

National Company Law Appellate Tribunal

Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 259 of 2021

(Arising out of Order dated 02nd February, 2021 passed by National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. No. 1010/KB/2020 in C.P. (IB) No.- 1444/KB/2018).

IN THE MATTER OF:

CRPL Infra Private Limited

121, Chitranjan Avenue,

Opp. Mohammed Ali Park,

Kolkata-700073 (W.B.)

Though its Director, Mr.. Rajesh Agarwal.

Email: crystalcal@rediff.com

...Appellant

Versus

1. Shri Anil Agarwal, Resolution Professional,

Transafe Services Limited, Balmer Lawrie

House (Rear Building), 6th Floor,

21, N.S. Road, Kolkata – 700001

Email: transafe@aaainsolvency.com

anilagarwal@aaainsolvency.com

...Respondent No. 1

2. Canara Bank (Syndicate Bank)

Kaveri House, 132/1, M.G. Road,

Barabazar, Kolkata-700007

Though its Branch Manager.

Email: samb.kolkata@syndicatebank.co.in

samvkolkata9797@gmail.com

...Respondent No. 2

3. Axis Bank Limited,

Structured Assets Group-East,

1 Shakespeare Sarani,

4th Floor, A.C. Market Building,

Kolkata-700071

Through its Branch Manager.

Email: Renosh.iacob@axisbank.com

Prasun.Bhattacharya@axisbank.com

...Respondent No. 3

4. HDFC Bank Ltd.,

Tower B, 4th Floor,

Peninsula Business Park,

Ganpatrao Kadam Marg,

Dwan Mills Compound,
Lower Parel (W), Mumbai – 400013
Through its Branch Manager.
Email: Manish.Nyati@hdfcbank.com

...Respondent No. 4

5. The Karur Vyasya Bank Ltd.
Kolkata, Shakespeare Sarani Branch,
Ground Floor, S.B. Towers,
37, Shakespeare Sarani, Kolkata,
West Bengal – 700017
Through its Branch Manager.
Email: shakespeare@kvbmail.com
srinivas@kvbmail.com

...Respondent No. 5

6. Bank of India,
Kolkata Large, Corporate Branch,
5 B.T.M. Sarani, Kolkata – 700001
Through its Branch Manager.
Email: LCB.kolkata@bankofindia.co.in

...Respondent No. 6

7. Balmer Lawrie and Company Limited,
3rd Floor, 21, Netaji Subhash Road,
Kolkata, West Bengal – 700001
Through its Company Secretary.
Email: choudhary.dinesh@balmerlawrie.com

...Respondent No. 7

8. Om Logistics Ltd.,
130 Transport Centre,
Punjabi Bagh, New Delhi – 110035
Through its Company Secretary.
Email: ashishmathur@omlogistics.co.in
omgroup@omlogistics.co.in

...Respondent No. 8

Appellant: Mr. Rajender Singhvi, Advocates.
Respondents: Mr. Anil Agarwal, RP in person.
Mr. Joy Saha, Sr. Advocate along with Mr. Arun Kumar Gupta (PCA), Mr.. Nipun Gautam (RP), Advocates for R-1.
Mr. R K Sanghi, Sr. Advocate for R-1 & R-8.
Mr. Shivang Rawat, Advocate for R-2 to R-6.
Mr. Abhinav Srivastava & Mr. Nirmal Prasad, Advocates for (CoC) R-2 to R-6.

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Challenge in this Appeal namely *Company Appeal (AT) (Insolvency) No. 259 of 2021*, is to the Impugned Order dated 02.02.2021, passed by the Learned Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) in I.A. No. 1010/KB/2020 in C.P. (IB) No.- 1444/KB/2018 under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**Code**'). By the Impugned Order, the Learned Adjudicating Authority has dismissed the I.A. No. 1010/KB/2020 preferred by *M/s. CRPL Infra Private Limited*, the Applicant/Appellant herein against the Resolution Professional/(RP) and the Members of Committee of Creditors (CoC) praying to set aside the resolution passed at the 12th COC Meeting held on 10.09.2020, on the ground that the CoC had rejected the Applicant's request for extension of time to submit the Resolution Plan and to consider the Resolution Plan proposed to be submitted by the Applicant/Appellant herein.

2. While dismissing the I.A., the Adjudicating Authority has observed as follows:

"18. This is a case where the CIRP had commenced on 21.11.2019, the first invitation to EoI was published on 18.01.2020. The last date of submission of resolution plan had been extended four times at the instance of prospective resolution applicants including the Applicant herein. Upon receiving an email from the RP, the resolution applicants, including the Applicant herein, had submitted their revised resolution plans before the eleventh CoC meeting was held on 03.09.2020.

19. In the said meeting, upon request from the Applicant herein, an opportunity to make revised bids

during the twelfth CoC meeting to be held on 10.09.2020 was granted. However, the Applicant herein, wide email dated 08.09.2020 sought further extension of time for submission of revised resolution plan. This request for further, extension was not entertained by the CoC in its twelfth meeting, however, the CoC has offered the Applicant to continue to be a part of the ongoing process so that it may have an opportunity at a later stage. The Applicant sought 15 minutes time for discussion and upon discussion, the Applicant decided not to participate in the open bidding process and exited the meeting. Therefore, the CoC went on to approve the resolution plan submitted by Om Logistics Ltd., i.e. Respondent No. 8 herein, in its fourteenth CoC meeting held on 17.10.2020.

20. From the submissions made on behalf of all the parties and the documents available on record, it is seen that four opportunities were granted for submission of resolution plan vide dates 16.04.2020, 30.05.2020, 29.06.2020, 31.07.2020, and two opportunities were granted to submit revised resolution plan vide 19.08.2020 and 03.09.2020 to the Applicant herein. Despite several opportunities being granted, the Applicant herein has failed to submit its revised resolution plan.

21. The Applicant's submission that the resolution plan could not be finalised due to lockdown and due to its directors, other than the authorised representative, being either infected or exposed to Covid-19 on various dates is also not very tenable since by the September 2020, remote working technologies were abundantly available, most of the proceedings had moved online, and the board meetings could also have been held online during the extended time already granted by the CoC.

22. All the resolution applicants, including the Applicant herein, were given equal opportunity to submit their resolution plans and revised resolution plans, in fact, the time was even extended upon the Applicant's request. The Applicant herein was treated at par with others and opportunity to participate in the meetings was given to them. In our considered opinion, neither the decision of the CoC nor of the RP was unreasonable or arbitrary. Therefore, this Adjudicating Authority is neither inclined towards

quashing and setting aside the resolution passed at the twelfth CoC meeting of the Corporate Debtor held on 10.09.2020 to the extent that it rejects the Applicant's request for extension of time to submit its resolution plan nor inclined towards directing the RP and the CoC to consider the resolution plan proposed to be submitted by the Applicant.”

3. **Submissions of the Learned Counsel appearing on behalf of the**

Appellant:

- Learned Counsel for the Appellant vehemently contended that during the CoC Meeting on 03.09.2020, all the Resolution Applicants agreed for adjournment to file the revised Resolution Plan. On 08.09.2020, the RP sent an email conveying that the 10th COC Meeting would take place on 10.09.2020, without stating the agenda and giving only two days time which is not in conformity with Section 19 of the Code.
- On 08.09.2020 itself the Appellant addressed an email to the RP seeking 10-15 days extra time to submit the revised Resolution Plan, but the RP on 10.09.2020 had conveyed to the Appellant that the COC has refused to extend the time. Even the Minutes of the Meeting were not supplied on the ground that it is a confidential document.
- The RP was aware that the Appellant was going to revise their offer to around Rs.55 Crs. and would become the highest bidder.
- On 10.09.2020, H8 was declared as H1 and the CoC passed the resolution on 04.11.2020 taking 53 days to approve the Plan. But the Appellant was not given any opportunity though no harm would have been caused had 10 to 15 days time been given to the Appellant.

- The I.A. preferred by the Appellant herein was heard by the Adjudicating Authority on 02.10.2020 but the Judgement was pronounced only 60 days later, whereby valuable time was lost.
- The Learned Counsel drew our attention to Annexure 11 which is an email dated 08.09.2020 sent by the Appellant seeking time for the following reasons:
 - *Despite talking all steps as may be necessary in order to comply with the timeline of 10th September, 2020, we have been unable to finalize and formalize our Resolution Plan in view of the lockdown that was imposed across the Country due to COVID-19. As a result of the Pandemic, we had very limited access to our office and all the documents necessary to prepare our Resolution Plan. As a result of this delay, we have lost a considerable amount of time;*
 - *Our Director Mr. Naresh Agarwal has been unwell and has in fact been diagnosed with COVID-19. A copy of the medical reports in this respect are enclosed. As a result, he was unable to assist in preparation of the Resolution Plan. Mr. Agarwal was a critical member of our team and was in fact spearheading this assignment. In his absence and without his leadership, our team has been struggling to formalize and finalize the Resolution Plan. Further Mr. Rajesh Agarwal, one of the key promoters of the Resolution Applicant is under home quarantine due to his recent exposure to a covid-19 positive patient. Our General Manager – Accounts Mr. Ved Byas, another key member of the whole transaction is also found to be Covid-19 positive and is under home isolation. We are confident that all these key members will be in a condition to resume office within a period of 14 days from the date of this letter, post which, our team will endeavor to expeditiously formalize and finalize the Resolution Plan;*
 -

- Our Government, various legislations and Courts across the Country have adopted a sympathetic approach and have duly extend timelines which were unable to be met as a result of the Pandemic Covid-19. In fact, as you are aware, the Insolvency and Bankruptcy Board of India vide notification dated 29th March 2020 inserted Regulation 40C which states as below:-

“40C. Special provision relating to time-line. Notwithstanding the timelines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

4. **Submissions of the Learned Counsel appearing on behalf of the**

Respondent No. 1/Resolution Professional (RP):

- The RP in consonance with the CoC Members extended the time for submission of the Resolution Plan four times i.e., 01.04.2020 till 31.07.2020 (120 days). The RP in the 8th CoC Meeting held on 31.07.2020 appraised the Members of the COC that two Resolution Applicants had sent their email seeking extension of the last date of submission of the Resolution Plan. The Members of the COC were not in favour of extending the time. In the 9th COC Meeting held on 12.08.2020 three Resolution Applicant submitted their Plans:

Sl. No.	Particulars	Location of PRA	Resolution Plan Received
1.	Om Logistics Ltd. (Respondent No. 8).	Delhi	Yes
2.	Western Carriers (India) Limited.	Kolkata	Yes
3.	CRPL Infra Private Limited (Appellant)	Kolkata	Yes

- R8 proposed a higher bid amount and was declared as H1 Bidder with a revised bid for Rs.43 Crs.
- The 12th CoC Meeting was held on 10.09.2020, wherein the RP brought to the notice of the CoC that an email was received from the Appellant seeking extension of time, but the same was refused.
- The H1 Bidder had written to the RP on 30.07.2020 and on 28.08.2020 that the extension in timeline might lead to their withdrawal from the Resolution Process of the 'Corporate Debtor' and that the funds earmarked for taking over the 'Corporate Debtor' may be deployed in some other Project.
- The timelines were published on 18.02.2020 through Form-G and the Appellant had given declaration that they will abide by the timelines and the provisions of RFRT.
- After the Members of the COC conveyed to the Appellant that extension could not be granted, the Appellant decided to exit the Meeting and their open bidding process was conducted wherein H1 Company was declared the Bidder with Rs.49 Crs.
- The EMD amount was returned to the Appellant. An application was preferred by the Appellant in September 2020, but the same was not pursued by them before the Adjudicating Authority, though it was sitting regularly.
- After the approval of the Resolution Plan, the RP conveyed the first Meeting of the Monitoring Committee and three new Board of Directors were appointed. Further, as per the terms of the Resolution Plan on 16.04.2021, Rs.49 Crs. were received from H1 out of which

Rs.47.17 Crs. payment was made to all the 'Secured Financial Creditors'. The Government and statutory dues were also paid.

- The 'Financial Creditors' namely Axis Bank, Canara Bank, HDFC Bank and Bank of India issued NOC and release their security interest.
- R-8 has taken control over the ownership and management of the 'Corporate Debtor Company'. The Plan has been implemented. The RP in support of their case relied on the following Judgements:

- *'Arcelor Mittal India Private Limited' Vs. 'Satish Kumar Gupta', (2019) 2 SCC 1.*
- *'Committee of Creditors of Essar Steel India Limited' Vs. 'Satish Kumar Gupta', 2019 SCC OnLine SC 1478, Para 54.*
- *'K Sashidhar' Vs. 'Indian Overseas Bank & Ors.', 2019 SCC OnLine SC 257, Para 52, 55, 57, 58 & 64.*
- *'Maharashtra Seamless Limited' Vs. 'Padmanabhan', Civil Appeal No. 4242 of 2018, Para 28.*
- *'Swiss Ribbons Pvt. Ltd. & Anr.' Vs. 'Union of India', 2019 SCC OnLine SC 73, Para 82-84.*

5. **Submissions of the Learned Counsel appearing on behalf of the Respondent No. 8/Successful Resolution Applicant:**

- The Resolution Plan has already been implemented and all the old Directors of the Company have resigned and the new Directors were appointed. Bankers have released their charges on the assets of their Company.

- The Successful Resolution Applicant has invested huge amounts on Purchase of Equipment, Repair of Machinery, Revival of Plant at Dheruheda.
- The Hon'ble Supreme Court has time and again held that commercial wisdom of the CoC cannot be overturned.
- Though the Appellant referred to the email dated 08.09.2020 stating that one Mr. Naresh Agarwal, one of the directors of the Appellant was tested Covid positive. The other authorised person Mr. Murali Lal Agarwal (the other director of the Appellant Company) or Mr. Rajesh Agarwal who has filed this Appeal could have acted on behalf of the Appellant Company.
- Regulation 40-C is applicable only till the end of the period of lockdown. As per the provisions of the Regulations for Resolution Plan (RFRP) all prospective Resolution Applicants have agreed to abide by the decision of the CoC under clause 1.14.7 of the RFRP, as it has been stated that no extension of time shall be given to the Resolution Applicant for submission of Resolution Plan.

Assessment:

6. I.A. 599 of 2021 seeking condonation of delay in filing the Appeal is condoned vide Order dated 09.08.2021.

7. The material on record shows that the last date for submission of the Resolution Plan was extended five times:

- On 01.04.2020
- 16.04.2020
- 30.05.2020

- 29.06.2020
- and finally till 30.07.2020

8. It is the case of the Appellant that RP had given only two days time i.e., the email was addressed to them on 08.09.2020 and the 10th CoC Meeting was convened on 10.09.2020 and that the fixing of the date within two days is not in conformity with Section 19 of the Code and there are no reasons for the urgency stated in the email. The documentary evidence on record shows that the 12th COC Meeting was held on 10.09.2020, whereby the RP brought to the notice of the COC Members regarding the request of the Appellant in the email dated 08.09.2020 seeking extension till 25.09.2020 for submission of the revised Resolution Plan. Further extension of date was declined by the Members of the COC. As regarding the urgency which is submitted by the Appellant, it is a well settled proposition that IBC is a time bound process and any extension of time has to be done strictly under the provisions of Section 12(2) of the Code which reads as follows:

12. Time-limit for completion of insolvency resolution 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.*

9. Sub-Section (3) of Section 30 of the Code provides that the RP shall present the Resolution Plans, which conform to the requirement of Section 30, before the CoC for approval. After considering the feasibility and viability, as stipulated under sub-Section (4) of Section 30, the CoC may approve the Resolution Plan by a vote not less than 66%. The Hon'ble

Supreme Court in **‘Ebix Singapore Private Limited’ Vs. ‘Committee of Creditors of Educomp Solutions Limited & Anr.’ 2021 SCC OnLine SC 707**, in para 142 discussed the importance of adherence to timelines and it is relevant to reproduce the observations:

142 As noted above, Section 12 of the IBC stipulates the timeline within which the CIRP is to be completed. The RP on the instructions of the CoC may make an application for extension of the CIRP. Regulation 40A of the CIRP Regulations provides a detailed model timeline for CIRP which accounts for all the procedural eventualities that are permitted by the statute and the regulations. Regulation 40A is extracted below:

“40-A. Model time-line for corporate insolvency resolution process.—The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:

<i>Section/ Regulation</i>	<i>Description of Activity</i>	<i>Norm</i>	<i>Latest Timeline</i>
<i>Section 16(1)</i>	<i>Commencement of CIRP and appointment of IRP</i>	<i>....</i>	<i>T</i>
<i>Regulation 6(1)</i>	<i>Public announcement inviting claims</i>	<i>Within 3 Days of Appointment of IRP</i>	<i>T+3</i>
<i>Section 15(1)(c)/Regulations 6(2)(c) and 12 (1)</i>	<i>Submission of claims</i>	<i>For 14 Days from Appointment of IRP</i>	<i>T+14</i>
<i>Regulation 12(2)</i>	<i>Submission of claims</i>	<i>Up to 90th day of commencement</i>	<i>T+90</i>

<i>Regulation 13(1)</i>	<i>Verification of claims received under Regulation 12(1)</i>	<i>Within 7 days from the receipt of the claim</i>	<i>T+21</i>
	<i>Verification of claims received under Regulation 12(2)</i>		<i>T+97</i>
<i>Section 21(6A) (b)/Regulation 16-A</i>	<i>Application for appointment of AR</i>	<i>Within 2 days from verification of claims received under Regulation 12(1)</i>	<i>T+23</i>
<i>Regulation 17(1)</i>	<i>Report certifying constitution of CoC</i>	<i>Regulation 12(1)</i>	<i>T+23</i>
<i>Section 22/Regulation 19(2)</i>	<i>1st meeting of the CoC</i>	<i>Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.</i>	<i>T+30]</i>
<i>Section 22(2)</i>	<i>Resolution to by appoint RP the CoC</i>	<i>In the first meeting of the CoC</i>	<i>T+30</i>
<i>Section 16(5)</i>	<i>Appointment of RP</i>	<i>On approval by the AA</i>	<i>.....</i>
<i>Regulation 17(3)</i>	<i>IRP performs the functions of RP till the RP is appointed.</i>	<i>If RP is not appointed by 40th day of commencement</i>	<i>T+40</i>
<i>Regulation 27</i>	<i>Appointment of valuer</i>	<i>Within 7 days of appointment of RP, but not later than 47th day of commencement</i>	<i>T+47]</i>
<i>Section 12(A)/Regulation 30-A</i>	<i>Submission of application for withdrawal application admitted</i>	<i>Before issue of EoI</i>	<i>W</i>

	<i>CoC to dispose of the application</i>	<i>Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.</i>	<i>W+7</i>
	<i>Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA</i>	<i>Within 3 days of approval by CoC</i>	<i>W+10</i>
<i>Regulation 35-A</i>	<i>RP to form an opinion on preferential and other transactions</i>	<i>Within 75 days of the commencement</i>	<i>T+75</i>
	<i>RP to make a determination on preferential and other transactions</i>	<i>Within 115 days of commencement</i>	<i>T+115</i>
	<i>RP to file applications to AA for appropriate relief</i>	<i>Within 135 days of commencement</i>	<i>T+135</i>
<i>Regulation 36 (1)</i>	<i>Submission of IM to CoC</i>	<i>Within 2 weeks of appointment of RP, but not later than 54th day of commencement</i>	<i>T+54</i>
<i>Regulation 36-A</i>	<i>Publish Form G</i>	<i>Within 75 days of commencement</i>	<i>T+75</i>
	<i>Invitation of EoI</i>		
	<i>Submission of EoI</i>	<i>At least 15 days from issue of EoI (Assume 15 days)</i>	<i>T+90</i>
	<i>Provisional List of RAs by RP</i>	<i>Within 10 days from the last day of receipt of EoI</i>	<i>T+100</i>
	<i>Submission of objections to provisional list</i>	<i>For 5 days from the date of provisional list</i>	<i>T+105</i>
	<i>Final List of RAs by RP</i>	<i>Within 10 days of the receipt of objections</i>	<i>T+115</i>

<i>Regulation 36-B</i>	<i>Issue of RFRP, including Evaluation of Matrix and IM</i>	<i>Within 5 days of the issue of the provisional list</i>	<i>T+105</i>
	<i>Receipt of Resolution Plans</i>	<i>At least 30 days from issue of RFRP (Assume 30 days)</i>	<i>T+135</i>
<i>Regulation 39(4)</i>	<i>Submission of CoC approved Resolution Plan to AA</i>	<i>As soon as approved by the CoC</i>	<i>T+165</i>
<i>Section 31(1)</i>	<i>Approval of Resolution plan by AA</i>		<i>T=180</i>

AA: Adjudicating Authority; AR: Authorised Representative; CIRP: Corporate Insolvency Resolution Process; CoC: Committee of Creditors; EoI: Expression of Interest; IM: Information Memorandum; IRP: Interim Resolution Professional; RA: Resolution Applicant; RP: Resolution Professional; RFRP: Request for Resolution Plan.”

10. The Minutes of the 12th COC Meeting established that the CoC offered to the Appellant to continue to be a part of the ongoing process so that it may have an opportunity at any later stage. The Appellant had sought 15 minutes time for discussion and thereafter decided not to participate in the open bidding process and exited the Meeting. Thereafter the CoC went on to approve the Resolution Plan submitted by M/s. Om Logistics Ltd./R-8. We find force in the contention of the Learned Counsels for the Respondent that if one of the Directors of the Appellant Company Mr. Naresh Agarwal had tested Covid positive, there are no substantial reasons given for any of the other five Directors not to have represented their matter.

11. Going a little bit more in detail, the material on record shows that the financial bid submitted by the Appellant as on 31.07.2020 and the revised bid submitted on 02.09.2020 read as follows:

Sl. No.	Particulars	Plan as on 31.07.2020	Revised Plan as on 02.09.2020
1	<i>CIRP Cost-unpaid if any</i>	-	00.50
2	<i>Secured Financial Creditor</i>	10.98	28.48
3	<i>Unrelated Operational Creditor</i>	00.01	00.01
4	<i>Unsecured Financial Creditor</i>	00.01	00.01
5	<i>Workman & Employee</i>	-	-
	Total Financial Bid	11.00	29.00

12. It is seen from the aforementioned table that even 10 days prior to the 12th Meeting of the CoC, the revised Plan was Rs.29 Crs. The Hon'ble Supreme Court in '**CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.'** (2019) **SCC OnLine SC 1478** held as follows:

*After a resolution plan is approved by the requisite majority of the Committee of Creditors, the aforesaid plan must then pass muster of the Adjudicating Authority under Section 31(1) of the Code. The Adjudicating Authority's jurisdiction is circumscribed by Section 30(2) of the Code. In this context, the decision of this court in **K. Sashidhar (supra)** is of great relevance.....*

45. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.....

48. Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).

(Emphasis Supplied)

13. In a catena of Judgements, the Hon'ble Apex Court has laid down that the provisions investing jurisdiction and authority in the NCLT has not made the commercial decision exercised by the CoC of not approving the Resolution Plan or rejecting the same, justiciable. So, in the instant case, if CoC has approved with 66% majority as provided under Section 12(2) of the Code and has decided not to extend the time to the Appellant herein on the ground that several extensions have already been given, the RP cannot take any contrary decision. Therefore the contention of the Learned Counsel for the Appellant that the RP has not given sufficient advance time for the meeting and has acted contrary to provisions of IBC, is untenable.

14. Additionally, the Appellant had not chosen to exercise their choice of participating in the open bidding process and chose to exit the Meeting and even accepted the refund of the EMD amount. Having regard to the fact that the Resolution Plan is already implemented, there is a change in the directorship, new shares have been allotted, the concerned Banks/'Financial Creditor' have released the charge on the security and have given their NOC, are of the considered view that it would defeat the scope and objective of the Code if the clock is turned back. Hence, we are of the considered view that

the ratio of the Hon'ble Apex Court in '**Ghanshyam Mishra and Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Limited & Ors.'** (2021) 166 SCL 237 (SC) and also in '**Ebix Singapore Private Limited' Vs. 'Committee of Creditors of Educomp Solutions Limited & Anr.'** 2021 SCC OnLine SC 707, is squarely applicable to the facts of this case.

15. For all the aforementioned reasons, this Appeal fails and is accordingly dismissed. No Order as to Costs.

16. The Registry is directed to upload the Judgement on the website of this Tribunal and send the copy of this Judgement to the Learned Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
17th January, 2022

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