
(2024) 03 NCLT CK 0063

In the National Company Law Tribunal

Case No : I.A. 5390 of 2023 IN C.P. (IB) No. 610 of 2021

Khimani Distributors And Marketing Limited

APPELLANT

Vs

Huzefa Sitabkhan

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 30, 31, 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2024) 03 NCLT CK 0063

Hon'ble Judges : Reeta Kohli, Member (J); Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Kunal Kanungo, Shreyas Lele, Khaitan Legal, Milind Garg

Final Decision : Disposed Of

Judgement

1. The above Interlocutory Application bearing I.A. No. 828 of 2023 is filed by Khemani Distributors and Marketing (hereinafter referred to as the "Applicant") seeking directions against Mr. Huzefa Sitabkhan and Ors. (hereinafter referred to as the "Respondent") under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "the Code") praying for following reliefs:

- i. This Hon'ble Tribunal be pleased to allow this application;
- ii. This Hon'ble Tribunal be pleased to set aside the alleged decision of the COC in its 19th meeting held on 18th August 2023 in its entirety, including the decision of the COC allegedly approving the resolution plan of another resolution applicant and allegedly declaring the Applicant as the unsuccessful resolution applicant;
- iii. This Hon'ble Tribunal be pleased to pass an order rejecting the interlocutory application filed by Respondent No, 1 for approval of resolution plan of the Corporate Debtor;
- iv. Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order restraining the Respondents from undertaking any

further steps and actions in respect of the conclusion of CIRP of the Corporate Debtor;

v. Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order keeping interlocutory application filed by Respondent No. 1 for approval of resolution plan of the Corporate Debtor in abeyance;

vi. Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to stay the effect, operation and implementation of the alleged decision of the COC in its 19th meeting held on 18h August 2023:

vii. Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order directing the Respondents to disclose on oath:

a. minutes of all meetings of the COC of the Corporate Debtor in which the resolution plan of the Applicant is discussed, including the 16th' 17th and 18th meetings of the COC held on 25th May 2023, 31st May 2023 and 2nd June 2023 respectively; and

b. decision and/or scoring on the evaluation matrix for the resolution plan of the Corporate Debtor for all resolution applicants.

viii. For ad interim and interim reliefs in terms of prayer (ii) to (vii) above;

ix. For costs and;

x. For such other order and further reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

Brief Facts of the Case

a. The CIRP process conducted by the Respondent violates IBC and the Regulations framed thereunder: The Applicant alleged that the CIRP conducted by the Respondent has violated the IBC and the Regulations. Applicant claims that the process was abruptly terminated without voting on resolution plan, including one submitted by Zicom Saas Private Limited of the Applicant. The Respondent restarted the processes without the Hon'ble Tribunal's approval.

b. Acts and decisions of the RP and CoC are manifestly illegal and arbitrary and cause direct and significant prejudice to the Applicant: The Applicant submitted that they are the only entity who had submitted their Resolution Plan in Both rounds of the CIRP. The Applicant alleged that the CoC's justification for rerunning the process without voting on the Resolution Plans submitted by the PRA's was based on purported interest from the other investors and the previous management. The Respondent highlighted the discrepancies in the resolution plan of the resolution applicant of the second round i.e. unclear funding sources and failure to submit the required documents by the deadline. Despite the shortcomings the CoC allegedly did not consider the applicant offer for acquiring shares of the corporate Debtor.

The Submission by the Applicant:

1. In the present Application, the Respondent No.1 is the Resolution Professional (herein after referred to as "RP") appointed vide order dated 29.07.2022 by this Hon'ble Tribunal and is the Resolution

Professional of Corporate Debtor/M.s Zicom Electronic Security Systems Limited which is incorporated under the "Companies Act 1956" (herein after referred to as "Corporate Debtor") undergoing Corporate Insolvency Resolution Process ("CIRP") pursuant to admission Order dated 29.07.2022 passed by this Hon'ble Tribunal.

2. The Applicant submits that, on 27.09.2022, RP issued the invitation for Expression of Interest. The Applicant submitted Its Expression of Interest vide an email dated 22.10.2022 to RP. On 1st November 2022, the information memorandum was published by RP. Vide email dated 05.11.2022, the RP highlighted various alleged discrepancies. These discrepancies were specified in the email. In response, the Applicant addressed these concerns by rectifying the issues pointed out by RP. This rectification was communicated to RP via email on 12.11.2022.

3. Vide Email dated 21.11.2022, the RP provided the Applicant with the provisional list of prospective resolution applicants, which included the name of the Applicant.

4. On 26.11.2022, RP provided the applicant with necessary documents and access to a virtual data room for submitting a resolution plan by 30.12.2022. However, on 26.12.2022, the applicant requested for an extension until 31.01.2023, due to unavoidable circumstance. There have been further extensions in the timeline to furnish resolution plans, which were extended up to 17.02.2023 and thereafter to 03.03.2023.

5. Furthermore, it is submitted that Zicom SaaS Pvt. Ltd., a former wholly owned subsidiary of the Corporate Debtor (i.e. M/s Zicom Electronic Security System Limited), was admitted into CIRP. The Applicant successfully became the resolution applicant for Zicom SaaS Pvt. Ltd.(i.e). To maximize business synergies, Zicom SaaS Pvt. Ltd. submitted a resolution plan initially on 17.02.2023, followed by a revised plan on 27.03.2023, through the Applicant i.e. wholly owned subsidiary. After completing the exercise, RP should have concluded the CIRP by approving the resolution plan, but shockingly, they instead sent an email on 08.04.2023, indicating their intention to invite fresh Expression of Interest, deviating from the expected process under the Insolvency and Bankruptcy Code (IBC).

6. However, in order not to lose out on the opportunity to participate in the resolution process the Applicant submitted an Expression of Interest afresh to participate in the resolution process via email on 18.04.2023. RP sent a list of prospective resolution applicants via email on 20.04.2023, but the Applicant's

name was not included in the list. Consequently, on 21.04.2023, the Applicant sent another email to RP providing additional documents and requesting that their name be added to the list of prospective resolution applicants.

7. The Applicant submitted that, on 25.04.2023, RP sent an email to the Applicant containing the information memorandum, evaluation matrix, and a request for a resolution plan. Vide Email dated 26.04.2023, the Applicant requested the RP to provide the final list of prospective resolution applicants. On 27.04.2023, the RP refused to provide the final list but confirmed the Applicant's eligibility. Correspondence continued between 28.04.2023, and 01.05.2023, regarding the Applicant's difficulty in accessing the virtual data room. Ultimately the Applicant submitted its compliant/ resolution plan on 12.05.2023.

8. The Applicant further submits that, on 13.05.2023, RP sent an email inviting the Applicant to witness the opening of sealed envelopes containing resolution plans during the COC meeting of the Corporate Debtor. The Applicant initially provided details of its representatives for the COC meeting to be held on 15.05.2023. In May and June 2023, the Applicant participated in several meetings of the Committee of Creditors (COC) regarding the CIRP of a Corporate Debtor. RP, later on raised concerns about deficiencies in the Applicant's resolution plan, leading the Applicant to submit an addendum on 24.05.2023. On 25.05.2023, the Applicant received details of avoidance applications filed by RP in the CIRP. Subsequent COC meetings were held on May 25, May 31, and June 2, 2023, to discuss the resolution plan submitted by the Applicant. In response to clarifications and queries raised by Respondents during these meetings, the Applicant submitted additional addendums on May 29, June 1, and June 19, 2023, during the 16th, 17th, and 18th meetings of the COC, respectively.

9. The Applicant also addressed a letter dated 19th June 2023 to Respondent No. 2, inter alia recording that the value of equity given to lenders under the Applicant's resolution plan has not been considered by Respondent No. 2 despite a binding offer to buy shares resulting in an undue Advantage to other resolution applicants and unfair to the interest of the Applicant. Accordingly, the Applicant provided two options to Respondent No. 2 i.e., An undertaking by the Applicant to pay the consideration of Rs 1,63,80,000/- (being 2,34,000 shares Rs. 70 per share) or increase Payment to financial creditors by Rs. 1,50,00,000/-).

10. Further the Applicant submitted that, the undertaking dated 19 .06.2023 attached to the letter dated 19 .06.2023 in favour of Respondent No. 2 records that in the event the Shares are not ascribed by the strategic investor under the resolution plan and no monies are paid, the Applicant shall pay to Respondent No. 2 an Aggregate consideration of Rs. 1,63,80,000/- for transfer of shares by Respondent No. 2. Thereafter Shockingly, RP addressed an email to the Applicant on 19th June 2023, inter alia asserting that RP, in consultation with Respondent No. 2, had decided to shorten the timeline for submission of Executed letter of intent and performance bank guarantee by PRA's.

11. Applicant further submitted that the 19th meeting of the CoC of the Corporate Debtor was held on 18th August 2023 i.e., after a gap of two months. At the said meeting, the Applicant was allegedly declared as unsuccessful resolution applicant. This was intimated to the Applicant by Respondent No. 1 vide its email dated 25th August 2023 and the Applicant was called upon to take refund of the earnest money deposit given by way of bank guarantee. RP, vide its emails dated 6th September 2023 and 18.10.2023 once again intimated that the Applicant was allegedly declared as an unsuccessful resolution applicant and called upon the Applicant to take refund of the earnest money deposit given by way of bank guarantee. Meanwhile, RP has filed an application for the approval of the resolution plan before the Tribunal.

12. The Ld. Counsel for the Applicant, after presenting the factual narration, argued that the initial Plan submitted by the Applicant was not subjected to voting. Furthermore, the Counsel contended that the subsequent invitation for Expression of Interest (EoI) by the Committee of Creditors (CoC) without a vote was contrary to the stipulations of the Insolvency and Bankruptcy Code (IBC), rendering it unsustainable. The Ld. Counsel emphasized that even if the CoC intended to solicit fresh EoI, it was the responsibility of the Resolution Professional (RP) to obtain appropriate permission or approval from the Hon'ble National Company Law Tribunal (NCLT) before issuing a Public Notice for such invitations. Given that no such permission was sought from the Hon'ble NCLT, the Counsel asserted that the CoC's action of inviting fresh EoIs was patently illegal. Consequently, the Counsel urged that the CoC should be directed to vote on the Plan originally submitted by the Applicant.

13. Hence this Application.

RESPONDENT 1 - RP

14. In response to the allegations made by the Applicant qua the conduct of the RP, the RP made his submissions stating therein that the Committee of Creditors ("CoC") of the Corporate Debtor, (i.e. Respondent No. 2), was constituted on 20.08.2022, and held its 1st meeting on 26.08.2022. In the 2nd meeting of Respondent No. 2 held on 08.12.2022, the appointment of Resolution Professional of the Corporate Debtor was confirmed, which was also approved by this Hon'ble Tribunal vide an Order dated 21.10.2022.

15. RP further stated that on 21.09.2022, after receiving approval and confirmation from Respondent No. 2, made a public announcement inviting Expressions of Interest (EoIs) from prospective resolution applicants ("PRAs"). The deadline for submission of resolution plans was extended from time to time at the request of various PRA's, till 03.03. 2023. In the meantime, since the 180 days of CIRP were to expire on 25.01.2023, based on the approval and confirmation of Respondent No. 2, an Extension of 90 days for the completion of the CIRP from 25.01.2023, till 24.04.2023, was sought and the same was granted by this Hon'ble Tribunal Vide an Order dated 25.01.2023.

16. The RP further submitted that as on 03.03.2023, 3 out of 10 PRA's including one of the Applicant company Viz., Zicom SaaS Private Limited ("ZSPL") in which the Applicant is a promoter/shareholder had submitted their resolution plan. In the 8th meeting of Respondent No. 2 held on 06.03.2023, the 3 resolution plans received in Sealed envelopes were opened in the presence of the CoC members. Although, Invitation to attend the meeting as special invitees and witness the opening of Sealed covers of the resolution plans was send to all the PRAs who had submitted the resolution plans, however, the said meeting was only attended by the Representatives of ZSPL.

17. Further the RP submitted that in the 9th meeting of Respondent No. 2 held on 16.03.2023, the 3 resolution Plans were elaborately discussed amongst the members present. Several CoC Members expressed their concern over the amounts being offered under the Resolution plans, which seemed to be too low for them. In fact, the amounts offered were even lower than the fair value and the liquidation value ascertained by the Registered valuers.

18. Furthermore, RP submitted that in the 10th meeting of Respondent No. 2 held on 20.03.2023, it was reiterated that the CoC members are not in a position to accept the amounts offered under the resolution plans in its current status and therefore, it was agreed that in the next Meeting, the resolution applicants ("RAs") would be invited for discussion on the Resolution plans and thereby, an opportunity be given to the RAs to increase the Amount offered, if possible, in their resolution plan(s).

19. The RP states that During the 11th meeting of Respondent No. 2 on 23.03.2023, representatives from 2 out of 3 Resolution Applicants (RAs) were present. The CoC members discussed the terms of 3 resolution plans with the RAs' representatives, and it was decided that all 3 RAs would be given time until the end of business hours on 27.03.2023, to submit compliant resolution plans with improved financial proposals.

20. In the 12th meeting of Respondent No. 2 held on 28.03.2023, resolution plans were discussed and it was taken note of that many offers were still below fair and liquidation values determined by valuers. Despite multiple opportunities for revision, satisfactory plans were not received. With the goal of maximizing asset value, Respondent No. 2, with 96.58% voting share, considered closing the current process and inviting Expressions of Interest afresh. The RP further emphasised that the act of closing the initial resolution plan process and re-issuing the invitation for expressions of interest (EOIs) was neither illegal nor unjustified. The Ld. Counsel contested the applicant's submissions that there were no reasons, justifications, or rationale provided for re-initiating the resolution plan process. The respondent asserted that the Applicants contentions are not only based on an incorrect understanding of the law but also on the facts of the case. There has been due application of mind on the part of the CoC before reinitiating the process of invitation of EoI's.

21. The RP further states that ZSPL did not protest the closure of the first resolution plan process but, instead actively participated in the second round as well. After the closure of the first Resolution Plan Processes a fresh announcement was made for expressions of interest from potential resolution applicants, followed by the issuance of the provisional and final lists of potential resolution applicants. On 25.04.2023, a Request for Resolution Plans (RFRP) was issued to the potential resolution applicants, including ZSPL. An extension of 60 days for the completion of the Corporate Insolvency Resolution Process (CIRP) was sought and granted, extending the deadline till 24.06.2023, by the Hon'ble Tribunal.

22. The RP states that in the re-run of the resolution plan process, resolution plans were received from the following four PRA's:

- Khemani Distributors & Marketing Limited, the Applicant above named,
- Nakshatra Corporate Advisors Limited ("NCAL"),
- Yash Shares and Stock Private Limited ("YSSPL"),
- Advaita Trading Private Limited ("ATPL").

23. The RP submitted that in the 14th meeting of Respondent No. 2 held on 15.05.2023, the 4 Resolution plans submitted in sealed covers were opened in the presence of the CoC members. Although, invitation to attend the meeting as special invitees and to Witness the opening of sealed covers of the resolution plan was sent to all PRA's but only the representatives of the Applicant and NCAL attended the proceedings.

24. Further in the 15th meeting of Respondent No. 2 held on 18.05.2023, the 4 Resolution plans were elaborately discussed. Various discrepancies were noticed in the resolution plans submitted, which were required to be rectified. Accordingly, the RAs were given time until 24.05.2023, to submit rectified resolution plans with an opportunity to improve upon the financial proposals, if possible.

25. In the 16th meeting of Respondent No. 2 held on 25.05.2023, the resolution plans were discussed. This meeting was also attended by the representatives of some of the RAs, including the Applicant, as special invitees. Although invitation to attend the meeting as a special Invitee was sent to all the RA's who had submitted the resolution plans. During this Meeting, another round of negotiations happened between the RA's and the Respondent No. 2 and some pending discrepancies noticed in the resolution plans were discussed. Subsequently, the RA's were given additional time until May 2023, to submit rectified resolution plans and to improve the financial proposals.

26. The RP further states that During the 17th meeting of Respondent No. 2 held on 31.05.2023, the Committee of Creditors (CoC) and representatives of Resolution Applicants (RAs), including the Applicant's representatives, discussed

resolution plans. All RAs who had submitted plans were invited, although not all attended the meeting. Following detailed discussions, RAs were granted time until June 1, 2023, to refine their plans, particularly focusing on enhancing the financial aspects.

27. The 18th meeting of Respondent No. 2 was held on 02.06.2023, the Resolution plans were further discussed between the CoC members. This meeting was also attended by the representatives of some of the RAs, including the Applicant's, as special invitees although an invitation to attend the meeting as a Special invitee was sent to all the RAs who had submitted the resolution plans. After Due discussions, it was agreed between the CoC members that in the next meeting, the pending decision items, including the compliant resolution plans, would be voted upon. Further the 19th meeting of Respondent No. 2 held on June 06, 2023, had detailed discussion on the status of the resolution plans received. It was also agreed amongst the CoC members that the compliant resolution plans would be voted upon by June 20, 2023. The deadline for voting on compliant Resolution plans was first extended till 21.06.2023, and then till 10.07.2023.

28. Since the 330 days of the CIRP of the Corporate Debtor was falling on 24.06.2023, it was resolved by Respondent No. 2 to seek an extension of 30 Days for the completion of the CIRP from June 25, 2023, till 24.07.2023. The Same was granted by this Hon'ble Tribunal vide an Order dated 04.07. 2023. The 360 days of the CIRP of the Corporate Debtor were falling on 24.07.2023, it was resolved by Respondent No. 2 to seek an extension of 30 Days for the completion of the CIRP from 25.07.2023 to 23.08.2023. The Same was granted by this Hon'ble Tribunal vide an Order dated August 03, 2023.

29. On The request of Respondent No. 2, the deadline for voting on compliant Resolution plans was further extended till July 15, 2023, then till July 20, 2023, And ultimately, till August 18, 2023.

30. RP further states that voting on the resolution plans discussed in the 19th meeting of Respondent No. 2 held on 06.06. 2023, was concluded on August 18, 2023. As can be seen from the results of e-voting, inter alia, Respondent No. 2, by a voting share of 75.03%, resolved to approve the resolution plan submitted by ATPL. On the other Hand, the resolution plan submitted by the Applicant was only approved by a Voting share of 21.61% in the second round.

31. The RP submitted that it was well settled that a committee of creditors, considering the possibility of maximization of value with a larger participation of resolution applicants, could also consider issuing a fresh invitation for expressions of interest from prospective resolution applicants. It was further submitted that there was no bar in the Code or the CIRP Regulations on re-issuance of invitation for expression of interest. In fact, if the same was done in order to maximize the value of the assets of the corporate debtor, the same would be in line with the objective of the Code and the CIRP Regulations. In the

present case, the sole reason for the CoC to issue a fresh invitation for EOIs was to obtain resolution plans offering greater value, particularly considering that the resolution plans received earlier offered values (despite giving adequate opportunity to increase the amount offered in the resolution plans) even lesser than the fair value and liquidation value. The RP reiterated that the decision of Respondent No. 2 along with the above-mentioned detailed reasons was conveyed to all the RAs who had submitted the resolution plan, including ZSPL the Applicant, and all the necessary and requisite steps to refund the EMD submitted by the RAs were undertaken.

32. The RP further submitted that prior to the present Application, neither the Applicant nor ZSPL had protested or raised any grievances with respect to the closure of the first resolution plan process and had not only collected the refund of the EMD in the first resolution plan process but also participated in the second round of resolution plan process through the Applicant.

33. Thus the Applicant due to his own conduct is estopped from challenging the Invitation of EoI as he is the beneficiary, having participated he cannot be permitted to turn around and challenge the same only on finding that his Plan has not been approved, RP vehemently denied that the said decision was taken in order to favor a certain party, as alleged. RP also denied that the CIRP of the Corporate Debtor had been conducted in a non-transparent manner with a view to hijack the Corporate Debtor. RP Submitted that these allegations of the Applicant were entirely baseless and deserve to be disregarded at the outset. RP denied that the entire process was carried out in haste. In fact, after the fresh invitation for EoIs was issued on 04.04.2023, and after 5 extensions were availed by Respondent No. 2 for the considerable deliberation and discussions on the 4 resolution plans, the voting on the same was concluded only on 18.08.2023. The CIRP under the Code was a time-bound process still even in the second round of the resolution plan process, sufficient and adequate opportunities were given to all RAs for rectification of the resolution plans as well as revision in the amount offered in their resolution plans. It was, therefore, ludicrous to suggest that the entire process was completed in haste, much less in order to favor a particular party.

34. The RP states the provisions of the RFRP clearly allowed the shortening of those time periods. Moreover, the reason for such shortening was, at that time, based on the request of Respondent No.2, and the voting had been extended until 21.06.2023, with the 330th day of the CIRP falling on 24.06.2023. Due to time constraints and the events that had transpired, an intimation was sent to all the RAs whose resolution plan had been put for voting. The shortening of the time period had been communicated to the RAs, including the Applicant, on 19.06.2023, well before the resolution plans were voted upon by Respondent No. 2. Further, the voting on the compliant resolution plans was only concluded on 18.08.2023. Therefore, this act of shortening the time by few days did not cause any prejudice to the Applicant.

35. Furthermore, the RP states that resolution applicant does not have any vested right to get its resolution plan considered. It is also well settled that the commercial wisdom of the committee of creditors is paramount, and the committee of creditors has the sole discretion to decide the viability and feasibility of a resolution plan. Moreover, the committee of creditors is also not required to vote based on the scoring of the evaluation matrix and thus, the scoring of the evaluation matrix acts only as a guiding tool for the committee of creditors while evaluating and ultimately voting on the resolution plan(s). The Applicant has no locus to demand access to the evaluation matrix. As long as a resolution plan meets the mandatory requirements of law and has the approval of a minimum of 66% of the voting share of the committee of creditors, an unsuccessful resolution applicant cannot question the commercial wisdom of the committee of creditors and challenge the approved resolution plan.

36. In the present matter, ATPL's resolution plan was approved with the requisite 13 voting share (75.03%) of Respondent No. 2. Moreover, I.A. No. 3956 of 2023 is already pending adjudication before this Hon'ble Tribunal.

37. While concluding the arguments the Ld. Counsel summarised as under:

a. The applicant cannot be permitted to object to the CIRP of the corporate debtor after having actively participated in the process, including submitting a resolution plan afresh.

b. The applicant, through a company called Zicom SaaS Private Limited (ZSPL), initially submitted a resolution plan during the first round of invitation of Expression of Interests (EOIs) in September 2022. However, this plan, along with others, had a value lower than the fair value and liquidation value of the corporate debtor.

c. The applicant actively participated in the second round of EOIs in April 2023 without raising any grievances. They even participated and submitted a Resolution Plan afresh.

d. The representatives of the applicant company were present in meetings where resolution plans were discussed and never raised any grievances about the process during those meetings.

e. The applicant objected to the CIRP only after their resolution plan was rejected, even though they were aware of the reissuance of EOIs in April 2023 and participated in it too. The Applicant attempted to benefit by participating in the process, on having been unsuccessful termed it as illegal, which is not permissible in Law.

RESPONDENT 2 -(CoC):

38. The Respondent 2 denied all the allegations and stated that during the 12th CoC meeting, it was discussed to re-invite expressions of interest for the Corporate Debtor's resolution process. The Committee of Creditors (CoC) agreed

to close the ongoing resolution plan process and restart a fresh process, aiming to maximizing the value of the Corporate Debtor's assets. On April 4, 2023, Zicom SaaS Pvt. Ltd. was informed of this decision. In response, Zicom SaaS Pvt. Ltd. wrote to the ICICI Bank on April 6, 2023, requesting for the cancellation of a Fixed Deposit and the transfer of its proceeds to the company's bank account. Thus, it is evident that the closure of the 1st round was accepted by the Applicant without any protest.

39. It is submitted that, the Applicant had participated in the 18th CoC Meeting held on 02.06.2023, and the fact that the next CoC Meeting was scheduled for 06.06.2023, and even its purpose was well noted by the participants of the said 18th CoC Meeting. In the 19th CoC Meeting held on 06.06.2023, the timelines for the process were decided. With this, the evaluation of Compliant Resolution Plans as per the approved Evaluation Criteria by the CoC was to take place between 12.06.2023 and 14.06.2023, and the conclusion of voting on the Resolution Plans and other voting items was to be held on 20.06.2023.

40. The evaluation by the CoC and voting on Resolution Plans was carried out in terms of Section 30 of the Code read with Regulation 39 of the CIRP Regulations. The Letter dated 19.06.2023, which was the revised offer of Applicant on Resolution Plan, was way beyond the timeline to submit offers and requisites. Thus, the actions of the Respondent No. 2 were well within the provisions of the law. The Respondent No. 2 relied upon the judgment of the Hon'ble Supreme Court in the case "Ebix Singapore Private Ltd.V. Committee of Creditors of Educomp Solutions Ltd., (2021) SCC Online 707", which says that, the Resolution Plan approved by the CoC is binding on the CoC and CoC cannot be allowed to take any different stand before the Adjudicating Authority.

41. The Respondent submitted that it is settled law that when it comes to approval or rejection of a resolution plan, the commercial wisdom of the CoC is paramount. The decision taken by Respondent No. 2 to re-run the process of invitation of EOIs was with a view to maximise the assets of the Corporate Debtor, in line with the objective of the Insolvency and Bankruptcy Code, 2016. Furthermore, on voting of the resolution plans Respondent No. 2 in its commercial wisdom, voted upon the plan submitted by the SRA, with a majority vote of 75.03%. It is settled law that once a resolution plan has been approved by the CoC in its commercial wisdom, this Hon'ble Tribunal may not consider interfering in the same. In support, the Respondent placed reliance on the Judgement of the Hon'ble Supreme Court in the Case of "Kalpraj Dharamshi & ors vs. Kotak Investment Advisor Limited & ors, 2021 SCC Online SC 204". Wherein it has been seen held, "the Commercial wisdom of CoC is not to be interfered with, excepting the limited scope with as provided under Sections 30 & 31 of I&B Code".

FINDINGS

42. After having heard the Ld. Counsel for the parties and appreciated the

arguments advanced by all the Counsels along with the supported law referred by them, it is necessary to first appreciate the facts of the case in its correct perspective.

43. The case of the Applicant before the Hon'ble Court is that the act of the RP/CoC of having sent the invitation of Expression of Interest second time without voting upon the Resolution Plan submitted to it is per-se illegal and deserves to be set aside. In addition, the Applicant has sought a direction that the Plan submitted by him in response to the first Expression of Interest deserve to be voted upon/accepted. The contention of the Applicant further is that even if the CoC/RP wanted to publish Expression of Interest second time, the same could only be done after having sought the approval from the Hon'ble Court. These contentions of the Applicant deserve to be appreciated in the facts and circumstance of the present case. It is pertinent to state that the Applicant who is the holding Company of Zicom SaaS Private Limited was the Prospective Resolution Applicant in response to the EOI published on 27.09.2022. The Resolution Plan initially were submitted on 17.02.2023 which subsequently revised on 27.03.2023.

44. The case of the Applicant is that instead of voting upon this revised plan, the Respondents invited a fresh Expression of Interest. The Applicant, with a view not to lose out on the opportunity, participated second time and submitted a fresh proposal in response to which the RP send the list of Prospective Resolution Applicants on 20.04.2023 where the name of the Applicant was not included. The case of the Applicant is that despite his name being missing in the earlier list of Prospective Resolution Applicants, he submitted a compliant plan on 12.05.2023 for consideration by CoC. Various correspondences were exchanged with the CoC. The Applicant also offer to buy the shares which proposal was not considered by CoC being beyond the stipulated time period whereas, qua the plan approved various queries raised by the RP and the response from the SRA given beyond the stipulated period was considered and the Plan was approved. The said act of the Respondents is stated to be illegal and unjustifiable.

45. On the other hand, the case of the Respondents is that the Resolution Plan submitted by the Applicant against the first Expression of Interest were much below the fair value. So much so that the Plans were below even the liquidation value hence a conscious call was given by the CoC to re-run the process of CIRP so as to get improved/better proposals from PRAs. The sole motive and objective of the Respondents was to maximize the value of the assets of the Corporate Debtor. This was a well-considered decision taken with commercial wisdom. The re-running of the CIRP process by issuance of Expression of Interest second time yielded better results and it is only in response to this second round that the Respondents were able to receive the proposal from Ten (10)

PRAs out of which Four (4) compliant Resolution Plans were received by the Respondents. The Plan of ATPL was approved by 75.03% of the voting whereas the Resolution Plan submitted by the Applicant got only 21.60% of the voting

share. Thus, the Respondents justified the action taken in the interest of the Corporate Debtor. The reliance was placed upon the judgment of the Hon'ble Supreme Court in-

- "Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd. & Ors., (2022) 1 SCC 401" has dismissed the objection raised by the Appellant to the Resolution Plan. It was submitted that the commercial wisdom of the CoC could not be allowed to be challenged.
- The Supreme Court of India, in its judgment on the Committee of Creditors of Essar vs Satish Kumar Gupta case[v], upheld the power of the Committee of Creditors (CoC) in approving resolution plans in insolvency proceedings under the Insolvency and Bankruptcy Code (IBC) of India. The Court recognized that the CoC's decision to approve a resolution plan must be based on commercial wisdom, and courts cannot interfere with it unless there is a violation of the provisions of the IBC or any other laws governing the insolvency proceedings.
- The Hon'ble Supreme Court of India, in the recent ruling in re-run Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors, held as under: - This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The Committee of Creditors (CoC) holds a crucial power, which is the ability to consider and approve a resolution plan for a distressed company under the provisions of Section 30 and Section 31 of the Insolvency and Bankruptcy Code (IBC).

46. Even though the argument of estoppel and locus standi have been raised by the Respondent against the Applicant stating that after having participated in the Expression of Interest published second time, it is not lie in the mouth of the Applicant to turn around and challenge the process only after its Resolution Plan was not approved by the CoC. Regarding locus, it was submitted that the PRA before the CoC was Zicom SaaS Private Limited whereas the Applicant before the Hon'ble Court is Khemani Distributer and Marketing Limtied. Thus, the Applicant had no locus to challenge due to file the present Application. In view of the fact that the decision to going for afresh EoI was taken by CoC in its commercial wisdom and the same has resulted in getting better plans. We deem it appropriate not to deal with these contentions at this stage.

47. Therefore, keeping in view the fact that the decision of going in for re-run of the CIRP by inviting EoI afresh was a decision taken by CoC in its commercial wisdom and the Plan approved has got more than 66% of the voting share of CoC (precisely 75.03%). We deem it appropriate to dismiss the present

Application.

48. Ordered Accordingly.