

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

**Company Appeal (AT) (Insolvency) No. 1715-1716 of 2023**

[Arising out of Order dated 01<sup>st</sup> December, 2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court-V) in IA/2594/2023 and I.A. No. 987 of 2023]

**IN THE MATTER OF:**

**NEHRU PLACE HOTELS AND REAL ESTATES  
PRIVATE LIMITED,**

A company incorporated on January 30, 2006 under the provisions of the Companies Act, 1956 having its registered office at 8<sup>th</sup> Floor, Eros Corporate Tower, Nehru Place, New Delhi, Delhi – 110019, India  
Through Authorised Representative Mr.Yoginder Dhawan

**...Appellant**

**Versus**

**1. SANJEEV MAHAJAN (Suspended Director)**

2A, Avenue Cassia, Westend Greens, New Delhi –  
110038

Email: [mahajan@hotmail.com](mailto:mahajan@hotmail.com)

**2. INDIAN BANK (Erstwhile Allahabad Bank)  
(Sole CoC Member)**

SAM-Large Branch at 17, Parliament Street, New Delhi  
– 110001

Email: [armbdelhi@indianbank.co.in](mailto:armbdelhi@indianbank.co.in)

**3. NAVNEET GUPTA (Resolution Professional) of  
Nimitaya Hotel & Resorts Limited.**

House No. 1598, Level -1, Sector 22-B, Chandigarh –  
160022

Email: [ip.nimitaya@gmail.com](mailto:ip.nimitaya@gmail.com);

[navguptaca@gmail.com](mailto:navguptaca@gmail.com)

**...Respondents**

**Present:**

**For Appellant:** Mr. Krishnendu Datta, Sr. Advocate with Mr. Ajay Kumar, Mr. Tanuj Sud, Mr. Vaibhav T., Ms. Stuti Vatsa, Mr. Vijyant Goel, Advocates

**For Respondents:** Mr. P. Nagesh, Sr. Advocate with Mr. Nakul Mohta, Mr. Kumar Anurag Singh, Mr. Zain A Khan, Mr. Vinayak Bhandari, Mr. Akshay Sharma, Alina Merin Mathew, Teesta Mishra, Advocates for R-1

Mr. M. Nargrath, RP-R-3

Mr. Navneet Gupta, RP

Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Anari Achumi, Advocates for R-2

## **J U D G M E N T**

**ASHOK BHUSHAN, J.**

1. This Appeal by Successful Resolution Applicant has been filed challenging the Order dated 01.12.2023 passed by National Company Law Tribunal, New Delhi, Court-V in I.A. No. 2594 of 2023 and I.A. No. 987 of 2023 in CP(IB) No. 1913(ND)2019.

2. Facts briefly be noted for deciding this Appeal are:-

- i. On an application filed by the Indian Bank, Corporate Insolvency Resolution Process commenced in the year 2021 with regard to M/s. Nimitya Hotel & Resorts Limited and IRP was appointed. C.A(AT) Ins. NO. 03 of 2022 was filed by Respondent No. 1, the Suspended Director of the Corporate Debtor challenging the Order dated 24.12.2021 which Appeal was disposed of by this Tribunal vide Order dated 04<sup>th</sup> July, 2022 permitting the Respondent No. 1

- to submit a fresh proposal under Section 12A of the Code for placing it before the Committee of Creditors.
- ii. After the aforesaid order in the CIRP of Corporate Debtor the Resolution Plan was submitted by the Appellant on 20.08.2022 along with EMD of Rs. 5 Crores.
  - iii. An I.A. No. 3410 of 2022 was filed by Respondent No. 1 Suspended Director in C.A.(AT) Ins. No. 03 of 2022 seeking direction to consider his settlement proposal which application was disposed of by this Tribunal vide Order dated 21.11.2022. Respondent No. 1 submitted a revised settlement proposal. Appellant also submitted an addendum and clarification to the plan. In the 14<sup>th</sup> CoC Meeting held on 14<sup>th</sup> December, 2022, Resolution Plan and Settlement Proposal were discussed. The Resolution Plan submitted by the Appellant as well as Settlement Proposal submitted by Respondent No.1 came to be considered and in the 14<sup>th</sup> CoC meeting under Item No. A-4 in pursuance of decision of the Committee of Creditors Resolution B-2 regarding settlement proposal and Resolution B-3 regarding Resolution Plan of the Appellant were put to vote, as per voting result dated 08<sup>th</sup> January, 2023, the Resolution Plan of the Appellant was approved with 100% vote share of CoC and settlement proposal submitted by Respondent No.1 was dissented by 100% vote share. After the Approval of the Resolution Plan of the Appellant, a Letter of Intent was issued on 10<sup>th</sup> January, 2023 which was accepted by the

- Appellant. Appellant submitted performance bank guarantee of Rs. 12.1 Crores.
- iv. The Resolution Professional filed I.A. No. 987 of 2023 before the Adjudicating Authority for approval of the Resolution Plan. The Respondent No. 1 again filed an application I.A. No. 259 of 2023 in C.A.(AT) Ins No. 3 of 2022 which application was disposed of on 03<sup>rd</sup> February, 2023 making certain observations that no case has been made to make any further order against which Civil Appeal No. 1705 of 2023 was filed which too was dismissed on 20<sup>th</sup> March, 2023.
- v. Respondent No. 1 again reiterated his settlement proposal. On 04<sup>th</sup> May, 2023, Respondent No. 1 filed I.A. No. 2594 of 2023 seeking a direction to consider and deliberate on the revised proposal submitted by Respondent No. 1. On 06<sup>th</sup> May, 2023, Respondent NO. 2 by email informed Respondent No. 1 that its competent authority of the Respondent No.1 has rejected the settlement proposal submitted on 21<sup>st</sup> March, 2023.
- vi. On 01<sup>st</sup> December, 2023, the Adjudicating Authority passed an order in I.A. No. 2594 of 2023 giving last opportunity to Respondent No. 1 so that any acceptable settlement can be arrived. The Adjudicating Authority fixed next date of hearing on 11<sup>th</sup> January, 2024 and observed that if any settlement is not arrived before the next date, Resolution Plan will be heard on merits.

vii. Aggrieved by the order dated 01<sup>st</sup> December, 2023, this Appeal has been filed.

3. We have heard Mr. Krishnendu Datta, Learned Sr. Counsel appearing for the Appellant and Mr. P Nagesh, Learned Sr. Counsel appearing for Respondent No.1.

4. Learned Sr. Counsel for the Appellant challenging the Order dated 01<sup>st</sup> December 2023 submits that Appellant's Resolution Plan have been approved with 100% vote share on 08<sup>th</sup> January, 2023, there is no occasion for granting any opportunity to Respondent No.1 to enter into a settlement with Committee of Creditors. The Settlement Proposal submitted by Respondent No. 1 was discussed in 14<sup>th</sup> CoC meeting and the settlement proposal under 12A submitted by Respondent No.1 was rejected with 100% vote share and the Resolution Plan of the Appellant was approved. There is no occasion to give any further opportunity to the Respondent No. 1 to settle. The Order of the Adjudicating Authority granting an opportunity to the Respondent No. 1 is against the provisions of the Code. It is submitted that after approval of the Resolution Plan, there can be no opportunity to submit a settlement under 12A more so when Settlement under 12A under order of this Tribunal was considered and rejected with 100% vote share. It is submitted that even after approval of the Resolution Plan on 08<sup>th</sup> January, 2023, the revised settlement proposal submitted by the Appellant was turned down by the CoC which was communicated to the Respondent No. 1 on 06<sup>th</sup> May, 2023 there was no occasion to grant any further opportunity to Respondent No. 1. It is submitted that settlement

proposal was submitted by Respondent No. 1 on several occasion which was considered and rejected by Financial Creditor. Respondent No1-the Suspended Director cannot be allowed to prolong the culmination of process by means of sending letters and revised settlement.

5. Learned Sr. Counsel appearing for Respondent No.1 submits that settlement proposal under Section 12A can be given at any stage even after approval of the Resolution Plan. It is further submitted that this Tribunal vide its order dated 3<sup>rd</sup> February, 2023 even after the approval of the Resolution Plan of the Appellant granted liberty to Respondent No. 1 to make an application before the Adjudicating Authority for consideration of his grievance, the I.A. No. 2594 of 2023 has been filed in pursuance of such liberty. Learned Counsel for Respondent No. 1 has also referred to the Order of the Hon'ble Supreme Court dated 20<sup>th</sup> March, 2023 passed in Civil Appeal No. 1705 of 2023 where Hon'ble Supreme Court has also noted the liberty granted by this Tribunal in its order dated 03.02.2023. It is submitted that Settlement Proposal given by the Respondent No. 1 is thrice to the plan value of the Appellant.

6. We have considered the submissions of Learned Sr. Counsel for the parties and have perused the record.

7. The Appeal filed by the Respondent No. 1 bearing C.A.(AT) Ins. No. 03 of 2022 was disposed of by this Tribunal by following directions:

*“15. In view of the foregoing discussions, we dispose of this Appeal with following directions:-*

*(i) Appellant shall submit a fresh Application under Section 12A to the IRP/ RP for placing it before the CoC which contains an offer of more than Rs.81 Crores.*

*(ii) The said Application shall be filed within two weeks from this date.*

*(iii) The CoC shall consider the Application under Section 12A after obtaining approval of the Competent Authority of the Bank keeping into consideration the factors as have been mentioned in paragraph 14, as above.*

*(iv) The CoC shall complete the process of taking decision on Section 12A Application within a period of two months from this date. For a period till CoC takes a decision on a proposal under Section 12A, CoC may not put any Resolution Plans, if any, to vote.”*

8. Subsequent to the aforesaid order of this Tribunal, Respondent No. 1 has submitted settlement proposal and as per Respondent No.1 when the settlement was not considered he filed I.A. No. 3410 of 2022 in C.A.(AT) Ins. NO. 03 of 2022 which application was disposed of by this Tribunal dated 21.11.2023. Paragraph 15 and 19 of the Order is as follows:

*“15. The 06th, 07th and 08th CoC Meetings which have been brought on record in the Contempt Application clearly indicate the substantial part of discussions in the minutes of the CoC where with regard to the interpretation of the Order of this Tribunal dated 04.07.2022, there was divergence in the views of the Resolution Professional and the CoC with regard to the interpretation of the Order dated 04.07.2022. The Appellant has filed this Application with the prayers as noted above. The Order dated 04th July, 2022 contemplated that CoC while considering the Application under Section 12A was to keep in mind the factors as has been mentioned in paragraph 14 of the*

*Judgment dated 04.07.2022. It has already been noticed in the Judgement that maximisation of the assets of the Corporate Debtor is one of the objectives and equally important is recovery of the financial dues of the Bank. The proposal of Applicant under section 12A for Settlement has naturally to be weighed against the Resolution Plans received in the process unless the Resolution Plans are opened and deliberated side by side with the proposal of settlement submitted by the Appellant, the objective as contemplated in paragraph 14(iii) cannot be achieved. We thus are of the view that the Order dated 04.07.2022 clearly entitled that the CoC to weigh the Resolution Plans as well as Settlement Proposal together.*

.....

*19. In result, I.A.No. 3410 of 2022 is disposed of as above and Contempt Application is rejected.”*

9. Subsequent to the order of this Tribunal dated 21.11.2022, CoC considered the Resolution Plan and Settlement Proposal in its 14<sup>th</sup> CoC Meeting. The discussion on the Settlement Proposal as well as Resolution Plan was noted in Item No. 4A. As per minutes of the 14<sup>th</sup> CoC Meeting, Resolution Plan was placed before the CoC for voting. The Resolution regarding approval of the Resolution Plan was approved with 100% vote share whereas Settlement Proposal given under Section 12A by the Respondent No. 1 was rejected with 100% vote share. As noted above, the Application has also been filed by the RP for approval of the Resolution Plan before the Adjudicating Authority being I.A. No. 987 of 2023. During the pendency of the Application by RP for approval of the Plan by the Appellant, Respondent No.1 filed another I.A. No. 259 of



2023 in disposed of Appeal 03 of 2022. This tribunal passed following order on I.A. No. 259 of 2023 on 3<sup>rd</sup> February, 2023:

**I.A. No. 259 of 2023** *This Interlocutory Application has been filed by the Appellant in disposed of Company Appeal (AT)(Insolvency) No. 03 of 2022 which was disposed of by this Tribunal's Judgment dated 04.07.2022. Subsequently, another order was passed by this Tribunal on 21.11.2022 in I.A. No. 3410 of 2022 filed by the Appellant. The Applicant/Appellant has come up with in this Application claiming that the Applicant/Appellant was not given opportunity to meet the Chairman-cum-Managing Director, who is the Competent Authority for considering the proposal of the Applicant/Appellant who is an MSME. By our order 21.11.2022, we have already made necessary clarification with regard to earlier judgment dated 04.07.2022. Learned Counsel for the Bank submits that in accordance with the order passed by this Tribunal dated 04.07.2022 and 21.11.2022, all steps were taken by CoC. Learned Counsel for the Applicant submits that after 20.01.2023, the Applicant/Appellant has also made efforts to meet the Chairman-cum Managing Director, but he was unsuccessful. Learned Counsel for Bank submits that CoC has already approved the Resolution Plan during the pendency of this Application We are of the view that it is open for the Applicant/Appellant to make such application, as permissible in law, before the Adjudicating Authority for consideration of this grievance, if any. Learned Counsel for the Applicant/Appellant submits that he is making offer higher than the Successful Resolution*

*Applicant, whose plan has been approved. It is open for the Applicant to place his plea, as admissible in law, before the Adjudicating Authority. We are of the view that no case has been made out to make further order in I.A. No. 259 of 2023. Any Application filed by the Applicant shall be considered in accordance with law by the Adjudicating Authority.”*

10. Against the above order, Civil Appeal No. 1705 of 2023 was filed by Respondent No. 1 on which following order was passed on 20<sup>th</sup> March, 2023:

*“Having heard counsel for the parties, this court is of the opinion that the impugned order has already granted the liberty to the appellant to approach the National Company Law Tribunal (NCLT).*

*In case such a course is adopted, the respondents shall not object to the consideration by the NCLT only on the ground of jurisdiction.*

*The civil appeal is disposed of in the above terms.*

*Pending applications, if any, are disposed of.”*

11. It is also relevant to notice that after approval of the Resolution Plan, fresh proposal given by Respondent No.1 vide email dated 21<sup>st</sup> March, 2023 was also not accepted by the Competent Authority and on 06<sup>th</sup> May, 2023, Respondent No. 1 was communicated as follows:

**“Sanjeev Mahajan** *Date: 06.05.2023*  
**Promoter of Nimitaya Hotel & Resorts Limited**  
**No. 3 Ashoka Avenue,**  
**Westend Greens**  
**Rajokari New Delhi 110038**

**Dear Sir,**

**Sub: Settlement Proposal U/s 12A of IBC, 2016**

**Ref: Your letter dated 21.03.2023**

*This is in reference to your email dated 21.03.2023, addressed to CMD SEC Indian Bank under copy to this branch and also to the Resolution Professional.*

*This is to inform you that the offer made by you for Rs. 118.26 Crore as per your letter dated 21.03.2023 is too low and has been declined by our competent authority.*

*Also, our communication regarding your above referred letter was replied vide our email dated 05.05.2023 at 10:53 hours. Copy of the email is enclosed for your reference =.*

*Yours faithfully.*

**Deputy General Manager**

**SAM Branch Delhi”**

12. In the Application which has been filed by Respondent No. 1 being I.A. No. 2594 of 2023, following prayers have been made:

*a) Allow the instant application and set aside the letter dated 06.05.2023 rejecting the Settlement Proposal dated 02.02.2023 submitted by the Appellant;*

*b) To take on record additional facts and documents filed along with the present Application;*

*c) To adjudicate the captioned I.A. 2954 of 2023 before the Adjudication of the I.A. No. 987 of 2023 seeking approval of the Resolution Plan;*

*d) Pass any other order in the interest of fairness and justice.”*

13. Now we come to the Impugned Order dated 01<sup>st</sup> December, 2023 passed in I.A. No. 2594 of 2023 which is as follows:

*“Ld. Counsel on behalf of the Resolution Professional and Ld. Counsel on behalf of Financial Creditor and*

*Ld. Sr. Counsel on behalf of the Suspended Manage is present. CoC has already approved the Resolution Plan which is pending for consideration of this Adjudicating Authority. Suspended Management has filed certain applications proposing higher amount than proposed by the SRA for consideration of the CoC. Since, the matter is an old one, last opportunity is granted, so that any acceptable settlement can be arrived. If no settlement arises before the next date of hearing, the Resolution Plan will be heard on merits. List this Application on 11.01.2023”*

14. From the facts as noticed above it is clear that Resolution Plan of the Appellant was approved with 100% vote share and settlement proposal submitted by Respondent No. 1 under 12A of the Code was considered under the order of this Tribunal in 14<sup>th</sup> CoC meeting and rejected with 100% vote share on 08<sup>th</sup> January, 2023.

15. Learned Sr. Counsel for the Respondent No. 1 has placed reliance on order of this Tribunal dated 03.02.2023 passed in I.A. No. 259 of 2023. According to Respondent No.1 I.A. No. 259 of 2023 has been filed due to liberty granted by this Tribunal. When we look into the order dated 03.02.2023 of this Tribunal, it is clear that this Tribunal only observed that it is open to the Applicant (Respondent No. 1 herein) to make such an application as permissible in law for consideration of his grievance before the Adjudicating Authority. The Order dated 03.02.2023 cannot be read to mean that this Tribunal granted liberty to Respondent No. 1 to submit any further proposal for settlement. The Order dated 03.02.2023 can be read only to mean at best the Respondent No. 1 can

raise his grievance by an application before the Adjudicating Authority. Application has been filed being I.A. No. 2594 of 2023 and prayer made to set aside the communication dated 06.05.2023 issued by the CoC rejecting his proposal. When we look into the Impugned Order, the Adjudicating Authority made following observations:

*“...CoC has already approved the Resolution Plan which is pending for consideration of this Adjudicating Authority. Suspended Management has filed certain applications proposing higher amount than proposed by the SRA for consideration of the CoC. Since, the matter is an old one, last opportunity is granted, so that any acceptable settlement can be arrived. If no settlement arises before the next date of hearing, the Resolution Plan will be heard on merits.....”*

16. The Order dated 01<sup>st</sup> December, 2023 cannot be read to mean that I.A. No. 2594 of 2023 filed by Respondent No.1 has been allowed and the rejection of his proposal has been set aside. The Adjudicating Authority committed error in observing that “last opportunity is granted, so that any acceptable settlement can be arrived.” Settlements already submitted by Respondent No.1 were rejected by CoC and the Application 2594 of 2023 challenging the rejection is already before the Adjudicating Authority. Without allowing I.A. No. 2594 of 2023, there is no occasion to grant any opportunity to Respondent No. 1 to settle with CoC.

17. Learned Counsel for the Appellant has placed reliance on Judgment of this Tribunal in **“Hem Singh Bharana vs. M/s. Pawan**

**Doot Estates Pvt. Ltd., C.A.(AT) Ins. No. 1481 of 2022**". This Tribunal in the aforesaid case had occasion to consider similar issue. The question has been noticed in Paragraph 9 of the Judgement which is as follows:

*"9. From the submissions, which have been made by the learned Counsel for the parties and the material on record, following question arise for consideration:*

*(I) Whether after approval of the Resolution Plan by Committee of Creditors under Section 30, sub-section (4) and filing an Application before the Adjudicating Authority for its approval, any Settlement Proposal under Section 12A (filed by Ex Promoter) can be entertained deferring consideration of approval of Resolution Plan by the Adjudicating Authority?"*

18. This Tribunal after considering the submission made following observations in paragraph 15 and 16 which are as follows:

*"15. The intendment of the proviso is that there has to be special reason for making Application under Section 30A(1)(b), when it is filed after publication of invitation for Expression of Interest. The Regulation clearly indicate that when 'Expression of Interest' is issued inviting Resolution Plan, there has to be sufficient reason justifying withdrawal.*

*16. Regulation making Authority was well aware about the entire process under the Code, including approval of the Plan by the CoC and filing of the Application before the Adjudicating Authority for approval of the Resolution Plan. Had it intended that 12A Application can be entertained even after Resolution Plan is approved by the CoC, the proviso would not have confined to issue invitation for*

*Expression of Interest, rather, it could have been conveniently mentioned that after approval of Resolution Plan Applicant should justify withdrawal. It was never intended that after approval of Resolution Plan by CoC, Application under Section 12A can be entertained. Hence, the Regulation is framed in that manner.”*

19. The above Judgment do support the submission of the Appellant that after approval of the Resolution Plan, settlement proposal by the Respondent No.1 cannot be accepted.

20. Mr. P. Nagesh, Learned Sr. Counsel for Respondent No. 1 has also placed reliance on various judgments of Hon'ble Supreme Court and this Tribunal to support his submissions that direction can be issued to consider his Application under Section 12A even after approval of the Resolution Plan by CoC.

21. Learned Sr. Counsel for the Respondent No.1 has relied on Judgment of Hon'ble Supreme Court in **R. Raghavendran vs. C. Raja John & Ors., C.A. No. 2552 of 2022** at paragraph No. 17-21 which are as follows:

*“17. We could have put an end to the matter by the aforesaid order but having been persuaded by learned counsel for the respondent No.1 to give some hiatus time to the said respondent on account of the fact that he has submitted an OTS (One Time Settlement) proposal to the financial creditors and are hopeful of the acceptance of the same. It is also his say that the flat buyers are also on board but are only 15% of the CoCs.*

18. We are inclined to give that chance to the respondent No.1 in the given facts of the case but would not like the proceedings to drag on under the pretext of the OTS given by the respondent No.1., as it would be the objective of the Court to have a quick resolution with the aspect of insolvency or revival. On our query, learned counsel submits, on instructions, that a two months window may be granted to persuade the financial creditors.

19. We are inclined to accept the request, making it clear that in case the financial creditors are not inclined to do so, if any further proceedings are initiated by the respondent(s) in that behalf, that would not impede the process to be dragged on by the respondent No.1. It is a one time window given to the respondent No.1. This is also as according to the learned counsel for respondent No.1. if the financial creditors accept the proposal and the flat buyers are involved, the process started would itself dissolve.

20. In view of the aforesaid terms while enunciating the legal proposition, we, thus, allow the appeal and set aside paragraph Nos.32 and 34 of the impugned judgment.

21. Needless to say that beyond the window of two months, if the OTS is not accepted, the appellant will be free to declare the results of the e-voting qua all the proposals.”

22. The above judgment indicates that the opportunity was given to Respondent No.1 to submit one time settlement and the plan submitted by Respondent No. 1 was held to be ineligible he being promoter as entity was not MSME. In the facts of the said case, the Respondent No. 1



was given an opportunity to give a OTS. The said case was entirely different which was not considering any 12A proposal after approval of the Resolution Plan hence no help can be rendered by the said judgment to Respondent No. 1.

23. Another Judgment relied by Respondent No.1 is **M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder & Anr. C.A. No. 1682-1683 of 2022** in support of his submission the promoter can give multiple settlement offer at any stage. There can be no quarrel to the proposition that promoter can give multiple proposal but the question is when the proposal submitted by Promoter have been considered and not approved, whether the Adjudicating Authority without passing any order in I.A. 2594 of 2023 can direct for consideration of proposal by Respondent No. 1. The said judgment is also on its own fact and does not support the Respondent No. 1.

24. Learned Sr. Counsel for the Respondent No. 1 has relied on another Judgment of this Tribunal in C.A.(AT) Ins. No. 921 of 2019, **Shaji Purushothaman Vs. Union Bank of India & Ors.** In the above case, Appellant who was suspended director claimed to have settled the dispute with the Union Bank of India and filed Misc. Application for setting aside the Order admitting CIRP. The Adjudicating Authority has observed that the Admission Order cannot be set aside except where an application under Section 12A is filed. In the above background, following observations were made in paragraph 7 to 9:

*“7. However, Mr. R.P. Agarwal appearing on behalf of ‘Union Bank of India’ submits that the ‘Resolution Plan’*

*has already been approved by the 'Committee of Creditors' after taking into consideration the claim of the 'M/s. Edelweiss Asset Reconstruction Company Ltd.'*

*8. In the circumstances, while we are not inclined to issue any specific direction, give liberty to the Appellant to move an application u/s 12A for settling the claims of all the Creditors including the guarantors.*

*9. If an application u/s 12A is filed by the Appellant, the 'Committee of Creditors' may decide as to whether the proposal given by the Appellant for settlement in terms of Section 12A is better than the 'Resolution Plan' as approved by it, and may pass appropriate order. However, as such decision is required to be taken by the 'Committee of Creditors', we are not expressing any opinion on the same."*

25. In the above case, this Tribunal noted that Resolution Plan was approved but after noticing that it was observed that no direction can be issued but liberty was given to the Appellant to file an application under Section 12A and this Tribunal has observed that if application under Section 12A is filed COC may decide as to whether proposal given by the Appellant is better than the plan. In the above case, Hon'ble Supreme Court vide Order dated 14<sup>th</sup> June 2019 granted liberty to move an application before the Adjudicating Authority and consequently the Appellant has moved the Adjudicating Authority which had observed that CIRP can be closed only when an application under Section 12A is filed by settling the matter with approval of 90% voting share. When we come to the facts of the present case, proposal under Section 12A submitted by the Respondent No.1 was also directed by this Tribunal to

be considered along with Resolution Plan as has been noticed above and CoC in its 14<sup>th</sup> CoC meeting has already considered the Resolution Plan along with settlement proposal submitted by Respondent No. 1. Thus the facts of the present case are entirely different where the Settlement proposal submitted by Respondent No.1 has already been considered by the CoC, the above Judgment does not help the Respondent No.1 in the present case.

26. Learned Sr. Counsel for the Respondent has relied on Judgments of Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.(2019) 4 SCC 17** and **Vallal RCK vs. Siva Industries and Holdings Ltd. and Ors. 2022 9 SCC 803** for the proposition that any arbitrary decision of CoC in rejecting 12A proposal can be interfered with. There can be no quarrel to the proposition that Adjudicating Authority has jurisdiction to set aside the order of the CoC rejecting 12A proposal when the decision of the CoC is arbitrary. The above Judgments of the Hon'ble Supreme Court have no application in the facts of the present case since the Adjudicating Authority has not returned any finding that rejection of settlement claim of the Respondent No.1 by the COC is arbitrary.

27. In view of the aforesaid discussion and our conclusions, we are of the view that the Adjudicating Authority committed error in giving an opportunity to Respondent No. 1 to arrive at acceptable settlement. Thus, following observations in the Order are deleted from the order **“Since, the matter is an old one, last opportunity is granted, so that any acceptable settlement can be arrived. If not settlement arises**

**before the next date of hearing, the Resolution Plan will be heard on merits.”** We are of the view that application for approval of the Resolution Plan which has already been filed and pending consideration, the Adjudicating Authority ought to have considered and decided the Application for approval of the plan. It was also open for the Adjudicating Authority to consider I.A. No. 2594 of 2023 and to take a final decision. The plan having been approved on 08<sup>th</sup> January, 2023 and application is pending for about last one year before the Adjudicating Authority, we are of the view that Adjudicating Authority may proceed expeditiously to decide application filed by the Resolution Professional for approval of the plan i.e. I.A. No. 987 of 2023. It would be also open for the Adjudicating Authority to consider and decide I.A. No. 2594 of 2023 filed by Respondent No. 1. 11<sup>th</sup> January, 2024 is also fixed in the matter, we request the Adjudicating Authority to proceed to decide the aforesaid application on the date fixed or as early as possible.

The Appeal is disposed of, accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**[Arun Baroka]  
Member (Technical)**

**NEW DELHI  
08<sup>th</sup> January, 2024**

*Basant B.*