

Steel Strips Wheels Ltd vs Shri Avil Menezes Resolution ... on 18 April, 2022

Author: Ashok Bhushan

Bench: Ashok Bhushan

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 89 of 2022

[Arising out of Order dated 18.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court-2 in IA 43(AHM)2022 in CP(IB) No. 185 OF 2018]

In the matter of:

Steel Strips Wheels Ltd. ...Appellant
Vs.

Shri Avil Menezes, Resolution Professional of AMW
Autocomponent Ltd. & Ors. ...Respondents

For Appellant:	Mr. Krishnendu Datta, Sr. Advocate with Samir Malik, Siddharth Nigotia, Mr. Aditya Sharma, Advocates
For Respondents:	Mr. Jayant Mehta, Sr. Advocate with Mr. Bishwajit Dubey, Srideepa Bhattacharya, Aishwarya Gupta, Advocates for R-1 Ms. Prachi Johri, Mr. Dhruvad Vaghani, Naveli Reshamwalla, Ajiz M.K., Mr. Lakshya Sachdeva, Advocates for R-2. Mr. Darius Khambata, Sr. Advocate with Mr. Amit Sibal, Sr. Advocate Mr. Devang Nanavati, Sr. Advocate Mr. Deepak Sharma, Advocates for R-3

JUDGMENT

(18th April, 2022) Ashok Bhushan, J.

1. This Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code" for short) challenging the order dated 18.01.2022 passed in I.A No. 43(AHM)2022 in CP (IB) No. 185 of 2018. The Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court-2, by impugned order has allowed the I.A No. 43(AHM)2022 filed by the Respondent No.3. The Appellant- Successful Resolution Applicant has filed this Appeal challenging the impugned order. The brief facts of the case and sequence of the events necessary to be noted for deciding this Appeal

are:-

By order dated 01.09.2020, 'Corporate Insolvency Resolution Process' ("CIRP" for short) was initiated against the Corporate Debtor- 'AMW Auto Component Ltd.'. Form-G was issued on 30.11.2020. The last date for submission of the Expression of Interest was 15.12.2020. The Adjudicating Authority granted extension of 90 days' time. The Committee of Creditors (CoC) has fixed 19.04.2021 as final date of submission of the Resolution Plan.

The Appellant submitted its Resolution Plan on 24.04.2021. The Appellant was communicated by Respondent No.1 that CoC has decided to consider the Resolution Plan of the Appellant and CoC has granted one-time opportunity to all the Prospective Resolution Applicants in the final list to submit Resolution Plan or a revised Resolution Plan till 09.05.2021. Further extension of 60 days' time was allowed beyond 270 days. On 26.07.2021, the Adjudicating Authority allowed eight weeks' time to complete the CIRP. The Appellant submitted its revised Resolution Plan on 24.04.2021 with addendum of 27.08.2021. In the CoC meeting dated 21.09.2021, the Resolution Plan of the Appellant was considered and voting was conducted from 28.08.2021 till 21.09.2021. The Appellant's plan was approved by the CoC with 98.55% voting share. The Letter of Intent was issued by Respondent No.1 to the Appellant on 21.09.2021. In pursuance of which, the Appellant submitted the Bank Guarantee of Rs. 20 Crores on 23.09.2021. On 24.09.2021, the Respondent No.1 filed I.A. No. 692 of 2021 before the NCLT Company Appeal (AT) (Ins.) No.89 of 2022 seeking approval of the Resolution Plan of the Appellant. On 13.12.2021, the Respondent No.1 received the request from Respondent No.3 for submitting a joint Resolution Plan. The Respondent No.1 placed the request of Respondent No.3 before the CoC by e-mail dated 14.12.2021. The 21st meeting of the CoC held on 18.12.2021 opined that the plan of the Appellant has already been approved by the CoC and Application for approval of Plan has already been filed by the Resolution Professional before the Adjudicating Authority, therefore, a new Expression of Interest cannot be considered. The Respondent No.1 by its e-mail dated 22.12.2021 conveyed to Respondent No.3, CoC's decision taken on 18.12.2021. The Application I.A. No. 692 of 2021 for approval of the Resolution Plan came before the Adjudicating Authority on 12.01.2022. The Adjudicating Authority was informed that certain objections by Ex-Management has been filed yesterday and Learned Counsel Shri Devang Nanavati also stated that he has filed an Intervention Application in I.A. No. 692 of 2021 which is getting numbered. The Adjudicating Authority passed an order on 12.01.2022 for listing the matter on 04.03.2022. The Respondent No.3 filed an I.A. No. 43 of 2022 before the Adjudicating Authority impleading the CoC as Respondent No.1 and the Resolution Professional as Respondent No.2. In the Application, it prayed for permitting the Applicant to intervene in the I.A. No. 692 of 2021 and further to submit the Resolution Plan and that the Resolution Professional and the Committee of Creditors be directed not to consider the Resolution Plan of the Appellant which is Respondent No.3 in the I.A. The above Application I.A. No. 43 of 2022 was taken by the Adjudicating Authority on 18.01.2022 and allowed.

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2. The Appellant aggrieved by the said order has filed the present Appeal.

3. We have heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant, Shri Jayant Mehta, Learned Senior Counsel for Respondent No.1, Ms. Prachi Johri, Learned Counsel for Respondent No.2 and Shri Darius Khambata, Shri Amit Sibal, Shri Devang Nanavati, Learned Senior Counsels for Respondent No.3.

4. Shri Krishnendu Datta, Learned Senior Counsel for the Appellant submits that the Resolution Plan of the Appellant having been approved by the CoC with 98.55% voting shares pursuant to the meeting of the CoC dated 26.08.2021 and the Application for approval of the Resolution Plan having been filed and pending before the Adjudicating Authority, there was no occasion for the Adjudicating Authority to pass an order for consideration of the Resolution Plan submitted by the Respondent No.3. The period for submitting Expression of Interest and the Resolution Plan had long expired and the name of Respondent No.3 was not included in the final prospective list of the Resolution Applicants and he had no authority to submit any Expression of Interest/ Resolution Plan. The Adjudicating Authority has no jurisdiction to permit the CoC to consider the Resolution Plan of the Respondent No.3 when the Resolution Plan of the Appellant has already been approved by the CoC, which fully comply with the provisions of the Code. The order dated 18.01.2022 was passed by the Adjudicating Authority without the Appellant being given opportunity and without Appellant being made party in the Application I.A. No. 43 of 2022 filed by the Respondent No.3. The order dated 18.01.2022 indicate that neither the Resolution Professional nor CoC Company Appeal (AT) (Ins.) No.89 of 2022 was heard since notices were issued to both Resolution Professional and the CoC. The Adjudicating Authority was not made aware that Resolution Plan has already been approved by the CoC on 26.08.2021 and further with regard to request of Respondent No.3, CoC on 18.12.2021 has already declined the request of Respondent No.3. The Adjudicating Authority being not posted with the correct facts has erroneously passed the impugned order directing the CoC to consider the Resolution Plan. The timeline under the IBC cannot be breached and Respondent No.3 who was not part of the CIRP could not have been permitted to join at such late stage.

5. Learned Counsel for Respondent No.1 has filed a Reply. It is submitted by Learned Counsel for Respondent No.1 that the Resolution Plan of the Appellant stood approved by 98.55% voting shares of the CoC in the meeting dated 26.08.2021 and the Resolution Professional has already filed an Application being I.A No. 692 of 2022 for approval of the plan which was fixed for 04.03.2022. It is submitted that after receiving e-mail dated 13.12.2021 from the Respondent No.3 an e-mail dated 22.12.2021 was sent to Respondent No.3. It was communicated to Respondent No.3 that CoC has instructed the Resolution Professional to convey that the Resolution Process of the Corporate Debtor is at very advance stage and Resolution Plan has already been approved by the CoC which is pending consideration before the NCLT, hence, CoC could not be able to consider the proposal at that stage.

6. Learned Counsel for the Resolution Professional referring to reply filed by the CoC submits that now CoC has shown its willingness to consider the plan of the Respondent No.3.

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7. Learned Counsel for the CoC submits that the Respondent No.2 support the reply of the Resolution Professional dated 04.03.2022. It is further submitted that looking to the objects and reasons of the Code, the CoC in its meeting dated 05.03.2022 deliberated and decided that the Respondent No.3 may be given an opportunity to present their Resolution Plan.

8. Learned Senior Counsel appearing for the Respondent No.3 submits that the Resolution Plan submitted by the Respondent No.3 is joint Resolution Plan with regard to Corporate Debtor as well as another sister concern. It is submitted that the Appellant itself had failed to submit the Resolution Plan before the final date of submission fixed by the CoC i.e. 19.04.2021. Keeping in mind the object and purpose of the Code, in the interest of the Corporate Debtor the Respondent No.3 be permitted to submit Resolution Plan. Respondent No.3 is a leading Company in Auto Component Sector and the Resolution Plan of Respondent No.3 will not only maximise the value of the assets of the Corporate Debtor but also provide value maximisation and a timely exit to all stakeholders of the CIRP including all the employees/ ex- employees of the Corporate Debtor. It is submitted that the CoC has now expressed its opinion to consider the Resolution Plan of Respondent No.3. The commercial wisdom of the CoC is to be given due credence. The Resolution Plan of the Appellant is neither binding nor irrevocable. The Adjudicating Authority has all powers and jurisdiction to permit the CoC to consider the Resolution Plan of Respondent No.3.

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9. Learned Counsel for the parties has referred to and relied on judgments of this Tribunal and the Hon'ble Supreme Court which shall be referred to while considering the submissions in detail.

10. It is not disputed between the parties that Resolution Plan of Appellant stood approved by the CoC by majority of 98.55% voting shares. The approval of the Resolution Plan was well within CIRP period as extended by the Adjudicating Authority. It is on the record that CIRP period of the Corporate Debtor was to expire on 28.07.2021. Thereafter, eight weeks' extension was granted by the Adjudicating Authority vide order dated 26.07.2021. During the CIRP, two Resolution Plans were placed for approval before the CoC and the Resolution Plan of the Appellant received 98.55% voting shares. An Application for approval of the Resolution Plan was filed by the Resolution Professional on 24.09.2021. The Letter of Intent was issued to the Appellant on 21.09.2021. It is not the case of any of the parties that Respondent No.3 in the CIRP had given any Expression of Interest. The CIRP period as per pleadings of the Resolution Professional came to end on 26.09.2021. Application for approval of the Resolution Plan was already filed and pending consideration before the Adjudicating Authority in which Application, following order was passed on 12.01.2022:-

"IA/692(AHM)2021 Application for Approval of Resolution Plan. IA/686(AHM)2021 Application for objection to the Approval of Resolution Plan.

Company Appeal (AT) (Ins.) No.89 of 2022 Learned Sr. Counsel Mr. Sanjanwala for the ex- management states that they have filed objection yesterday.

Learned Counsel Mr. Devang Nanavati states that they have filed Intervention Application in IA 692 of 2021 which is getting numbered, further states that there was one IA 659 of 2021 pending consideration which is listed on 4th March, 2022 which will have same bearing on the Resolution Plan Application. RP may respond and file affidavit in response to the objections filed by the parties.

List the matter on 04.03.2022"

11. The Adjudicating Authority by impugned order dated 18.01.2022 in I.A No. 43 of 2022 passed following order:-

"IA 43(AHM)2022 Application filed by a proposed Resolution Applicant seeking permission to submit the resolution plan to RP to enable CoC to consider the same. Learned Counsel for the Applicant states that they have already sent the copy of plan to RP and CoC and the application was informed that CoC is of the view that it could be taken into consideration subject to the outcome of this application or directions issued by the Bench. The CoC is the final Authority as on date to decide about the discretion and decision with respect to resolution plans. If CoC finds that considering this plan may bring maximisation of value, it may take a call and decide accordingly. RP to file an affidavit to the effect of the decision taken by the CoC with respect to the present applicant.

Issue notice to RP and CoC.

Company Appeal (AT) (Ins.) No.89 of 2022 List the matter on 04.03.2022."

12. With reference to the request received by Respondent No.3, Resolution Professional has stated in its reply that after receiving the e-mail dated 13.12.2021, by e-mail dated 14.12.2021 CoC was informed and the CoC in its meeting held on 18.12.2021 expressed opinion that the new Expression of Interest cannot be considered. In this context, it is useful to refer para 14 of the Reply filed by the Resolution Professional which is to the following effect:-

"14. During the twenty-first CoC meeting held on December 18, 2021, the joint expression of interest submitted by Triton was discussed and deliberated upon by the CoC. The CoC unanimously opined that since the SSWL Plan has already been approved by the CoC and the Plan Approval Application has already been filed by the RP before the Ld. Adjudicating Authority, a new expression of interest cannot be considered at this juncture. Further, the CoC directed the RP to convey the same to Triton. The Respondent No.1 undertakes to produce a copy of the minutes of the twenty-first CoC meeting held on December 18, 2021 before this Hon'ble Appellate Tribunal, if it so desires."

13. Further for the first time, the Expression of Interest was shown by Respondent No.3 by its e-mail dated 13.12.2021 by which time entire CIRP process was complete including approval of the Resolution Plan of the Appellant which is pending consideration before the Adjudicating Authority. The e-mail dated 13.12.2021 received from Respondent No.3 was replied by the Resolution

Professional by its e-mail dated 22.12.2021. It is useful to Company Appeal (AT) (Ins.) No.89 of 2022 extract the e-mail dated 22.12.2021 sent by the Resolution Professional to the Respondent No.3 which is to the following effect:-

"Subject: RE: Submission of Joint Resolution Plan under the provisions of The Insolvency and Bankruptcy Code, 2016 for AMW Motors Limited and AMW Auto component Limited and Comprehensive resolution of AMW campus at Kannaiyabe, Bhuj, Gujarat.

Dear Sir, This is with reference to the ongoing corporate insolvency resolution process ("CIRP") of AMW Auto component Limited ('Corporate Debtor'). At the outset, we thank you for your interest to participate in the resolution process of the Corporate Debtor vide your e-mail below.

At the outset, we would like to bring to your attention that the 330 days' time period in respect of the Corporate Debtor expired on July 28, 2021. Thereafter, the 8 weeks' extension granted by the Hon'ble National Company Law Tribunal, Ahmedabad Bench ("Hon'ble NCLT") vide order dated July 26, 2021 expired on September 22, 2021. During the CIRP, 2 prospective resolution applicants had submitted resolution plans for the Corporate Debtor. The 2 resolution plans were placed for approval of the Committee of Creditors ("CoC") of the Corporate Debtor by the undersigned in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, as amended ("IBC") and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, as amended ("CIRP Regulations"). The CoC has Company Appeal (AT) (Ins.) No.89 of 2022 approved one of the resolution plans by the requisite majority and an application under Section 30(6) of the IBC has been filed by the undersigned for seeking approval of the Hon'ble NCLT. The application for approval of the resolution plan is pending before the Hon'ble NCLT.

In light of the aforesaid background, your e-mail and proposal was placed before the CoC for their consideration at the meeting of the CoC held on December 18, 2021.

After due discussions and deliberations on your proposal, the CoC members have instructed the undersigned to convey to you that the resolution process of the Corporate Debtor has is at a very advanced stage given that the resolution plan has already been approved by the CoC of the Corporate Debtor and the CoC approved resolution plan is pending before the Hon'ble NCLT for its consideration. In view of the aforesaid, the CoC of the Corporate Debtor would not be able to consider your proposal at this stage.

Please note that the CoC and the undersigned shall always act in accordance with applicable laws and regulations and any directions from the Hon'ble NCLT or any other appropriate court or tribunal."

14. The CoC in its meeting dated 18.12.2021 has clearly refused to consider the plan of Respondent No.3 after over of CIRP which fact was communicated by the Resolution Professional to the Respondent No.3. A perusal of the order of the Adjudicating Authority impugned in the present Appeal indicate that the Respondent No.3 has represented before the Adjudicating Authority that Company Appeal (AT) (Ins.) No.89 of 2022 "CoC is of the view that it could be taken into consideration subject to the outcome of this Application and directions issued by this Bench". The CoC could not as per existing law, consider the Resolution Plan of Respondent No.3 after approval of the plan of the Appellant and after over of the CIRP. The Respondent No.3 did not correctly represent the correct situation before the Adjudicating Authority which resulted in Adjudicating Authority issuing direction to take a call and decide accordingly. The order dated 18.01.2022 does not indicate any valid reason on which CoC was directed to consider the plan of the Respondent No.3 which was submitted after approval of the plan of the Appellant and after close of the CIRP. A bare perusal of the order dated 18.01.2022 indicate that it was passed without even hearing the Resolution Professional and CoC since the order itself mention "Issue notice to RP and CoC". The Adjudicating Authority ought not to have passed an order without hearing the affected parties. The order dated 18.01.2022 deserves to be set aside on this ground alone.

15. Learned Counsel for the Appellant has submitted that the finality has been attached to the Resolution Plan of the Appellant which was approved by the CoC, which finality could not have been taken away by the impugned order passed by the Adjudicating Authority. Learned Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in "Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Another- 2021 SCC OnLine SC 707". In the said judgment, the Hon'ble Supreme Court held that Resolution Plan even prior to the approval of the Adjudicating Authority is binding inter se the CoC Company Appeal (AT) (Ins.) No.89 of 2022 and the successful resolution applicant. Para 132 of the judgment is as follows:-

"132. While the above observations were made in the context of a scheme that has been sanctioned by the Court, the Resolution Plan even prior to the approval of the Adjudicating Authority is binding inter se the CoC and the successful Resolution Applicant. The Resolution Plan cannot be construed purely as a 'contract' governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the Adjudicating Authority. Even at that stage, its binding effects are produced by the IBC framework. The BLRC Report mentions that "[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors". The BLRC Report also mentions that, "the RP submits a binding agreement to the Adjudicator before the default maximum date". We have further discussed the statutory scheme of the IBC in Sections I and J of this judgement to establish that a Resolution Plan is binding inter se the CoC and the successful Resolution Applicant. Thus, the ability of the Resolution Plan to bind those who have not consented to it, by way a statutory procedure, indicates that it is not a typical contract."

16. The CoC having approved the plan of the Appellant had rightly taken a decision on 18.12.2021 to communicate the Respondent No.3 that plan of Respondent No.3 cannot be considered. In "Ebix

Singapore Private Limited" (supra), the Hon'ble Supreme Court has emphasised on the timeline. It was held that the CIRP is a time bound process with a specific aim Company Appeal (AT) (Ins.) No.89 of 2022 of maximizing the value of assets. In para 146, following observations have been made:-

"146. The CIRP is a time bound process with a specific aim of maximizing the value of assets. IBC and the regulations made under it lay down strict timelines which need to be adhered to by all the parties, at all stages of the CIRP. The CIRP is expected to be completed within 180 days under Section 12(1) of the IBC. In terms of sub-Section (2) and (3) of Section 12, an extension can be sought from the Adjudicating Authority for extending this period up to 90 days. The first proviso to Section 12(3) clarifies that such an extension can only be granted once. In *Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta*⁹³, this Court had held that the time taken in legal proceedings in relation to the CIRP must be excluded from the timeline mentioned in Section 12. Since this could (2019) 2 SCC 1, para 86 PART I extend the CIRP indefinitely, the Insolvency and Bankruptcy Code (Amendment) Act 2019, inserted a second proviso to Section 12(3) with effect from 16 August 2019 to state that the CIRP in its entirety must be mandatorily completed within 330 days from the insolvency commencement date, including the time taken in legal proceedings. A legislative amendment that takes away the basis of a judicial finding is indicative of the strong emphasis of the IBC on its timelines and its attempt to thwart the prospect of stakeholders engaging in multiple litigations, solely with the intent of causing undue delay. Delays are also a cause of concern because the liquidation value Company Appeal (AT) (Ins.) No.89 of 2022 depletes rapidly, irrespective of the imposition of a moratorium, and a delayed liquidation is harmful to the value of the Corporate Debtor, the recovery rate of the CoC and consequentially, the economy at large."

17. Further in para 249, the Hon'ble Supreme Court noticed the cause for deviation of the original objective and timeline for CIRP. It was also noticed that "late and unsolicited bids by Resolution Applicants after the original bidder becomes public upon passage of the deadline for submission of the plan' is a reason for deviation of the original objective and timeline. In para 249, following has been stated:-

"249. In its observations, the Report noted that a delay in the resolution process with more than seventy-one per cent cases pending for more than 180 days is in deviation of the original objective and timeline for CIRP that was envisaged by the IBC¹²⁹. The delays were attributable to: (i) the NCLT taking considerable time in admitting CIRPs;

(ii) late and unsolicited bids by Resolution Applicants after the original bidder becomes public upon passage of the deadline for submission of the Plan; and (iii) multiplicity of litigation and the appellate process to the NCLAT and the Supreme Court¹³⁰. Such inordinate delays cause commercial uncertainty, degradation in the value of the Corporate Debtor and makes the insolvency process inefficient and

expensive. We urge the NCLT and NCLAT to be sensitive to the effect of such delays on the insolvency resolution process Company Appeal (AT) (Ins.) No.89 of 2022 and be cognizant that adjournments hamper the efficacy of the judicial process. The NCLT and the NCLAT should endeavor, on a best effort basis, to strictly adhere to the timelines stipulated under the IBC and clear pending resolution plans forthwith.

Judicial delay was one of the major reasons for the failure of the insolvency regime that was in effect prior to the IBC. We cannot let the present insolvency regime meet the same fate."

18. In view of the law laid down by the Hon'ble Supreme Court in the above case, we are of the considered opinion that there is no valid reason given by the Adjudicating Authority for permitting the consideration of plan of Respondent No.3. The consideration of the Resolution Plan of Respondent No.3 shall be breaching both timeline as well as the finality of the Resolution Plan of the Appellant which was approved by the CoC on 26.08.2021.

19. Learned Counsel for the Appellant has also relied on the judgment of this Tribunal in "Chhatisgarh Distilleries Ltd. vs. Dushyant Dave (Resolution Professional of Anand Distilleries Pvt. Ltd.)- 2020 SCC OnLine NCLAT 1078". In the above case also, after approval of the Resolution Plan, the Application filed by Chhatisgarh Distilleries Ltd. for direction to submit its Resolution Plan which was rejected by the Adjudicating Authority. In paras 6 and 7 of the judgment, following has been noticed:-

"6. Appellant Chhatisgarh Distilleries Ltd (i.e. A-1) filed an application (MA No. 602/2019) under section 60(5) of I&B Code before Adjudicating Authority on 5.11.2018 seeking direction to submit its resolution plan for consideration of the resolution Company Appeal (AT) (Ins.) No.89 of 2022 professional and COC under Section 30(3) of I&B Code. It is stated that once the plan is submitted before the Adjudicating Authority then the CIRP period stopped running and thus the A-1's application be considered as filed within the subsistence of the CIRP period. It is also stated that the A-1 shall invest approximately Rs.52.50 crores which consists of Rs.35.60 crores towards liability of the corporate debtor and Rs.12.90 crores towards capital investment for upgradation of the plant of the corporate debtor and Rs. 4 crores towards working capital for the corporate debtor.

7. After elaborate discussions, Adjudicating Authority rejected the application on two grounds, firstly the A-1 has come after the submissions of approved resolution plan to the Adjudicating Authority and secondly the COC or RP has not sought any relief to recall the approved resolution plan and for allowing them to reconsider the approved resolution plan along with the new resolution plan offering better value. Adjudicating Authority suo moto cannot direct the COC to consider the new resolution plan and re-consider the already approved resolution plan. As the decision of the COC accepting or rejecting the resolution plan is limited to the grounds mentioned in Section 30(2) and purely commercial decision of COC cannot be adjudicated by the Adjudicating Authority. Thus Adjudicating Authority rejected the application of the

A-1, and approved the plan by the impugned order".

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20. This Tribunal after noticing the judgment of the Hon'ble Supreme Court in "Committee of Creditor of Essar Steel India Ltd. vs. Satish Gupta- 2019 SCC OnLine SC 1478" made following observations in para 17:-

"17. In the light of the above pronouncement of Hon'ble Supreme Court, we have examined the issues raised in these Appeals. Admittedly, the A-1 filed its resolution plan before the Adjudicating Authority on 13.02.2019 whereas, the last date for submission of Resolution Plan before RP was 15.10.2018. Resolution plan of successful Resolution Applicant i.e. Dera Finvest Pvt. Ltd. (R2) was approved by 98.72 % of the Committee of Creditor in e-voting conducted on 01.11.2018 and 02.11.2018. When the Resolution Plan is filed before the Adjudicating Authority then the Authority has to satisfy that the Resolution Plan approved by the Committee of Creditor fulfills the requirements as specified in Sub-Section 2 of Section 30. However, the Adjudicating Authority cannot direct the CoC to consider the second Resolution plan submitted before the Authority although the second Resolution Applicant is ready to invest more amount in comparison to first Resolution Applicant. Learned Adjudicating Authority has rightly held that Adjudicating Authority cannot suomotu direct the CoC to consider new resolution plan and reconsider already approved Resolution plan. The Hon'ble Supreme Court in the above referred judgment held that under Section 30(2) of I&B Code, decision of Committee of Creditor is purely Commercial and cannot be adjudicated by the Company Appeal (AT) (Ins.) No.89 of 2022 Adjudicating Authority. Thus, we are of the view that Adjudicating Authority is well within its jurisdiction while rejecting the application of A-1".

21. The law laid down by this Tribunal in the above case fully supports the submissions of the Counsel for the Appellant.

22. Shri Darius Khambata, Learned Senior Counsel sought to distinguish the above judgment in the facts of the present case. It is submitted that the case in "Chhatisgarh Distilleries Ltd." (supra) is a case where the Adjudicating Authority has rejected the plan whereas present is a case where the Adjudicating Authority has allowed Application and the CoC as has now been submitted before this Tribunal is willing to consider the Resolution Plan of the Respondent No.3.

23. As noted above, the CoC in its meeting dated 18.12.2021 has declined to consider the Resolution Plan which was also communicated to Respondent No.3 by Resolution Professional. During the hearing before this Tribunal, after passing of the impugned order dated 18.01.2022, the fact that the CoC is now willing to consider the plan of the Respondent No.3 does not in any manner shall take away the finality of plan of Appellant approved by the CoC.

24. Learned Counsel for the Respondent No.3 has also emphasised that the commercial wisdom of the CoC cannot be questioned by the Appellant. The present is not a case where issue of commercial wisdom of the CoC regarding approval or disapproval of the plan is under consideration. In exercise of Company Appeal (AT) (Ins.) No.89 of 2022 commercial wisdom, CoC has already approved the plan of the Appellant in its meeting dated 26.08.2021 on the basis of voting share of 98.55%.

25. Learned Counsel for the Respondent No.3 has emphasized that the plan which is being submitted by Respondent No.3 is of much higher value and is favourable to the Corporate Debtor. After approval of the Resolution Plan by the CoC by requisite vote and after expiry of CIRP, it is not open for the CoC to contend that it is ready to consider the plan of Respondent No.3 which according to it may be better plan.

26. Another judgment of this Tribunal has been relied by the Learned Counsel for the Appellant is "Kalinga Allied Industries India Pvt. Ltd. vs. Hindustan Coils Ltd.- 2021 SCC OnLine NCLAT 51" where one of the question framed was "Whether the Adjudicating Authority can direct the CoC to consider the Resolution Plan of a person who was not part of CIRP?". The said question no. (ii) is answered in paras 15, 16 & 17 in following words:-

"Issue No. 2.

15. In pursuant to the expression of interest issued by RP on 24.08.2018 the Appellant submitted a Resolution Plan. After several rounds of deliberation by the COC revised Resolution Plan was submitted by the Appellant on 19.12.2018. The same was approved on 28.12.2018 by the COC in the 13th meeting by requisite majority. Thereafter, the RP filed an Application under Section 30 (6) of the I&B Code for approval of Resolution Plan in the month of January, 2019 and sometime in the month of February, 2020 the Respondent No. 1 filed an Company Appeal (AT) (Ins.) No.89 of 2022 Application seeking direction for consideration of its Resolution Plan. Admittedly the Respondent No. 1 has not submitted any Resolution Plan pursuant to the expression of interest issued by the RP. Thus, the Respondent No. 1 is not part of CIRP. The Respondent No. 1 has filed Application directly before the Adjudicating Authority. The Adjudicating Authority in the guise of maximization of the value of assets of the Corporate Debtor directed that the Respondent No. 1's Application and Resolution Plan be put up before the COC for consideration. There is no provision in the code or regulation which provides that while exercising the power under Section 31 of the I&B Code the Adjudicating Authority can direct the COC to consider the Resolution Plan of such person who has not been part of CIRP. Otherwise also if such procedure is adopted then the CIRP will be frustrated. Once the Resolution Plan has been opened and fundamentals and financials of the Plan and offer made therein were disclosed to all the participants including RP. Then anyone can enhance its offer before the Adjudicating Authority in the guise of maximization of realisation. Therefore, no further fresh bid or offer could have been accepted or considered as held by this Appellate Tribunal in the case of Kotak Investment Advisors Ltd. (Supra) (See Para 23)

16. This Appellate Tribunal in the case of Chhatisgarh Distilleries Ltd. Vs. Dushyant Dave & Ors. Company Appeal (AT) (Ins) No. 461 of 2019 in the light of the pronouncement of Hon'ble Supreme Court in the case of Committee of Creditors Essar Company Appeal (AT) (Ins.) No.89 of 2022 Steel India Ltd. Vs. Satish Gupta & Ors. 2019 SCC Online SC1478 held that:

"In the light of the above pronouncement of Hon'ble Supreme Court, we have examined the issues raised in these Appeals. Admittedly, the A-1 filed its resolution plan before the Adjudicating Authority on 13.02.2019 whereas, the last date for submission of Resolution Plan before RP was 15.10.2018.

Resolution plan of successful Resolution Applicant i.e. Dera Finvest Pvt. Ltd. (R2) was approved by 98.72 % of the Committee of Creditor in e-voting conducted on 01.11.2018 and 02.11.2018. When the Resolution Plan is filed before the Adjudicating Authority then the Authority has to satisfy that the Resolution Plan approved by the Committee of Creditor fulfils the requirements as specified in Sub-

Section 2 of Section 30. However, the Adjudicating Authority cannot direct the CoC to consider the second Resolution plan submitted before the Authority although the second Resolution Applicant is ready to invest more amount in comparison to first Resolution Applicant. Learned Adjudicating Authority has rightly held that Adjudicating Authority cannot suomotu direct the CoC to consider new resolution plan and reconsider already approved Resolution plan. The Hon'ble Supreme Court in the above referred judgment held that under Section 30(2) of I&B Code, decision of Committee of Creditor is purely Commercial and cannot be adjudicated by the Company Appeal (AT) (Ins.) No.89 of 2022 Adjudicating Authority. Thus, we are of the view that Adjudicating Authority is well within its jurisdiction while rejecting the application of A-1."

17. With the aforesaid, we are of the considered view that Ld. Adjudicating Authority has erroneously entertained the Application and Resolution Plan of the Respondent No. 1 and directed the RP to put up the same before the COC for consideration."

27. The above judgment fully supports the submission of the Learned Counsel for the Appellant. It is also submitted by Respondent No.3 that the Resolution Plan which is submitted by the Appellant was beyond 19.04.2021 which was last date for submission fixed by CoC. The Resolution Professional in its reply has categorically stated that the plan was received on 24.04.2021. It has been stated that the CoC has extended the last date for submission of Resolution Plan from time to time. The Resolution Professional sent an e-mail on 03.05.2021 to the Appellant that CoC has decided to consider the Resolution Plan of the Appellant and further CoC has granted one-time opportunity to all Resolution Applicants in the final list to submit a Resolution Plan or a revised plan till 09.05.2021.

28. In view of the above decision of the CoC, there is no substance in the submission of the Counsel for the Respondent No.3 that plan of Appellant was also not submitted within the time fixed. We, thus, are of the view that there was no valid reason indicated in the order of the Adjudicating Authority dated 18.01.2022 for permitting the CoC to consider the Resolution Plan of the Company Appeal (AT) (Ins.) No.89 of 2022 Respondent. The impugned order dated 18.01.2022 is unsustainable and deserves to be set aside. We allow the Appeal and set aside the order dated 18.01.2022 and reject the Application I.A. No. 43 of 2022. The parties shall bear their own costs.

[Justice Ashok Bhushan] Chairperson [Dr. Alok Srivastava] Member (Technical) [Shreesha Merla] Member (Technical) New Delhi Anjali Company Appeal (AT) (Ins.) No.89 of 2022