

For Respondent: Mr. Anupam Lal Das, Sr. Advocate with Mrinal Harsh Vardan, Kailash Ram, Advocates for R-1 and R-2

Mr. Arvind Nayyar, Sr. Advocate with Ms. Anuja Pethia, Mr. Subhashish Kumar, Mr. Akshay Joshi, Advocates for R-3

Mr. P Moryia, Advocate for Homebuyer

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Successful Resolution Applicant (“**SRA**”) has been filed against the order dated 23.01.2024 passed by National Company Law Tribunal, New Delhi Bench (Court-II) in IA No.188/2024 filed by Respondent No.1.

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

- (i) The Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor – M/s. Primrose Infratech Pvt. Ltd. commenced by order dated 21.12.2018. Public announcement was made on 03.01.2019.
- (ii) CA No.315 of 2019 filed by Ex-Director, seeking withdrawal of CIRP was rejected by the Adjudicating Authority on 08.04.2019, which order was challenged in Company Appeal (AT) (Insolvency) No.564 of 2019. The second Application being IA No.1511 of 2019 was filed by the Ex. Director under

Section 12A, which was directed to be placed before the Committee of Creditors (“**CoC**”).

- (iii) On 13.02.2020, the Resolution Plan submitted by the Appellant was approved by the CoC with 80.84% voting share. IA No.1489 of 2020 was filed by the Resolution Professional (“**RP**”) for approval of Resolution Plan, which is pending before the Adjudicating Authority. In the meeting held on 19.02.2020, the proposal of Ex. Director for withdrawal of CIRP was considered and rejected by the CoC with 80.22% vote share.
- (iv) An IA No.188 of 2024 dated 11.01.2024 was filed by Respondent No.1 – Ex. Director before the Adjudicating Authority, where, following prayers were made:

“1. Allow the instant application filed by the Applicants,
2. Pass an appropriate order to allow the Applicants to place the settlement proposal under Section 12(A) of IBC, 2016 read with Regulation 30(A) before the committee of creditors for voting, and allow consequent withdrawal and suspension of CIRP admitted under section 9 of IBC, 2016.

Pass any other such order(s) and/or direction(s) as this Hon’ble Tribunal may deem fit and proper in the interest of justice be served.”

- (v) On the Application, i.e., IA No.188 of 2024, the Adjudicating Authority passed an order on 23.01.2024 directing the Applicant to deposit Rs.1 crore in CIRP Account of Corporate

Debtor and the RP was directed to call a meeting of the CoC to examine the proposal made by Applicant vis-à-vis proposal made by SRA. Aggrieved by the said order, this Appeal has been filed.

3. We have heard Shri Sunil Fernandes, learned Senior Counsel appearing for the Appellant; Shri Arvind Nayyar, learned Senior Counsel has appearing for the RP; Shri Anupam Lal Das, learned Senior Counsel has appeared for Respondent Nos.1 and 2.

4. Learned Counsel for the Appellant, challenging the order submits that after approval of Resolution Plan of the Appellant by the CoC, there was no occasion for directing consideration of fresh settlement proposal submitted by Ex. Directors to be placed before the CoC, where the earlier Applications filed by the Ex. Directors under Section 12A were already considered and rejected twice by the CoC. It is submitted that after approval of Resolution Plan, there is no jurisdiction in the Adjudicating Authority to direct for consideration of any Application under Section 12A. The learned Counsel for the Appellant submits that Adjudicating Authority in the impugned order has relied on judgment of this Tribunal in ***Nehru Place Hotels States Pvt. Ltd. vs. Mr. Sanjeev Mahajan and Ors. – Company Appeal (AT) (Insolvency) No.1715/ 1716 of 2023*** decided on 08.01.2024, where the Adjudicating Authority failed to notice that direction issued by the Adjudicating Authority for arriving at an acceptable settlement by the next date was set aside by this Tribunal. The Adjudicating Authority although noticed the judgment, but failed to notice

the ultimate direction passed by the Appellate Tribunal. Learned Senior Counsel for the Appellant has relied on judgments of this Tribunal in ***Hem Sigh Bharana vs. Pawan Doot Estate Pvt. Ltd. – Company Appeal (AT) (Insolvency) No.1481 of 2022*** and ***Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. and Anr. – (2022) 2 SCC 401***. The learned Senior Counsel for the Appellant further submits that Adjudicating Authority has passed order in IA 188 of 2024 on the first date of hearing without giving any opportunity to the Appellant to respond to the Application. In the Appeal, learned Counsel for the Appellant has taken a specific ground that no opportunity was given to the Appellant to respond to the Application and on the first date of hearing, an order was passed on the Application, which is in violation of principles of natural justice.

5. Learned Senior Counsel appearing for the RP supported the submissions of learned Senior Counsel for the Appellant and submits that the Resolution Plan of the Appellant having been approved by the CoC, no direction could have been issued to place the Application filed by the Ex. Directors being IA No.188 of 2024 for consideration before the CoC. It is submitted that Adjudicating Authority itself has made observation that plan approval application was impeded at every stage by the Ex. Directors, inspite of the above observation, the Adjudicating Authority has directed the Application to be placed before the CoC. It is submitted that there was no jurisdiction for placing any proposal under Section 12A, after the approval of a Resolution Plan by the CoC. The learned Senior Counsel for

the RP has also relied on judgment of this Tribunal in **Hem Singh Bharana** and submits that the Appeal against the judgment has also been dismissed by Hon'ble Supreme Court on 30.01.2023.

6. The learned Senior Counsel appearing for Respondent Nos.1 and 2 opposing the submissions of learned Senior Counsel for the Appellant submits that Adjudicating Authority is not precluded from directing for consideration of 12A proposal submitted by the Ex. Director, since the Application for withdrawal of proceeding can be allowed at any stage of the CIRP. The mere fact that the Resolution Plan of the Appellant has been approved by the CoC, does not preclude the consideration of 12A proposal submitted by the Appellant. It is submitted that Adjudicating Authority has directed for consideration of the Application with certain conditions including deposit of Rs.1 crore by the Applicant. The learned Counsel for Respondent Nos.1 and 2 has relied on judgment of Hon'ble Supreme Court in **Brilliant Alloys Pvt. Ltd. vs. S. Rajagopal and Ors. – (2022) 2 SCC 544**, where the Hon'ble Supreme Court has taken the view that there are no restriction in Section 12A and stipulation under Regulation 30A has to be construed as directory depending on the facts of each case. The learned Counsel for Respondent Nos.1 and 2 has also relied on the judgment of this Tribunal in **Shaji Purushothaman Vs Union Bank of India & Ors. – Company Appeal (AT) (Insolvency) No.921 of 2019**, where this Tribunal has observed that if an application is filed under Section 12A, the CoC may decide whether the proposal given by the Appellant for settlement is better than the Resolution Plan as approved by the CoC. It is submitted that as

per the above judgment, the CoC can very well consider the proposal submitted by the Applicant.

7. We have considered the submissions of learned Counsel for the parties and have perused the record.

8. From the facts, which have been brought on record, it is clear that earlier applications filed under Section 12A by the Ex. Director was considered and not approved by the CoC. On 13.02.2020, the Resolution Plan of the Appellant was approved by the CoC and an IA No.1489 of 2020 for approval of the Resolution Plan filed by the RP is pending consideration before the Adjudicating Authority. We have looked into IA No.188 of 2024, which was filed by Respondent Nos.1 and 2, where the Applicant have referred to proceeding subsequent to filing of the Application for approval of the Resolution Plan. Filing of IA No.5403 of 2023 seeking certain clarification of orders passed by the Adjudicating Authority has also been referred to. Reference to affidavit filed by SRA clarifying the issues has also been noticed in paragraph-6 of the Application specifically. The Applicant has submitted a proposal in paragraph-9 of the Application. The Application, which was filed by Respondent Nos.1 and 2 dated 11.01.2024, came for the first time before the Adjudicating Authority on 23.01.2024, on which date order was passed by the Adjudicating Authority, directing the Applicant to deposit Rs.1 crore and subject to deposit, the RP was directed to call a meeting of the CoC to examine the proposal. The Adjudicating Authority in the impugned order has relied on judgment of this Tribunal in ***Nehru Place Hotels States Pvt. Ltd. vs. Mr. Sanjeev Mahajan and Ors.***

– **Company Appeal (AT) (Insolvency) No.1715/ 1716 of 2023** in which judgment, this Tribunal has set aside the part of direction issued by the Adjudicating Authority giving opportunity to Ex. Director to arrive at an acceptable settlement before the next date. The direction with regard to opportunity granted to Ex. Director, so that any settlement can be arrived, was set aside. However, this Tribunal directed Application for approval of Resolution Plan should be considered and decided and it was also open for the Adjudicating Authority to consider IA No.2594 of 2023 filed by Respondent No.1. In the operating portion of the order, following was observed in last paragraph:

“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 08th 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. 11th

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.”

9. We are further of the view that in the Application, which was filed by the Ex. Director, where a proposal was submitted for settlement, the Adjudicating Authority ought to have given an opportunity to SRA to submit a response to the Application, specifically when Applicant in his Application IA No.188 of 2024 has referred to various affidavits filed by SRA in the proceedings for Plan approval. The Appellant in the Appeal in ground (u), stated following:

“u. Furthermore, the impugned order has been passed without affording an opportunity. to the Appellant to file its appropriate -response to the said Application wherein the Impugned Order has been passed as the same has a direct bearing on the Resolution Plan submitted by the Appellant and prejudice the rights of the Appellant.”

10. In the facts of the present case, we are of the view that Adjudicating Authority, ought to have allowed opportunity to SRA to respond to the Application (IA No.188 of 2024 filed by Respondent Nos.1 and 2), whose Resolution Plan has been approved by the CoC and which is pending consideration before the Adjudicating Authority. Without giving an opportunity to the Appellant, direction to the CoC to consider the Plan, cannot be sustained. To obviate any further delay in the matter, we allow two weeks’ time to the Appellant to file its objection to IA No.188 of 2024. The Application for approval of Resolution Plan being pending consideration, it shall be open for the Adjudicating Authority to consider

IA No.188 of 2024 along with its objection. In view of giving opportunity to the Appellant to file objections to the IA No.188 of 2024, we desist from entering into various issues, which may arise for consideration by the Adjudicating Authority while deciding IA No.188 of 2024 along with its objections.

11. In result, the impugned order of the Adjudicating Authority dated 23.01.2024 passed in IA No.188 of 2024 is set aside. Liberty is granted to the Appellant to file its objection to IA No.188 of 2024 within two weeks' time before the Adjudicating Authority. It shall be open for the Adjudicating Authority to decide IA No.188 of 2024 along with its objections in accordance with law. The Appeal is disposed of. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

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

NEW DELHI

28th February, 2024

Ashwani