NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 76 of 2025

[Arising out of the Impugned Order dated 27.11.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench-II in IA(Pan)/6(AHM)2024 in CP(IB)/9(AHM)2021]

In the matter of:

J.K. PAPER FIBRE RESOURCES
Through its Partner
Mr. Jitendra K. Shah
6th Floor, Elite Square
274 Perin Nariman Street,
Fort, Mumbai 400 001

...Appellant

Versus

Sunit Jagdishchandra Shah
Resolution Professional of
Shree Rajeshwaranand Paper Mills Limited.
801-802, 8th Floor, Abhijeet 1,
Nr. Milhakhali Six Roads,
Navrangpura,
Ahmedabad 380009
Gujarat

...Respondents

Present:

For Appellant : Mr. Romy Chako, Sr. Advocate with Mr. Ajay Kumar Tiwari, Advocates.

For Respondent : Ms. Honey Satpal, Mr. Yash Dhyani, Ms. Pooja Singh and Mr. Akash Agarwalla, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated

27.11.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-II) in IA No 6 of 2024 in CP(IB)/9(AHM)2021. By the impugned order, the Adjudicating Authority has approved the resolution plan of the Corporate Debtor as submitted by the Resolution Professional. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Operational Creditor.

2. The sequence of events which are necessary to be noticed for deciding the present appeal are as follows:

- On 07.12.2022, the CIRP of the Corporate Debtor was initiated and IRP was appointed.
- The IRP constituted the CoC comprising of two Secured Financial Creditors and two Unsecured Financial Creditors. The first CoC meeting was held on 13.01.2023.
- On 10.03.2023, the Form-G was published by the IRP inviting EOIs.
- On 05.06.2023, the CIRP period of 180 days had expired. The Resolution Professional (**"RP"** in short) filed an application before the Adjudicating Authority for extension of CIRP period for 90 days which was allowed on 19.06.2023.
- In the 14th CoC meeting held on 29.08.2023, the CoC resolved to extend the CIRP period beyond 270 days. This was allowed by the Adjudicating Authority on 06.10.2023.

- On 19.10.2023, the 17th CoC meeting directed the RP to file application for extension of CIRP period as it wanted to discuss the resolution plan submitted by Mercury Terra Firma.
- On 30.12.2023, the Adjudicating Authority allowed extension of CIRP period upto 10.12.2023, while also directing the RP to expedite the CIRP process.
- The 19th CoC meeting held on 01.11.2023 decided to reissue Form-G. Accordingly, the RP republished Form-G on 03.11.2023.
- The CoC considered the EOIs received in the 21st and 22nd CoC meetings. Since the 23rd CoC meeting held on 04.12.2023 was still considering the resolution plans and needed further time for consideration and the CIRP period was expiring on 10.12.2023, the RP moved the Adjudicating Authority for seeking further extension of CIRP for a period of 60 days.
- Extension of CIRP period upto 20.02.2024 was allowed on 08.01.2024 by the Adjudicating Authority.
- On 29.01.2024 the CoC approved the resolution plan submitted by Mercury Terra Firma which was approved with 97.36% voting.
- The Adjudicating Authority passed the impugned order on 27.11.2024 approving the resolution plan.
- Aggrieved by the impugned order approving the resolution plan, the present appeal has been preferred by the Appellant- Operational Creditor.

3. Making his submissions, the Ld. Counsel for the Appellant submitted that the Adjudicating Authority approved the resolution plan in violation of Section 12 of the IBC by allowing repeated extensions of CIRP even beyond 330 days. Extension had been allowed beyond the period of 330 days without adequate justification. It was submitted that the Hon'ble Supreme Court in its judgment in ***Committee of Creditors of Essar Steel India Vs Satish Kumar Gupta*** in ***Civil Appeal No. 8766-67 of 2019*** clearly provided that the resolution process was required to be completed within the outer limit of 330 days from insolvency commencement date including extensions. Highlighting other procedural and material irregularities, it was submitted that the RP had re-published the Form-G on 03.11.2023 only in the newspapers and not on the website of IBBI or the Corporate Debtor which amounted to non-compliance of Regulation 36-A(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"CIRP Regulations**" in short). It is also contended that the RP did not circulate the valuation report of the Corporate Debtor either to the Appellant or to other members of the CoC but only furnished bare figures of fair value and liquidation value. In the absence of valid and detailed valuation reports, the CoC would have been handicapped to exercise its commercial wisdom judiciously. However, the Adjudicating Authority has overlooked these procedural irregularities in approving the resolution plan.

4. It was also pointed out that the RP had admitted Rs 7,40,60,531/- as against Rs 7,61,15,758/- claimed by the Appellant and that the aggregate admitted claim of all Operational Creditors put together worked out to Rs

18,34,60,969/-. However, as against a composite claim of Rs 18.34 Cr. of the Operational Creditors, the Successful Resolution Applicant has offered only Rs 60 lakhs for payment to Operational Creditors which was shockingly low. The resolution plan therefore prejudiced the interests of Operational Creditors and amounted to non-compliance with Section 30(2)(b) of IBC.

5. Refuting the contentions raised by the Appellant, the Ld. Counsel for the Respondent submitted that the resolution plan could have been challenged only on the grounds laid down under Section 61(3) of the IBC but no such grounds have been substantiated by the Appellant in the present appeal. On the contention that the RP had only shared naked figures of fair value and liquidation value instead of providing the detailed valuation report, it was submitted that the 17th CoC meeting had after due deliberations recorded the reasons for not sharing the full valuation report with the Appellant. In any case, the Appellant being an Operational Creditor having no voting rights it was of no consequence whether the detailed valuation report was placed before them or not since it was the members of the CoC who were required to exercise their commercial wisdom on the valuation reports placed before them. Moreover, the Appellant had participated in the CoC meetings but not having raised any objections earlier on this count cannot do so now.

6. It was also contended that in terms of the judgment of the Hon'ble Supreme Court in ***Essar Steel supra,*** the Adjudicating Authority was empowered to complete the resolution process by extending the 330 day time-line. It was submitted by the Respondent that the Adjudicating Authority had also rejected objections taken by the Suspended Management against

extension of time-lines. It was contended that the Appellant has failed to explain how it was aggrieved by the resolution plan which had been approved by the Adjudicating Authority after allowing extended time-lines. The Appellant had been a regular participant in the CoC meetings but never opposed the extension of CIRP time-lines. Not having raised such objections earlier, the Respondent cannot raise this issue at this belated stage. It was also pointed out that the Respondent cannot complain about the treatment meted out to the Operational Creditors in the resolution plan since they had received more than the minimum entitlement in terms of liquidation value which was kept at Nil for Operational Creditors. It was also pointed out that when the resolution plan had been approved by the CoC with 97.36% voting, the Adjudicating Authority had no option to traverse beyond the commercial wisdom of the CoC. In any case, it was vehemently contended that the resolution plan already stands implemented and therefore cannot be reversed when the Appellant has failed to make out any ground as to how the resolution plan was non-compliant of Section 30(2) of IBC.

7. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

8. The short point for our consideration is whether there were material irregularities in the exercise of powers by the RP in the CIRP proceedings; whether the claims of the Operational Creditors did not receive their dues or whether there was any contravention of the provisions of law.

9. Coming to the contentions raised by the Appellant with regard to material and procedural irregularities, we find that the Appellant has assailed the impugned order approving the resolution plan on the ground that the plan was approved by the Adjudicating Authority after expiry of 330 days of CIRP period at a time when this outer time-line could not have been breached in terms of the ***Essar judgment***.

10. There is no doubt that in terms of Section 24(3)(c) of the IBC, it is the duty of the RP to give notice to the Operational Creditors or their representatives regarding the CoC meetings if the amount of their aggregate due is not less than 10% of the debt. It is also well settled that such Operational Creditors whose aggregate due is not less than 10% of the debt have a right to watch the proceedings of the CoC and express their views in the meetings without however any right to vote. In the present case, there is no denial of the fact that the Appellant received notice of the CoC meetings from the RP. As the Appellant was kept informed of the CoC meetings and records show their regular participation in such meetings, they had full knowledge of the CIRP proceedings. They were therefore equally aware of the extensions of CIRP time-lines approved by the CoC but these extensions by the CoC were not questioned by them at the appropriate time. The issue was neither agitated before the Adjudicating Authority at the right point of time and is now being raked up belatedly.

11. Further when we look at the material on record, it is an undisputed fact that the resolution plan in the present case was approved by the Adjudicating Authority beyond 330 days. Be that as it may, we also notice that the

Adjudicating Authority had already approved the extension of CIRP period on 08.01.2024 which date was before 29.01.2024 when the plan was approved. In the present case, the 23rd CoC meeting on 04.12.2023 had taken note of the fact that it was in an advanced stage of considering the resolution plans before it and since the extended CIRP period was getting expired on 10.12.2023, the CoC approved seeking further extension of CIRP period. Clearly enough, CoC having taken a considered decision in this regard, this constituted sufficient grounds for the Adjudicating Authority to extend further time beyond 330 days for completion of the CIRP process. The ***Essar judgment*** supra which has been relied upon by the Appellant does not come to their rescue since this judgment does not completely rule out the possibility of CIRP extension beyond 330 days particularly so when a short period is left for completion of CIRP.

12. In such circumstances, we are not persuaded to accept the contention of the Appellant that the resolution plan could not have been approved by the Adjudicating Authority since the CIRP timeline had stood exhausted.

13. Yet another perceived irregularity contended by the Appellant is that though Regulation 35(2) of the CIRP Regulations makes it incumbent on the part of the RP to provide fair value, liquidation value and valuation report to every member of the CoC, the same was not done.

14. To appreciate the above allegation better, we need to look at the minutes of the 17thCoC meeting wherein this issue was discussed in details which is as extracted hereunder:

> ***"Agenda 7) Any other matters relevant to the present case subject to approval of Chairman.***

One of the CoC members i.e. Riddhi Siddhi GlucoBiols Limited represented by their authorised representative required and insisted the RP to provide them the Valuation Reports of the Corporate Debtor to share ahead with prospective buyers.

The RP informed that he can only share the Fair Value & Liquidation Value of the Corporate Debtor. The RP drew their attention to the regulations of the IBC, 2016 that as per the Regulation 35(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is quoted below:

> *"After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair values and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue lass to itself or any other person and comply with the requirements under sub-section (2) of section 29"*

The RP even informed the CoC members that such liquidation value and fair value were already sent and shared with all the CoC members. He further informed that CoC members also cannot share the values with anyone as they have provided the undertaking as per the Regulation 35(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Section 29 of the Insolvency & Bankruptcy Code, 2016."

15. When we look at the above 17th CoC meeting proceedings, we find that the issue of sharing of the detailed valuation report had been raised therein by one of the CoC members - Riddhi Siddhi GlucoBiols Limited. We find that the CoC had considered this issue in the meeting and minuted the reasons for only sharing the bare figures of the fair value and liquidation value of the Corporate Debtor. Besides the fact that this matter was duly

considered, deliberated and decided upon by the CoC in its commercial wisdom, it is also pertinent to note that since the Operational Creditor had no right to vote in the meeting of the CoC, they cannot be said to have suffered from any prejudice for not being provided with the valuation report. Whether the detailed valuation report was placed before the Appellant or not was immaterial since it was the members of the CoC who were required to exercise the commercial wisdom on the valuation reports placed before them and not the Appellant who did not have the right to exercise their vote. The bogey of non-sharing of the detailed valuation report as a ground evidencing material or procedural irregularity therefore lacks force.

16. Even the ground raised by the Appellant that Form-G had not been published on the websites of the Corporate Debtor and IBBI lacks force of contention since this is again another much belated complaint. It does not lie in their mouth to agitate this matter now when they had slept over this issue all along when the EoIs were received. Further, non-publication of Form-G has a bearing on the interests of the potential resolution applicants who have not raised any such complaint. The Appellant in their capacity as Operational Creditor cannot rightfully claim that their interests were prejudicially affected on this count. Moreover, it is ironical that on the one hand the Appellant has been expressing concern over CIRP timelines having been crossed and yet a belated complaint is being thrown up pushing the plan approval process into disarray.

17. Yet another contention of the Appellant was that the plan was wrongly approved by the Adjudicating Authority without the plan conforming to the

statutory provision as contained in Section 30(2)(b) of the IBC. This argument was premised on the ground that the Appellant as Operational Creditor had not been allocated amount as per their entitlement under Section 30(2)(b) of IBC.

18. To decide on the tenability of the above argument, we may first notice the provisions contained in Section 30(2)(b) of the IBC which reads as follows:

> ***Section 30: Submission of resolution plan.***
>
> ***30.*** *(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*
>
> *(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*
>
> *(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*
>
> *(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
>
> *(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section(1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*
>
> *Explanation 1.-For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

19. From a plain reading of the above statutory provision, the entitlement of an Operational Creditor is to receive the amount as provided under Section 30(2)(b) of IBC which is not less than the amount which the Appellant would

have been entitled to receive in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC. When we see the material on record, we find that the fair value of the Corporate Debtor was Rs 45.85 Cr and the liquidation value was Rs 33.16 Cr with no amount specified for Operational Creditors. On the other hand, when we see the plan features at para 15 of the impugned order, the plan provides for Rs. 60 lakhs for Operational Creditors which sum was clearly more than the liquidation value which was their minimum entitlement. That being so, the resolution plan cannot be said to be in dissonance with the provisions of Section 30(2)(b) of IBC.

20. Furthermore, the resolution plan having been approved by more than 66% of vote share by the CoC, such plan cannot be interfered with by the Adjudicating Authority merely on the grounds that the Operational Creditors were being paid Rs 60 lakhs at a time when no amount has been specified for Operational Creditors in terms of liquidation value. We are of therefore of the considered view that since the liquidation value in the present case is nil, the Operational Creditors including the Appellant cannot have any grievance against the amount being paid to them since the amount paid under the plan to the Operational Creditors is clearly more than the liquidation value.

21. The resolution plan has been approved with a majority of 97.36% of vote share. The plan having been approved by majority of votes, the Operational Creditor is clearly bound by the approved resolution plan. We therefore are of the considered view that the Adjudicating Authority did not commit any error while approving the resolution plan after noting its satisfaction at para 26 of

the impugned order about the plan being in compliance of the provisions of the IBC in terms of Section 30(2) of the IBC.

22. It may be useful to notice that Section 30 of the IBC which deals with submission of Resolution Plan and sub-section (6) thereto states that "the resolution professional shall submit the Resolution Plan as approved by the Committee of Creditors to the Adjudicating Authority". In the present case, the RP after approval of the plan by the CoC with 97.36% vote share filed an application before the Adjudicating Authority seeking approval of the Resolution Plan under Section 31 of the Code. Section 31 deals with approval of Resolution Plan. Section 31(1) provides that if the Adjudicating Authority is satisfied that the Resolution Plan as approved by the CoC under Section 30(4) meets the requirements as referred to in Section 30(2), it shall by order approve the resolution plan which shall be binding on the Corporate Debtor and other stakeholders involved in the Resolution Plan. It is also pertinent to note that the Adjudicating Authority has noted at para 20 of the impugned order that the CoC has satisfied itself that the resolution plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. That the CoC also expressed its satisfaction that the plan was in accordance with Section 30 of the IBC and compliant with CIRP Regulations 38 has been noticed at para 18 of the impugned order. Furthermore, the Adjudicating Authority has noticed at para 26 of the impugned order that the plan was in accordance with Sections 30 and 31 of the IBC and complies with Regulations 38 and 39 of CIRP Regulations.

23. Law is now well settled that the jurisdiction of the Adjudicating and Appellate Authorities to interfere with approval of the resolution plan is limited. The scope of judicial review is confined to the provisions contained in Section 30(2) of the IBC for the Adjudicating Authority and Section 30(2) read with Section 61(3) for the Appellate Authority. There is only limited review which can be exercised by the Adjudicating Authority or the Appellate Authority. There can be no fetters on the commercial wisdom of CoC. The supremacy of commercial wisdom of CoC has been reaffirmed time and again by the Hon'ble Supreme Court in a catena of judgements - ***K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150 ; Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531; Maharashtra Seamless Limited v. Padmanabhan Venkatesh (2020) 11 SCC 467; Kalpraj Dharamshi v. Kotak Investment Advisors Limited, (2021) 10 SCC 401 and Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director (2021) 9 SCC 657.***

24. So long the statutory provisions of the IBC and the CIRP Regulations framed thereunder are complied with, it is the commercial wisdom of the requisite majority of the CoC which is to negotiate and accept a resolution plan. Once all the mandatory requirements have been duly complied with and taken care of, judicial review cannot be extended to analyse and look into the dissatisfaction evinced by any particular creditor or stakeholder. The Adjudicating Authority cannot substitute its views with the commercial wisdom of the CoC nor deal with the merits of Resolution Plan unless it is

found it to be contrary to the express provisions of law and against the public interest. There is neither any material irregularity nor contravention of any provisions of law by the CoC which has been justifiably substantiated by the Appellant. In the present case when no valid grounds have been made out to challenge the approval of the resolution plan, the legislative fiat of the IBC that the Adjudicating Authority cannot trespass upon the business decision of the CoC holds ground. We have no doubts in our mind that the plan has been rightly approved by the Adjudicating Authority.

25. In result, we do not find any good ground to interfere with the impugned order approving the resolution plan. There is no merit in the appeal. The Appeal is dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 05.03.2025

Abdul/Harleen