

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1950 of 2024

[Arising out of the Order dated 27.09.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench, Court-1), in IA(Plan)/33(AHM)/2024 in CP(IB)/561(AHM)/2018]

IN THE MATTER OF:

LORENZO VITRIFIED TILES PRIVATE LIMITED

Having its registered office at:
8-A, National Highway, Opp.
Omkar Petroluem,
Post Box No. 411, Lalpur,
Morbi – 363642

...Appellant

Versus

1. COMMITTEE OF CREDITORS OF VRUNDAVAN CERAMIC PRIVATE LIMITED

Through sole financial creditor
State Bank of India
Stressed Assets Management Branch,
2nd Floor, "Paramsiddhi Complex"
Opp. V.S. Hospital, Ellisbridge,
Ahmedabad – 380006.

..Respondent No.1

2. VRUNDAVAN CERAMIC PRIVATE LIMITED

Having its address at:
Survey No. 143/2,
8-A, National Highway,
B/h. Gangotri Glazed Tiles,
Village: Dhuva, Ta: Vankaner,
District : Morbi, Gujarat – 363622

..Respondent No.2

3. SHRI ARVIND GAUDANA ERSTWHILE RESOLUTION PROFESSIONAL OF VRUNDAVAN CERAMIC PRIVATE LIMITED

Having its address at:
307, Ashirwad Paras,
Nr. Prahladnagar Garden,
Corporate Road, Prahladnagar,
Satellite, Ahmedabad – 380015

..Respondent No.3

**4. M/S RRR INSOLVENCY SERVICE
EXPERTS LLP LIQUIDATOR OF
VRUNDAVAN CERAMIC PRIVATE
LIMITED**

Having its address at:
C-10, Lower Ground Floor,
Lajpat Nagar-III Delhi – 110024

..Respondent No.4

Present:

For Appellant : Mr. Arjun Sheth, Mr. Shubhanshu Tiwari, Ms. Somya Jain, Advocates.

For Respondent : Mr. PBA Srinivasan, Ms. Barnali Paul, Mr. Manish Kumar, Advocates for Respondent No. 5/Intervener.
Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Agrawal, Advocates for SBI.
Ms. Eshna Kumar, Ms. Astha Agrawal, Advocates for R-3. Ms. Aditi Sharma, Advocate for R-4.

With
Company Appeal (AT) (Ins) No. 1952 of 2024

[Arising out of the Order dated 27.09.2024, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Ahmedabad Bench), in IA(Plan)/33(AHM)2024 in CP(IB) 561 of 2018]

IN THE MATTER OF:

**1. SHRI ARVIND GAUDANA ERSTWHILE
RESOLUTION PROFESSIONAL OF
VRUNDAVAN CERAMIC PRIVATE
LIMITED** Having its address at:
307, Ashirwad Paras,
Nr. Prahladnagar Garden,
Corporate Road, Prahladnagar,
Satellite, Ahmedabad – 380015
arvindg_cs@yahoo.com

...Appellant

Versus

**1. COMMITTEE OF CREDITORS OF
VRUNDAVAN CERAMIC PRIVATE
LIMITED**
Through sole financial creditor
State Bank of India
Stressed Assets Management Branch,
2nd Floor, “Paramsiddhi Complex”
Opp. V.S. Hospital, Ellisbridge,
Ahmedabad – 380006.

..Respondent No.1

- team5sanb.ahm@sbi.co.in
2. **VRUNDAVAN CERAMIC PRIVATE LIMITED**

Having its address at:
Survey No. 143/2,
8-A, National Highway,
B/h. Gangotri Glazed Tiles,
Village: Dhuva, Ta: Vankaner,
District: Morbi,
Gujarat – 363622

vrundavanacct@gmail.com

..Respondent No.2

3. **LORENZO VITRIFIED TILES PRIVATE LIMITED**

Having its address at:
8-A, National Highway,
Opp. Omkar Petroleum,
Post Box No. 411, Lalpur,
Morbi – 363642

dinesh@lorenzovitrified.com

..Respondent No.3

4. **M/S RRR INSOLVENCY SERVICE EXPERTS LLP LIQUIDATOR OF VRUNDAVAN CERAMIC PRIVATE LIMITED**

Having its address at:
C-10, Lower Ground Floor, Lajpat Nagar-III
Delhi – 110024

Asikdar1990@gmail.com

..Respondent No.4

Present:

For Appellant : Ms. Eshna Kumar, Ms. Astha Agrawal, Advocates.
For : CS Arvind Gaudana for RP.
Respondent : Mr. Arjun Sheth, Mr. Shubhanshu Tiwari, Ms. Somya Jain, Advocates for R-3.
Mr. PBA Srinivasan, Ms. Barnali Paul, Mr. Manish Kumar, Advocates for Respondent No. 5/Intervener.
Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuaj Agrawal, Advocates for SBI.
Ms. Aditi Sharma, Advocate for R-4.

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

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Both the aforesaid appeals have been filed against the same impugned order passed by the Ld. Adjudicating Authority and for the sake of convenience are being disposed of by passing this common judgment.

2. CA (AT) (Ins) No. 1950 of 2024 has been filed by the Resolution Applicant (RA) of the Corporate Debtor (CD) Challenging the impugned order dated 27.09.2024 passed by the National Company Law Tribunal, Ahmedabad Bench, (Adjudicating Authority) in IA No. 33 of 2024 moved in CP IB No. 561 of 2018 for the approval of the Resolution Plan whereby the Resolution Plan approved by the Committee of Creditors (CoC) has been rejected by the Ld. Adjudicating Authority and order for liquidation of the CD has been passed while CA (AT) (Ins) No. 1952 of 2024 has been preferred by the Resolution Professional of the CD (RP) challenging the same impugned order wherein the Ld. Adjudicating Authority in the process of rejecting the Resolution Plan has made some adverse observations against the conduct of the RP.

3. The facts of the aforesaid appeals are that vide order dated 21.01.2020 passed in CP IB No. 561 of 2018 the Vrundavan Ceramics Pvt. Ltd. (CD) was admitted into the Corporate Insolvency Resolution Process (CIRP) on an application moved under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by the State Bank of India.

4. The IRP during the course of CIRP collated the claims of the various creditors and constituted the CoC comprising of the State Bank of India as the Sole Financial Creditor and the first meeting of the CoC was held on

20.02.2020 wherein Shri Arvind Gaudana was appointed as the Resolution Professional (RP) of the CD.

5. It is further reflected that an IA No. 604 of 2020 was filed by the RP for exclusion/extension of the CIRP period which was due to expire on 18.07.2020 and vide order dated 21.09.2020 the period of CIRP was extended up to 15.10.2020 and thereafter the Form G Seeking Expression of Interest (EOI) under Regulation 36 A of the CIRP Regulations, 2016 was published by the RP on 11.06.2020 and the last date of submission of Resolution Plan was on or before 04.08.2020.

6. It is also evident that due to the Covid-19 Pandemic situation no plan was received and some of the prospective applicants had requested for extension of time for submitting their EOI's and in view of the Resolution passed in the 4th meeting of the CoC held on 05.09.2020 revised Form G was published on 15.09.2020 and in pursuance of the same three Resolution Applicants including the appellant- Lorenzo Vitrified were received and these three Resolution Plans were placed before the CoC in its meeting held on 12.02.2021. The 7th CoC meeting scheduled to be held on 04.03.2021 was adjourned on account of the fact that one of the Resolution Applicant namely Shri Vishram Akhai Patel raised objections against another Resolution Applicant.

7. It is also reflected that the RP filed IA No. 205 of 2021 for the exclusion of period from 25.03.2020 to 31.05.2020 which was allowed by the Ld. Adjudicating Authority vide order dated 23.03.2021. In the 8th CoC meeting held on 13.04.2021 various issues were discussed by the CoC including the approval of the CIRP expenses and thereafter the 9th CoC

meeting was held on 22.04.2021 wherein the CoC resolved to direct the Resolution Applicants to submit their financial offers on or before 27.04.2021 and thereafter in the 10th CoC meeting held on 03.05.2021 all the three Resolution Applicants were called through online mode to ascertain whether they can increase their offers and ultimately it was resolved that the applicants will submit their revised plans.

8. It is also reflected that in the 11th CoC meeting held on 07.05.2021 after negotiations with all the three Resolution Applicants the CoC informed them to send their revised financial offers and in pursuance of this resolution, revised resolution plan was submitted by the appellant Lorenzo Vitriified Tiles Pvt. Ltd. (appellant), and Mr. Purshottam Lalji Patel. However, Vishram Akhai Patel along with six consortium members did not provide any revised Resolution Plan.

9. It is further reflected that the 12th meeting of the CoC was held on 13.07.2021 wherein the CoC required more time for negotiations and to take a decision to approve or reject the Resolution Plans submitted by the Prospective Resolution Applicants (PRA's) and as the CIRP period of 330 days stood expired on 11.05.2021 the RP filed IA No. 529 of 2021 before the Ld. Adjudicating Authority for extension of the CIRP period which was allowed by Ld. Adjudicating Authority vide order dated 10.08.2021 extending the period of CIRP for further 15 days from 10.08.2021 i.e. the date of order.

10. It is also evident that in the 13th CoC meeting held on 03.08.2021 the Resolution was passed for voting on Resolution Plan and in the meeting held on 03.08.2021 the Resolution Plan submitted by the Lorenzo Vitriified was

approved by the CoC and consequently IA No. 638 of 2021 was filed by the RP before Ld. Adjudicating Authority for approval of this plan, however the Ld. Adjudicating Authority vide its order dated 08.11.2023 remanded the matter back to the CoC for reconsideration of the plan keeping in view the judgment of the Hon'ble Supreme Court passed in Rainbow Paper Ltd.

11. It is further reflected that the 19th meeting of the CoC was called on 04.12.2024 and the CoC requested the SRA to revise its offer within 7 days and after negotiations the Resolution Applicant vide letter dated 05.01.2024 denied to revise the plan and therefore the 20th meeting of the CoC was held on 06.01.2024 wherein the State Bank of India sought 7 days' time to discuss the approval of the Resolution Plan and thereafter the Resolution Plan was approved by the CoC in its 21st meeting held on 25.01.2024.

12. It is also reflected that RP has filed IA No. 33 of 2024 before Ld. Adjudicating Authority for approval of the Resolution Plan however the same was dismissed by Ld. Adjudicating Authority by passing the impugned judgment, wherein certain adverse remarks were recorded pertaining to the conduct of RP. Aggrieved by the impugned order CA (AT) (Ins) No. 1950 of 2024 and CA (AT) (Ins) No. 1952 of 2024 have been filed by the SRA Lorenzo Vitrified and RP of the CD, respectively.

13. Ld. Counsel for the Appellant in CA (AT) (Ins) No. 1950 of 2024 (SRA) submits that Ld. Adjudicating Authority has not considered the matter in right perspective and has rejected the Resolution Plan of the Appellant on the basis that the same has been placed with delay however there is no fault, whatsoever of the appellant even if any delay has been caused in submission of the plan before the Ld. Adjudicating Authority.

14. It is further submitted that the appellant has been vigilant since beginning and the first application for approval of the Resolution Plan was filed within the time limit given by the Ld. Adjudicating Authority however the said application filed by the RP remained pending before the Ld. Adjudicating Authority for about 2 years and thereafter vide order dated 08.11.2023 passed in IA No. 638 of 2021 the Resolution Plan of the Appellant was remanded back to the CoC to reconsider it in view of the Rainbow Paper Judgment passed by the Hon'ble Supreme Court and to resubmit it to the Ld. Adjudicating Authority till 30.11.2023.

15. It is further submitted that the RP has filed an affidavit on 04.09.2024, explaining therein the time consumed in refiling the application for approval of the plan and it was evident that the sole CoC i.e. SBI was served with the copy of the order of the Ld. Adjudicating Authority and it took time to review the order and the delay has been caused by them in taking a decision and thereafter the 19th CoC meeting was held on 04.12.2023 wherein the order of the Ld. Adjudicating Authority dated 08.11.2023 was considered and the SBI asked the appellant to give revised amount and resubmit the plan and the revised plan submitted by the appellant was considered in the 12th CoC meeting held on 06.01.2024 and the SBI did not agree to the revised distribution.

16. It is further submitted that the 21st, meeting of the CoC was held on 25.01.2024 wherein the CoC asked the appellant to replace the old original Resolution Plan once again which was approved initially on 04.08.2021 and it was the same Resolution Plan which was approved again by the CoC in its 21st meeting held on 25.01.2024 and it was thereafter the plan approval

application was filed by the RP on 04.03.2024 which was held up at the Registry level due to non- clearance of the objections raised by the Registry for which the fault could not be attributed to the RP or to the appellant and in this background the third application for approval of Resolution Plan was filed by the RP on 03.07.2024 being IA No. 33 of 2024 on which the impugned order has been passed.

17. It is further submitted that the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors., 2020 (8) SCC 531*** has propounded that the extension of the CIRP may be given to ensure Resolution of the CD and also in the interest of all stakeholders and where the delay or a large part of the same could be attributable to the tardy process of litigation. In this regard reliance is also placed on ***K.N Rajkumar vs. V Nagarjan, Civil Appeal No.1792 of 2021, Swiss Ribbons Pvt. Ltd. vs. Union of India, AIR 2019 SC 739, Invent Assets Securitisation and Reconstruction Pv.t Ltd. vs. Girnar Fibres Ltd., (2022) ibclaw.in 26 SC as well as on Asset Reconstruction Company (India)... vs. Tulip Star Hotels Ltd. Civil Appeal No. 1792 of 2021, Supreme Court.***

18. It is further submitted that the CoC (State Bank of India) is now supporting the impugned judgment whereby the liquidation process has been initiated however it is precluded from doing so as the State Bank of India being the sole CoC has approved the Resolution Plan which has been rejected by Ld. Adjudicating Authority and the same is/was binding on the appellant as well as the CoC. In this regard reliance has been placed on ***State Bank of India & Ors. vs. Consortium of Murari Lal Jalan, (2025)***

4 SCC 354 and Ebix Singapore Ltd. vs. Committee of Creditors of Educomp, (2021) SCC Online SC 707.

19. Ld. Counsel for the Appellant/Erstwhile RP of the CD Shri Arvind Gaudana in CA (AT) (Ins) No. 1952 of 2024 submits that the impugned order could not be permitted to stand as a grave jurisdictional error has been committed by the Ld. Adjudicating Authority in passing the impugned order in complete disregard to the fact that Resolution Plan was approved by 100% of the CoC and the same has been rejected solely on hyper technical ground of delayed refiling of the approval application.

20. It is further submitted that after taking requisite extensions and exclusions the resolution plan submitted by M/s Lorenzo Vitrified Tiles Pvt. Ltd. (SRA) was approved by the CoC with 100% voting share on 03.08.2021 and an application being IA No. 638 of 2021 was filed for approval of the same and the same remained pending before the Ld. Adjudicating Authority for more than 2 years and it was on 08.11.2023 the same was remanded back for reconsideration of the CoC in view of the judgment of the Hon'ble Supreme Court passed in State Tax Officer vs. Rainbow Paper Ltd. with a further direction to refile the same by 30th November, 2023.

21. It is further submitted that the Appellant RP immediately send the copy of this order to the Respondent SBI and after Diwali Holidays the 19th CoC meeting was convened on 04.12.2023 and the SRA was requested to revise its offer which was declined by the SRA and it was on 06.01.2024 the CoC reaffirmed the original Resolution Plan filed by the SRA and on receiving CoC clearance on 04.03.2024 an IA was filed by the RP however due to subsequent technical defects raised by the Registry on 29.07.2024

this application being Interlocutory Application Plan No. 33 of 2024 was listed on 29.07.2024 and the same has been rejected by passing the impugned order, only on technical grounds while having regard to the tone and texture of the order dated 08.11.2023 the refiling of plan till 30.11.2023 appears to be only directory.

22. It is further submitted that on 06.09.2024, the Ld. Adjudicating Authority passed an order that the explanation of delay explained by the RP is not satisfactory and thereafter the order was reserved.

23. It is vehemently submitted that timelines prescribed for the purpose of Resolution, not contained in the IBC, are not mandatory and in this regard reliance has been placed by Ld. Counsel for the RP on ***Surendra Trading Company vs. Juggilal Kamalapat Jute Mills Co. Ltd. & Ors., (2017) 16 SCC 143.***

24. It is further submitted that the invocation of Section 33 (1) (a) of the Code is manifestly wrong as the original plan which was approved by the CoC on 03.08.2021 was filed on 19.08.2021, within the CIRP period and by passing order dated 08.11.2023 the same was not rejected on merits and will not restart the CIRP period as by passing order dated 08.11.2023 direction was given for reconsideration of distribution in the light of the law laid down in Rainbow Paper Ltd. Reliance has also been placed on ***CoC Essar Steel India Ltd. (supra), Swiss Ribbons Pvt. Ltd. (supra) and on Piya Puri & Ors. vs. Mr. Debashish Nanda & Ors., CA (AT) (Ins) No. 906 of 2022.***

25. It is submitted that so far as the submission with regard to the absence of authority of the RP for filing of the appeal is concerned the same

is not having merits as the appeal has been filed in pursuance of the Resolution passed by the CoC in its 21st CoC meeting and the IA No. 638 of 2021 was also filed under the directions of the CoC.

26. It is lastly submitted that Ld. Adjudicating Authority has made some adverse observation/remarks which were totally uncalled for and it is evident that the RP has conducted CIRP under the directions of the CoC and therefore these remarks are required to be expunged.

27. Ld. Counsel for the Respondent No. 1 i.e. State Bank of India submits that the Ld. Adjudicating Authority vide order dated 08.11.2023 has remanded the matter back to the COC for reconsideration in the light of the judgment passed in Rainbow Paper Ltd. (supra) with a further direction that the application for approval of the revised plan shall be filed by 30.11.2023, however this fact was never communicated by the RP to the CoC and the meeting of the CoC could only be convened by the RP on 04.12.2023, after the expiry of the CIRP period and the timeline stipulated by the Ld. Adjudicating Authority.

28. It is further submitted that so much so the RP thereafter placed the resolution for original plan approval before the CoC in its 20th meeting dated 06.01.2024 and the same was approved in 21st CoC meeting held on 25.01.2024. However, for reasons best known to the RP alone, the fresh application for approval of the Resolution Plan was filed by him on 04.03.2024.

29. Ld. Counsel for the SBI has drawn the attention of this Appellate Tribunal towards many portions of the aforesaid both appeals in order to

show that identical language and Phraseology has been used indicating that both these appeals are collusive.

30. It is also submitted that the RP is having no locus to file the appeal as he is not an aggrieved person under Section 61 of the Code and no minutes has been produced by him to show that he was authorised to file the appeal and keeping in view the law laid down in **Regen Powertech Pvt. Ltd. vs. Giriraj Enterprises, Civil Appeal Nos. 5985-6001 of 2023** the RP should maintain a neutral stand and could not be treated as aggrieved party and thus the appeal filed by the RP required to be dismissed on this ground alone.

31. It is further submitted that the CIRP period had already expired and in this background the Ld. Adjudicating Authority was justified in invoking Section 33 of the Code as no Resolution seeking extension of the CIRP period was placed before the CoC and no application in this regard was filed before the Ld. Adjudicating Authority after the expiry of the timeline mentioned in order dated 08.11.2023 i.e. 30.11.2023. Reliance in this regard has been placed on **State Bank of India vs. M/s Manibhadra Polycot and Ors., Civil Appeal Nos. 4392-4393 of 2019.**

32. It is further submitted that delay in filing the plan approval application was attributable to the Resolution Professional alone and before a Resolution Plan approved by the CoC is further approved by Ld. Adjudicating Authority, the CoC is having power in its commercial wisdom to opt for liquidation. Reliance has been placed on **Sanjay Dave vs. Andhra Bank, CA (AT) (Ins) No. 1128 of 2024 and State Bank of India & Ors. vs. Consortium of Mr. Murari Lal Jalan & Anr., Civil Appeal Nos. 5023-**

5024 of 2024 and In Re: Vivek Raheja, CA (AT) (Ins) No. 331 of 2021 decided on 04.05.2021.

33. Ld. Counsel for the intervener i.e. Intec Capital Ltd. submits that the intervener had filed its claim before RP, which was rejected and an IA No. 340 of 2020 was filed before the Ld. Adjudicating Authority which was also rejected and in this regard an appeal bearing CA (AT) (Ins) No. 220 of 2021 was filed before this Appellate Tribunal and a direction was issued to the RP to admit the claim however the RP admitted the claim of the intervener as unsecured financial creditor and aggrieved by the same the intervener again approached Ld. Adjudicating Authority and when his application was rejected an appeal bearing CA (AT) (Ins) No. 771 of 2023 was filed which is pending before this Appellate Tribunal.

34. It is also submitted that after passing of order dated 08.11.2023 the 20th CoC meeting was held on 06.01.2024 and thereafter the 21st CoC meeting was held on 25.01.2024 wherein the filing of the application and appeal by the intervener was discussed and the intervener in this meeting also dissented the agenda for revised distribution as presented before voting and the revised distribution schedule in Resolution Plan submitted by the SRA was rejected by the intervener.

35. It is also submitted that the intervener had voted upon and dissented the agenda with regard to distribution and not on the original plan as the voting was with regard to the revised distribution as per Rainbow judgment.

36. We have heard Ld. Counsel for the parties and have perused the record including written submissions filed by them.

37. It appears that Section 12 and Section 33 of the Code would be relevant for our discussion and both these Sections are reproduced as under:

“Section 12: Time-limit for completion of insolvency resolution process.

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of [sixty-six] per cent of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]

Section 33: Initiation of Liquidation.

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section

12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall--

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. -- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator”.

38. Perusal of Section 12 would reveal that a period of 180 days has been provided from the date of initiation of the Insolvency Process to complete the whole process however it has been further provided in Sub-Section 2 of Section 12 that the Resolution Professional shall file an application to the Adjudicating Authority to extend this period beyond 180 days if instructed to do so by a Resolution passed in the CoC by a vote of 66% and Sub-Section 3 of the same further provides that if the Adjudicating Authority is satisfied that the subject matter of the case is such that the Resolution Process cannot be completed within the time stipulated it may extend the duration of such process beyond 180 days but not exceeding 90 days with a further stipulation that any extension of the period of Corporate Insolvency shall not be granted more than once and the second proviso attached with Section 12 also provides that the Insolvency Process shall mandatorily be completed within a period of 330 days from the Insolvency commencement date including any extension of the period of Corporate Insolvency Resolution Process granted under this Section and the time taken in legal proceedings in relation to the Resolution Process.

39. Section 33 of the Code appears in Chapter -III of the Code which provides various eventualities on the happening of which the Adjudicating Authority shall pass an order for liquidation of the CD and Sub-Section 1 (a) of this Section provides one of the eventuality as the non-completion of the Corporate Insolvency Resolution Process within the maximum period

provided under Section 12 of the Code. Sub-Section 2, 3, 4, 5, 6 and 7 deals with other situations not relevant for our discussion.

40. At this juncture, it is also fruitful to have a glance on the precedents of this Appellate Tribunal as well as of the Hon'ble Supreme Court which have been relied on by the parties, to assess the manner in which the delay occurred in the Insolvency Process or the expiry of the maximum period under which the Resolution Process must be completed, has been interpreted.

41. Hon'ble Supreme Court in **SBI v. Murari Lal Jalan & Florian Fritsch (Consortium), (2025) 4 SCC 354** Observed as under:

“166. It is in the above context that the Rules regarding the power of NCLT and NCLAT to extend time, have to be discussed. Rule 15 of the NCLT Rules, 2016 reads as thus:

“15. Power to extend time. —The Tribunal may extend the time appointed by these Rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.”

167. Rule 15 of the NCLAT Rules, 2016 reads as thus:

“15. Power to extend time. —The Appellate Tribunal may extend the time appointed by these Rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.”

168. Rule 15 of the NCLT and the NCLAT Rules, 2016 grants power to NCLT and NCLAT, respectively, to extend the time-limits for doing any act which have been fixed, either by the rules or by an order, as the justice of the case may require. However, such power must not be exercised mechanically without any application of mind. An extension on the strict timelines fixed under the resolution

plan must be done by adequately weighing the period of extension sought with the consequences of such extension on the continued implementation of the resolution plan. After all, such a discretion cannot be exercised to the detriment of the resolution plan and its implementation itself. While one of the reasons supporting the grant of extension would be to ensure the successful revival of the corporate debtor, multiple extensions may seriously hamper the economic feasibility of the resolution plan and also lead to an increase in the debts of the corporate debtor. Not to mention, during the extended period, there are several costs incurred towards maintaining the corporate debtor as well. The feasibility and practicability of the resolution plan adjudged by the “commercial wisdom” of the CoC might no longer remain in cases where incessant extensions are granted by NCLT and NCLAT under their discretionary powers.

169. *The discretion in extending the time-limits fixed under the resolution plan must be exercised in a much more circumspect manner, especially in cases such as the present, which pertains to the aviation sector, wherein timely resolution and revival of the corporate debtor is all the more crucial since the sector operates in such a way that a continuous flow of cash is required to maintain the company in a position of status quo.*

42. Hon’ble Supreme Court again in **Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17** held as under:

“28. *It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also*

protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends”.

43. Hon’ble Supreme Court in ***Essar Steel (India) Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531*** held as under:

“127. Both these judgments in Atma Ram Mittal and Sarah Mathew have been followed in Neeraj Kumar Sainy v. State of U.P. , SCC paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem. Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being

attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation”.

44. Hon’ble Supreme Court again in **K.N. Rajakumar v. V. Nagarajan & Ors., (2021) ibclaw.150 SC** Opined as under:

“16. It could thus be seen that one of the principal objects of the IBC is providing for revival of the Corporate Debtor and to make it a going concern. Every attempt has to be first made to revive the concern and make it a going concern, liquidation being the last resort”.

45. Hon’ble Supreme Court in **Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd. & Ors., (2022) ibclaw.94 SC** Opined as under:

“55. The IBC is not just a statute for recovery of debts. It is also not a statute which only prescribes the modalities of liquidation of a corporate body, unable to pay its debts. It is essentially a statute which works towards the revival of a corporate body, unable to pay its debts, by appointment of a Resolution Professional”.

46. Hon’ble Supreme Court again in **Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), SCC Online SC 707 Observed** as under:

“116. The BLRC Report, which furnished the first draft of IBC and elaborated on the aims behind the overhaul of the insolvency regime, refers to a CoC-approved resolution plan as a “binding contract” in one instance and refers to it as a “binding agreement” in other instances. The report also refers to a CoC-approved resolution plan as a

“financial arrangement”, “revival plan” or a “solution”. The interchangeability of the terms — “agreement”, “contract”, “financial arrangement”, “revival plan” and “solution” indicates that there is no clear intention of the BLRC in characterising the nature of the resolution plan as a contract. The binding effect of the resolution plan has the consequence of preventing the CoC or the resolution applicant to renege from its terms after the plan has been approved by the CoC through a voting mechanism. The fleeting mention of a “binding contract” on one occasion in the BLRC Report (which was a pre-legislative text that underwent subsequent modifications by the legislature) to indicate the binding nature of the resolution plan and the finality of negotiations once it is approved by the CoC, does not establish the legal nature of the document, especially when it is not complemented by the text and design of IBC”.

47. Hon’ble Supreme Court in ***Invent Assets Securitisation & Reconstruction Pvt. Ltd. v. Girnar Fibres Ltd., (2022) ibclaw.in 26*** Held as under:

“Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor. We find no fault in the Tribunal and the Appellate Tribunal having declined the prayer of the appellant”.

48. Hon’ble Supreme Court in ***STATE BANK OF INDIA VS. M/S MANIBHADRA POLYCOT & ORS., CIVIL APPEAL NOS. 4392-4393 of 2019*** held as under:

C.A. Nos. 4656-4657/2019

1. The National Company Law Appellate Tribunal in the impugned order dated 01.05.2019 has excluded a further 21 days from being counted as part of the 270 days’ period which is otherwise over in the facts of this case. These 21 days are divided into 3 groups. A cluster of 7 days from 17.11.2017 to 23.11.2017; another cluster of 11 days between 06.03.2018 and 17.03.2018; and a third cluster of 3 days between 08.08.2018 and 10.08.2018.

2. We are of the view that the first two sets of days, namely, 7 days and 11 days, cannot be excluded for the simple reason that they are not incurred in any litigation process. Even assuming that the last cluster, namely 3 days between 08.08.2018 and 10.08.2018 are to be excluded, and we add these days to 01.05.2019 when the litigation process has come to an end, we still reach 04.05.2019. The Resolution plan in question is submitted only on 08.05.2019, and is therefore clearly beyond the mandatory period laid down in the Insolvency Code, 2016.

3. The impugned order dated 01.05.2019 is set aside and the appeals are accordingly allowed.

49. This Appellate Tribunal in **SANJAY DAVE VS. ANDHRA BANK, Company Appeal (AT) (INS.) NO. 1128 OF 2024**, held as under:

“28. In the given circumstances the Adjudicating Authority has correctly relied on the decision of this Tribunal in Gulab Chand Jain Vs RP of Vijay Timber Industries in CA(AT)(Ins) No. 142 of 2021 wherein it was held that after approval of the resolution plan by the CoC, the CoC can always change its mind and pass a resolution liquidating the Corporate Debtor as long as the resolution plan is not approved by the Adjudicating Authority. The Adjudicating Authority had not committed any error in arriving at the above finding since there was no approved resolution plan available with the RP to be placed before the Adjudicating Authority. The Adjudicating Authority was also of the view that with further delay, the assets of the Corporate Debtor would have suffered from economic depreciation as the liquidation value goes down with the efflux of time. A long time had elapsed since commencement of insolvency on 09.08.2018 and we are inclined to agree with the Adjudicating Authority that Corporate Debtor should go into liquidation forthwith in the interest of all stakeholders. The Adjudicating Authority also was of the view that it had limited powers of judicial review in matters of commercial wisdom of CoC as has been held by the Hon’ble Supreme Court in the matter of K. Sashidhar Vs Indian Overseas Bank (2019) 12 SCC 150.

30. It is pertinent to note that the statutory construct of IBC in terms of Section 33 clearly empowers the CoC to decide to liquidate the Corporate Debtor any time before the confirmation of the resolution plan by the Adjudicating Authority”.

50. This Appellate Tribunal again in **JM Financial Asset Reconstruction Company Ltd vs. Venkatachalam, Resolution Professional of Raigarh Champa Rail Infrastructure Pvt. Ltd. 2025 SCC OnLine NCLAT 1052**,

held as under:

“6. Consequent to this, an Application was submitted before the Ld. Adjudicating Authority for the purposes of approval of the Resolution Plan. The same was heard and was reserved for final orders on 10.07.2024. However, before Ld. NCLT could pass any orders on the said Application, CoC on 23.10.2024 with the majority voting share of 78.59%, resolved to undertake the challenge mechanism process, in accordance with the CIRP Regulations under I & B Code, 2016. In pursuance to this decision taken on 23.10.2024, the CoC also resolved to withdraw the Plan approval application already submitted, with liberty to file a fresh application depending upon the outcome of the “challenge mechanism process” to be undertaken to which the Successful Resolution Applicant i.e. Medha, had consented upon. On filing of the Application to that effect, as above, the Ld. Adjudicating Authority, on 25.10.2024 dismissed the Application IA No.16/2024 as withdrawn, with a liberty to file a fresh application in respect of the same subject matter.

22. It is to be noted that, the aforesaid two authorities have advocated that a decision of the CoC borne out of its commercial wisdom to re-publish Form G, in order to attract more PRAs and to increase participation in CIRP process, even after completion of the process of submission of Resolution Plans cannot be faulted, as by its very design, such action, by increasing competition, will further enhance value of the Corporate Debtor which is always in the interest of the object of the Act.

26. For the aforesaid reasons, the Impugned Order of 03.04.2025 is hereby quashed and as a consequence, IA (IBC)/608/2025 stands allowed. The relief as sought for, by the Resolution Professional, to be permitted to issue fresh Form G and to invite Expression of Interest (EoI) from new and interested eligible Prospective Resolution Applicants is granted subject to the stipulations that the CIRP process has to be completed in a time bound manner as provided under the Code and Regulations framed thereunder”.

51. Hon'ble Supreme Court in **REGEN POWERTECH PRIVATE LIMITED VS. GIRIRAJ ENTERPRISES & ANR.** CIVIL APPEAL NOS. 5985-6001/2023, MANU/SCOR/45822/2023 held as under:

“We are of the opinion that in view of the facts and circumstances, the Resolution Professional should not have filed the present appeals. The Resolution Professional should have maintained a neutral stand. It is for the aggrieved parties, including the Committee of Creditors of Regen Powertech Private Limited (RPPL) and Regen Infrastructure and Services Private Limited (RISPL), to take appropriate proceedings or file an appeal before this Court. Recording the aforesaid, the present appeals preferred by the Resolution Professional are dismissed as not entertained.

If required and necessary, the Court can take assistance and ascertain the facts from the Resolution Professional, in case an appeal(s) is preferred by the Committee of Creditors or a third party. Pending application(s), if any, shall stand disposed of”.

52. Coming back to the facts of this case the State Bank of India has filed an application under Section 7 of the Code for initiation of Resolution Process against the CD and vide order dated 21.01.2020 the same was accepted and Mr. Arvind Gaudana was appointed as the IRP. The public announcement was made on 31.01.2020 and claims were invited from the creditors and IRP after collating the claims constituted the CoC comprising of SBI as the sole financial creditor.

53. The first meeting of the CoC was convened on 20.02.2020 wherein the IRP was appointed as the RP. The CIRP period was to expire on 18.07.2020 and in this regard an IA No. 604 of 2020 was filed by the RP for extension/exclusion of the CIRP period and vide order dated 21.09.2020 the aforesaid IA was allowed and the period of CIRP was extended for 90 days till 15.10.2020. In the meanwhile, intervener Intec Capital Ltd. filed an IA

No. 340 of 2020 before Ld. Adjudicating Authority for admission of its claim as secured financial creditor and vide order dated 11.11.2020 a direction was given by the Adjudicating Authority that the process would proceed only after disposal of the aforesaid IA, which was ultimately dismissed on 05.02.2021.

54. It appears that Form G seeking expression of interest (EOI) was published on 11.06.2020, however no plan was received due to Covid -19 Pandemic situation and some Prospective Applicant requested for extension of time and the CoC in its 4th meeting held on 05.09.2020 resolved to issue fresh Form G in pursuance of which 3 Resolution Plans were received.

55. It is also reflected that in the meeting of the CoC held on 12.02.2021, the 3 Resolution Plans were placed before CoC and thereafter the 7th CoC meeting scheduled to be held on 04.03.2021 was adjourned and an IA No. 205 of 2021 was filed by the RP before Ld. Adjudicating Authority for exclusion of period from 25.03.2020 to 31.05.2020 and vide order dated 23.03.2021 the same was allowed and the period of 68 days was excluded.

56. It also appears that the 8th CoC meeting was held on 13.04.2021, and 9th CoC meeting was held on 22.04.2021, wherein the CoC directed the PRA to give presentation and also to revise their proposals. The 10th CoC meeting was held on 03.05.2021 wherein the PRA's were again directed to revise their proposals and the revised Resolution Plans was ultimately filed by the Appellant-Lorenzo Vitrified Tiles and Vishram Akhai Patel on 07.05.2021 and 08.05.2021 respectively.

57. It is also evident that the entire CIRP period of 330 days after exclusion/extension granted by Ld. Adjudicating Authority expired on

11.05.2021 and IA No. 529 of 2021 was filed by the RP for extension of the CIRP period and vide order dated 10.08.2021 the same was extended till 10.08.2021. In the 13th CoC meeting held on 03.08.2021 CoC approved the Resolution Plan of the Appellant- Lorenzo Vitriified Tiles Pvt. Ltd. and approved the same.

58. At this juncture, it is also pertinent to mention that an application being IA no. 340 of 2020 was filed by the intervener before the Ld. Adjudicating Authority for treating him to be the financial creditor as a request to this effect was rejected by the RP. However, his application was rejected and he filed an appeal CA (AT) (Ins) No. 220 of 2021 which was allowed by this Appellate Tribunal vide order dated 07.02.2022. The Intec again filed an application before the Ld. Adjudicating Authority as it was aggrieved for non-treating it as secured financial creditor which was rejected by the Ld. Adjudicating Authority and in this regard an CA (AT) (Ins) No. 771 of 2023 was filed before this Appellate Tribunal which according to the intervener is still pending.

59. The record further shows that on approval of resolution plan by the CoC on 03.08.2021, in its 13th meeting, the RP filed IA No. 638 of 2021 for approval of the plan, however vide order dated 08.11.2023 Ld. Adjudicating Authority remanded the plan back to CoC for its reconsideration in the light of the judgment passed by the Hon'ble Supreme Court in Rainbow Paper Ltd. The order dated 08.11.2023 passed in IA No. 638 of 2021 is reproduced as under:

IA/638(AHM) 2021

This application is remanded back to the RP and dismissed with the liberty to re-file the same again in view

*of the position of the claims and the distribution amount is crystallized by the Successful Resolution Applicant in the next CoC meeting taking into consideration Rainbow Paper judgment of the Hon'ble Supreme Court. Application for approval, if any, to be filed not later than 30.11.2023. Accordingly, **IA/638(AHM) 2021 is dismissed.***

60. Perusal of this order would reveal that Ld. Adjudicating Authority has categorically directed the CoC to consider the plan in the light of the law propounded by Hon'ble Supreme Court in Rainbow Paper Ltd. with a further direction that the revised resolution plan shall be submitted before 30.11.2023.

61. Perusal of the impugned judgment passed by the Ld. Adjudicating Authority in IA No. 33 of 2024 has stated that the plan after the order dated 08.11.2023 could only be submitted on 05.07.2024, with the delay of more than 8 months and also that the first meeting after the order of remand could only be convened by the RP on 04.12.2023 after the stipulated date of 30.11.2023 and further noted that RP did not seek any condonation of delay nor explained the delay and the application was rejected on this score. The relevant part of the judgment passed by the Ld. Adjudicating Authority is also reproduced as under:

*“VII. Moreover, the non-adherence of the parties in this matter be it the applicant RP or the CoC, is to such extent that notably, **the first meeting post the Tribunal's order dated 08.11.2023 was convened only on 04.12.2023, which itself is beyond the stipulated date as per the order dated 08.11.2023 for the filing of the application.***

*VIII. The Applicant has further convened several meetings of the CoC without proper authorisation and outside the mandate of the Insolvency and Bankruptcy Code. Moreover, it is noteworthy that the **Applicant has neither sought condonation of the delay in filing the present application nor provided any reasonable explanation for the cause of such delay.***

IX. Based on the foregoing observations, it is evident that the RP and the CoC have demonstrated a grossly negligent and lackadaisical approach in the conduct of this matter, thereby failing to uphold the provisions and objectives of the Code. Such conduct not only reflects a disregard for the timelines and procedural mandate stipulated by this Tribunal but also undermines the very essence of the Insolvency Resolution Process.

X. The indifference exhibited by the RP and CoC towards their statutory duties is not only condemnable but also warrants serious censure. This Tribunal views their actions as bordering on dereliction of duty, and their failure to act with diligence and expediency as required under the law. The evident lethargy and non-compliance with the legal framework have delayed the resolution process, which is against the spirit of the IBC. Such behavior is not only subject to criticism but may also attract penal consequences under the law, as it has significantly hindered the timely and efficient resolution of the corporate debtor's insolvency.

XI. This Tribunal is fully conscious of the need to keep judicial intervention or innovation from NCLT at its bare minimum and should not disturb the foundational principles of the IBC, as the law laid down in catena of rulings of Hon'ble Supreme Court of India, however at the same time we cannot overlook or brush aside this glaring breach of compliance of a statutory mandatory provision by the parties when noticed”.

62. Thus, the Ld. Adjudicating Authority observed that the RP convened various meetings of the CoC without prior authorisation and outside the mandate of the IBC and also that the RP as well as the CoC has shown gross negligent conduct and approach and thereafter censured their conduct.

63. According to the Ld. Adjudicating Authority the CoC/RP failed to comply the timeline given in order dated 08.11.2023 and the Resolution plan instead of placing before Ld. Adjudicating Authority on 30.11.2023, as directed vide order dated 08.11.2023, was in fact submitted on 05.07.2024.

64. The RP before this Appellate Tribunal has explained that order dated 08.11.2023 was sent to the SBI and the 19th CoC meeting was convened on 04.12.2023 due to Diwali Vacations and SRA was requested to revise the offer and when the SRA declined to revise the offer the 20th CoC meeting was held on 06.01.2024, wherein the agenda item no. 20/5 to approve suitable amendments in resolution plan was discussed and revised distribution was placed before the CoC, however SBI took 7 days' time for internal procedure and requested to defer the e-voting on which the Resolution was passed to authorize the RP to extend the time of e-voting and to file appropriate application before Ld. Adjudicating Authority. Therefor the 21st CoC meeting was convened on 25.01.2024 wherein RP informed that SBI and Intec have rejected the resolution of revised distribution and in this meeting the CoC affirmed the original plan submitted by the SRA and on 04.03.2024 after receiving the CoC clearance RP filed fresh application for approval of the plan.

65. Though, the RP in his written submissions has stated that the application for approval of plan was filed on 04.03.2024 and has relied on a fee receipt of Rs. 1000/- deposited on 04.03.2024 and on the copy of the application moved for approval of the plan, which has been placed on record, however we are unable to satisfy ourselves as to how only the deposit of court fee may be construed as the date of filing and likewise the date bearing on the copy of the application may also not establish that the application was actually filed on 04.03.2024. It is however again contended by the RP that the application before the Adjudicating Authority remained in the defects and it was only on 29.07.2024, the defects could be removed and

thereafter the IA No. 33 of 2024 was formally listed before the Adjudicating Authority. Even if the filing of the application for approval of plan on 04.03.2024, for the sake of argument, is believed (while there is no material on record to establish the filing of the same on 04.03.2024) even thereafter, as per the admission of the RP the application remained in defects for a long time only due to the negligence of the RP as the defect according to the own admission of the RP could not be removed before 29.07.2024 and ultimately the application was refiled thereafter. Thus, having regard to the first date on which this application was presented before the Ld. Adjudicating Authority, the delay of about 8 months had occurred since 30.11.2023. In the background of the aforesaid factual matrix we do not find any illegality in the observation of the Ld. Adjudicating Authority that the application for approval of Resolution Plan was moved after 8 months' delay.

66. The RP in his additional affidavit dated 08.08.2024 filed before Ld. Adjudicating Authority has also admitted to have convened the first meeting of the CoC after passing of the order dated 08.11.2023, on 04.12.2023, while the last date given in the order dated 08.11.2023 for resubmission of revised plan was 30.11.2023 and by that time this date had already expired and no further extension was sought by the RP by moving any application before Ld. Adjudicating Authority.

67. It is also evident that the next meetings of the CoC were held on 06.01.2024 and 25.01.2024 and it was in the 21st CoC meeting held on 25.01.2024 the resolution plan was approved but, even after approval of the plan by the CoC on 25.01.2024 the application of approval of the plan was moved with inordinate and unexplained delay of many months. Thus at

first the RP appears to be responsible for causing delay in not placing the order of date 08.11.2023 of the Ld. Adjudicating Authority before the CoC in time by convening any meeting of the CoC and admittedly the first meeting after the passing of order dated 08.11.2023 could only be convened on 04.12.2023 when the last date for submission of plan, as directed by Ld. Adjudicating Authority i.e. 30.11.2023, had already expired and thereafter the CoC consumed much time to take a decision for approval of the Resolution plan and conspicuously the original plan which was earlier rejected by the Ld. Adjudicating Authority was again approved without considering the Rainbow Paper Mill judgment passed by the Hon'ble Supreme Court and the RP again appears to be at fault for not moving any application for approval of such plan for many months and surprisingly no application was moved either to extend the CIRP period which was admittedly expired on 30.11.2023. Thus in the background of the aforesaid facts and circumstances we do not find any illegality in the decision of the Ld. Adjudicating Authority to initiate the liquidation process of the CD.

68. The argument adopted by the appellants that the timeline given by Ld. Adjudicating Authority vide order dated 08.11.2021 was not mandatory and was only directory, even if is accepted would also be of no use to the appellants, as even after the approval of the plan by the CoC on 25.01.2024 the application for approval of the same was not moved by the RP for many months.

69. We are conscious of the inherent objective of the Insolvency and Bankruptcy Code that the timely and quick resolution of the stressed assets is the key to successful working of the Code and also that the delay dilutes

the value of the assets and also that one of the key objective of the IBC is to ensure the survival of the CD as a going concern. But the moot question which stares at the face of this Appellate Tribunal is whether the stakeholders of a Resolution Process may be permitted to sleep over the Resolution Plan for a long time causing deterioration in the value of the assets of the CD and therefore the survival of the CD as a going concern, in our considered opinion must not be at the cost of the devaluation of the value of assets of the CD and in such scenario where the timely action is not taken by the stakeholders the timely liquidation should be preferred over an endless resolution process and in this way the interest of the creditors would also be secured who may be suffering because of no fault of theirs and in this way maximising of the value of the assets may also be achieved.

70. The timely action and the speed by which the resolution process of the CD must travel has been enshrined in various provisions of the Code and Regulations made thereunder as well as in catena of judgments passed by the Hon'ble Supreme Court and this Appellate Tribunal. The report of the Bankruptcy Law Reforms Committee, 2015 also highlights and emphasises the timely working of the Code and has observed that speed of the Resolution is of the essence for the correct working of the bankruptcy code, as the calm period can help to keep an organization afloat without the full clarity of ownership and control, as significant decisions cannot be made and the longer the delay, the more likely it is that liquidation will be the only answer. This report also highlights that the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.

71. It may also be recalled that the delay caused in arriving at the conclusion that the company is to be liquidated is also detrimental to the company, especially when much time has been consumed for the successful resolution of the CD and therefore in our considered opinion, the liquidation of the CD should be as a matter of last resort but one should not turn its eyes away from the fact that the further delay in arriving at a decision with regard to the liquidation of the CD would further reduce the value of the assets.

72. Hon'ble Supreme Court as well as this Appellate Tribunal in various decisions have highlighted the importance of speedy resolution process under the IBC and a pre-dominant consideration behind minimising the delay in resolution of the CD is, as stated earlier, to minimise the devaluation of the assets and it is in this background the delay which has been caused in the instant case by the CoC as well as by the RP is to be visualised. It is also pertinent to mention here that one of the member of the CoC namely State Bank of India having majority voting share is supporting the impugned order before this Appellate Tribunal.

73. In **State Bank of India vs. Consortium of Murari Lal Jalan (supra)** in paragraph no. 168 Hon'ble Supreme Court has highlighted as to how the power to extend time may be exercised by the Adjudicating Authority and by this Appellate Tribunal and it is emphasised that this power must not be exercised mechanically without application of mind.

74. We also notice that in celebrated case of **Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors.** (supra) the Hon'ble Supreme Court has highlighted the manner in which the delay

which has occurred after the outer limit of 330 days must be dealt with and it is stated that it would be in the interest of all stakeholders that the CD be put back on its feet instead of being sent into liquidation and the delay which has occurred due to the pendency of the legal proceedings for which the fault cannot be attributed to the litigants and could only be due to the tardy process of adjudication, it may be open in such cases to the Adjudicating Authority or this Appellate Tribunal to extend time beyond 330 days. However, a note of caution has been given in paragraph no. 127 of the report that it is only in exceptional cases the time can be extended and the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the CD must take place beyond which the CD is to be driven into liquidation.

75. In **State Bank of India vs. M/s Manibhadra Polycot and Ors. (supra)** this Appellate Tribunal has set aside the judgment of the Adjudicating Authority whereby the application filed by the Resolution Professional for initiation of the liquidation of the CD was allowed. On an appeal filed before the Hon'ble Supreme Court in **State Bank of India vs. M/s Manibhadra Polycot and Ors. Civil Appeal Nos. 4392-4393 of 2019, vide order dated 09.08.2019**, Apex Court set aside the order of this Appellate Tribunal and refused to exclude 21 days from being counted as part of 270 days' period on the ground that first two sets of days namely 7 days and 11 days cannot be excluded for the reason that they are not incurred in any litigation process and also noticed that the resolution plan in question is submitted beyond time stipulated.

76. At the cost of repetition, we highlight that the Ld. Adjudicating Authority has remanded the resolution plan for reconsideration of the CoC in the background of the law laid down by the Hon'ble Supreme Court in ***Rainbow Paper Ltd. (supra)*** vide order dated 08.11.2023 and has given a timeline till 30.11.2023 for submission of revised resolution plan. What the CoC and the RP has done is that the first meeting after this order could only be convened on 04.12.2023 when the outer limit to file the revised resolution plan was expired on 30.11.2023 and so much so even after the approval of the resolution plan (the original resolution plan which was remanded back by the Ld. Adjudicating Authority without considering the effect of the Rainbow Paper Ltd.) on 25.01.2024 the same was not submitted to the Ld. Adjudicating Authority for many months and though a claim has been made by the RP that application for approval of the resolution plan was filed on 04.03.2024, but even if this is believed (while there is no material to establish this fact) the defects were admittedly not removed for months and it was after 7-8 months of passing of order dated 08.11.2023 the plan approval application came before the Ld. Adjudicating Authority.

77. In view of the above facts and circumstances and for the reasons mentioned in the impugned order and also given by us herein before we do not find any good ground to interfere in the impugned judgment passed by Ld. Adjudicating Authority and keeping in view the huge delay running into many months the liquidation was the only option available before Ld. Adjudicating Authority. So far as the observations made by the Ld. Adjudicating Authority, with regard to the conduct of the RP, in our

considered opinion same are based on the facts of the case and could not be said to have been made without any material or basis.

78. In result both the appeals appear without merit and are **dismissed** as such.

79. There is no order as to costs.

80. Pending IA's if any are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

New Delhi.
20.05.2026.

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