(2025) 03 NCLAT CK 0674

In the National Company Law Appellate Tribunal

Case No : Company Appeal (AT) (Insolvency) No. 1566 of 2024 &?I.A. No. 5973, 6380 of 2024

Authum Investment and Infrastructure Limited Vs Ashdan Properties Private Limited? & Ors

Date of Decision : 17-03-2025

Acts Referred:
Insolvency and Bankruptcy Code 2016 — Section 30, 31

Citation : (2025) 03 NCLAT CK 0674

Hon'ble Judges : Ashok Bhushan, Chairperson;Barun Mitra, Member (T)

Bench : Division Bench

Advocate : Arun Kathpalia, Mahesh Agarwal, Geetika Sharma ,Shivam Shukla, Sumesh Dhawan, Pragya Choudhary , Shaurya Shyam, Abhinav Vashisht, Ritesh Kumar, Mallika Kamal, Adithya Devarayan , Akshita Sachdeva Jaitly, Abhijeet Sinha, Joshua Borges

Final Decision : Allowed

Judgement

ASHOK BHUSHAN, J.

This appeal by a Resolution Applicant (RA) has been filed challenging the order dated 29.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – IV) in I.A. No.1143/2024. Adjudicating Authority by the impugned order passed in I.A. No.1143/2024 filed by the Respondent – Ashden Properties Private Limited has directed the resolution plan submitted by respondent to be considered by the Committee of Creditors (CoC). Aggrieved by the said order, this appeal has been filed by the appellant, who is one of the RA.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

i. Corporate Insolvency Resolution Process (CIRP) of the corporate debtor, AA Estate Private Limited, commenced by order dated 06.12.2022.

ii. RP issued publication inviting the Expression of Interest (EoI) from Prospective Resolution Applicant (PRA). EoIs were received and list of PRA was issued, which included the name of the appellant as well as the Respondent No. 1.

iii. Request for Resolution Plan (RFRP) was issued by the Resolution Professional (RP) and shared with all RA.

iv. On 30.01.2024, PRAs were informed that the last date for submission of the resolution plan would be 09.02.2024 from 30.01.2024 in view of the request made by some of the PRAs, Respondent No. 1 sought extension of two weeks to submit a resolution plan on 08.02.2024. Extension was, however, provided for five days upto till 14.02.2024 5:00 PM.

v. On 09.02.2024, appellant submitted a resolution plan along with the EMD.

vi. Respondent No. 1 has sent his plan on 15.02.2024 to the RP i.e., after expiry of the last date.

vii. In the meeting of the CoC held on 16.02.2024, the RP brought into the notice of the CoC the plan received after due date i.e., on 15.02.2024 by Respondent No. 1 and one EMD received after due date. The CoC in its meeting held on 16.02.2024 decided not to accept the resolution plan of Respondent No. 1, which was filed after expiry of the last date for receipt of the resolution plan.

viii. I.A.1143/2024 was filed by Respondent No. 1 before the Adjudicating Authority seeking a direction to the RP to condone the 1 day delay in filing the plan and further resolution plan of the Respondent No. 1 be directed to be considered by the CoC.

ix. The I.A. filed by Respondent No. 1 was opposed by the RP. Adjudicating Authority after hearing the parties on I.A.1143/2024 allowed the IA vide order 29.07.2024 and directed the plan to be considered by the CoC/RP.

x. In the meantime, the CoC decided to conduct a challenge process in 17th meeting held on 23.04.2024.

xi. On 29.04.2024 challenge mechanism was conducted in which appellant was declared as H-1 bidder.

xii. Appellant submitted his resolution plan after the challenge process on 15.06.2024 and the plans were under consideration before the CoC when the impugned order was passed on 29.07.2024.

xiii. This appeal was filed by the appellant and in the appeal following interim order was passed on 08.08.2024:

"1. Learned Counsel for the Appellant submits that the Adjudicating Authority by the impugned order has directed for consideration of the Resolution Plan of Respondent No.1 which was not submitted within time and it is submitted that the Resolution Plans which were submitted within the time including the Appellant's plan was put to Challenge Process on 29.04.2024 and Appellant has been declared as H-1 in the Challenge Process. The Respondent No.1 who was not part of the Challenge Process could not be allowed to be considered at the time when CoC is going for approval of the Resolution Plan. It is submitted that the meeting of the CoC has been convened for tomorrow to consider the directions issued by the Adjudicating Authority in the impugned order. Submissions made by the Counsel for the Appellant need consideration.

2. Let 'Notice' be issued to the Respondents through 'Speed Post'. Let the requisites together with process

fee be filed within three days from today. The Appellant is required to provide the e-mail address of the Respondents and in that mode also, the service can be effected. The Appellant is also required to furnish the Mobile No. of the Respondents to the 'Office of the Registry'.

3. Let Reply be filed within one week. Rejoinder, if any, be filed within one week thereafter. Appellant may also serve all the Respondents personally.

4. List the Appeal for consideration on 22.08.2024.

In the meantime, the directions issued by the Adjudicating Authority by the impugned order may not be implemented by the CoC."

xiv. In the appeal, reply was filed by Respondent No. 1 to which rejoinder has also been filed. Respondent No. 2 has also filed the reply.

3. We have heard Learned Sr. counsel, Mr. Arun Kathpalia appearing for the appellant. Learned Sr. counsel, Mr. Abhinav Vashisht has appeared for the Respondent No. 1. Learned Sr. counsel, Mr. Abhijeet Sinha appeared for the RP.

4. Learned Sr. counsel Mr. Arun Kathpalia appearing for the appellant submits that in spite of extension of the last date for submitting the plan, the Respondent No. 1 failed to submit the plan by the last date which was 14.02.2024 by 5:00 P.M. Plan was sent by Respondent No. 1 to the RP after expiry of timeline. RP brought into the notice of the CoC meeting held on 16.02.2024 about the plan of Respondent No. 1, which was filed after expiry of the timeline. CoC deliberated on the issue and decided not to accept resolution plan of the Respondent No. 1 and further the resolution plan of one who has submitted the Earnest Money Deposit (EMD) after expiry of the date.

The said decision was taken by the CoC on 16.02.2024, after the aforesaid decision of the CoC not be accept the resolution plan of the Respondent No. 1, the Application was filed by the Respondent No. 1 in which application, none of the RAs, including the appellant was impleaded. The Adjudicating Authority has committed an error in allowing the application directing the consideration of resolution plan which having received after timeline could not be considered. Learned counsel for the appellant referring to the Regulation 39(1-B) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016 (for short 'the CIRP Regulations, 2016") contends that committee is statutory prohibited to consider the plan received after timeline. Learned counsel for the appellant submits that CoC in its commercial wisdom decided not to accept and consider the plan of Respondent No. 1. Adjudicating Authority could not have interfered with the said commercial wisdom and overturn the decision of the CoC.

5. Learned Sr. counsel, Mr. Abhinav Vashisht appearing for the Respondent No. 1 submits that Respondent No. 1 has sent several emails to the RP requiring various information and documents, and the Respondent No. 1 was not given all the necessary documents due to which the plan could not be submitted by the last date. However, the plan was sent by the Respondent No. 1 on next date i.e., 15.02.2024 and the plan were to be considered on 16.02.2024, hence the plan was sent prior to date when plans were to be considered and hence there was no reason for non-consideration of the plan by the CoC. CoC erred and in deciding not to consider the plan of the appellant. The application filed by the Respondent No. 1 has rightly been allowed by the Adjudicating Authority. Maximisation of the value of the corporate debtor is one of the objectives of the CIRP and consideration of the plan of Respondent No. 1 is towards that object and Adjudicating Authority has rightly passed an order directing for consideration of the plan. Learned counsel also referred to the judgment of the Hon'ble Supreme Court in the matter of 'Kalparaj Dharamshi' Vs. 'Kotak Investment Advisors Ltd. & Anr.' reported in (2021) 10 SCC 401, which has been relied by the Adjudicating Authority in the impugned order. It is submitted that no grounds have been made out to interfere with the impugned order.

6. Learned Counsel for the RP submitted that all necessary information was provided to Respondent No. 1 and in spite of extension of last date, the Respondent No. 1 did not submit the plan within time. The RP brought into notice of CoC, the plan of Respondent No. 1 sent on 15.02.2024, on which CoC decided not to accept the plan.

7. We have considered the submissions of the counsel for the parties and perused the record.

8. There is no dispute of facts between the parties that last date for receipt of submission of the plan was 14.02.2024, 5:00 PM, which date was extended date for receiving the resolution plan. Last date earlier was 05.02.2024, which was extended up to 14.02.2024, which facts have been noticed by the Adjudicating Authority in paragraph 23. The Respondent No. 1 admittedly submitted the plan on 15.02.2024 and handed over the same to RP at Pune. EMD of ☐ 2 crore by way of cheque was also credited into the bank account of corporate debtor on 15.02.2024.

9. Adjudicating Authority in the impugned order has observed that RP and CoC has lost sight of Regulation 36B (6) of the CIRP Regulations, 2016 and failed to exercise the discretion having been granted under the regulation to RP in consultation with CoC. Paragraph 29 of the judgment of the Adjudicating Authority is as follows:

"29. It is evident from the perusal of the facts and circumstances of this case and the reply filed by Respondent No. 1/RP that the RP and also CoC seems to have lost sight of Regulation 36(B)(6) of IBBI (CIRP Regulation 2016) and thus failed to exercise the discretion having been granted under the regulations to RP in consultation with CoC."

10. Regulation 36B (6) & (6A) of the CIRP Regulations, 2016 which has been referred by Adjudicating Authority, provides as follows:

"Regulation 36B: Request for resolution plans.

(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.

[(6A) If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor.]"

11. Sub-Regulation 6 provides the RP with the approval of the committee extend the timeline for submission of the plan, which pre-suppose that the CoC has to agree for extension of timeline. The present is a case where timeline was extended from 05.02.2024 to 14.02.2024, and all PRAs were informed that 14.02.2024 is the last date for last extension. In the present case, after plan was sent by Respondent No. 1, the RP placed the resolution plan of the receipt from the appellant before the CoC in its meeting dated 16.02.2024. In Agenda Item No. A (3), the RP updated, the CoC and also informed about receipt of the plan by Respondent No. 1 on 15.02.2024 and EMD of the above plan also after the due date. Even though some homebuyers were in favour of accepting the plan, the meeting on 16.02.2024 was also adjourned to 17.02.2024 and in the 17.02.2024 meeting again the issue was deliberated and CoC took a decision not to accept the plan of Respondent No. 1. It is useful to extract following minutes of the meeting:

"…The Authorised Representative of Homebuyers said that the legal opinion is very clear that both the plans should not be accepted which is received after the due date and which is received without the EMD. Consequently, the Authorised Representative of Homebuyers and the Representative of Suraksha ARC is with the view of the legal counsel. The RP asked the Representative of SBI about the plans, in reply the representative of SBI asked the RP about his view, the RP replied that the legal provisions does not allow to accept the plans. The representative of SBI requested RP to give his views on the above two issues on the legal aspects of IBC Code. RP responded that legal provision does not allow RP to accept the plans submitted by RA after due date and Plan without EMD. However, it is the commercial wisdom of the CoC to allow plans which may have received after the due date and without EMD. SBI representative asked RP to first clarify and inform the CoC about the legality. RP informed based on the legal opinion received that the resolution plans received after the due date and without EMD cannot be accepted under the provisions of IBC Code. Hence plans received after the due date and plan without EMD are not in complaint with the IBC Regulations. Subsequently, the plans may not be considered from the legal perspective. SBI informed that they are agreed with view of the RP and we have to abide the IBC Code. The other CoC members Suraksha ARC and Authorised representative of Homebuyers also agreed with the above view of the RP. Hence, the plan of Homebuyers of RNA Grandeur in consortium with Vraj Group and Ashdan Properties Private Limited will not be accepted. The RP is left with the 2 plans which is of PlatinumCorp Realty Hub Private Limited and Authum Investment and Infrastructure Limited in consortium with the Cosmos Prime Projects Limited. The representative of SBI asked for the further action to which the RP replied that the plans will be submitted to the legal counsel for vetting. The Representative of SBI asked the RP to complete the legal vetting process of the plans as early as possible…"

12. The present is a case where the CoC deliberated and took a decision not to accept the plan of Respondent No. 1, which was received after the last date.

I.A. which was filed by the Respondent No. 1 had made following prayers, which is extracted in paragraph 1 of the order, which is as follows:

"a) That this Hon'ble Tribunal be pleased to order and direct the Resolution Professional to condone the delay of one day of the Applicant in submission of its Resolution Plan, accept the Application of the Applicant, and place the Applicant's Resolution Plan dated 14h February 2024 before the Committee of Creditors of Corporate Debtor to be considered on merits";

b) Direct the Respondents to evaluate and consider the Resolution Plan of the Applicant in parity with other Resolution Plans and;

c) Pending the hearing and final disposal of the present Application this Hon'ble Tribunal be pleased to, by an order, grant a stay and injunction restraining the Committee of Creditors of the Corporate Debtor from considering any resolution plan or from voting on any resolution plans already submitted by other Prospective Resolution Applicants;

d) Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case."

13. The Respondent No. 1 sought a direction to the RP and CoC to consider the resolution plan, whereas in the present case, CoC has already considered the plan submitted by 15.02.2024 from the Respondent No. 1 and has decided to not to accept the resolution plan and to proceed with CIRP process. Thus, present is not a case for RP and CoC failing to exercise jurisdiction under Regulation 36B (6) rather the CoC deliberated on extension of timeline and refused to extend the timeline. Adjudicating Authority in the impugned order has not returned any finding that decision of the CoC dated 16.02.2024 was arbitrary or not in accordance with the regulation.

14. Learned counsel for the appellant has relied on the judgment of this Tribunal

in the matter of 'Jindal Stainless Ltd.' Vs. 'Shailendra Arora, Resolution Professional Mittal Corp. Ltd. & Anr.' in Comp. App. (AT) (Ins.) No.1058/2022, which was also a case where respondent had filed an application before the Adjudicating Authority seeking a direction to consider the modified proposal submitted by Respondent No. 2 which application was allowed against which the appeal was filed. This Tribunal has allowed the appeal and also relied on the judgment of the Hon'ble Supreme Court in 'Ngaitlang Dhar' Vs. 'Panna Pragati Infrastructure Private Ltd. & Ors.' in Civil Appeal Nos. 3665-3666 of 2020. It is useful to extract paragraphs 21 & 22 of the judgment, which is as follows:

"21. The Respondent No.2 who had filed an Application before the Adjudicating Authority relying on its e-mails dated 19.07.2022 and 29.07.2022 by which it modified its financial proposal clearly admitted that in pursuance of bidding process held on 15.07.2022, it had submitted its Resolution Plan on 18.07.2022. The Adjudicating Authority in the impugned order, as noted above, has not given any reason as to why direction is being issued to consider the revised Resolution Plan of Respondent No.2. There is a reference of judgment of the Hon'ble Supreme Court in "Ajay Gupta vs. Pramod Kumar Sharma- Civil Appeal No. 1358 of 2022" but we failed to see that how the said judgment helped the Respondent No.2 in seeking the direction to modify his Resolution Plan which he had submitted after completion of Challenge Process. Order of the Adjudicating Authority does not give any reason as is clear from the order itself.

22. We may also notice a judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 3665-3666 of 2020- "Ngaitlang Dhar vs. Panna Pragati Infrastructure Private Limited & Ors.". In the above case, the CoC has adopted the Swiss Challenge Method and after finalisation of the negotiation by Swiss Challenge open biding method plans were considered for approval and was approved on 12.02.2020. The Respondent No.1 who was also Resolution Applicant and filed Application before the Adjudicating Authority had sent revised Resolution Plan dated 14.02.2020. An I.A No. 27 of 2020 was filed by Respondent No.1 to the Adjudicating Authority seeking direction to the Resolution Professional to take on record the revised Resolution Plan which Application was rejected by the Adjudicating Authority on 18.03.2020 against which Appeal was filed by Respondent No.1 before NCLAT which Appeal was allowed by order dated 19.10.2020. The judgment of this Appellate Tribunal was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court after considering the facts of the said case and after noticing that Resolution Plans were approved adopting Swiss Challenge open biding method allowed the Appeal, setting aside the order passed by this Appellate Tribunal. It is useful to extract paras 25, 26 & 27 of the judgment of the Hon'ble Supreme Court:-

"25. The minutes of the 5th meeting of the CoC would further reveal that the CoC thereafter invited Ngaitlang Dhar for negotiation of the bid and requested him to enhance the bid amount. Ngaitlang Dhar agreed to enhance the bid amount from Rs.63 crore to Rs.64 crore. Thereafter again, the representative of

PPIPL returned back and requested to adjourn the meeting for a few days. The said request was specifically rejected by the CoC informing the representative of PPIPL that they were bound to follow the IBC timeline and wanted to conclude the matter by next day. The said 5th meeting of the CoC was adjourned to next day and was held on 12th February, 2020. The minutes of the said meeting would further reveal that the representative of PPIPL had informed the CoC/RP that the Directors of their Company will not be available for the meeting to be held on 12th February, 2020 and the meeting should be deferred by one or two days. The minutes of the meeting would further reveal that all the prospective Resolution Applicants present in the meeting sought clarification from the CoC members and the RP about the status of Resolution Applicant, who was absent in the meeting, as to whether it would be allowed to participate in the further bidding process or not. The CoC members specifically replied that since they were at the neck of the timeline (i.e. 180 days were to get over on 24th February, 2020), it was decided to exclude the respondent No.1PPIPL, who was not present in the said meeting. The proceedings commenced after lunch break, wherein only two prospective Resolution Applicants, i.e., Ngaitlang Dhar and Mr. Abhishek Agarwal were present. Thereafter, the CoC adopted Swiss Challenge open bidding method. In the said bidding process, both prospective Resolution Applicants present increased their offer. In the said open bidding process between the two prospective Resolution Applicants present, Ngaitlang Dhar was found to be the highest bidder/prospective Resolution Applicant having offered the bid of an upfront amount of Rs.64.30 crore plus CIRP costs. The said Resolution Plan of Ngaitlang Dhar was approved unanimously by Allahabad Bank having 68.34% voting rights and the Corporation Bank having 31.66% voting rights.

26. It is thus clear that the respondent No.1PPIPL was very much aware that the CoC has decided to finalise the proceedings by 12th February, 2020. It is also clear that though PPIPL was first called upon by the CoC to enhance the bid amount, it had specifically rejected the same. It insisted on disclosing the basis of score. In the proceedings of the 5th meeting of the CoC dated 11th February, 2020, post lunch, though Ngaitlang Dhar had enhanced his bid from Rs.63 crore to Rs.64 crore, the representative of PPIPL subsequently came and requested for adjourning the meeting for few days. The said request was specifically rejected by the CoC by informing the representative of PPIPL that it had to adhere to the IBC timeline and would have to conclude the matter by next day. On the next day, i.e., 12th February, 2020, when the adjourned proceedings of the CoC were held, the respondent No.1PPIPL had sent an email, stating therein that the Directors of its Company will not be available for the said meeting and requested for deferring the meeting by a day or two. On the insistence of all the prospective Resolution Applicants present, the CoC clarified that since the timeline was coming to an end, it had decided to exclude the prospective Resolution Applicants who were not present in the said meeting. In the said meeting, Ngaitlang Dhar came to be declared as the highest bidder after he

improved his bid in the open bidding held between him and Mr. Abhishek Agarwal.

27. It could thus be seen that the RP as well as the CoC had acted in a totally transparent manner. An equal opportunity was accorded to all the prospective Resolution Applicants. However, the respondent No.1PPIPL, without improving his bid amount, went on insisting for more time, which request was specifically rejected by the CoC."

15. We may also notice the judgment of the Hon'ble Supreme Court in the matter of 'Kalparaj Dharamshi' (Supra), relied by learned counsel for the Respondent No. 1. In the above case last date of submission of resolution plan was 08.01.2019, the appellant submitted its plan on 27.01.2019. In the meeting 30.01.2019 the resolution plan of appellant was placed before CoC which resolved to direct all the applicants to submit revised plan. It is useful to notice paragraphs 6 to 8, where sequence of event has been noted:

"6. On the said date i.e. 9-7-2018, analogously, the first Form 'G' also came to be notified. Vide the said Form 'G', the last date prescribed for submission of resolution plan was on or before 21-9-2018. The second Form 'G' came to be issued on 24-8-2018, which required the resolution plans to be submitted on or before 28-9-2018. The third Form 'G' came to be issued on 28-9-2018, which required the resolution plans to be submitted on or before 25-10-2018. The fourth Form 'G' came to be issued on 9-11-2018, which required the resolution plans to be submitted on or before 13-12-2018. The fifth and the last Form 'G' came to be issued on 11-12-2018, which required the resolution plans to be submitted on or before 8-1-2019.

7. KIAL, the appellant before NCLAT (Respondent 1 herein) and one Karvy Data Management Systems Ltd. submitted their resolution plans on the last date as stipulated in the last and fifth Form 'G' i.e. on 8-1-2019. One another applicant i.e. WeP Solutions Ltd. submitted its resolution plan jointly with one Sattva Real Estate Private Ltd. (hereinafter referred to as "WeP") on 13-1-2019. The appellant in Civil Appeals Nos. 2943-44 of 2020 i.e. Kalpraj submitted its EOI and resolution plan to RP on 27-1-2019.

8. On 29-1-2019, KIAL sent an email to RP, raising its objection permitting Kalpraj to submit resolution plan, beyond the prescribed time-limit. In the meeting of CoC held on 30-1-2019, the resolution plan of Kalpraj was placed before CoC. In the said meeting, CoC resolved to direct all the applicants to submit revised plans. Accordingly, an email was sent to KIAL directing it to submit its revised plan. Accordingly, KIAL submitted its revised plan on 1-2-2019. By another email dated 10-2-2019, KIAL once again objected to consideration of the plan submitted by Kalpraj."

16. The CoC has subsequently approved the plan of appellant. The NCLT also approved the plan on 28.11.2019. In appeal NCLAT allowed the appeal directing the CoC to take fresh decision, against which order the appellant filed the appeal in the Hon'ble Supreme Court. Hon'ble Supreme Court allowed the appeal and

held that NCLAT could not have interfered in the commercial decision of CoC to accept the plan of appellant. Following was held by Hon'ble Supreme Court in paragraphs 170 to 172:

"170. This Court observed, that the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.

171. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.

172. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, Nclat was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", Nclat was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%."

17. The above judgment does not come to the aid of Respondent No. 1 since in the above case CoC had resolved to accept the plan which was submitted after expiry of last date, whereas in the present case CoC resolved not to accept the plan of Respondent No. 1 which was received after last date.

18. There is one more relevant fact which need to be noticed subsequent to the decision of the CoC on 16.02.2024 and 17.02.2024, CoC decided to conduct a challenge process on 23.04.2024, which was completed on 29.04.2024, in which the appellant was declared as H−1 bidder. The Respondent No. 1 had not been invited to participate in the challenge process nor he could have been invited, it was already decided for not to accept the plan. Application filed by Respondent No. 1 was allowed subsequent to completion of challenge process on 29.04.2024, in which the appellant has declared as H−1 bidder.

19. We, thus are of the view that there was no sufficient ground on basis of

which the Adjudicating Authority could have allowed the application filed by Respondent No. 1 and issued direction to the CoC.

20. Regulation 39(1B) of the CIRP Regulations, 2016, prohibits consideration of resolution plan which is received after timeline under Regulation 39(1B). Regulation 39 (1B) of the CIRP Regulations, 2016, provides as follows:

“39. Approval of resolution plan.

(1B) The committee shall not consider any resolution plan-

(a) received after the time as specified by the committee under regulation 36B; or

(b) received from a person who does not appear in the final list of prospective resolution applicants; or

(c) does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1).]”

21. The CoC did not commit an error in considering the late receipt plan of Respondent No. 1 and deciding not to consider the plan which was in accordance with the statutory regulation. The Adjudicating Authority could not have interfered with the decision of the CoC, which was taken in the commercial wisdom, after considering all the relevant facts and circumstances.

22. We, thus find sufficient ground has been made out to allow the appeal. Appeal is allowed. Order impugned is set aside. I.A.1143/2024, filed by Respondent No. 1 is rejected. The period from 08.08.2024 till date during which the interim order operated shall be excluded from the CIRP. It shall be open for the RP to proceed further and complete CIRP process in accordance with the law.

