

THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

IA 6058/2023

IN

Company Petition No. (IB) – 2628/(ND)/2019

*Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
NCLT Rules, 2016.*

IN THE MATTER OF:

PUNJAB NATIONAL BANK

.... Financial Creditor

Versus

SARAYA INDUSTRIES LTD

.... Corporate Debtor

AND IN THE MATTER OF-

SHRAVAN KUMAR VISHNOI,

RP, SARAYA INDUSTRIES LTD.

.... Applicant

Versus

SWARAJKRANTI INFRATECH PVT. LTD.

...Respondent

CORAM:

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Appearance –

For the Applicant/Financial Creditor

:Adv. Sunil Kumar Pandey in Inv. P/04/2024. Adv. Karuna Nidhi in IA no. 6381/2023 & IA No. 6382/2023. Adv. Akshay Lodhi and Adv. Pawan Reley along with Mr. Sohita Aneja Sole Proprietor of the Applicant in I.A. No. 660/2024. CS Gaurav Joshi in I.A. 2887/2024. Adv. Kumar Prateek, Adv. Shashi Ranjan Kumar, Adv. Rahul Dubey Adv in IA. No. 4119/2023.

For the Brokers

:Adv. Tanveer Zaki and Adv. Sana Ansari in IA/5335/2023.

For the RP

:Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Palak Kalra. Adv. Vinod Chaurasia, Mr. Sharavan Vishoni -RP

For the Respondent/Corporate Debtor

:Adv. Varsha Banerjee, Applicant IA No.5122/2023, Repondent 1-2, IA No.2862/2022. Adv. Daleep Dhyani for Purvanchal Vidyut Vitran Nigam Ltd./respondent in IA NO.5356/2022.

ORDER

PER- MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Order Pronounced on: 26.07.2024

1. That the instant application is being filed by Mr. Shraavan Kumar Vishnoi ("Applicant"), the Resolution Professional for Saraya Industries Limited ("Corporate Debtor") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking withdrawal of application filed by the Applicant Shraavan Kumar Vishnoi Resolution Professional for approval of resolution plan of Swarajkranti Infratech Private Limited in the CIRP of the Corporate Debtor bearing I.A. No. 5122 of 2023.

2. The applicant in the present application has prayed for the following relief/s –

- I. *Allow the present application and allow the withdrawal of I.A. No. 5122 of 2023 filed by the Applicant herein under Section 30(6) read with section 31 of the Code;*
- II. *Extend the period of CIRP in terms of section 12(2) of the Code for a period 30 Days for the limited purpose of reconsideration, renegotiations of the Resolution Plan of the Resolution Applicant with Resolution Applicant;*
- III. *Issue appropriate directions for remanding back of Resolution Plan to consider the claims as directed by this Hon'ble Adjudicating Authority and file appropriate application for approval in accordance with law;*
- IV. *Pass such other order(s) as this Hon'ble Adjudicating Authority may deem fit.*

3. A brief overview of the facts of the case, averred in the instant application by the applicant, which are relevant for adjudication, have been elucidated as under -

- a. That this Adjudicating Authority by the virtue of its order dated 17.05.2022 was pleased to admit the present company petition being C.P. No. - (IB) - 2628 (ND) / 2019 filed by the Financial Creditor namely Punjab National Bank under Section 7 of the Code

and initiated CIRP with regard to Corporate Debtor i.e., Saraya Industries Limited.

- b. That the Applicant conducted the CIRP as per the provisions and the Regulations made thereunder. Accordingly, in the CIRP during the 19th meeting of the CoC convened on 11.07.2023, two Resolution Plans as submitted of the following PRA's were placed for voting.
- c. Subsequently, e-voting was opened from 14.07.2023 at 10:45 AM to 09.08.2023 at 11:00 PM wherein the Resolution Plan of JFC Finance (India) Limited was rejected by the members of CoC while the Resolution Plan of Swarajkranti Infratech Private Limited was approved with 99.96% voting share in favor.
- d. Thereafter the Applicant filed an application before the Hon'ble Adjudicating Authority under Section 30(6) and 31 of Insolvency and Bankruptcy Code, 2016 Read with Regulation 39(4) of The Insolvency And Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 bearing I.A. No. 5122 of 2023 seeking approval of resolution plan.
- e. It is submitted that the said application was listed on 27.09.2023 wherein this Hon'ble Adjudicating Authority was pleased to issue notice upon all the Respondents.
- f. That the Applicant on the requisition of Punjab National Bank, one of the members of COC, convened 21st CoC meeting of Corporate

Debtor on 19.10.2023, wherein, the Applicant apprised the members of the CoC that the Hon'ble Adjudicating Authority had allowed certain claims and directed the Applicant to consider the same on merits. The Applicant received claims from the Operational Creditors, Financial Creditors & Employees and Workmen, etc. for the value of Rs. 3.79 Crores. Further, claims of approximately Rs. 14 Crore are sub-judice before Hon'ble Adjudicating Authority. It was directed by the PNB that it wants to re-consider and re-negotiate the Resolution Plan considering the Resolution Value is Rs. 76 Crores only against the Liquidation Value of Rs. 100 Crores which is 24 Crores less.

- g. The Applicant informed the members of the CoC that no provision has been provided under the Code for sending the resolution plan back to the CoC for reconsideration.
- h. However, the representative of the PNB apprised the members of the CoC that in view of the judgments passed by the Hon'ble National Company Law Tribunal, Ahmedabad in the case of Asset Reconstruction Company (India) Ltd. versus M/s Nivaya Resources Pvt. Ltd. wherein Financial Creditor approached the Hon'ble National Company Law Tribunal, Ahmedabad and requested withdrawing the application for approval of resolution plan for reconsideration and re-negotiation by CoC for enhancing the resolution plan value to meet the additional claims and the Hon'ble

National Company Law Tribunal, Ahmedabad was pleased to allow reconsideration of the Resolution Plan already submitted for approval before the Hon'ble National Company Law Tribunal, Ahmedabad.

- i. In view of the same, a resolution was put up for e-voting. Subsequently, e-voting was opened from 21.10.2023 at 16:00 hours to 27.10.2023 at 18:00 hours, wherein the filing of withdrawal of Resolution plan approval application being I.A. No. 5122 of 2023 was approved by the CoC i.e., Punjab National Bank having 87.95% voting share.
- j. This is pertinent to mention herein that the Applicant while acting as a facilitator with no role in any decision making filed I.A. No. 5122 of 2023 upon the instructions of the members of CoC of Corporate Debtor and similarly, the Applicant is filing the present Application upon the instructions of the members of CoC as resolved in 21st meeting of the Corporate Debtor.

4. The arguments/submissions made by the respondent have briefly elucidated as under -

- a. That the present Application is a gross abuse of the process of law and has been preferred by the Applicant, acting on wrong instructions of CoC, and will unduly delay and derail the CIR process of the Corporate Debtor. It is submitted that the

Applicant has not approached this Adjudicating Authority with clean hands inasmuch as the Application under reply comprises of completely misleading and misconceived averments hence, are denied in toto and the same is liable to be dismissed in limine.

- b. That once a Resolution Plan has been approved by the CoC of the Corporate Debtor and an Application for approval of Resolution Plan is pending adjudication before this Adjudicating Authority, the CoC has no jurisdiction to decide that it wants to withdraw the plan approval application or wants to reconsider the resolution plan or renegotiate the same.
- c. The Resolution Plan, once approved by the CoC, is binding on all stakeholders and it is only subject to approval of this Adjudicating Authority under Section 31 IBC, 2016. In doing so, it is a settled principle of law that this Adjudicating Authority would not have the jurisdiction to entertain the Application to withdraw the Plan Approval Application, be it for reconsideration of the Resolution Plan or to renegotiate the same with the Successful Resolution Applicant.
- d. That the Resolution Plan submitted by the Respondent was approved by the CoC of Corporate Debtor with 99.96% voting. The CoC of the Corporate Debtor only after applying its commercial wisdom had approved the Resolution Plan submitted by the Corporate Debtor under the provisions of Section 30 IBC. Once a plan is approved by the CoC under Section 30, it is not open for the CoC, acting through

RP, to contend that it does not want this Adjudicating Authority to approve the Plan under S. 31 IBC. The plan, once approved by CoC, is equally binding on CoC as well, as a stakeholder in the process.

- e. That the Resolution Plan submitted by the Respondent herein is not violative of any of the provisions of Section 30 (2) of the IB Code. There is no case that the Successful Resolution Applicant has committed any breach of the approved Resolution Plan. As has been held in a catena of judgements, the scope of S. 31 IBC is limited in nature, which does not extend to permitting withdrawal of resolution plan already approved by the CoC.
- f. That it is pertinent to mention herein that neither the IB Code, 2016 nor the Regulations thereunder empowers the CoC to get a second chance to review a Resolution Plan which already stands approved. It is submitted that the Application for approval of Resolution Plan is pending adjudication before this Hon'ble Tribunal and the CoC, at this stage, cannot be allowed to take a U-Turn from its earlier stand and reverse the decision already taken by it.
- g. It is submitted before this Adjudicating Authority that there can be only two circumstances under which the Resolution Plan can be remitted by this Adjudicating Authority i.e., where the Resolution Applicant acquires any ineligibility subsequent to the approval of Resolution Plan or where there is a breach of any condition of the Resolution Plan which makes the Resolution Applicant not entitled

to implement the plan however, in the present case, there being no such circumstances, therefore, the Resolution Plan cannot be remanded back to CoC for reconsideration.

- h. Further, the respondent has relied on Kalinga Allied Industries India Private Limited vs. CoC and Ors.- Company Appeal (AT) (Insolvency) No. 689 of 2021, wherein it was held that –

“In the instant case, though it is not the SRA which is seeking withdrawal, the effect of the CoC seeking withdrawal of an already approved Resolution Plan would have identical repercussions with respect to 'timelines' as the same would have the effect of restarting the CRP Process from the valuation stage when all the statutory timelines have long since been exhausted. The principle with respect to 'timelines' is applicable to the facts of this case. At the cost of repetition, it is crystal clear that any modification or withdrawal (by SRA or otherwise) after approval by the CoC and submission to the Adjudicating Authority, 'irrespective of the content of the terms envisaged by the Resolution Plan, would only lead to further delay and defeat the very scope and objective of the Code. The existing framework does not provide any scope for effecting any further modifications or withdrawals of the CoC approved Resolution Plan by

the SRA or the Creditors. The Adjudicating Authority can interfere only if the Plan is against the provisions of the Code. Once the Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code.”

- i. It is stated by the Applicant before this Adjudicating Authority that that Punjab National Bank wanted to re-consider and renegotiate the Resolution Plan submitted by the Respondent considering the Resolution Value is Rs. 76 Cr. only against the Liquidation Value of Rs. 100 Cr.
- j. In terms of catena of judgement propounded by various Hon 'ble Courts, there is no stipulation that the Resolution Plan is required to be more than the liquidation value. This position has more specifically been clarified by the Hon 'ble Supreme Court in the matter of “Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh-(2020) 11 SCC 467”.

Analysis and Findings –

5. We have perused the documents placed on record by the Applicant and Respondent and considered the arguments tendered by the Counsels for the Applicant and the Respondent.

6. At this juncture it is pertinent to mention that the Applicant himself has admitted that there is no provision which enables this Adjudicating Authority to remand the resolution plan back to the CoC for reconsideration at the behest of the CoC itself. Consequently, this Adjudicating Authority is confined by the IBC, 2016, the role of the AA is limited to approval or rejection of the Resolution Plan in accordance with section 31 of the IBC.

7. It has been made abundantly clear in the IBC, 2016, that once the resolution plan has been submitted to the Adjudicating Authority, the AA has an extremely narrow jurisdiction with regards to the approval or rejection of the said plan and the AA cannot remand the Resolution Plan back to the CoC for reconsidering merely at the request of the CoC, the plan once approved by CoC, as it has been in the present case (approved with 99.96% voting share in favor), it cannot be sent back for reconsideration unless it suffers material defects.

8. In the above context, it is pertinent to refer to the judicial precedent laid down by the Hon'ble Supreme Court in *GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY VS PRABHJIT SINGH SONI (2024 SCC OnLine SC 122)*, wherein the plan was sent back for re-submission, to the CoC and the Hon'ble Supreme Court elaborated on the grounds on which a plan can be sent back by the AA to the CoC, i.e., in the instance where the

Resolution Plan does not all the parameters laid down in sub section (2) of Section 30 of the IBC, 2016 and the relevant CIRP regulations.

9. From the aforementioned precedent, it can be clearly inferred that the Hon'ble Supreme Court has elucidated defects, which if present in a plan, would allow the plan to be sent back to the CoC for reconsideration by the AA. Consequently, the Resolution Plan in the present case cannot be sent back for reconsideration/renegotiation to the CoC merely at the request of the CoC.

10. Further, the Hon'ble Supreme Court in 'Ebix Singapore Pvt. Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Ltd. & Anr' (2021 SCC OnLine SC 707) held that –

“Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the

12

Corporate Debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time.”

11. The aforesaid precedent was further affirmed by the Hon’ble NCLAT in *Kalinga Allied Industries India Private Limited vs. CoC and Ors.- Company Appeal (AT) (Insolvency) No. 689 of 2021*, wherein it was held that, once a plan has been approved by the CoC and the said plan does not suffer any material defects, it becomes binding on the SRA and the CoC and renegotiation of the same by the virtue of withdrawal of an application seeking the approval of the resolution plan before the AA, would be improper as it would cause unwarranted delays. Moreover, the aforementioned precedent also states that the Adjudicating Authority shall exercise a limited jurisdiction over a resolution plan that has been submitted for its scrutiny, thereby limiting the scope of the AA with regard to interference with the plan, in the form of sanctioning the withdrawal of the same at the request of the CoC.

12. Additionally, the precedent relied upon by the Applicants i.e., *Asset Reconstruction Company (India) Ltd. versus M/s Nivaya Resources Pvt. Ltd.* has been overruled by the Hon’ble NCLAT in *Nivaya Resources Private Limited VS Asset reconstruction Company India Limited & Anr, Company Appeal (AT) (Insolvency) Nos. 1184 & 1186 of 2022*, wherein it was held that –

“We, thus, are satisfied that in the present case, there were no grounds on which the plan could have been sent back for reconsideration before the CoC.”

13. In light of the aforementioned legislation and the judicial precedents laid down by the Hon’ble NCLAT and the Hon’ble Supreme Court, it would be detrimental to allow the applicant to withdraw I.A No. 5122 of 2023 in accordance with the instructions of the CoC, owing to the fact that such an act would go against the very essence of IBC, 2016 and derail the CIR Process.

14. Taking into consideration the facts and circumstances of the present case this this Adjudicating Authority **Dismisses** the present application filed by the applicant.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)