NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 62 of 2025
& I.A. No. 245 of 2025

[Arising out of Order dated 19.11.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Court-I in IA No.26 of 2024 in C.P.(IB) No.211/CDH/HRY/2019]

IN THE MATTER OF:

State Bank of India **...Appellant**

Versus

Santoshi Hyvolt Electricals Pvt. Ltd. & Ors. **...Respondents**

Present:

For Appellant:	**Mr. P. Nagesh Sr. Advocate with Mr. Siddharth Sangal, Mr. Akshay Sharma and Mr. Harshita Agrawal, Advocates.**
For Respondents:	**Mr. Aalok Jagga, Mr. Yogesh Mittal and Ms. Mahima Ashikai, Advocates for SRA. PCS G.S. Sarin, (PCS).** **Mr. Harshit Khare, Mr. Prafful Saini and RP Ms. Ritu Rastogi Advocates for RP.**

J U D G M E N T
(17th March, 2025)

Ashok Bhushan, J.

This Appeal by a financial creditor of the corporate debtor- Eon Electric Limited has been filed challenging the order of the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench (Court-I), Chandigarh in IA No.26 of 2024. Adjudicating Authority by the impugned order has rejected IA No.26 of 2024 filed by the Appellant, aggrieved by which order this appeal has been filed.

2. Brief facts necessary to be noticed for deciding the Appeal are:-

2.1. The Adjudicating Authority vide its order dated 13.10.2020 admitted Section 9 application against the corporate debtor and Ms. Ritu Rastogi, Respondent No.2 was appointed as the Resolution Professional. Resolution Plans were invited in the CIRP process. In the 16th CoC meeting held on 11.08.2022 by vote share of 99.26%, CoC approved the Resolution Plan submitted by Santoshi Hyvolt Electricals Pvt. Ltd. (SRA). Voting was concluded on 15.09.2022 on which date result was declared by the Resolution Professional. On 01.10.2022, Resolution Professional filed an IA No.1629 of 2022 before the NCLT seeking approval of the Resolution Plan. EESL to whom the bank guarantees was given by the corporate debtor invoked the bank guarantees on 08.02.2023, 12.07.2023 and 19.09.2023 to the extent of Rs.15.84 Crores. The Resolution Professional convened a meeting. In the 19th CoC meeting held on 25.07.2023, CoC deliberated on the increased CIRP costs and authorised the Resolution Professional to arrange a meeting with the SRA on the issue. 20th CoC meeting held on 18.11.2023 on which the financial creditor deliberated upon the increased CIRP costs and non-feasibility and un-viability of the plan. In the 20th CoC meeting, Resolution Professional informed in the said meeting that Resolution Professional has filed IA No.2660 of 2023 dated 09.10.2023 before the NCLT for remitting the Resolution Plan back to the CoC. CoC decided that Resolution Professional will take action subject to appropriate direction from the NCLT. After 20th CoC meeting held on 18.11.2023, State Bank of India, a financial creditor of the corporate debtor filed an IA No.26 of 2024. The application was opposed by the SRA. Resolution Professional also filed a reply to the application. The Adjudicating Authority heard the parties on IA No.26 of 2024 and framed the question "whether the CoC can request to remit back the Resolution Plan pending before the Adjudicating Authority for approval". The Adjudicating Authority after considering the submissions of the parties and reference to various judgments relied by both the parties came to the conclusion that the CoC meeting held on 18.11.2023 cannot decide the matters to remit back the Resolution Plan and the CoC, after submission of the Resolution Plan to the Adjudicating Authority, cannot request for remitting it back. Application IA No.26 of 2024 was held to be not maintainable in the eyes of law. The Adjudicating Authority rejected the said application by order dated 19.11.2024 aggrieved by which order, the State Bank of India, the financial creditor of the corporate debtor has come up in this appeal.

3. We have heard Shri P. Nagesh, Learned Senior Counsel appearing for the Appellant, Shri Aalok Jagga, Learned Counsel for the SRA and Shri Harshit Khare, Learned Counsel for the Respondent No.2.

4. Counsel for the Appellant in support of the Appeal submits that the value of the Resolution Plan was Rs.21.15 Crores. Resolution Plan also contemplated that the SRA shall give the counter bank guarantee on all performance guarantees issued by the SBI/ RBL which has not expired on effective date. It is submitted that although plan approval application filed

on 01.10.2022, EESL has invoked the bank guarantees on 08.02.2023, 12.07.2023 and 19.09.2023 and by invocation of bank guarantees of Rs.14.38 Crores, the CIRP costs has increased upto Rs.23 Crores. The financial creditor has PF dues of Rs.96,80,894/- and gratuity dues of Rs.1,99,386/- were paid in full. An additional requirement of Rs.2.21 Crores has been added by the Resolution Professional in the CIRP costs. Resolution Professional has informed the financial creditor that CIRP costs in relation to running and managing the affairs of the corporate debtor from insolvency commencement date till November, 2023 has reached Rs.4.37 Crores. It is submitted that the SRA is to bear the CIRP costs only up to the extent of Rs.2 Crores and CIRP costs beyond Rs.2 Crores have to be borne by the financial creditor. The consequence is that the financial creditor will be left nothing in the resolution plan. It is contended that the resolution plan has become un-implementable and unviable due to subsequent event. Hence, the application was filed by the State Bank of India which has 86% vote share for remitting the plan for fresh consideration. It is further submitted that in any view of the matter, the plan approval application being IA No.1629 of 2022 being pending, Adjudicating Authority ought to have considered the plan approval application along with IA No.26 of 2024. It is submitted that the liberty may be given by this Tribunal to the appellant to raise the issue regarding un-implementability and un-viability of the plan when resolution plan comes for consideration.

5. Counsel for the SRA refuting the submission of the counsel for the appellant contends that the bank guarantees having been given by the

corporate debtor to the EESL was well known fact and all the parties were aware that EESL can invoke the bank guarantees and liability of the SRA to give counter bank guarantee was only to those bank guarantees who were current on the effective date. It is submitted that the CoC having approved the Resolution Plan with 99.26% vote shares was well aware of all the facts including the issuance of bank guarantees by the corporate debtor to the EESL when the CoC has approved the resolution plan. It is clearly bound by the said approval and cannot ask the Adjudicating Authority to remit the plan for reconsideration. It is submitted that the basis of filing IA No.26 of 2024 was 20th CoC meeting held on 18.11.2023. It is submitted that by virtue of Regulation 18 (2) of the CIRP Regulations 2016 as amended w.e.f 16.09.2022, no CoC meeting can be convened which may have effect on the Resolution Plan. It is submitted that the Resolution taken by the CoC meeting held on 18.11.2023 is not in accordance with law. Adjudicating Authority has rightly taken notice of the Regulation 18. It is submitted that similar issues were raised by the suspended director whose application was rejected by the impugned order and Company Appeal (AT) (Ins.) No.2312 of 2024 filed by the suspended director has also been rejected.

6. We have considered the submission of the Counsel for the parties and perused the record.

7. There is no dispute between the parties that the Resolution Plan came to be considered in the 16th CoC meeting held on 11.08.2022 in which by vote share of 99.26%, the plan was approved and IA No.1629 of 2022 was

filed by the Resolution Plan on 01.10.2022 praying for approval of the Resolution Plan.

8. IA No.26 of 2024 was filed on 01.12.2023 by the State Bank of India and in the application, State Bank of India after giving all details and subsequent invocation of the bank guarantees by EESL prayed for following reliefs:-

> *"a) Allow the present application to remit back to CoC for further review/issue a fresh Form G according to the provisions of the IBC, 2016 and to give equal opportunity to the all the stake holders and to maximize the value of the assets of the corporate debtor and declare the resolution plan as submitted by M/S Santoshi Hyvolt Electricals Private Limited as not feasible and viable in view of changed circumstances*
>
> *b) To extend the CIRP period for 60 days to conclude the CIRP process of the corporate debtor by allowing the republication of Form G.*
>
> *c) Pass such other or further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of present case."*

9. Prayer of the Appellant- State Bank of India in the application was to remit back to CoC for further review/ issue a fresh Form G according to the provisions of the IBC. The Adjudicating Authority in paragraph 18 of the order noticed the moot point for consideration in following words:-

> *"18. The first moot point for consideration before us is "Whether the CoC can request to remit back the resolution plan pending before the Adjudicating Authority for approval."*

10. Counsel for the Respondent has relied on the judgment of the Hon'ble Supreme Court in ***"Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Limited and Anr.- (2022) 2 SCC 401"*** where the Hon'ble Supreme Court has held that the Resolution Plan after being approved by the CoC is *inter se* binding between the CoC and the SRA. The Hon'ble Supreme Court in paragraph 115 has held that the Resolution Plan is binding *inter se* CoC and the SRA. Paragraph 115 is as follows:-

> *"**115.** 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 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" [3.3.1, The Report of the Bankruptcy Law Reforms Committee, Vol. I : Rationale and Design (November 2015), p. 13, available at*

<https://ibbi.gov.in/BLRCReportVol1_04112015.pdf> last accessed 20-8-2021.] . The BLRC Report also mentions that, "the RP submits a binding agreement to the adjudicator before the default maximum date" [Id, p. 92.] . We have further discussed the statutory scheme of IBC in Sections I and J of this judgment 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 of a statutory procedure, indicates that it is not a typical contract."

11. The Adjudicating Authority after considering the issue as noticed in paragraph 18 has come to the conclusion which is recorded in paragraph 18(xii) which is as follows:-

"(xii) In view of the above discussions, we are of the considered view that the CoC meeting held on 18.11.2023 cannot decide the matters to remit back the resolution plan and the CoC, after submission of the resolution plan to the Adjudicating Authority, cannot request for remitting it back. Thus, I.A. 26/2024 and 471/2024 are not maintainable in the eyes of law."

12. One more issue with regard to Regulation 18(2) of the CIRP Regulations as amended w.e.f. 16.09.2022 needs to be noticed. Regulation 18 deals with the "meetings of the committee". The *explanation* was inserted w.e.f. 16.09.2022. Regulation 18 as amended is as follows:-

*"**18. Meetings of the committee.** (1) A resolution professional shall convene a meeting of the committee before lapse of thirty days from the last meeting:*

Provided that the committee may decide to extend the interval between such meetings subject to the condition that there shall be at least one meeting in each quarter.]

(2) A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights.

[Explanation: For the purposes of sub- regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority.]

(3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights.]

[(4) Where the corporate debtor has any real estate project, the committee may direct the resolution professional to invite the 'competent authority' as defined in clause (p) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) related to such project to attend such meeting(s) of the committee, as the committee may decide, without

> *voting rights, for providing inputs on matters associated with the development of such project.]"*

13. The *explanation* was added and it is clarified that the meeting of the CoC convened till the resolution plan is approved under Section 31(1) or order of liquidation is passed under Section 33 and decide on matters ***which do not affect the resolution plan submitted before the Adjudicating Authority***. Counsel for the Appellant had submitted that the Regulation was introduced on 16.09.2022 whereas plan was approved by the CoC in the meeting held on 11.08.2022, hence, the amended Regulation is not applicable. Amended Regulation came w.e.f. 16.09.2022, hence, accepting the regulation to be prospective only any CoC meeting which is convened after 16.09.2022 has to in accordance with *explanation* added in the Regulation. Thus, no decision could have been taken by the CoC in any CoC meeting held subsequent to submission of the application for approval before the Adjudicating Authority which may affect the resolution plan submitted. We, thus, are of the clear view that in any meeting held by the CoC after submission of the application before the Adjudicating Authority there can be no decision which may affect the resolution plan.

14. In any view of the matter, the conclusion was drawn by the Adjudicating Authority in paragraph 18 (xii), the CoC cannot decide the matter to remit back the Resolution Plan. In the application IA No.26 of 2024 which was filed, specific prayer was made by the State Bank of India for remitting the resolution plan back to the CoC which prayer could not have been accepted in view of the law laid down by the Hon'ble Supreme

Court in ***"Ebix Singapore Pvt. Ltd."*** (supra) as well as recent judgment of the Hon'ble Supreme Court in ***"State Bank of India and Ors. vs. Consortium of Murari Lal Jalan and Florian Fritsch and Anr.- 2024 SCC OnLine SC 3187"***. In paragraph 116 of the judgment (***"State Bank of India and Ors. vs. Consortium of Murari Lal Jalan and Florian Fritsch and Anr."***), following was held:-

> *"**116.** In light of the aforesaid, it is clear that the existing insolvency framework does not provide any scope for effecting further modifications or withdrawals of the resolution plan approved by the committee of creditors, at the behest of the successful resolution applicant, once the plan has been submitted to the Adjudicating Authority. The submitted resolution plan is binding and irrevocable as between the committee of creditors and the successful resolution applicant in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 and the 2016 Regulations as well. In other words, once a committee of creditors-approved resolution plan is submitted to the Adjudicating Authority, i.e., the National Company Law Tribunal, it immediately becomes binding on the committee of creditors and the successful resolution applicant, even if the Adjudicating Authority has not yet given its stamp of approval on the same. While deciding so, this court re-emphasized the object under section 31(1) of the Insolvency and Bankruptcy Code, 2016 and observed that once the Adjudicating Authority has approved the plan under section 31(1) of the Insolvency and Bankruptcy Code, 2016, the resolution plan is binding on all the stakeholders*

including those stakeholders who are not direct participants of the corporate insolvency resolution process. Therefore, there is absolutely no scope for modification of the terms of a resolution plan which has received the imprimatur of the Adjudicating Authority, be it by the Adjudicating Authority itself, the committee of creditors or the successful resolution applicant."

15. We, thus, do not find any error in the order of the Adjudicating Authority rejecting IA No.26 of 2024.

16. Now we come to the submission of the Appellant that the Adjudicating Authority ought to have considered the IA No.26 of 2024 along with the IA No.1629 of 2022 which is pending consideration. We are of the view that the parties having advanced submission on the application IA No.26 of 2024 and other applications which were pending consideration i.e. 471 of 2024 and 434 of 2023, we see no reason to take any exception to the order of the Adjudicating Authority deciding those applications. The submission which has been pressed by the Appellant is that the plan has become unviable and un-implementable in view of the subsequent events. With regard to the bank guarantees, the resolution plan contains the relevant clause 10 in Chapter IV. Section 31(1) provides as follows:-

*"**31. Approval of resolution plan. -** (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of*

section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]"

17. The proviso to Section 31(1) clearly cast a duty on the Adjudicating Authority to satisfy itself that the Resolution Plan has provision for its effective implementation and it satisfy other requirements as contained in sub-section (2) of Section 30. The plan approval application is admittedly pending consideration. We have no doubt in our mind that the Adjudicating Authority while considering plan approval application shall bestow its consideration on proviso to sub-section (1) of Section 31 which required to be looked into while approving the resolution plan. When the statutory scheme itself provides that the Adjudicating Authority shall satisfy that the Resolution Plan has provision for its effective implementation, no liberty is required to be given to the appellant separately. All issues which are required to be considered under the statute can be pressed before the Adjudicating Authority when plan approval application comes into consideration. We only observe that it shall be open for the appellant who

are the financial creditors to make a submission at the time when plan approval application is heard that statutory requirements as contained in sub-section (1) of Section 31 and sub-section (2) of Section 30 are not met. Application IA No.26 of 2024 has been held as not maintainable in which we do not find any infirmity.

18. In result of foregoing discussions, we uphold the impugned order dated 19.11.2024 rejecting IA No.26 of 2024. We however, observe that the rejection of the IA No.26 of 2024 as not maintainable shall not preclude the appellant from raising arguments when the plan approval comes for consideration with respect to statutory requirement as provided under sub-section (1) of Section 31 proviso and sub-section (2) of Section 30.

19. Subject to above observations, we dismiss the appeal.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali