeholders including the Appellant in relation to the Resolution Plan.

32. The SRA elaborated that in the Impugned Order, the Adjudicating Authority observed that Appellant being a promoter shareholder having 16% equity of the Corporate Debtor cannot be treated differently from the other promoters of the Corporate Debtor and hence the Appellant shall be ineligible

under Section 29A of the Code and therefore, any direction to include the Appellant as an integral part of the Resolution Plan will vitiate the Resolution Plan. The Adjudicating Authority, passed orders allowing the SRA having discretion to consider the Appellant as a potential Hotel operator on the condition that the Appellant would play its role purely and exclusively as an operator which does not indulge in or interfere with the management of the affairs of the Corporate Debtor and in any of its decision making process in the course of its business.

33. The SRA submitted that by the aforesaid directions, the Adjudicating Authority ensured that the Appellant would not remain in 'management' or 'control' of the Corporate Debtor, thereby adhering to the tenets of the Code in general and Section 29A(c) and Section 29A (c) Explanation 1(ii) of the Code in particular.

34. The SRA submitted that the Management Agreement reveals full control of the Appellant over the business and operations of the Corporate Debtor and submitted that the Management Agreement, in its present form, provides the Appellant control over the business. decision making, employees, bank accounts and even legal proceedings of the Hotel and through this overarching control over the Hotel, the Management Agreement also provides control of the Appellant over the business of the Corporate Debtor, as a whole. The SRA

submitted that the Appeal is an attempt of the Appellant to maintain such control over the Corporate Debtor which is not permissible.

35. The SRA submitted that through reliefs sought by the Appellant from this Appellate Tribunal in the present appeal, the Appellant is again trying to gain continuation of the Management Agreement on the existing terms and conditions and thereby to remain in full and pervasive control of the management and operations of the Corporate Debtor, notwithstanding that an entire CIRP has been undertaken. The SRA elaborated that the Appellant is thus seeking to restore status quo ante for the Corporate Debtor directly and contrary to the very reason for which the CIRP has been undertaken. The SRA submitted that the Impugned Order only preserves the right of the Resolution Applicant to choose an operator for running of the Hotel, and any attempt to deprive such rights by the SRA, would be illegal. The SRA stated that the Appellant by the indirect method is seeking modification of the approved Resolution Plan and restricting the rights of the SRA as embedded therein.

36. The SRA submitted that the approval of the Resolution Plan by the CoC reflects the commercial wisdom of the CoC and as reiterated by the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.* (Civil Appeal No. 8766- 8767/2019] and the catena of judgements of the Hon'ble Supreme Court of India that the commercial wisdom of the CoC should not be interfered with by the

Adjudicating Authority/ Appellate Tribunal. The SRA submitted that appeal, in as much as it seeks interference in the commercial wisdom of the CoC, deserves no consideration.

37. The SRA submitted that the Resolution Plan was duly approved by the CoC with 68 25% of the total voting share of the financial creditors and thus was duly approved in terms of Section 30(4) of the Code and the Adjudicating Authority examined the legality of the said Resolution Plan in light of the Section 30(2) of the Code and approved, the Resolution Plan which is now binding on all stakeholder including the Appellant.

38. Concluding his arguments, the SRA requested this Appellate Tribunal to dismiss the appeal with penal costs.

Findings

39. We note that the SRA had kept provision in his resolution plan for changing the Hotel Operator during interim period as well as from the effective date as seen from para 4.1.1 of the approved Resolution Plan.

40. We also note that the SRA believed that the hotel was not managed well which was the reason for losses of the Corporate Debtor and therefore the business plan of the SRA provided for steps to revive fortune of the Corporate Debtor. The SRA in fact is opposing the Appellant to continue with the previous hotel operator (appellant herein). We have noted pleadings of the SRA

that if the appellant continues as hotel operator, then the corporate debtor will never be able to turn around the Appellant was the cause of losses due to mismanagement of operations of hotel by Ex-Promoters and the Appellant being 16% shareholders of Erstwhile Corporate Debtor as well as operator of the hotel having full control is also cause of this mess of the Corporate Debtor.

41. We note that the Resolution Plan envisaged a complete break from all contracts and obligations due towards the existing share- holders and promoters including the appellant EIH Ltd. The SRA has specifically provided in the resolution plan that the existing contracts would be saved to keep the Corporate Debtor as a going concern but the contracts of the appellant were specifically excluded from the contracts intended to be protected.

42. We note that the approved resolution plan envisages change of the Hotel Operator as the appellant was not only the Hotel Operator but also a promoter of the corporate debtor and was holding 16% share in the Corporate Debtor, hence the appellant cannot be expected to continue same role as Ex-Promoter of the Corporate Debtor as well as the operation of the Hotel of the Corporate Debtor. We observe that it is for the SRA to choose the operator of the hotel and SRA cannot be forced to continue any existing agency including the existing operator of the Hotel i.e., the Appellant herein. Thus, the plea of appellant that the management and operation of hotel is an arm's length transaction is not found convincing.

43. We observe that the Appellant is the original promoter of the hotel and the land would not have been allotted unless there was a promoter having experience in running and operating the hotel. Hence, the decision of the promoters of the Corporate Debtor to engage the appellant as hotel operator cannot be deemed to be an independent contract at an arm's length. In view of this, Section 29A of the Code will apply to the appellant being part of Resolution Plan. We consciously note that the CoC and Adjudicating Authority have left it to the discretion of the SRA to retain the Appellant or change the hotel operator and no fault can be found with such reasoning.

44. We also note that the commercial wisdom of the CoC is paramount and the Adjudicating Authority or even this Appellate Tribunal cannot interfere in view of catena of judgments of the Hon'ble Supreme Court of India including :-

- (i) ***K. Shashidhar vs. Indian Overseas Bank & Ors. .***, (2019) 12 SCC 150
- (ii) ***Embassy Property Developments (P) Ltd. v. State of Karnataka***, (2020) 13 SCC 308
- (iii) ***Greater Noida v. Prabhjit Singh Soni***, (2024) 6 SCC 767
- (iv) ***E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd.***, (2022) 3 SCC 161
- (v) ***Tata Consultancy Services Limited v. Vishal Ghisulal Jain***, 2020 SCC OnLine SC 1254

- (vi) ***Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC)***, (2022)
2 SCC 401 : 2021 SCC OnLine SC 707
- (vii) ***Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Limited***, 2021 SCC OnLine SC 661
- (viii) ***Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.***, (2021) 10
SCC 401
- (ix) ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta***, (2021) 7 SCC 209;
2021 SCC OnLine SC 194
- (x) ***Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta***, (2020) 8 SCC 531
- (xi) ***Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh***, (2020)
11 SCC 467
- (xii) ***Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd.***, (2021) 3
SCC 475

45. We will now take into consideration the latest judgment of the Hon'ble Supreme Court of India passed in ***State Bank Of India & Ors Vs. The Consortium Of Mr. Murari Lal Jalan And Mr. Florian Fritsch & Anr in Civil Appeal Nos. 5023-5024 OF 2024 (Jet Airways case)*** and the relevant portion on commercial wisdom of CoC reads as under :-

“Para 169- A Resolution Plan evolves through these players referred to above. However, it is the “commercial wisdom of the CoC” that assumes a position of superiority and becomes binding on all the stakeholders. The NCLT, which

is the adjudicating authority and who has to approve the Resolution Plan under Section 31 of the IBC, 2016 also cannot trespass into the commercial wisdom exercised by the CoC. This decision to restrict the scope of interference on the commercial wisdom of the CoC was conscious and possibly taken bearing in mind the time delays that may arise out of a subsequent adjudication of the resolution plans approved by the CoC. Therefore, the commercial wisdom of the CoC has achieved paramount status, immune from any judicial intervention, to ensure the completion of the respective processes under the IBC, 2016 within the timelines prescribed therein.

Para 170- The position that the “commercial wisdom” of the CoC is non-justiciable and only a limited judicial review is available in this regard is well-settled through several decisions of this Court. This Court in the case of **K Shashidhar v. Indian Overseas Bank and Ors.** reported in (2019) 12 SCC 150, held that: “

“52. As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial

Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided
any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.”

Para 171- *Thus, there is no doubt that the commercial wisdom of the CoC cannot be subjected to judicial review. However, in order to foster a much more effective and time-bound decision making by the members of the CoC, in the interests of maximization of value of the assets of the Corporate Debtor, certain selfregulating guidelines were issued by the IBBI on 06.08.2024 with immediate effect...*

Para 172- *The aforesaid guidelines may go a long way in streamlining the functions of the CoC. Adding to the aforesaid guidelines, we suggest that the CoC exercise their commercial wisdom and approve/reject the Resolution Plans placed before them exhibiting fairness and with good reasons. Such a reasoned decision making on their part will only serve to further enable the other key players like the Adjudicating Authorities to understand the rationale behind their decision and to uphold the correctness of the same. Furthermore, it is also suggested*

that the Central Government or the IBBI explore the possibilities of better enforcement of the standards and practices enumerated in the guidelines through an independent mechanism under the auspices of an oversight committee instead of making them self-regulatory. This will enable the guidelines to achieve some level of practical and operational relevance and also prevent any significant lapse in decision making on the part of the CoC.”

(Emphasis Supplied)

46. This recent judgment leaves no doubt about reinforced faith in commercial wisdom of CoC and little scope of any judicial intervention.

47. We reiterate that a business decision by the majority of the CoC cannot be questionable or looked into. The judicial scrutiny, if any, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as this Appellate Tribunal is concerned.

48. In fine the appeal is found to be devoid of any merit and therefore fails and stands dismissed. No costs. IA, if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**