
(2025) 03 NCLAT CK 0689

In the National Company Law Appellate Tribunal

Case No : Company Appeal (AT) (Insolvency) No.249 of 2025

M/s. Findoc Finvest Private Limited

APPELLANT

Vs

Mr. Surendera Raj Gang & Ors.

RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 7, 29, 30, 33

Citation : (2025) 03 NCLAT CK 0689

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

Bench : Full Bench

Advocate : Gaurav Mitra, Harsh Vardhan Sharma, Arushi Mishra, Ankur Mittal, Preeti Choudhary, Vaijayant Paliwal, Tanya Chib

Final Decision : Dismissed

Judgement

ASHOK BHUSHAN, J.

This Appeal has been filed by an Unsuccessful Resolution Applicant, challenging order dated 04.10.2024 passed by National Company Law Tribunal, Principal Bench, New Delhi allowing IA No.37 of 2024 filed by the Resolution Professional ("RP") approving the Resolution Plan submitted by Successful Resolution Applicant ("SRA") in the Corporate Insolvency Resolution Process ("CIRP") of M/s Metenere Limited.

2. Brief facts necessary to be noticed for deciding the Appeal are:

(i) On an Application filed by State Bank of India ("SBI") under Section 7 against the Corporate Debtor ("CD") – M/s Metenere Ltd., CIRP commenced vide order dated 03.10.2020.

(ii) In the CIRP of the CD, a Resolution Plan by one M/s Jubilee Metals Pvt. Ltd. was approved. However due to change in the constitutional operation of Jubilee Metals Pvt. Ltd., during the pendency of adjudication of Plan approval application,

the Plan approval application was withdrawn.

(iii) The RP on direction of the Adjudicating Authority issued fresh Form-G dated 02.12.2023, inviting Expression of Interest ("EoI") with respect to submission of Resolution Plan. List of Prospection Resolution Applicants was prepared by the RP, in which the name of the Appellant was also included. The Appellant and two other Resolution Applicants were not included in the final list of Prospective Resolution Applicant.

(iv) An IA No.504 of 2024 was filed by the Appellant to include the Appellant's name in the final list of Prospection Resolution Applicants. The Adjudicating Authority was apprised on 01.05.2024 of the reconstitution of the Committee of Creditors ("CoC"). The Adjudicating Authority passed an order on IA No.504 of 2024, permitting the Appellant to submit Resolution Plan, which shall be scrutinized by the CoC on all aspect, including their eligibility. The Appellant was directed to submit the Resolution Plan within three days. The Appellant submitted his Resolution Plan on 04.05.2024.

(v) All Resolution Applicants were given opportunity to submit revised Resolution Plan on 08.05.2024. In the 30th CoC Meeting dated 09.05.2024, the CoC further granted time till 14.05.2024 to all Resolution Applicants to complete their due diligence and submit revised Resolution Plan complying with all the requisite provisions of the IBC. On 14.05.2024, the Appellant submitted its revised Resolution Plan. The CoC on 18.06.2024 granted final opportunity to all Prospective Resolution Applicants to submit their final Plan till 24.06.2024. The Appellant submitted its revised Resolution Plan on 24.06.2024. In the 33rd CoC Meeting convened on 25.06.2024 all three revised Resolution Plans were presented by the RP before the CoC.

(vi) On 01.07.2024, the Appellant sent an email to the RP and asked the RP for intimating as to when the Plants will re-start operations so that they can conduct the site visit and submit financially improved Resolution Plan in 2/3 days. It was further enquired as to when it is proposed to carry out Swiss Challenge Mechanism as contemplated in RFRP. The RP replied on 02.07.2024, informing that Resolution Plans having submitted on 24.06.2024, cannot be allowed to change insofar as financial proposal is concerned. With regard to enquiry regarding Swiss Challenge Mechanism, it was communicated by RP that it is the CoC discretion to exercise the challenge mechanism or not. On 08.07.2024, the RP wrote to the Appellant that revised compliant Resolution Plan, with no changes to the financial proposal outlined in Findoc's Resolution Plan dated 24.06.2024, be submitted by 08.07.2024, failing which the original Resolution Plan dated 24.06.2024 will be evaluated and considered by the CoC.

(vii) The CoC in its 35th CoC Meeting considered and evaluated the Resolution Plans. The Plan of the Appellant and Orissa Metaliks were put to vote in the 35th CoC Meeting held on 11.07.2024. The voting lines were opened from 16.07.2024 to 23.07.2024, which was extended to 24.07.2024. The CoC after voting,

approved the Resolution Plan of Orissa Metaliks by majority of 98.95% vote shares.

(viii) An Application was filed by the RP, IA No.37 of 2024 seeking approval of Resolution Plan. IA No.504 of 2024 filed by the Appellant was dismissed on 04.09.2024 as infructuous, in view of the changed circumstances. The Adjudicating Authority heard IA No.37 of 2024 and by impugned order approved the Resolution Plan of the Orissa Metaliks. The Adjudicating Authority also directed the RP to deposit the entire Plan amount of Rs.295,14,95,611/- in a high interest-bearing account, which was to be distributed as and when the Adjudicating Authority adjudicated the Applications filed by different stakeholders and the balance, will go to the benefit of the CoC Members. The Appellant aggrieved by the approval of the Resolution Plan vide order dated 04.10.2024 has filed this Appeal.

3. We have heard Shri Gaurav Mitra, learned Counsel appearing for the Appellant; Shri Ankur Mittal, learned Counsel appearing for CoC and Shri Vijayant Paliwal, learned Counsel appearing for the RP.

4. Learned Counsel for the Appellant challenging the impugned order submits that RFRP having contemplated holding of challenge mechanism, it was necessary for the CoC and the RP to conduct Swiss Challenge Mechanism, so as to maximize the value of the CD. The Plan was approved without resorting to Swiss Challenge Mechanism. The Appellant was initially being treated as 'related party' and it was only after obtaining legal opinion, the Appellant was considered as 'un-related party' and his Resolution Plan was considered. After submitting the Resolution Plan on 24.06.2024, the Appellant vide email dated 01.07.2024, requested the RP to inform as to whether it needs to increase its bid amount. The RP informed the Appellant not to increase the bid, due to which the Appellant did not increase the bid. The CoC approved the Resolution Plan of Orissa Metaliks and did not approve the Plan of the Appellant. Had the Appellant permitted to increase his bid, it would have offered the higher amount. The Resolution Plan entails a huge tax advantage to Orissa Metaliks. The Resolution Plan appears to have been approved in haste.

5. Shri Ankur Mittal, learned Counsel submission of the Appellant submitted that given to all Resolution Applicants to submit for the CoC refuting the various opportunities were the revised Plan and last revised Plan was to be submitted by 24.06.2024. The Appellant had submitted its last revised Plan. Holding of Swiss Challenge Mechanism is not compulsory and it was in the discretion of CoC to take a decision to hold Swiss Challenge Mechanism. The CoC took its commercial decision to evaluate the Resolution Plans, including the Resolution Plan of the Appellant and the SRA. The Resolution Plan of the Appellant was also considered and was put to vote and it was the Plan of SRA, which was approved by more than 98% vote share. In the 35th CoC Meeting held on 11.07.2024, the Plan of the Appellant as well as the Plan of the SRA was evaluated and put to vote. The Plan submitted by Appellant as well as that of

Orissa Metaliks were compared and evaluated and on the voting result, the Plan of Orissa Metaliks was approved. It is submitted that there is no error in the order of the Adjudicating Authority approving the Resolution Plan of Orissa Metaliks. The Appellant, who is a Resolution Applicant, has had right only to the extent of consideration of his Plan, which was duly considered. The commercial wisdom of the CoC, cannot be questioned or interfered with by the Adjudicating Authority.

6. We have considered the submission of learned Counsel for the parties and have perused the record.

7. From the facts, which have been brought on the record, it is clear that the Appellant was one of the Resolution Applicants, who was permitted to submit a Resolution Plan. The Appellant submitted its revised Resolution Plan and the last revised Resolution Plan submitted by the Appellant was dated 24.06.2024. Three Resolution Plans, i.e., of the Appellant, Orissa Metaliks and Hampton came for consideration. The Plan submitted by Hampton was decided not to put for voting, it being not compliant. A decision was taken in 35st CoC Meeting dated 11.07.2024 to put the Plan of Appellant and Orissa Metaliks for voting. The above facts have been clearly noticed by the Adjudicating Authority in paragraphs 4.11 and 4.12, which are as follows:

"4.11. In the 35th meeting of the CoC on 11 July 2024, the terms of all resolution plans received by the Applicant/RP were duly considered and evaluated by the CoC in terms of their feasibility, viability and commercial soundness. Different values had been proposed by the three different resolution applicants, as a total package for payments towards various costs and creditors as well as investment for the envisaged turnaround of the CD. The members of CoC highlighted that an independent legal opinion was sought basis which it is found that Hampton was ineligible under Section 29A of the Code. Moreover, Hampton had also not deposited the earnest money of INR 2 Crore, along with the submission of plan, as required in accordance with the terms of RFRP. The CoC decided not to consider the plan submitted by Hampton."

4.12. The resolution plan of Findoc and Orissa Metaliks were put to vote in the 35th CoC meeting dated 11.07.2024. The voting line for the approval of the resolution plans of Findoc and Orissa Metaliks was open from 16 July 2024 and was open till 23 July 2024 and was thereafter extended till 24 July 2024. Thereafter, the CoC approved Resolution Plan of Orissa Metaliks Private Limited by a majority of 98.94% of the CoC and passed the following resolution:

"RESOLVED THAT pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 read with the relevant rules and regulations framed thereunder, as amended, the Resolution Plan dated 08 July 2024 submitted by Orissa Metaliks Private Limited, be and is hereby approved by the Committee of Creditors of Metenere Limited, as the Successful Resolution Plan"

"Resolved Further That the Resolution Professional of Metenere Limited be and is

further authorized to take all necessary steps and execute all necessary documents as may be required from time to time for the aforesaid purposes"

8. The Adjudicating Authority in the impugned order has examined the Resolution Plan of the SRA and found it compliant with Section 30, sub-section (2) of the IBC. The Resolution Plan contained sufficient provisions for implementation of the Resolution Plan, which have been noticed by the Adjudicating Authority in the impugned order.

9. Two main grounds, which have been advanced by learned Counsel for the Appellant challenging the impugned order is – firstly, that the CoC did not conduct the challenge process, which would have maximized the value of the CD, which is the objective of the IBC. There is no dispute that RFRP contemplates that CoC in its discretion can hold a challenge mechanism. Clause 16.8 of the RFRP, which is relevant, is as follows:

"16.8 Step III- Discussions and Negotiation by the CoC:

The CoC and/or the Resolution Professional (acting on the instructions of the CoC) may, at their sole discretion, decide any method or process for negotiations with the Resolution Applicant(s) regarding the Resolution Plans, which may include, but shall not be limited to, a price discovery process, outbidding process, or any other challenge mechanism, and each Resolution Applicant shall be bound by the terms governing such a process, which shall be decided by the CoC in its commercial wisdom subject to the CIRP Regulations the details of which will be intimated to the Resolution Applicants at the appropriate stage. Notwithstanding anything contained herein, the CoC reserves the right to engage in discussions with any Applicant, in any manner or order as they may deem appropriate. Further, the Applicant shall not challenge any actions taken/ to be taken by the Resolution Professional or the CoC, in accordance with the provisions of the RFRP and/ or the Code.

The CoC, in its discretion, may decide to adopt Swiss Challenge Mechanism or any other challenge mechanism to ascertain the Successful Resolution Applicant after receipt of all resolution plans. A detailed process note for Swiss Challenge Mechanism or any other challenge mechanism will be issued by the RP, after taking requisite approval from CoC before commencement of the Swiss Challenge Mechanism process or any other challenge mechanism. An indicative procedure (subject to such changes/ modifications/ alterations as the CoC may decide in its sole discretion) is appended in Format 15. Further, the Resolution Professional under directions of the CoC reserve the right to use any challenge mechanism including Swiss Challenge Mechanism, outbidding process, open challenge or any other price discovery process to ascertain the Successful Resolution Applicant after receipt of all resolution plans and it shall be binding on the Resolution Applicants. It is clarified that modification of the Resolution Plan shall in no manner allow the Resolution Applicant to reduce proposed Resolution Plan Amount and shall not be allowed to modify any other terms of their Resolution

Plan, and any such modification shall not be considered by the CoC”

10. The expression used in the above Clause is “The CoC, in its discretion, may decide to adopt Swiss Challenge Mechanism to ascertain the Successful Resolution Applicant after receipt of all resolution plans”. The above Clause thus vests discretion on the CoC to adopt Swiss Challenge Mechanism. Thus, the submission of the Appellant that there is any breach of procedure by CoC in not adopting to Swiss Challenge Mechanism, cannot be accepted. The CoC in its various Meetings has deliberated on the Plans and in 35th CoC Meeting, decision was taken to vote on the Resolution Plan of the Appellant and Orissa Metaliks. We do not find any error in the procedure.

11. Learned Counsel for the Appellant has further submitted that the Appellant has enquired on 01.07.2024 from RP, so that it can submit financially improved Resolution Plan. Email dated 01.07.2024 filed by the Appellant has been brought as Annexure A-5, which is as follows:

“Subject: RE: Final Submission of Resolution Plan

Dear Sir,

This is in relation to the ongoing CIRP of Metenere Limited and the Resolution plan submitted by US.

We would like to inform you that Ms. Ketki Arora had gifted all the shares held by her in Hampton Sky Realty Limited to her mother (Ms. Sandhya Arda).

We request you to take the above in consideration while evaluating the resolution plan submitted by the Applicant along with other points/contentions mentioned in our application filed before the Adjudicating Authority challenging our ineligibility to submit the resolution plan and participate as Resolution Applicant in the CIRP process of Metnere Ltd.

Should you require further clarifications on the matter, we would be happy to provide the same.

We also await the confirmation from Resolution Professional for intimating by when the plants will re-start operations so that we could conduct our site visit or if plants are not expected to restart in near future then let us know accordingly so that we can submit financially improved resolution plan in next 2/3 days.

Also kindly confirm by when you propose to carry out Swiss Challenge as contemplated in RFRP.

Warm Regards

Namita Sachdeva

Findoc Financial Services Group

Mobile #7814302860

Office: 4th and 5th Floor, Kartar Bhawan,
Near PAU Gate No-1, Ferozepur Road,
Ludhiana-141001

Desk: +91 (0)161-4155000) Extn: 847

Email #namita.sachdeva@myfindac.com."

12. The RP immediately replied to the Appellant's email on 02.07.2024, which reply has been brought on record as Annexure-6, which is as follows:

"Subject: RE: Final Submission of Resolution Plan

Importance: High

Dear Ma'am,

In furtherance to your email dated 24 June 2024, wherein Findoc Finvest Private Limited (Findoc") has submitted the Revised Resolution Plan in the ongoing resolution process of Metenere Limited, upon instructions of the CoC and pursuant to Order of Hon'ble NCLT dated 01. May 2024,

Please find attached herewith observations of the Legal Counsels on Findoc's Resolution Plan.

You are requested to kindly address these observations and send the Resolution Plan along with all the required documents and annexures as per RFRP dated 18 January 2024, by 04 July 2024, including all relevant documents relating to Findoc's 29A compliance. Please note that this email correspondence for submission of the Resolution Plan after incorporating Legal Counsel's observation, shall not be construed as an opportunity to revise the financial proposal submitted in the Revised Resolution Plan dated 24 June 2024 and accordingly, no changes to the financial proposal in your Revised Resolution Plan dated 24 June 2024 is permitted in your further revised Resolution Plan. Your further revised resolution plan addressing the compliance related and other observations (as attached) should be sent without any password protection.

With respect to your visit to the plants of the Corporate Debtor, it is again reiterated that the undersigned has never denied your request to visit the plant sites. As far as operations are concerned, the fresh job work agreement is already uploaded on the VDR. This is to further bring to your notice that Gandhidham Plant's operations are on suspension since April 2024 and Damtal Plant's operations were temporarily suspended in last 3 months and the same are being resumed gradually in accordance with the terms of the fresh job work agreement.

Further to your inquiry regarding the challenge mechanism outlined in the RFRP, please be advised that it is the CoC's discretion to exercise the challenge mechanism or not.

Best regards.

Surendra

+919717390678

Surendra Raj Gang

(IBBI/IPA-001/IP-P010066/2017-2018/11773)

Resolution Professional (RP)

Metenere Limited"

13. Admittedly, the Appellant has given revised Plan on 24.06.2024. The RP has communicated that revised compliant Plan could be submitted by 08.07.2024, without changing commercial terms. Another email sent by the RP on 09.07.2024 to all Resolution Applicants, is as follows:

"Subject: RE : Final Submission of Resolution Plan

Importance: High

Dear Madam,

As requested by you in trailing mail, please ensure to submit the Resolution Plan (without changing the commercial terms) by 10 July 2024 positively.

Best regards,

Surendra

+919717390678

Surendra Raj Gang

(IBBI/IPA-001/IP-P010066/2017-2018/11773)

Resolution Professional (RP)

Metenere Limited"

14. When the final Resolution Plan has been submitted by all Resolution Applicants by 24.06.2024, there was no occasion to permit any Resolution Applicant to enhance its financial offer. The Resolution Plan was submitted by the Appellant on 24.06.2024 and all Resolution Applicants were permitted to submit their revised Resolution Plan within the time allowed.

After revised Resolution Plans have been submitted by Resolution Applicants, no Applicant can be permitted to enhance its financial offer.

15. The Appellant is only a Resolution Applicant and his claim can at best be with regard to considering of his Resolution Plan in accordance with law by the CoC. The Resolution Plan submitted by the Appellant was deliberated, compared with Resolution Plan of Orissa Metaliks and was approved with vote shares of more

than 98% of the CoC. It is well settled that commercial wisdom of CoC in approving the Resolution Plan is not required to be interfered with by the Adjudicating Authority while approving the Resolution Plan, unless the Adjudicating Authority is satisfied that Resolution Plan is not compliant of Section 30, sub-section (2). Present is not a case where there is any ground that Resolution Plan submitted by SRA is not compliant. The scope of interference in commercial wisdom of CoC is minimal. The Hon'ble Supreme Court in *K. Sashidhar vs. Indian Overseas Bank and Ors.* – (2019) 12 SCC 150 in paragraphs 52 and 59 has laid down following:

"52. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. 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 opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.

59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (Nclat) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority per cent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 6-6-2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter III of the I & B Code, is avoidable, only

if approval of the resolution plan is by a vote of not less than 75% (as in October 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified per cent (25% in October 2017; and now after the amendment w.e.f. 6-6-2018, 44%). The inevitable outcome of voting by not less than requisite per cent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.”

16. Learned Counsel for the Appellant relying on Regulation 39 (1A) of CIRP Regulations, 2016 submits that RP could have allowed modification at least once. Regulation 39 (1A) is as follows:

“39(1A) The resolution professional may, if envisaged in the request for resolution plan-

(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or

(b) use a challenge mechanism to enable resolution applicants to improve their plans.

17. The above Regulation is an enabling Regulation and does not cast any obligation to permit modification of a Resolution Plan. In present case all Resolution Applicants were permitted to submit revised Resolution Plan. The CoC having not instructed the RP to permit any modification in Plan, RP cannot be said to have faulted in any manner.

18. We, thus, are of the view that there are no grounds made out to interfere with the approval of Resolution Plan by the Adjudicating Authority. No ground made out to interfere with the impugned order. The Appeal is dismissed. There shall be no order as to costs.