

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1417 of 2024

[Arising out of order dated 10.05.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Ahmedabad, Division Bench, Court No. 2),
in I.A. 36/NCLT/AHM/2021 in CP (IB) No.257/NCLT/AHM/2019]

IN THE MATTER OF:

1. Yogeshkumar Jashwantilal Thakkar

A-501, Palak – 2, Opp. Shreeji Enclave,
Anandnagar, Ramdevnagar Road, Satellite,
Ahmedabad – 380015, Gujarat.

Email: arrol.jason@gmail.com

Address of Legal Representative:

Dhruvit Shah (Advocate)
608, Sakar – 1,
Near Gandhigram Railway Station,
Ashram Road, Ahmedabad – 380009,
Gujarat.

Email: dhruvitshah.adv@gmail.com

...Appellant No. 1

2. Jayeshkumar Kantilal Thakkar

R/7, Sharanam – 5, Prernatirth Road,
Jodhpur, Satellite, Ahmedabad – 380015,
Gujarat.

Email: jason.karjan@gmail.com

Address of Legal Representative

Dhruvit Shah (Advocate)
608, Sakar – 1,
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Ashram Road, Ahmedabad – 380009,
Gujarat.

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...Appellant No. 2

Versus

**1. George Samuel,
Resolution Professional of Jason Dekor Private
Limited**

110, Atria-B, Sargasan Circle,
Gandhinagar – 382421, Gujarat.

Email: gsforags@gmail.com

...Respondent No. 1

**2. Committee of Creditors of
Jason Dekor Private Limited
through Indian Overseas Bank**

Indian Overseas Bank,
ARM Branch, Ground Floor,
Chinubhai Tower, Ashram Road,
Ahmedabad – 380009, Gujarat.
Email: iob2581@iob.in

...Respondent No. 2

3. Jay Overseas Private Limited

202, Neptune Harmony,
Next to Ashok Vatika,
BRTS Iscon, Ambali,
Ahmedabad – 380058, Gujarat.
Email: account@jayoverseas.com
ashok@jayoverseas.com

...Respondent No. 3

Present:

For Appellant : Present but appearance not marked.

**For Respondents : Mr. Madhusudan Sharma and Mr. George Samuel,
Erstwhile RP for R-1.**

**Mr. Diwaker Goel, Mr. Sagar Aggarwal, Ms. Anjali
Jain and Ms. Swati Sood, Advocates for R-2.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by two Suspended Directors of the Corporate Debtor, Jason Dekor Private Limited has been filed challenging the Order dated 10.05.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad, Division Bench, Court No. 2) in I.A. 36/NCLT/AHM/2021 in CP (IB) No.257/NCLT/AHM/2019, by which Order, the Adjudicating Authority approved the Resolution Plan submitted by Respondent No. 3.

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

- i. Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor commenced on 19.12.2019.
- ii. The Committee of Creditors (CoC) took a decision to file an Application for Liquidation of the Corporate Debtor there being no viable Resolution Plan.
- iii. The Respondent No. 3 filed an Application I.A.886/2020 before the Adjudicating Authority seeking direction for consideration of its Plan which was rejected by the Adjudicating Authority on 09.12.2020.
- iv. Comp. App. (AT) (Ins.) No. 117/2020 was filed by the Respondent No. 3, which Appeal was disposed of by this Tribunal setting aside the Order of the Adjudicating Authority and directing for consideration of Revised Resolution Plan.
- v. The CoC considered the Resolution Plan of Respondent No. 3 and Resolution Plan along with first Addendum dated 28.12.2020 was considered and was approved on 05.01.2021 with 100% Vote Shares of the CoC.
- vi. Resolution Professional (RP) filed I.A. No.36/AHM/2021 for approval of the Resolution Plan. The Adjudicating Authority heard the Parties and vide Impugned Order allowed the Application of RP and approved the Resolution Plan. Adjudicating Authority held that Resolution Plan is compliant of Section 30(2) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code' or 'The IBC') and no substantial grounds have been raised for rejecting the Resolution Plan.

Certain objections were raised by the Suspended Management to the Resolution Plan which was found to have no substance.

vii. Suspended Management aggrieved by the Impugned Order has come up in this Appeal.

3. We have heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the RP.

4. Learned Counsel for the Appellant challenging the Impugned Order contends that various submissions were raised by the Suspended Management including the RP having violated various procedural requirement which have although noticed by the Adjudicating Authority in Paragraph 13 of the Impugned Order but have not been considered. Learned Counsel for the Appellant submits that there is violation of Regulation 37(ba) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short 'The 2016 Regulations'). It is submitted that the second Addendum dated 02.01.2021 which was submitted by the Resolution Applicant was never placed for voting. It is submitted that Valuation Report which was received by the RP was not shared with the Suspended Management. Learned Counsel further submitted that SRA has failed to implement the Resolution Plan and SRA himself have filed an I.A. 942/2024 for recall of the approved Resolution Plan. RP has also filed a Contempt Petition being Petition No. 10/2024 on the ground that SRA has violated the Resolution Plan. It is submitted that Order approving the Resolution Plan deserves to be rejected.

5. Learned Counsel for the RP opposing the submission of Counsel for the Appellant submits that RP followed all required process for approval of the
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Resolution Plan. `Form-H' has been submitted by RP giving all steps taken in the CIRP. It is submitted that there is no violation of Regulation 37(ba) of the 2016 Regulations since the Clauses pertaining to restructuring of the Corporate Debtor by way of merger amalgamation and demerger is not a mandatory condition to be included in the Plan. Regulation itself provides "as may be necessary" thus the Resolution Plan having no provisions under Regulation 37(ba) of the 2016 Regulations does not violate the provisions of Regulations. It is submitted that insofar as second Addendum dated 02.01.2021 was concerned, the same was never put for voting and the Plan was approved along with Addendum dated 28.12.2020. It is submitted that Successful Resolution Applicant (SRA) itself has filed an Application for recall of the approved Resolution Plan. SRA has not implemented the Resolution Plan and matter is pending consideration before the Adjudicating Authority. It is submitted that there is no merit in the Appeal, Appeal deserves to be dismissed. It is further submitted that Valuation Reports are required to be shared only with the Member of the CoC in an electronic form on receiving and undertaking to maintain confidentiality.

6. We have considered the submissions of Counsel for the Parties and perused the record.

7. The submission which has been sought to be advanced by the Counsel for the Appellant are mainly regarding procedural requirement of RP in conduct of the CIRP. First submission is with regard to non-compliance of Regulation 37(ba) of 2016 Regulations. Regulation 37 provides:

"37. Resolution plan.

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the

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corporate debtor for maximization of value of its assets, including but not limited to the following: -

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;”

8. The above Regulation has to read to mean that Resolution Plan shall provide for the measures as may be necessary, including but not limited to as has been enumerated in Clause a to m. Clause (ba) on which reliance has been placed by the Appellant is regarding the restructuring of the Corporate Debtor, by way of merger, amalgamation and demerger. The above Clause in the Plan is required to be put if it is necessary, thus it cannot be said that Resolution Plan which does not contain any Plan pertaining to Regulation 37(ba) violates any provisions of law. The use of expression **“as may be necessary”** clearly indicates the intent of the statutory requirement. The Clause pertaining to restructuring of the Corporate Debtor is required to be put when it is necessary for insolvency resolution of the Corporate Debtor, hence a Plan which does not contain such Clause regarding restructuring of the Corporate Debtor cannot be said to violate any provisions of law. Insofar as the submissions that second Addendum was not voted upon by the CoC the Minutes of the CoC held on 28.12.2020 clearly indicate that what was decided that Resolution Applicant shall provide an Addendum and the said may be proposed for e-voting. Addendum was provided by the Resolution Applicant which has been filed and annexed at Page 251 of the Appeal, which Addendum dated 28.12.2020 provides as follows:

“To,

Mr. George Samuel,
Resolution Professional of Jason Dekor Private Limited
(In CIRP)
110, Atria-B, Saragasan Circle,
Gandhinagar
Gujarat – 382421

Sub – Addendum in offer

Dear Sir,

It is required you to please ignore two earlier addendum offer submitted by us and consider this addendum offer on your record.

The Committee of Creditor (CoC) Meeting is held on 28th December, 2020. The CoC has requested us to improve your offer. The Resolution Applicant is doing addendum in offer to give honour to the CoC and submit you offer as below,

No.	Particular	Amount Rs. In Lakhs
1	Secured Financial Creditor	875
2	CIRP Cost	25
	Total offer Amount	900

The Resolution Applicant will pay actual CIRP Cost if it will be more than above mentioned CIRP Cost and such amount deemed as increase amount of Resolution Plan.

The payment scheduled for CIRP Cost will be within one month from the date of receipt of approval order from NCLT where payment schedule for the secured financial creditor will be remained as follow,

The Resolution Applicant has increased the offer of Rs. 50 lakh (offer from Rs.850 lakh to 900 lakh). This additional offer amount will be paid by Resolution Applicant with last month instalment payment mentioned in Resolution Plan (with price revision) submitted on 25th December, 2020 (i.e. within six months from the date of receipt of approval order from NCLT).

Yours faithfully

For Jay Overseas Private Limited,”

9. Second Addendum was also submitted on 02.01.2021 but the Minutes of the 12th Meeting of the CoC held on 28.12.2020 under agenda Item No. B2 following was minuted:

“In view of the above, the Committee of Creditors agreed that a resolution for the approval of the Revised Resolution Plan dated 25-12-2020, along with the Addendum to the resolution plan to be received from the Resolution Applicant, Jay Overseas Pvt. Limited is proposed for e-voting to be voted upon through e-voting process to be initiated by the Resolution Professional.

After the meeting of the CoC, within the same day on 28-12-2020 itself the Resolution Professional has received the Addendum. Thus, a proposed resolution enclosed as RES/JASON/02, modified for the receipt of Addendum dated 28-12-2020, in the approval of the Revised Resolution Plan dated 25-12-2020 along with the Addendum in Offer dated 28-12-2020 of Jay Overseas Pvt. Limited will be put to e-voting after the minutes are sent.

VOTING OF RESOLUTION

It is decided that both the above Resolutions, vis. RES/JASON/01 and RES/JASON/02 dated 28-12-2020 shall be put to electronic voting after the sending of the Minutes of the Meeting and that the electronic voting system shall commence at 10:30AM on 30-12-2020 and shall continue till 06PM on Tuesday, the 5th of January, 2021, when the voting shall be concluded.”

10. The above clearly indicates that the second Addendum was never put to vote and what was put was Revised Resolution Plan with Addendum dated 28.12.2020. We, thus do not find any infirmity insofar as non-putting the second Addendum for voting.

11. The Appellant in the Appeal has not made out any ground to the effect that Resolution Plan submitted by Respondent No. 3 violates any of the provisions of Section 30(2) of the IBC. It is well settled that commercial wisdom of the CoC in approving the Resolution Plan needs no interference by the Adjudicating Authority/Appellate Tribunal unless the Plan is violative of

Section 30(2). The Hon'ble Supreme Court in the matter of '**K. Sashidhar**' **Vs. 'Indian Overseas Bank & Ors.'** reported in **(2019) 12 SCC 150**, has held that legislature has not endowed the Adjudicating Authority with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC.

12. Coming to the submissions regarding Valuation Report, the Valuation Report was shared with the Members of the CoC and no Member of the CoC raised any objection regarding the valuation. The issue of valuation cannot be allowed to be raised by the Appellant at this stage.

13. Insofar as submission that proceeding by SRA itself has filed an Application for recall of the approval of the Resolution Plan is not the issue which need to be considered in this Appeal.

14. We, thus do not find any ground to interfere with the decision of the Adjudicating Authority approving the Resolution Plan submitted by the Respondent No. 3.

There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

NEW DELHI

05th December, 2024

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