NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) (INS) 1973/2024

(*Arising out of judgement and order dated 13.05.2024 passed in IA No.280/2023 in CP(IB)No.155/2018 by National Company Law Tribunal, Chandigarh*)

In the matter of:

M/S Micro Turner
Through its Authorized Representative
Mr. Sachin Kapoor
Having its registered office at: Hisar Road, Rohtak
Also, at
Plot No.228,
Industrial Area Phase 1,
Panchkula – 134113
Email: harenderdahiya@microturnersmail.com
Mobile: +91-9812591763 ...**Appellant**

Versus

Committee of Creditors
(Through Resolution Professional)
H.No. 237/1, 44-A,
Chandigarh, Haryana & Punjab, 160047
Email: ip.lakshmiprecision@ducturus.com ...**Respondent**

For Appellant: Mr Siddharth Batra, Ms Shivani Chawla, Mr Rhythm Katyal, Mr Chinmay Dubey, Advocates.

For Respondent: Mr Hitesh Sachhar, Ms Anju Jain, Ms Rifat Touhid, Ms Bhawna Prajapati, Advocates for Canara Bank.
Mr Shekhar Raj Sharma, Ms Nidhi Narwal, Ms Shristi Jain, Advocates for Intervenor.
Mr. Harshat Khar, Mr Praful Jain, Mr. Ayuj Aggarwal, Advocates for RP

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal is filed against an impugned order dated 13.05.2024 passed by Ld. NCLT, Chandigarh in IA No.280/2023 in CP(IB) No.155/2018.

2. The facts are:

a) On 18.07.2018 CIRP for Laxmi Precision Screws Limited, the corporate debtor, commenced and Mr. Deepak Thakur was appointed as an Interim Resolution Professional which was later confirmed by the CoC;

b) On 12.04.2019 the appellant/resolution applicant submitted resolution plan and it was approved by the CoC on 10.04.2019;

c) On 12.04.2019 *vide* CA No.*274/2019* the application was filed alongwith resolution plan before the Ld. Adjudicating Authority for its approval;

d) On *20.07.2019* the workmen at Units I and II went on strike and thus halted the entire operation;

e) IA No.*45/2020* and *46/2020* were filed by the workmen challenging the resolution plan being non-compliant under Section *53* of IBC. The Ld. Adjudicating Authority directed the appellant to file an affidavit regarding PF and gratuity dues;

3. The resolution plan so submitted by the appellant initially, gave workers only *54.42%* of their dues and claim of PF plus interest etc only to an extent of *54.42%*.

4. The learned Adjudicating Authority on 08.09.2022 thus directed the appellant to file an affidavit regarding PF and gratuity, which affidavit was rather filed on 21.10.2022.

5. Thereafter on 01.12.2022, the Ld. Adjudicating Authority referred the resolution plan to CoC to consider *additional statutory claims within 30 days*. It is pertinent to mention provisions were to be made for income tax and GST in the resolution plan initially submitted.

6. On 28.12.2022 in the 35^{th} CoC Meeting resolution plan was formally rejected as the appellant did not come forward to increase the value of the plan and was not interested to pursue it. The CoC thus formally rejected the plan.

7. On 09.01.2023 CoC filed IA No.*140/2023* for enlargement of CIRP period beyond 270 days and whereas on 01.02.2023 the appellant filed IA No.*280/2023* to set aside decision of the CoC regarding rejection of the resolution plan.

8. On 13.05.2024 *vide* the impugned order, Learned Adjudicating Authority dismissed both the IAs No.*140/2023* and *280/2023* and directed liquidation of the corporate debtor.

9. It is the submission of the learned counsel for the appellant the COC should not have asked to increase the value of the plan on the ground the value of the properties had increased as it was illegal and the contract was rather binding upon the CoC. The CoC, however, had referred to the minutes of its *35^{th}* Meeting wherein the appellant had blatantly refused to amend his plan and thus the CoC had rejected the plan on the basis of it being non-compliant of

Section *53* of IBC as also because of non-compliance to the judgement of Hon'ble Supreme Court in the case of Rainbow Papers Ltd.

10. Here we need first to refer to few orders of the Ld. Adjudicating Authority to understand the issues involved.

11. On 08.09.2022, while disposing of CA No.*274/2019* filed for the approval of the plan given by the appellant the Ld. Adjudicating Authority had directed as follows:

> *To submit an affidavit stating that the SRA will pay the contribution and other sums due from the corporate debtor under any provisions of the Employment Provident Fund and Miscellaneous Act, 1952 or the Scheme or the Pension Scheme or the Insurance Scheme, and under the Payment of the Gratuity Act, 1972 as the case may be, in respect of the period up to the date of approval of the resolution plan by the Adjudicating Authority,*

12. On 21.10.2022, in compliance of the order dated 08.01.2022, the appellant filed the affidavit to the following extent:

> *"3. That the Resolution Professional has informed that a total amount of Rs.14.20 crores is payable against Provident Funds along with interest as per the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 0952.*
> *4. That the Resolution Professional has further informed that a total amount of Rs.22.28 crores is payable against Gratuity as per the provisions of Payment of Gratuity Act, 1972*
> *5. That the Resolution Professional has further informed that the amount due against Provident Fund and Gratuity as per the Information Memorandum is Rs.10.09 crores and Rs.22.28 crores*
> *6. That the total amount due under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and Payment of Gratuity Act, 1972 in total is Rs.36.48 crores as informed by Resolution Professional. Hence, the total amount payable to the Creditors as per the Resolution Plan will have to be deducted and the plan will be modified accordingly.*
> *7. Hence it is required that a revised resolution plan will have to be submitted to the Resolution Professional in terms of the*

liberty granted by this Hon'ble tribunal as sought by my legal counsel.

13. That from perusal of the Affidavit of the Appellant it is clear that the Appellant has on its own sought the revision of the plan.

14. On 01.12.2022 the Learned Adjudicating Authority while considering various applications filed by the creditors, EPFO, GST, Employees Union, noted as under: -

> *Considering the facts and the legal issues discussed in the foregoing paragraphs, we hold that whatever directed, the aforementioned claims of various stakeholders are to be considered by the Resolution Professional under the relevant provisions of the IBC and in accordance with law and the same should be placed before the CoC for approval.* ***We, therefore, refer the resolution plan back for approval by the CoC*** *with a direction to consider the claims within a period of 30 days as per the observations/directions in the foregoing paragraphs.*

15. Thereafter on 15.12.2022 the Respondent No.2 convened 33rd CoC Meeting to take note of the order dated 01.12.2022 passed by the Learned Adjudicating Authority.

16. On 20.12.2022, the Respondent No.2 in its 34th Meeting noted:

> *Respondent No.2 held a meet and as per the direction of the Ld. Adjudicating Authority, seeking the Appellant to* ***revise his offer*** *to the payment under the resolution plan submitted earlier stood approved by the CoC on the payment and timings. That instead of revising the plan, the appellant advised that the Respondent No.1* ***may opt for liquidation as he was not revising the total plan value and stated that the other claim amount would be included in the total plan value submitted expecting the CoC, i.e. Respondent No.1 to make sacrifice and reduce its claim from the proposed payments as per the plan****.*

That in the same meeting on 20.12.2022 the Respondent No.1 discussed about filing an application for extension/exclusion of CIRP period for starting CIRP afresh.

17. Thereafter on 28.12.2022 the Respondent No.1 in its 35th Meeting had rejected the resolution plan since the appellant had failed to increase its plan value as per the *34th* Meeting held on 20.12.2022.

18. Thereafter an IA No.*140/2023* was filed by Respondent No.2 to enlarge the time for CIRP and whereas an IA No.*280/2023* was preferred by the appellant herein against rejection of his plan.

19. Learned Adjudicating Authority on 13.05.2024 had dismissed IA No.140/2023 holding as follows

".... *the commercial wisdom of CoC and decision of CoC needs to be accepted as far as issues relating to the Resolution Plan is concerned. The CoC's decision cannot be recalled at this stage of the matter as the said decision was taken at about couple of years back.*
That vide same order Ld. Adjudicating Authority held that:
We are of the view that value in the increase of the land will result in viable liquidation. Therefore, the applicant is directed to put an end to CIRP Process and consider to opt for liquidation process. The Liquidator can be chosen from the list of penal recommended by the IBBI. The Liquidator may first make an attempt to sell Corporate Debtor as a going concern. Let RP serve copy of this order to the creditors (Erstwhile members of CoC)
That consequently all applications related to the resolution plan were dismissed as vide the same order in IA No.280 (CH) of 2023 filed by the appellant was dismissed.

20. On the above facts it was argued by the appellants the CoC after having approved the plan could not have reopened the commercial bargain purely because of change in law regarding *100%* payment of workmen/employee statutory dues, like provident fund, gratuity and retiral benefits. It was argued

the amount of Rs. *170* crores was full and final payment towards all financial and operational creditors.

21. It was argued by the Ld. Counsel for the appellant that the resolution plan categorically records an amount of Rs. *170* Crores constituted the *"full and final payout"* towards all Financial Creditors, Operational Creditors, claimed/unclaimed liabilities, book liabilities and it further stipulated that the Resolution Applicant shall not be liable for any further liability pertaining to the period prior to the effective date. Thus, the commercial obligation of the appellant was conclusively capped and crystallized at Rs. *170* Crores and once such commercial offer was accepted by the CoC it could not have later changed it on the ground of financial viability.

22. It was argued the remand of the plan by the Adjudicating Authority was only necessitated due to change in law because of the later Judgments viz. '*Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia'* [Comp. App. (AT) (Ins.) No. 752 of 2021] where the provident fund, gratuity, EPF, Employee retiral benefits dues were required to be paid in full 100% as statutory employee benefits.

23. It was argued that the order dated 01.12.2022 passed by the Ld. Adjudicating Authority was not an invitation to the CoC to sit in appeal over its own earlier commercial decision or to revisit the value of the Corporate Debtor's assets after passage of time and such an approach of the CoC was wholly

impermissible. The CoC was only required to examine how those claims were to be paid and whether consequential adjustments were required.

24. It was argued that once a resolution plan is approved by the CoC with the requisite majority, the same becomes binding and sacrosanct between the CoC and the Successful Resolution Applicant and neither party can unilaterally resile therefrom per '*Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.*' [2021 SCC Online SC 707].

25. Further reference was made to '*Express Resorts and Hotels Ltd. vs. Amit Jain, Resolution Professional, Neesa Leisure Ltd. & Ors.* [2023 SCC Online NCLAT 97] which also reiterated that after approval of the resolution plan by the CoC, the process cannot be unsettled by entertaining competing proposals or by permitting reconsideration on grounds extraneous to the CIRP framework.

26. Thus, it was argued that the Ld. Adjudicating Authority while passing the impugned order dated 13.05.2024 failed to appreciate the limited scope of the order dated 01.12.2022; the binding nature of CoC's earlier approval dated 10.04.2019 and thus wrongly rejected the plan.

27. We have heard the arguments advanced by both the counsels.

28. We have gone through the arguments and records and as the appellant has limited its challenge only to the impugned order passed while dismissing the I.A. No. *280 of 2023* but it is relevant to mention that the order dated 08.09.2022 passed by Ld. NCLT was not challenged by the appellant and it has attainedfinality. In the said order dated 08.09.2022 the Ld. NCLT had given

specific directions to the appellant to submit an affidavit stating the Appellant *will pay the contribution and other sums due from the Corporate Debtor under any provision of the Employees Provident Funds and Miscellaneous Act, 1952 or the Scheme or the Pension scheme or the Insurance scheme, and under the Payment of the Gratuity Act, 1972, as the case may be, in respect of the period up to the date of approval of the Resolution Plan by the NCLT*.

29. On 21.10.2022 Appellant filed its affidavit in terms of order dated 08.09.2022. In the said affidavit the Appellant had specifically stated that "the total amount due under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and Payment of Gratuity Act, 1972 in total is Rs.36.48 Crores as informed by Resolution Professional. Hence, the total amount payable to the Creditors as per the Resolution Plan will have to be deducted and plan will be modified accordingly. *Hence it is required that a revised resolution plan will have to be submitted to the Resolution Professional in terms of the liberty granted by this Hon'ble Tribunal as sought by my legal counsel*." That from perusal of the said affidavit it is clear that Appellant has on its own sought the revision of the plan.

30. Further, there is no challenge to the order dated 01.12.2022 passed by the Ld. NCLT whereby the Resolution Plan so approved on 10.04.2019 was referred back for approval with a direction to consider the claims of various stakeholders as decided in various applications on 01.12.2022.

31. The Respondent No.1 in its 33rd meeting of CoC held on 15.12.2022 took note of order dated 01.12.2022. Further, 34th meeting of CoC was held on 20.12.2022, in terms of direction of Ld. NCLT, seeking the Appellant to revise its offer as the payment under the resolution plan submitted earlier stood approved by the CoC on the payment and timings. Instead of revising the plan, the Appellant advised the Respondent No.1 *may opt for liquidation as they are not revising the total plan value* and stated the other claim amount should be included in the total plan value expecting the CoC to make sacrifice and reduce its claim from the proposed payments as per the plan.

32. On 28.12.2022 Respondent No.1 held its *35th* meeting of CoC. In the said meeting the proposed resolution plan of the Appellant was rejected since the Appellant had failed to revise its plan as per 34th meeting.

33. Thus, under the above background we find there is no infirmity in the order dated 13.05.2024 passed by Ld. NCLT in dismissing the IA *280/2023*.

34. The order dated 13.05.2024 needs no consideration by this Appellate Tribunal, as *(a)* there was no challenge by the Appellant to the order dated 08.09.2022 and 01.12.2022 passed by the Ld. NCLT, whereby the proposed plan was referred back to the CoC for approval with a direction to the Appellant to consider the payment of claims of various stakeholders, and statutory authorities and *(b)* CoC’s commercial wisdom regarding accepting/ rejecting the Resolution Plan is "Non-Justiciable".

35. Further it is settled proposition of law as laid down by this Tribunal in *Sanjay Dave vs Andhra Bank Ltd. and Ors. Company Appeal (AT) (Insolvency) No.1128 of 2024*: -

> "*..... 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 have been held by the Hon'ble Supreme Court in the matter* of *K. Sashidhar vs Indian Overseas Bank 92019) 12 sec 150*".

36. Further in *Devi Trading & Holding Private Limited vs Ravi Shankar Devarakonda and Ors. Company Appeal (AT) (CH) (Ins.) No.30812023*, IA Nos. 945 and 946/2023 decided on 16.10.2023, it was held: -

> "*...... A deliberated 'Business Decision' of the CoC includes deliberations on the feasibility and viability, the financial and operational aspects of the Corporate Debtor, and therefore, the question of only 'considering' the proposal put forth by the Resolution Applicant cannot be viewed in a 'rigid manner'. The CoC is a pivotal decision-making body which decides all critical decision-making functions regarding Resolution Plans, Liquidation, Management etc., essential to the success of the CIRP. Though the IBC does not have a specific Provision that uses the term 'Business Decision' of the CoC, the Code contains several provisions that detail the powers and functions of the CoC, which encompass various decision-making responsibilities relating to the Insolvency Resolution Process, which definitely includes*

distribution methodology of the Resolution Plan. To say that only the Resolution Applicant should 'propose' the distribution and the CoC can only 'consider' it, is viewing the 'Business Decision' making capacity of the CoC in its commercial wisdom, in a very 'narrow compass, ' thereby defeating the very scope and objective of the Code".

37. Qua the power of CoC to take a decision with regard to liquidation of the Corporate Debtor, we note: -

In the matter of Mr. Gulabchand Jain vs Mr. Ramchandra D. Choudhary, Resolution Professional of Vijay Timber Industries Pvt. Ltd. Company Appeal (AT) (Insolvency) No.142 of 2021 "... ... That apart, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read together with explanation inserted by Act 26 of 2019 enforced w.e.f 16th August, 2019, the COC is empowered to take a decision in regard to liquidation of the Corporate Debtor even after an application has been filed by the Resolution Professional placing the Resolution Plan approved by the COC before the Adjudicating Authority for approval. Of course, the withdrawal of the Resolution Plan can be done before its approval by the Adjudicating Authority. This implies that even after approval of the Resolution Plan by the COC and laying it before the Adjudicating Authority, the COC can change its mind and pass a Resolution liquidating the Corporate Debtor subject to only exception that such course cannot be adopted after its confirmation i.e. after approval of the Resolution Plan by the Adjudicating Authority".

38. At this stage of the proceeding the affidavit dated 09.11.2024 filed by the Appellant, cannot be considered as the resolution plan was rejected on 28.12.2022 nearly about *4* years ago, hence the commercial wisdom of the CoC in rejecting the plan of the appellant cannot be reviewed.

39. The case laws relied upon by the Appellant i.e. Ebix Singapore Pvt Ltd, Express Resorts and Hotels Ltd, Hem Singh Bharana (supra) are not applicable in the present matter as it is not a case of unilateral withdrawal of plan by CoC upon receiving of any better resolution plan. In the present matter vide order

dated 08.09.2022, while considering the earlier proposed plan of the Appellant, the Ld. NCLT issued specific direction(s) to the Appellant to submit an affidavit stating the Appellant will pay the contribution and other sums due from the Corporate Debtor under any provision of the Employees Provident Funds and Miscellaneous Act, 1952 or the Scheme or the Pension scheme or the Insurance scheme and under the Payment of the Gratuity Act, 1972, as the case may be, in respect of the period up to the date of approval of the Resolution Plan by the Ld. NCLT and thereafter, the Ld. NCLT had remanded the resolution plan to the CoC for approval with certain observations/directions to the Appellant, to consider the claims within 30 days. The said orders were never challenged by the Appellant and have attained finality.

40. That since after order dated 01.12.2022 there was no approved plan by the CoC, as the CoC was directed to consider the approval of plan after considering the further claims, hence in 35th CoC meeting dated 28.12.2022 the CoC had rejected the proposed plan of the Appellant, as it had failed to revise its plan as per the discussion held in 34th CoC meeting dated 20.12.2022 wherein instead of revising the plan, the Appellant advised the *CoC they may opt for liquidation as the Appellant does not intent to revise the total plan value expecting the CoC to make further sacrifice haircut*, hence no fault can be found in the decision of CoC.

41. In light of the facts stated above, we hold that the Ld. NCLT has not committed any error in rejecting the I.A.'s. Accordingly, the appeal is dismissed. No order as to costs. All pending I.A.'s, if any, are disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 17-08-2026
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