
(2025) 02 NCLAT CK 0953

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Appeal (AT) (Insolvency) No. 1936 of 2024

Greenshift Initiatives Pvt. Ltd. Vs Sonu Gupta, Resolution Professional of Rolta Bi & Big Data Analytics Pvt. Ltd.

Date of Decision : 11-02-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 5, 21

Citation : (2025) 02 NCLAT CK 0953

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

Bench : Full Bench

Advocate : Rahul Chitnis, Priyambada Mishra, Sonu Gupta

Final Decision : Dismissed

Judgement

11.02.2025: Resolution Professional appearing in person submits that the Resolution Professional does not propose to file a reply. We record the statement.

2. Heard learned counsel for the parties. This appeal has been filed against order of the Adjudicating Authority dated 13.01.2025 by which order application filed by the Appellant being IA No.331/2024 has been rejected.

3. Brief facts necessary to be noticed for deciding this appeal are:

3.1 CIRP against the Corporate Debtor - Rolta Bi & Big Data Analytics Pvt. Ltd. commenced on 13.10.2023. Form A was published on 16.10.2023 and last date was 28.10.2023. Appellant's case is that it entered into Assignment Agreement on 06.11.2023 with Rolta Pvt. Ltd. and in terms of the said Assignment Agreement, Rolta Pvt. Ltd. assigned the debt for an amount of Rs.3,25,000/- to the Assignee. A claim was filed by the Applicant before the Resolution Professional and claim was admitted for Rs.3,48,742/-. However, the Applicant was not permitted a seat in the CoC, hence, an IA was filed by the Applicant to give a seat in CoC with voting rights, which application has been rejected by the impugned order. Aggrieved by which order this appeal has been filed.

4. Learned counsel for the Appellant submits that the mere fact that Rolta Pvt. Ltd., the Assignor was a related party cannot ipso-facto led to conclusion that Assignee/Applicant is also a related party. In support of his submission, learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in "Phoenix ARC Private Limited vs. Spade Financial Services Ltd. & Ors., (2021) 3 SCC 475".

5. The Resolution Professional appearing in person opposing the submission of learned counsel for the Appellant submits that the Appellant has entered into Assignment Agreement subsequent to commencement of CIRP with a motive to come in the CoC. A reply was also filed by the Resolution Professional opposing the application of the Appellant.

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

7. There is not dispute to the facts and sequence of events. CIRP was commenced against the Corporate Debtor on 13.10.2023. Public Announcement was made on 16.10.2023 inviting claims and last date of submission of claims was 28.10.2023. Subsequently, Assignment Agreement was entered between the Appellant and Rolta Pvt. Ltd. on 06.11.2023 and on that basis the Appellant claim to be member of the CoC. The judgment in Phoenix ARC Private Limited has been relied by the Appellant in Para 100, 101 & 102, which is as follows:

"100. Therefore, it could be stated that where a financial creditor seeks a position on the CoC on the basis of a debt which was created when it was a related party of the corporate debtor, the exclusion which is created by the first proviso to Section 21(2) must apply. For, it is on the strength of the financial debt as defined in Section 5(8) that an entity claiming as a financial creditor under Section 5(7) seeks a position on the CoC under Section 21(2). If the definition of the expression 'related party' under section 5(24) applies at the time when the debt was created, the exclusion in the first proviso to Section 21(2) would stand attracted.

101. However, if such an interpretation is given to the first proviso of Section 21(2), all financial creditors would stand excluded if they were a 'related party' of the corporate debtor at the time when the financial debt was created. This may arguably lead to absurd conclusions for entities which have legitimately takenover the debt of related parties, or where the related party entity had stopped being a 'related party' long ago.

102. In this regard, it is relevant to note the observations in the Insolvency Law Committee Report of 2020 clarifying the eligibility of third-party assignees of the debt of a related party creditor, to be members of the CoC. It was observed:

"11.09 ... As a third-party assignee, who by itself is not a related party, would not have any such conflict of interest, it should not be disabled from participating in the CoC. Further, the aforesaid disability is not related to the debt itself but is

based on the relationship existing between a related party creditor and the corporate debtor. Therefore, as the disability imposed under the first proviso to Section 21(2) pertains to the related party financial creditor and not to the debt it is owed, the Committee agreed that it is clear that when a related party financial creditor assigns her debt to a third party in good faith, such third party should not be disqualified from participating, voting or being represented in a meeting of the CoC.

11.10. However, the Committee discussed that in certain cases, a related party creditor may assign its debts with the intention of circumventing the disability imposed under the first proviso to Section 21(2) by indirectly participating in the CoC through the assignee. As a related party is expressly prohibited from participating in the CoC, it cannot do so indirectly by assigning its debt to a third-party assignee for the purposes of circumventing this restriction. Therefore, in order to prevent any misuse, the Committee recommended that prior to including an assignee of a related party financial creditor within the CoC, the resolution professional should verify that the assignee is not a related party of the corporate debtor. In cases where it may be proved that a related party financial creditor had assigned or transferred its debts to a third party in bad faith or with a fraudulent intent to vitiate the proceedings under the Code, the assignee should be treated akin to a related party financial creditor under the first proviso to Section 21(2)."

(emphasis supplied)"

8. There can be no disputed to the proposition laid down by the Hon'ble Supreme Court in the above case that the financial creditor who in praesenti is not a related party, would not be debarred from being a member of CoC, but that proposition comes with a caveat that it should not be with intention of participating in the CoC and sabotage the CIRP by diluting the vote share of other creditors and it would be in keeping with the object and purpose of the first proviso to section 21(2), to consider said party out of CoC. In Para 103 of the judgment the Hon'ble Supreme Court laid down following:

"103. Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing the financial creditor party financial creditor and the corporate debtor. As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso."

9. Learned counsel for the Appellant has pointed out the reply, which was filed by

the Resolution Professional before the Adjudicating Authority. Resolution Professional clearly opposed the claim of the Appellant to be given seat in the CoC. Para 5 of the Reply gives details of the facts, which is as follows:

"5. The Applicant submitted its claim to me and after verification, I admitted the claim amount and I sent an email on 18.12.2023 to the applicant stating that, "Dear Sir, With reference to the trailing mail, please be updated that your claim as a Financial Creditor of Rs. 3,48,742/- is hereby accepted in full. However, the claim was originally submitted by the related party of the corporate debtor and the said assignment took place on 06.11.2023 which is after the CIRP commencement date i.e. 13.10.2023. Therefore, participation in CoC and voting rights cannot be given with respect to the said claim as per the provisions of section 21 of IBC, 2016".

It is humbly submitted that the Applicant is not entitled to right of representation, participation or voting in a meeting of the committee of creditors as on date. It is based on the first principles of law that 'one cannot assign a better right that he himself possess', if a related party creditor has assigned its debts with ulterior motives, the diminished voting share of the applicant creditor would be appropriate. Disqualification that existed at the time of initiating the CIRP cannot be removed by a mere assignment. It is submitted that assignment is transfer of one's right to recover debt to another person and that the rights of the 'assignee' are no better than those of an 'assignor'. Accordingly, the assignee does not get the right to change its status from 'related' to 'unrelated'. At the same time, it is humbly submitted that the bar is on the person who is holding the debt and not the nature of the debt per se. It will not be entirely correct to bar somebody (who is otherwise eligible) from voting just because it bought the debt from a related party."

10. In the facts of the present case and sequence of time, it is clear that the Assignment was only with object to get a seat in the CoC to affect the interest and rights of other creditors. We, thus, are of the view that the Adjudicating Authority has rightly rejected the application of the Appellant claiming right in the CoC. We thus do not find any error in the order of the Adjudicating Authority. There is no merit in the appeal. Appeal is dismissed.