

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT)(Insolvency) No. 906 of 2022**

**[Arising out of order dated 30.05.2022 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-V in IA 324 of 2022 and I.A. No. 572 of 2022 in C.P.(IB)-923 (PB)/2019]**

**IN THE MATTER OF:**

**1. Piya Puri**  
**77B, Tatvan Villas, Sector 48**  
**Sohna Road,**  
**Gurgaon – 122018.** **.... Appellant No.1**

**2. Pradeep Arora**  
**R-325, East of Kailash,**  
**New Delhi – 110065.** **....Appellant No.2**

**3. Satyadeep Bishnoi**  
**C-2001, Oberoi Woods,**  
**Mohan Gokhale Road, Oberoi Garden City,**  
**Goregaon East,**  
**Mumbai.** **.... Appellant No.3**

**Versus**

**1. Mr. Debhashish Nanda**  
**Resolution Professional of**  
**Venta Realtech Private Limited**  
**CS-14, Ansal Plaza Mall, Vaishali, Ghaziabad,**  
**Uttar Pradesh – 201010.** **.... Respondent No.1**

**2. Adani Infrastructure & Developers Pvt. Ltd.**  
**10<sup>th</sup> Floor, Shikhar, Near Adani House,**  
**Mithakhali Six Road, Navrangpura,**  
**Ahmedabad-380009.** **....Respondent No.2**

**3. Mr. G. Satya Narayana Guddeti**  
**Authorised Representative of**  
**Financial Creditors in Class of**  
**Venta Realtech Private Limited**  
**Plot No. 23, First Floor, Durganagar Colony,**  
**Punjabgutta, Hyderabad – 500082.** **....Respondent No.3**

**Present:**

**For Appellants: Mr. Abhishek Anand, Mr. Nipun Gautam, Advocates**

**For Respondents: Mr. Sumant Batra and Ms. Ruchi Goyal, Advocates for RP.**

## J U D G M E N T

**[Per: Barun Mitra, Member (Technical)]**

1. The present appeal, filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') by the Appellant arises out of order dated 30.05.2022 (hereinafter referred to as 'Impugned Order') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi-V Bench) in IA No. 324 of 2022 and IA No. 572 of 2022 in Company Petition No.(IB)-923(PB)/2019. By the impugned order, the Adjudicating Authority allowed I.A. No. 324/2022 and approved the Resolution Plan of the Corporate Debtor submitted before it by the Resolution Professional under Section 31(1) of the IBC while dismissing IA No. 572/2022 filed by the present Appellants in their capacity as members of Financial Creditors in class of Corporate Debtor challenging the material irregularities committed by the Resolution Professional of the Corporate Debtor and the Authorised Representative of Financial Creditors in class in the Corporate Insolvency Resolution Process ('CIRP' in short). Aggrieved by the said impugned order, the instant appeal has been preferred by the Appellant with the prayer that the impugned order be set aside and the Company Appeal (AT)(Insolvency) No. 906 of 2022

Resolution Professional and Authorised Representative be directed to follow the due process of law and place the revised Resolution Plan before the Committee of Creditors('CoC' in short) in terms of the provisions of IBC and regulations framed thereunder.

2. The Learned Counsel for the Appellants has also filed I.A. No. 2562 in Company Appeal (AT)(Ins.) No. 906 of 2022 seeking condonation of eleven days in filing this Appeal. The grounds of delay appear to be bonafide, the I.A. is allowed and the delay in filing the appeal is condoned.

3. The brief facts of the case are that one of the Financial Creditors, Oriental Bank of Commerce of the Corporate Debtor, M/s Venta Realtech Private Limited had preferred an application under Section 7 of the IBC for initiation of CIRP which was admitted by the Adjudicating Authority on 20.05.2019. Following initiation of the CIRP process, Mr Debashis Nanda, Respondent No 1 in the present case, was initially appointed as the Interim Resolution Professional('IRP' in short) and later confirmed as the Resolution Professional on 17.06.2019.

4. The IRP made a Public Announcement and invited claims from the creditors of the Corporate Debtor. The IRP also constituted a CoC of the Corporate Debtor which included Homebuyers as Class of Creditors represented by Mr G Satya Narayana Guddeti, Authorised Representative, Respondent No 3 in the present case.

5. The 180 day time period for completion of CIRP expired on 16.11.2019 following which the Resolution Professional filed an application with the Adjudicating Authority for allowing extended period for CIRP completion. The Adjudicating Authority on 06.02.2020 allowed the CIRP period to be extended by another 90 days which ended on 14.02.2020 and subsequently the 330 day period also ended on 14.04.2020. Adani Infrastructure and Developers Private Ltd., Respondent No. 2 in the present case, submitted the sole Resolution Plan which was approved by the CoC on 29.07.2020 with 98.58% votes in favour and thereafter placed by the Resolution Professional before the Adjudicating Authority for approval. The date of submission of the Resolution Plan was beyond the 330 days CIRP period. The Adjudicating Authority noted that time period of CIRP was enlarged with the passing of 107 days exclusion order by the Appellate Authority on 25.06.2021 by which time the 330 days period for completion of CIRP had already expired. The Adjudicating Authority, therefore, held that as the CIRP period had already expired and time exclusion order having not been granted prior to expiry of CIRP period, it was not inclined to approve the Resolution Plan.

6. Be that as it may, the Adjudicating Authority instead of rejecting the Resolution Plan, after considering the exceptional circumstances since the matter related to Homebuyers, in the interest of justice, directed on 06.01.2022 that the Resolution Plan be remanded to the CoC for fresh reconsideration including the issue of cash infusion by the Resolution Applicant for effective

implementation of the Resolution Plan. The Adjudicating Authority further ordered that this exercise to be completed by 18.01.2022 and till then the CIRP period was extended by the Adjudicating Authority.

7. In compliance to these directions, the Resolution Applicant submitted the revised Resolution Plan on 11.01.2022 after adding the clause of initial cash infusion. Pursuant to receipt of the revised Resolution Plan by the Resolution Professional, notice was issued for holding the CoC meeting (8th in series) on 14.01.2022 for approval of the revised Resolution Plan. In turn, the Authorised Representative of Homebuyers issued a notice alongwith the agenda of the CoC meeting to all the Homebuyers for a meeting on 12.01.2022 to seek their preliminary views on the revised Resolution Plan for voting and approval.

8. As per the voting instructions received by the Authorised Representative of the Homebuyers, out of a total of 26 Homebuyers, 19 Homebuyers voted in the matter with 89.80% voting in favour of the amended Resolution Plan. As per above voting instructions received from the Homebuyers as Creditors in class, the Authorised Representative, therefore, took cognizance of the fact that majority of the Homebuyers (being more than 50%) having decided in favour of the amended Resolution Plan, he accordingly cast his vote in favour of the amended Resolution Plan on behalf of the Creditors in class, representing 50.93% share of voting rights in the CoC. The amended Resolution Plan, as approved by the CoC was placed before the Adjudicating Authority by the

Resolution Professional under Section 30(6) of the IBC and was approved by the Adjudicating Authority vide impugned order dated 30.05.2022.

9. Aggrieved by this impugned order, the Learned Counsel for the Appellants has submitted that the Respondents No 1 and 3 committed material irregularities by not following the due process of law as prescribed under the IBC and regulations framed thereunder while submitting the amended Resolution Plan and that the Adjudicating Authority failed to consider these gross irregularities while approving the Resolution Plan of the Corporate Debtor.

10. Elaborating on the said material irregularities, it has been submitted by the Learned Counsel for the Appellants that though the Authorised Representative had sent an email dated 10.01.2022 keeping a meeting of the Homebuyers as Creditors in class on 12.01.2022 to seek their preliminary views, however, no such meeting was later conducted. It has been argued that the Financial Creditors in class were not called by the Authorised Representative to submit their preliminary views on the Resolution Plan though mandated under Regulation 16-A(9) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP' in short) and, thus, the Authorised Representative had failed to follow the prescribed procedure. It is further argued that the first proviso to the said Regulation 16-A(9) mandates that creditors shall have a time window of at least 12 hours to submit the preliminary views and the said window opens at least 24 hours after

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the Authorised Representative seeks preliminary views, which was again not followed in the present case, and thus amounted to be an irregularity.

11. The Learned Counsel for the Appellants has further submitted that seeking of preliminary views and conduct of voting as provided by the CIRP regulations is mandatory in nature and not directory and in support of his contention has relied upon the judgement of this Tribunal in the matter of **Amit Goel versus Piyush Shelters India Private Limited in Company Appeal (AT) (Ins.) No 700 of 2021**. The Learned Counsel for the Appellants has further contended that the Resolution Professional also acted in complete contravention of CIRP Regulations 25(5), 25(6), 25-A and 26 which, inter alia, provides for voting through electronic means, however, the Authorised Representative on 12.01.2022 sent an email at 3 p.m. informing that there will be no e-voting portal for Homebuyers and that the Homebuyers were to communicate their decision on the revised Resolution Plan by 2 p.m. of 15.01.2022 by email. Thus the conduct of the Respondents No 1 and 3 negated the possibility of any deliberation and discussion on the revised Resolution Plan which was necessary since the Resolution Plan was conditional and discriminatory in nature and by virtue of being non-compliant ought not to have been placed before the CoC for approval and that such an act was contrary to the ratio laid down by this Tribunal in **K. L. Jute Products Private Limited versus Tirupati Jute Industries Ltd in Company Appeal (AT) (Ins) No 277 of 2019**.

12. The Learned Counsel for the Respondent refuted the submissions of the Appellants that there was any material irregularity on the part of the Respondents while considering the amended Resolution Plan and argued that the Adjudicating Authority has correctly held that Authorised Representative had acted in accordance with the voting instructions received from the Creditors in class. Further, in terms of Section 25-A(3-A) of IBC, the Authorised Representative was required to cast his vote on behalf of the Creditors in class after taking into account what the majority of Homebuyers in class had decided, and in the present case, the Homebuyers had decided in favour of the Resolution Plan by 89.80% votes. The Learned Counsel for the Respondent further stated that the short time period of twelve days that was provided to the Resolution Professional by the Adjudicating Authority to complete the process of reconsideration of the revised Resolution Plan needs to be factorised as to why the procedure of voting by email was adopted.

13. The Learned Counsel for the Respondent also contended that the objections raised by the Appellants are inconsequential in so far as they represent Homebuyers in minority and thus bound by the decision taken by the majority within the class of creditors. In support of his contention that dissenting minority amongst Creditors in class shall be treated at par with the other Homebuyers, he relied on the judgement of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC(India) Ltd. and Ors.(2022)1 SCC 401** wherein it held that when Company Appeal (AT)(Insolvency) No. 906 of 2022



Homebuyers as a class have voted in favour of the Resolution Plan, any particular constituent of that class cannot be heard in opposition to the Resolution Plan by way of objection as there is no concept of dissenting Homebuyers within Creditors in class.

14. We have considered the submissions of the Learned Counsels for the parties and carefully perused the records.

15. We do not want to enter into the realm of discussion as to whether the CIRP Regulations under purview in the present matter is mandatory or directory. It would, however, suffice to say that we are in agreement with the basic premise that both the Resolution Professional and the Authorized Representative are duty bound to act scrupulously in terms of the statutory scheme of the IBC including the practice rules and regulations framed there-under. If procedural rules are bypassed or circumvented by them in a manner which stifles the basic canons of fairness and justice and prejudicially affects the legal rights and entitlements of party, the said action on grounds of having vitiated the process deserves to be set aside. Be that as it may, while it is important to maintain the sanctity and credibility of CIRP proceedings, it is equally important to ensure that hyper-technicality is not allowed to occupy centre-stage and besiege the proceedings as it would end up frustrating and defeating the very object and purpose of IBC. It is against this evaluation parameter that we may now proceed to examine the acts of omission and commission on the part of Respondents No.1 and 3 in the Company Appeal (AT)(Insolvency) No. 906 of 2022

present matter to conclude as to whether there has been any transgression of the bounds of rules and regulations leading to any serious miscarriage of justice suffered by the Appellants.

16. For better understanding, we may have a peep into the statutory scheme of IBC with respect to rights and duties of Authorized Representative of Financial Creditors including Class of Creditors as laid down in Section 25-A of the IBC and 16-A(9) of CIRP Regulations is extracted which reads as follows:

**25-A. Rights and duties of authorized representative of financial creditors -**

*(1) The authorized representative under sub-section (6) or sub-section (6-A) of Section 21 or sub-section(5) of Section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.*

*(2) It shall be the duty of the authorized representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.*

*(3) The authorized representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:*

*Provided that if the authorized representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:*

*Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorized representative shall abstain from voting on behalf of such creditor.*

*[(3-A) Notwithstanding anything to the contrary contained in sub-section (3), the authorized representative under sub-section (6-A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the financial creditors he represents, who have cast their vote:*

*Provided that for a vote to be cast in respect of an application under section 12-A, the authorized representative shall cast his vote in accordance with the provisions of sub-section (3)].*

*(4) The authorized representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly*

*recorded by the interim resolution professional or resolution professional, as the case may be.*

*Explanation – For the purposes of this section, the “electronic means” shall be such as may be specified.*

17. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 16-A (9) provides that “*the Authorized Representative shall circulate the agenda to creditors in a class and **may** seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee.....*” Regulation 16-A(9) further provides for certain time window to be allowed for Creditors in a class for submission of their preliminary views.

18. In the present case, we find that the Authorised Representative sent an e-mail to the Homebuyers on 10.01.2022 informing them about a meeting of CoC being convened by the Resolution Professional on 13.01.2022 on the directions of the Adjudicating Authority. It is also noted that the same e-mail mentions that a meeting to seek preliminary views of all Homebuyers would be conducted by him on 12.01.2022. This was followed up by another e-mail on 11.01.2022 communicating the agenda for CoC meeting which, inter alia, included discussion on the revised Resolution Plan of the Resolution Applicant. However, it is also noted neither the meeting of the Homebuyers on 12.01.2022 nor the CoC meeting on 13.01.2022 were held. Subsequently vide another e-mail on Company Appeal (AT)(Insolvency) No. 906 of 2022

12.01.2022, the Authorized Representative has informed the Homebuyers that instead of e-voting portal, they may communicate their decision of acceptance/rejection of the amended Resolution Plan by e-mail by 15.01.2022.

19. The above-cited series of communications issued by the Authorized Representative makes it abundantly clear that he did not falter in keeping the Homebuyers informed about the CoC meeting and its agenda. It is also noted that Authorized Representative had intended to hold a meeting to elicit preliminary views of the Homebuyers on 12.01.2022 but eventually did not convene it and instead sought the views of Homebuyers on the amended Resolution Plan by e-mail on whether they approved or rejected it. It is pertinent to note that CIRP Regulations 16-A(9) does not appear to make it obligatory to hold the meeting with Homebuyers to seek their preliminary views as the word used in the said Regulation is 'may', thereby rendering the decision to seek preliminary views optional. This is not to deny the fact that with a view to enable the Authorised Representative to participate effectively in the CoC meeting and properly represent the interests of the homebuyers, holding such a meeting of Homebuyers is eminently desirable.

20. It is also an admitted fact that out of 26 Homebuyers, only 19 Homebuyers voted in the matter and that in terms of Section 25-A(3-A) of the IBC, the Authorized Representative taking cognizance of the fact that 89.80% of Homebuyers voted in favour of the amended Resolution Plan, he cast his vote in

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favour of the amended Resolution Plan on behalf of the Creditors in class. It is also noted that the present Appellants had very much exercised their option of conveying their decision on the Resolution Plan by e-mail and that they did not approve the said Resolution Plan but in doing so constituted a very thin dissenting minority. It is also noted that the Authorized Representative and Resolution Professional was allowed a tight time-frame of only 12 days (from 06.01.2022 to 18.01.2022) by the Adjudicating Authority to complete the CIRP. Given the exceptional and stringent time-frame, the Adjudicating Authority has held that objections raised by the Appellant like the Authorised Representative not holding the meeting scheduled on 12.01.2022 and instead seeking the views on the Resolution Plan by email lacks merit. On the whole, we are of the considered opinion that the procedural compliance by the Resolution Professional and Authorized Representative appears to be reasonably substantial and we find no reason to hold that there was any wilful casualty or miscarriage of justice.

21. We now look at the two judgements of this Tribunal referred to by the Learned Counsel for the Appellants. There is no dispute with regard to these case laws. However, as each case has its own merits, it is necessary to examine the relevance of these case laws against the facts and circumstances of the present case. In the matter of **Amit Goel Vs. Piyush Shelters India Private Ltd.**, the facts are clearly distinguishable, in that the Financial Creditors in class constituted more than 79% of total voting rights in the CoC and there was Company Appeal (AT)(Insolvency) No. 906 of 2022

an issue of unequal treatment meted out to two separate categories within financial creditors in class. Hence, the context being different, applying this ratio in the present matter does not appear to be in order. The other judgement is **K.L. Jute Products Private Ltd. Vs. Tirupati Jute Industries Ltd.** regarding the Resolution Plan being conditional and discriminatory and thus non-compliant has been found to be misplaced by the Adjudicating Authority in so far that it meets the requirements of Section 30(2) of IBC. We find no reasons to disagree with the Adjudicating Authority. We tend to agree with the view that the above mentioned two judgements do not provide support to the contention of the Appellants.

22. More importantly, the question before us, is whether the CoC decision on the amended Resolution Plan could have been materially any different, had the procedural deviations not taken place. The answer seems to be in the negative for the following reasons. The Adjudicating Authority in the impugned order has clearly held that the amended Resolution Plan has been approved by 98.58% voting share of the CoC members which is much above the statutory requirement of 66% vote share and this has not been challenged by the Appellants. Furthermore, we find that it has neither been disputed by the Appellants that they constitute a minority in the Creditor of class as Homebuyers had voted in favour of the amended Resolution Plan with 89.80% vote share.

23. It may be safely inferred that even if the alleged procedural omissions had not taken place, the Appellants would still have remained minority Homebuyers in the class of Creditors. That being so, no clear nexus between the alleged material irregularity in the procedure followed and resultant prejudice caused to the interest of the minority Homebuyers in the class of creditors has been established. It is well recognised that rules of procedure being handmaid of justice, the object and intent of such procedures should be to advance the cause of justice and not become a tool to manipulate the process. The CIRP proceedings in the present case has already been a protracted affair. Remanding the matter back to CoC on the grounds of the procedural deviations raised by a dissenting minority in class of creditors would render the CIRP a never ending process. This would militate against the core objective of the IBC to ensure insolvency resolution in a time bound manner.

24. Most importantly, we find substance in the submission made by the Learned Counsel for the Respondent that the minority Homebuyers have to necessarily flow with the majority within the class and the decision of Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC(India) Ltd. and Ors.(2022)1 SCC 401** is indeed fully attracted in the present case. The relevant extracts of this judgement are reproduced below:-

xxx

xxx

xxx



“164.4            *Having regard to the scheme of IBC, and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorize representative over the resolution plan in accordance with the majority decision of the class he is authorized to represent, a plan or resolution involving large decision of the class he is authorized to represent, a plan or resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions*

*relating to voting on the resolution plan and binding nature of the vote of authorized representative on the entire class of the financial creditor/s he represents.*

*xxx*

*xxx*

*xxx*

170. *To sum up this part of discussion, in our view, after approval of the resolution plan of NBCC by CoC, where homebuyers as a class assented to the plan, any individual homebuyer or association cannot maintain any challenge to the resolution plan nor could be treated as carrying any legal grievance.*

*xxx*

*xxx*

*xxx*

171. *Once we have held that these dissatisfied homebuyers and associations are not entitled to put up any challenge to the resolution plan contrary to the decision of the requisite majority of their class, all their objections are required to be rejected outright....”*

25. In view of the above discussions, facts and circumstances, we are of the considered opinion that there are no convincing reasons to interfere with the Company Appeal (AT)(Insolvency) No. 906 of 2022

order of Adjudicating Authority approving the revised Resolution Plan of the Corporate Debtor under Section 31(1) of the IBC. We, thus, find that the appeal is devoid of merit and find no reasons to entertain it. In the result, the appeal is dismissed. There is no order as to costs.

**(Justice Ashok Bhushan)**  
**Chairperson**

**(Justice M. Satyanarayana Murthy)**  
**Member(Judicial)**

**(Barun Mitra)**  
**Member(Technical)**

**Place: New Delhi**  
**Date: 24.08.2022**

*shashi*