

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

Company Appeal (AT) (Insolvency) No. 194 & 195 of 2025

[Arising out of Order dated 20.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court-I), Kolkata in IA No.1407/KB/2023 and IA No. 1490/KB/2023]

IN THE MATTER OF:

Brand Steel & Power Pvt. Ltd.

...Appellant

Versus

Avishek Gupta & Ors.

...Respondents

Present:

For Appellant:

Mr. Rishav Banerjee, Mr. Arijit Mazumdar, Ms. Madhuja Burman, Mr. Shambo Nandy and Ms. Anoushka Dey, Advocates.

For Respondent:

Mr. Krishnendu Dutta, Sr. Advocate with Mr. Sailedndra Tiwari, Mr. Inranil Ghosh, Mr. Palzer Moktan, Mr. Rahul Gupta, Mr. Harsh Tandon and Ms. Mehar Bedi, Advocates for R-2 & R-3.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Saikat Sarkar and Mr. Saurav Jain, Advocates for R-4 & R-5.

Ms. Swati Dalmia, Ms. Neha Sinha and Ms. Safura Ahmed, Advocates for R-1/RP.

J U D G M E N T
(18th February, 2025)

Ashok Bhushan, J.

These two Appeals challenges two orders of the same date dated 20.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court-I), Kolkata passed in IA No.1490/KB/2023 approving the Resolution Plan submitted by the Successful Resolution Applicant (SRA) and order passed in IA No.1407/KB/2023 by which application filed by the Appellant objecting to the Resolution Plan has been

rejected. The Appellant an Unsuccessful Resolution Applicant aggrieved by the aforesaid two orders has filed these two Appeals.

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

2.1. The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor- Indian Pulp and Paper Private Limited commenced on 22.07.2022. Resolution Professional published Form G- invitation for submission of Expression of Interest (EoI) on 23.10.2022. Last date for submission of EoI was 08.11.2022. Appellant submitted its EoI with a Consortium member Bhagwati Vintrade Private Limited. A list of Prospective Resolution Applicants (PRAs) was published on 14.11.2022 in which name of the SRA – Pinax Paper Mills Ltd. and Pinax Steel Industries Pvt. Ltd. was not there. The last date for submission of the Resolution Plan was extended till 10.01.2023. Resolution Plan was submitted by the Appellant on 10.01.2023. In the plan submitted by the Appellant, name of Nippon Ispat Pvt. Ltd. was also added which was not part of the EoI submitted by the Appellant. In the 10th CoC meeting held on 13.01.2023, all the three Resolution Plans were opened. Resolution Professional undertook to go through the Resolution Plans in detail regarding the compliance. 11th CoC meeting was held on 30.01.2023, Resolution Professional made note of non-compliances in each of the Resolution Plan submitted in relation to the CIRP of the Corporate Debtor. Insofar as the Appellant, it was noticed that the Appellant in Consortium with Bhagwati Vintrade Private Limited has submitted the EoI and in the final list of PRA, the same name was

mentioned. However, in the plan submitted another member was added i.e. Nippon Ispat Pvt. Ltd. In the 11th CoC meeting, one of the members of the CoC Punjab National Bank informed that one interested party has approached showing willingness to become Resolution Applicant. Discussions took place regarding a fair chance should be given to all interested parties or interested party can be allowed at this stage without issuance of Form G. In the 12th CoC meeting held on 09.02.2023, after elaborate discussions the CoC decided to approve the extension of timeline for submitting EoI as well as Resolution Plan. A fresh timeline was decided by the CoC. Date for submission of EoI was extended till 15.02.2023 and date for receiving Resolution Plan was extended to 27.02.2023. On 13.02.2023, a communication was sent by the Resolution Professional to all Resolution Applicants to submit revised plans, if any, in terms of the extended timeline. Pinax Paper Mills Ltd. in consortium with Pinax Steel Industries Pvt. Ltd. submitted EoI. On 23.02.2023, a list of PRA was published in which apart from the Appellant name of Pinax Paper Mills Ltd. was also mentioned as one of the PRAs. List dated 23.02.2023 allowed 5 days' time to file objection against the list of PRAs. No objection having been filed, the Resolution Professional issued final list of PRA on 28.02.2023 in which following four Resolution Applicants were included:-

- (i) Brand Steel & Power Limited in consortium with Bhagwati Vintrade Private Limited;
- (ii) Green Valliey Industries Limited;
- (iii) RKG Fund- IA scheme of RKG Trust; and

- (iv) Pinax Paper Mills Private Limited in consortium with Pinax Steel Industries Private Limited

2.2. No Resolution Applicants raised any objection against the extension of timeline or invitation to submit revised Resolution Plan. Last date for submission of the Resolution Plan being 27.02.2023 was extended till 02.03.2023. Resolution Professional received Resolution Plans from Brand Steel & Power Limited, Green Valliey Industries Limited and Pinax Paper Mills Private Limited. RKG Fund opted to continue with their earlier Resolution Plans. All Resolution Plans were opened in the 13th CoC meeting held on 06.03.2023. In the 14th CoC meeting held on 21.04.2023, all representatives of Resolution Applicants were invited to present their plans. Resolution Professional informed all the Resolution Applicants that the CoC is looking forward to an upward revision of the amount offered under the Resolution Plan and the Resolution Applicants may submit a revised upward financial offer and modify their plans by 27.04.2023. No objection was raised by any of the Resolution Applicants. Resolution Professional received financial offer only from two Resolution Applicants namely— Brand Steel & Power Limited, and Pinax Paper Mills Private Limited. All the plans were discussed in the 15th CoC meeting. An objection was raised regarding eligibility of Brand Steel & Power Limited in consortium with Bhagwati Vintrade Private Limited with regard to which a legal opinion was called for and discussions were made in the CoC meeting. Appellant also submitted three addendums to Resolution Plan which were discussed in 20th CoC meeting held on 11.07.2023 on which date it was decided to put the

Resolution Plan of Pinax Paper Mills Private Limited, Brand Steel & Power Limited and RKG Fund be put to vote. E-voting period was to begin from 19.07.2023 and was to end on 11.08.2023. At the end of voting, CoC members by majority of 96.05% voting share approved the Resolution Plan submitted by Pinax Paper Mills Private Limited in consortium with Pinax Steel Industries Private Limited. Appellant, after voting had commenced on Resolution Plans, filed an IA No.1407 of 2023 dated 07.08.2023 seeking a direction to disqualify Pinax Paper Mills Private Limited and to reject the Resolution Plan submitted by Pinax Paper Mills Private Limited and further directing the Resolution Professional and the CoC for not voting on any Resolution Plan. Voting has been completed. The result was declared by the Resolution Professional and the Resolution Professional filed an IA being IA No.1490 of 2023 on 16.08.2023 for approval of the Resolution Plan.

2.3. In IA No.1407 of 2023, reply was filed by the Resolution Professional as well as the CoC opposing the application. Adjudicating Authority heard the parties on IA No.1407 of 2023 as well as plan approval application IA No.1490 of 2023. By order dated 20.12.2024 passed in IA No.1490 of 2023, Adjudicating Authority approved the Resolution Plan. By order of the same date passed in IA No. 1407 of 2023 application filed by the Appellant has been rejected. Aggrieved by the aforesaid two orders, these two Appeals have been filed as noticed above.

3. We have heard Shri Rishav Banerjee, Learned Counsel for the Appellant. Shri Krishnendu Dutta, Learned Senior Counsel and Shri Abhijeet Sinha, Learned Senior Counsel for the Respondents.

4. Learned Counsel appearing for the Appellant submits that the Resolution Professional has conducted the CIRP process against the provisions of the CIRP Regulations 2016. It is submitted that the name of the SRA- Pinax Paper Mills Private Limited was not included in the list of PRA which was published by the Resolution Professional. On 14.11.2022, Resolution Plans were submitted by the Appellant and other two applicants which came to be opened and discussed on 13.01.2023 by the CoC in which meeting one of the members of the CoC has informed that one applicant has expressed interest and want to become Resolution Applicant. Thereafter, the CoC extended the timeline for submission of the EoI and Resolution Plan in its meeting dated 07.02.2023. No fresh Form G was issued by the Resolution Professional, without issuing any fresh Form G. EoI and Resolution Plans was received from Pinax Paper Mills Private Limited and has been considered in the CIRP process. It is submitted that the name of Pinax Paper Mills Private Limited not being included in the list of PRA which was published on 14.11.2022. By virtue of Regulation 39(1B), the Committee could not have considered the Resolution Plan of the Pinax Paper Mills Private Limited. It is further submitted that by virtue of Regulation 36A (4-A), it was incumbent on the Resolution Professional to publish fresh Form G in event the timeline for submitting EoI being extended. The process adopted by the Resolution Professional was in violation of Regulation 36A (4-A) and Regulation 39(1B). The plan submitted by Pinax Paper Mills Private Limited could not have been considered and approved by the CoC. Appellant has filed application being IA No.1407 of 2023 before voting was completed

on the plan. Material irregularity has been committed by the Resolution Professional in consideration of the Resolution Plan of Pinax Paper Mills Private Limited due to which the approval of the Resolution Plan deserves to be interfered with and Resolution Plan submitted by Pinax Paper Mills Private Limited was rejected. Counsel for the Appellant placed reliance on judgment of this Tribunal in ***“Ashdan Properties Pvt. Ltd. vs. Mamta Binani (RP of Rolta India Ltd.) & Ors.- Company Appeal (AT) (Insolvency) No.464 of 2024”***. It is submitted that this Tribunal held in the said judgment that although it was open for the CoC to take a decision for issuance of fresh Form G but without issuance of fresh Form G, no new applicant could have been permitted to participate in the CIRP. It is submitted that the facts of the present case are fully covered by the judgement of this Tribunal in ***“Ashdan Properties Pvt. Ltd.”*** (supra) which judgment although was cited before the Adjudicating Authority but was distinguished on incorrect grounds.

5. Shri Krishnendu Datta, Learned Senior Counsel for the Respondent submits that there is no material irregularity committed by the Resolution Professional in conduct of the CIRP under the invitation for EoI which was issued by the Resolution Professional on 23.10.2022. It was specifically provided that the Resolution Professional may extend the last date with approval of the CoC. It is submitted that the timeline for extending the receipt of EoI and Resolution Plan was extended after decision was taken by the CoC on 07.07.2023 and communication was sent to all the Resolution Applicants on 13.02.2023 informing extended timeline as 15.02.2023 for

submitting EoI and for submitting Resolution Plan on 27.02.2023. A list of PRA was published on 23.02.2023 which also included the name of Pinax Paper Mills Private Limited who has submitted EoI. A final list of PRA was also published on 28.02.2023 which included the name of SRA- Pinax Paper Mills Private Limited. No objection was raised by the Appellant or any other Resolution Applicants regarding extension of timeline as communicated on 13.02.2023. It is submitted that the Resolution Plan which was submitted by the Appellant was not a compliant plan. EoI which was initially submitted by the Appellant was from Appellant with Bhagwati Vintrade Private Limited whereas when the plan was submitted, the name of Nippon Ispat Pvt. Ltd. was added which Resolution Plan was non-compliant and taking advantage of extension of time giving opportunity to Resolution Applicants to file fresh plan. Appellant filed fresh Resolution Plan by deleting the name of Nippon Ispat Pvt. Ltd., hence, Appellant took benefit of extension of timeline and has never objected to the extension of timeline. Appellant took benefit of extension of timeline by submitting a revised plan and thereafter CoC asked the applicants to enhance its financial offer and submit Resolution Plans. It cannot now turnover and object to the process adopted by the Resolution Professional and the CoC. Applicants who have taken benefit of extension of timeline cannot be allowed to question. It is submitted that the Appellant took chance to get his plan approved and it has only after voting has commenced, he filed IA No.1407 of 2023. It is submitted that the final list of PRA was published on 28.02.2023 in which name of Pinax Paper Mills Private Limited was also included. No objection was raised by the Applicants even though opportunity was given when list of

PRAs was published on 23.02.2023. The submission that the name of Pinax Paper Mills Private Limited is not included in the list of Resolution Applicants is incorrect and against the facts on record. After extension of timeline, Pinax Paper Mills Private Limited submitted its EoI and was included in the list of PRA. The CoC in its commercial wisdom with more than 96% vote shares has approved the plan of Pinax Paper Mills Private Limited which cannot be allowed to be questioned by the Appellant who is an Unsuccessful Resolution Applicant. Appellant having taken a chance to get his plan approved cannot be allowed to challenge the approval of the Resolution Plan. The judgment of the Hon'ble Supreme Court in ***"Kalpraj Dharamshi and Anr. vs. Kotak Investment Advisors Limited and Anr.- (2021) 10 SCC 401"*** fully supports the facts of the present case. In the above case also, the Resolution Plan submitted by Kalpraj was submitted after expiry of timeline which was accepted by the CoC. The plan of Kalpraj was approved by the Adjudicating Authority which order was set aside by this Tribunal. However, the Hon'ble Supreme Court upheld the order of the Adjudicating Authority approving the plan and took the view that actions of the Resolution Professional were in accordance with the decision of the CoC which need no interference.

6. Shri Abhijeet Sinha, Learned Senior Counsel appearing for the SRA submits that the SRA was fully eligible to submit a Resolution Plan. Timeline for submitting EoI was extended by the CoC which was fully empowered under the Invitation for EoI. The Resolution Plan has already been implemented within one month of the approval of the plan. SRA has to

make payment which has already been made. There are no grounds made out to interfere with the order approving the Resolution Plan. Appellant after having taken chance to get his plan approved has filed the application questioning the process.

7. We have considered the submissions made by Counsel for the parties and perused the record.

8. Before we proceed to enter into the submissions of Counsel for the parties, we need to notice Invitation for Expression of Interest issued by the Resolution Professional on 23.10.2022 with the approval of the CoC. It is relevant to notice certain clauses of Invitation for Expression of Interest. Clause 6 dealt with 'last date of submission of EoI' which is as follows:-

"6. LAST DATE OF SUBMISSION OF EOI

The last date for submission of EOI is 08th of November 2022 ("Last Date").

Provided that the Resolution Professional may extend the Last Date, with consent/approval/ratification of the COC (at its sole discretion). Further, the Resolution Professional may (with COC consent/approval/ratification) has the right to accept or reject any EOI submitted after the Last Date."

9. Proviso to Clause 6 clearly contained provisions for extension of last date with consent/approval of the CoC. Further, Resolution Professional entitled to accept or reject any EoI submitted after the last date.

10. Clause 9 contained heading ‘important notices’. Clause 9 (a) and (c) are as follows:-

“9. IMPORTANT NOTICES

a) CoC has the right to cancel or modify or withdraw the process of invitation of EOI (including the timelines) or resolution plans without assigning any reason and without any liability. This is not an offer document and is issued with no commitment.

b) COC has the right to amend or revise the eligibility criteria, this IEOI or issue further supplements to the IEOI or require additional documents from the PRAs without assigning any reason and without any liability.

c) The Resolution Professional (with the consent/approval/ratification of CoC) reserves the right to accept any EOI submitted after the Last Date or any EOI that deviates from the requirements set out herein, and no other PRA shall have the right to object to such acceptance.”

11. The fact as noted above indicate that in pursuance of Form G issued on 23.10.2022, Appellant and two other expressed their interest and filed Resolution Plans. List of PRA was also published on 14.11.2022 in which Pinax Paper Mills Private Limited was not included. In the meeting of the CoC held on 13.01.2023, all the Resolution Plans were opened and in the meeting which was held on 13.01.2023, Resolution Professional noticed

about the non-compliance of each of the Resolution Applicants. With regard to Resolution Plan submitted by the Appellant, it was mentioned that the Appellant has submitted the plan in consortium with Bhagwati Vintrade Private Limited and Nippon Ispat Pvt. Ltd. which was not permissible. Reply was filed by the Resolution Professional to the IA No.1407 of 2023 of the Appellant where in paragraph 3 (o) & (p), following was pleaded:-

“(o) Thereafter, in the 11th CoC meeting held on 30th January, 2023, the Respondent No.1 made note of the non-compliances in each of the Resolution Plan submitted in relation to the Corporate Debtor and briefly informed the same to the members of the CoC. It is pertinent to mention here that though the Expression of Interest was submitted by the Applicant in consortium with Bhagwati Vintrade Private Limited and the Final List of Prospective Resolution Applicants also mentioned the same, however, the Resolution Plan was submitted by the App in consortium with Bhagwati Vintrade Private Limited and Nippon Ispat Private Limited, which was not permissible. I crave leave to refer to the Resolution Plan submitted by the Applicant in consortium with Bhagwati Vintrade Private Limited and Nippon Ispat Private Limited at the time of hearing, if necessary. The Resolution Professional brought the same to the notice of the CoC members in the 11th CoC meeting held on 30th January, 2023 and it is recorded in the minutes of the CoC that the same needs to be rectified by the Resolution Applicant in future. In the said CoC meeting, one of the CoC members informed that one interested party has

approached showing willingness to become a Resolution Applicant. Discussions took place as to whether in the interest to maximize value, a fair chance should be given to all interested parties by issuance of a new Form G or the interested party can be allowed at this stage without issuance of Form G. One of the members of the CoC was of the view that interested parties can be allowed at this stage without fresh issuance of Invitation for Expression of Interest and/or Form G pursuant to some rulings by Court which the CoC member would share with the Resolution Professional after the meeting and further discussions would take place in the next CoC meeting. I crave leave to refer to minutes of 11th COC meeting held on 30th January, 2023 at the time of hearing, if necessary. I also crave leave to refer to the Resolution Plan submitted by the Applicant in consortium with Bhagwati Vintrade Private Limited and Nippon Ispat Private Limited at the time of hearing, if necessary.

p. In the 12th COC meeting held on 9th February, 2023, the Resolution Professional apprised the CoC members that Punjab National Bank had shared two judgments (Kalpraj Dharamshree & Anr, vs Kotak Investment Advisors Limited & Anr. and Ankit Paini Vs. State Bank of India & Anr.) on the proposition that the interested parties can be allowed at this stage to submit the Resolution Plan without fresh issuance of Invitation for Expression of Interest. The issue was discussed in detail as to whether Form G should be re-issued or whether the interested bidders should be permitted along with existing Resolution

Applicant who would be given an opportunity to re-submit their Resolution Plan. In the said meeting it was also submitted and suggested by the Resolution Professional that to avoid any risk of litigation by existing Prospective Resolution Applicants it should be considered whether Form G should be re-issued. After detailed discussions, the CoC and the Resolution Professional were of the view that considering value maximization under the CIRP and to expedite the process, all the potential Resolution Applicants including the new interested parties should be permitted to submit their Eols and the Resolution Plan so that all interested parties are allowed a fair chance. It was decided that the existing Resolution Applicants, who had submitted their Resolution Plans will also be given an opportunity to re-submit their Resolution Plans. Both the CoC members approved the condonation of delay for submission of Eols and Resolution Plans. The fresh timeline was decided in the CoC meeting and fresh communications regarding the new timeline were informed to all the parties accordingly. I crave leave to refer to minutes of 12th COC Meeting held on 9th February, 2023 at the time of hearing, if necessary.”

12. As per the decision of the 12th CoC meeting held on 09.02.2023, the Resolution Professional issued e-mail dated 13.02.2023 to all Resolution Applicants informing about extension of date of EoI and submission of Resolution Plan. E-mail dated 13.02.2023 is as follows:-

“IPPL <cirp.ipppl@gmail.com> Mon, Feb 13, 2023 at 1:56 PM

To: Avishek <avishek@optimusresolution.net>

Bcc: tarunjain83@gmail.com

Dear Sir,

This is to notify you that as per discussion held in the 12th CoC meeting, the time period for submission of EOI and Resolution Plan has been extended, the last date being 15.02.2023 and 27.02.2023 respectively. In this context all potential resolution applicants are instructed as under

Existing PRAs need not submit EOI as they have already completed the process. They may submit a resolution plan, if they so desire, by the new stipulated date i.e. 27.02.2023.

New PRAs can submit EOIs along with required documents as mentioned in the annexures to this mail. Subsequently, we shall provide RFRP, Evaluation Matrix and Information Memorandum after issuing the final list of PRAS. Those who have already submitted their EOI may directly submit the Resolution Plan by the due date

Please let me know in case you need any clarification.

Sincerely,

Avishek Gupta

Resolution Professional

Indian Pulp & Paper Private Limited (in CIRP)"

13. After issuance of e-mail dated 13.02.2023, list of PRA was published on 23.02.2023 by the Resolution Professional which is at page 381 of the paper book which is as follows: -

“INDIAN PULP & PAPER PRIVATE LIMITED

23 February 2023

Issue of Prospective list of eligible Prospective Resolution Applicants (PRA) for submission of Resolution Plan for Indian Pulp & Paper Private Limited Company or Corporate Debtor):

In the 12th CoC meeting, it was decided by the CoC, members to extend the last date of submission of EoI and Resolution Plan.

Based on the BOI received till the said due date and the preliminary review of the documents submitted by the PRA's the following is the provisional list of eligible Prospective Resolution Applicants (PRA) for submission of Resolution Plan for the Corporate Debtor

- 1. Brand Steel & Power Limited in consortium with Bhagwati Vintrade Private Limited*
- 2. Green Valley Industries Limited*
- 3. RKG Fund-1A scheme of RKG Trost*
- 4. Pinax Paper, Mills Pvt. Ltd, in consortium with Pinax Steel Industries Pvt. Ltd.*

**In case the RP/ CoC subsequently becomes aware or is made aware of any disqualification ineligibility of any PRA (including but not limited to under Section 29% of the IBC), then the RP/ CoC shall have the right to disqualify such PRA from the resolution process or any stage,*

***Inclusion IBC. of the of the PRA, in the final list is subject to satisfaction of the RF on compliance with Section 29A*

Any objection to inclusion or exclusion of a PRA in the provisional list referred to above list may be made with supporting documents within five days from the date of issue of this provisional list i.e. by 28th February 2023

Thanking You,

*For and on behalf of
Indian Pulp & Paper Private Limited (In CIRP)*

*Avishek Gupta
Resolution Professional
Indian Pulp & Paper Private Limited (in CIRP)”*

14. No objection to the list of PRAs was filed, hence, the final list of PRAs was published on 28.02.2023 which is at Page 480 of the appeal paper book:-

“INDIAN PULP & PAPER PRIVATE LIMITED

28 February 2023

Issue of Final list of eligible Prospective Resolution Applicants (PRA) for submission of Resolution Plan for Indian Pulp & Paper Private Limited ('Company' or 'Corporate Debtor'):

In the 12th CoC meeting, it was decided by the CoC members to extend the last date of submission of EoI and Resolution Plan.

Based on the EOI received till the said due date and the preliminary review of the documents submitted by the PRA's the following is the provisional list of eligible Prospective Resolution Applicants (PRA) for submission of Resolution Plan for the Corporate Debtor:

- 1. Brand Steel & Power Limited in consortium with Bhagwati Vintrade Private Limited*
- 2. Green Valliey Industries Limited*
- 3. RKG Fund-1 A scheme of RKG Trust*
- 4. Pinax Paper Mills Pvt. Ltd. in consortium with Pinax Steel Industries Pvt. Ltd.*

In case the RP/ CoC subsequently becomes aware or is made aware of any disqualification/ineligibility of any PRA (including but not limited to under Section 29A of the IBC), then the RP/CoC shall have the right to disqualify such PRA from the resolution process at any stage.

***Inclusion of the PRA in the final list is subject to satisfaction of the RP on compliance with Section 29A of the IBC.*

Thanking You,

*For and on behalf of
Indian Pulp & Paper Private Limited (in CIRP)*

*Avishek Gupta
Resolution Professional
Indian Pulp & Paper Private Limited”*

15. After the e-mail dated 13.02.2023, the Appellant has filed its Resolution Plan which resolution plan was filed with Brand Steel & Power Limited in consortium with Bhagwati Vintrade Private Limited. Thus, the plan which was submitted subsequent to 13.02.2023 did not contain the name of Nippon Ispat Pvt. Ltd. which was part of the earlier Resolution Plan. Resolution Professional in his reply in paragraph 3(t) & (u) pleaded as follows:-

“t. It is pertinent to mention here that none of the Prospective Resolution Applicants including the Applicant raised any objection in respect of any of the names contained in the List of Prospective Resolution Applicants. The Resolution Professional thereafter issued the Final List of eligible Prospective Resolution Applicants for submission of Resolution Plan for the Corporate Debtor, a copy whereof is annexed hereto and marked with the letter 'R-6.' It is pertinent to mention here that none of the Prospective Resolution Applicants raised any objection whatsoever regarding the names contained in the Final List of eligible Prospective Resolution Applicants. The four Prospective Resolution Applicants were as follows: -

- i. Brand Steel & Power Limited in consortium with Bhagwati Vintrade Private Limited;*
- ii. Green Valliey Industries Limited;*
- iii. RKG Fund-I A scheme of RKG Trust; and*
- iv. Pinax Paper Mills Private Limited in consortium with Pinax Steel Industries Private Limited.*

u. The last date for submission of Resolution Plan was thereafter extended from 27th February 2023 to 2nd March 2023 and within such extended date i.e., 2nd March 2023 the Respondent No.1 herein received Resolution Plan from Pinax Paper Mills Private Limited (lead) in consortium with Pinax Steel Industries Private Limited and a fresh resolution plan from Brand Steel & Power Private Limited, the Applicant herein in consortium with Bhagwati Vintrade Private Limited replacing their earlier submitted resolution plan. Green Valley Industries Limited and RKG Fund opted to continue with their earlier Resolution Plans and did not make any changes in their plans. The other two parties, namely Lohia Group and Spinaroo Commercial Private Limited, however, did not submit any Eols. I crave leave to refer to the fresh Resolution Plan submitted by the Applicant in consortium with Bhagwati Vintrade Private Limited and Nippon Ispat Private Limited at the time of hearing, if necessary.”

16. The above indicate that the Appellant had submitted fresh Resolution Plan making it compliant with its EoI by deleting the name of Nippon Ispat Pvt. Ltd. which was part of the earlier Resolution Plan. Subsequent Resolution Plan submitted by the Appellant was found to be compliant although an objection was raised by one of the Resolution Applicants regarding eligibility which was examined and ultimately CoC took decision to vote the plan of the Appellant also in its 20th CoC meeting held on 11.07.2023 which is pleaded in paragraph 3(ff):-

“ff. In the 20th COC meeting held on 11th July, 2023 (continued on 14th July, 2023), upon a detailed deliberation on Resolution Plans and after considering the scoring on the Resolution Plan as determined on the basis of Evaluation Matrix, the COC decided that the Resolution Plans submitted by Pinax Paper Mills Private Limited in Consortium with Pinax Steel Industries Private Limited, Brand Steel & Power Limited in Consortium with Bhagwati Vintrade Private Limited and RKG Fund be put to vote, whereas the Resolution Plan submitted by Green Valliey Industries Limited shall be not be put for vote before the CoC as the plan had an element of conditionality.”

17. The voting period for the voting of the plan was allocated from 19.07.2023 to 11.08.2023 and as per e-voting result on 11.08.2023, the plan of Pinax Paper Mills Private Limited was approved with 96.05% voting share.

18. Present is a case where CoC in its meeting held on 09.02.2023 decided to extend the timeline for submission of EoI and Resolution Plan. We have noticed above that Invitation for Expression of Interest itself contemplated extension of timeline by the CoC which is reflected in Clause 6 of the EoI. Thus, all Resolution Applicants were well aware that time for submission of the EoI and submission of the Resolution Plan can be extended by the Resolution Professional with approval of the CoC.

19. Counsel for the Appellant has contended that by virtue of provisions of Regulation 36A (4A) which was inserted on 30.09.2021 even extension of

timeline was required to be published i.e. a fresh Form G was required to be published. Regulation 36A (4A) provides as follows:-

“36A. Invitation for expression of interest. (4A) Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made: Provided that such modification shall not be made more than once.”

20. One of the questions to be answered is as to whether extension of timeline which is contemplated in the EoI itself require a publication of fresh Form G. Present is not a case that there was any modification in the Invitation for EoI rather only extension of timeline on same criteria and conditions as was initially provided have been made. Timeline as noticed above was already permitted to be extended by Clause 6 of the same Invitation for EoI dated 23.10.2022 by which process for receiving of EoI commenced. Clause 6 only provided for extension of last date for submission of EoI and when we read Clause 6, it does not indicate that for extension of last date of EoI revised fresh Form G was required to be issued. We have noticed that in Regulation 36 B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is ‘request for resolution plans’ both expressions i.e. modification and extension of timeline have been used. We may refer to sub-regulations (5) and (6) of the Regulation 36B which are as follows:-

“36B. Request for resolution plans.- (5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall

be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).

[Provided that such modifications shall not be made more than once.]

(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.

[(6A) If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor.”

21. As per sub-regulation (5), any modification in the request for resolution plan has to be treated as fresh issue whereas extension of timeline with the approval of the committee has been separately dealt. Thus, modification of request for resolution plan and extension of timeline has been separately dealt in Regulation 36B. Applying the aforesaid analogy in Regulation 36A, it is clear that although any modification in the Invitation for Expression of Interest require publication of fresh Form G but Regulation 36A on its term does not contemplate publication of fresh Form G when timeline has been extended. In any view of the matter, the present is a case where Appellant who has aggrieved by the approval of the Resolution Plan and rejection of his IA was very much part of the CIRP process, he having expressed its interest in pursuance of the issuance of Form G and after extension of timeline, it was communicated by e-mail dated 13.02.2023 and after publication of list of Prospective Resolution Applicants on 23.02.2023, neither any objection was filed by Appellant rather it participated in the

process by filing a resolution plan by deleting Nippon Ispat Pvt. Ltd. from its resolution plan with whom it has earlier submitted resolution plan which was non-compliant. Applicant, thus, participated in the process and took chance to succeed without raising any objection to the extension of timeline. Even for argument sake, if we accept the submission that extension of timeline requires publication of fresh Form G, the Appellant in no manner can be said to have aggrieved by non-publication of Form-G since Appellant was part of process from beginning and after extension of timeline has also submitted its revised plan. Counsel for the Appellant has placed much reliance on Regulation 39(1-B) which provides as follows:-

“39. Approval of resolution plan.- (1B) The committee shall not consider any resolution plan- (a) received after the time as specified by the committee under regulation 36B; or (b) received from a person who does not appear in the final list of prospective resolution applicants; or (c) does not comply with the provisions of sub-section (2) of section 30 and sub regulation (1).]”

22. Counsel for the Appellant relied on sub-clause (1-B) of Regulation 39 to support his submission that the name of the SRA did not appear in the final list of PRA. We have noticed above that even though the name of Pinax Paper Mills Private Limited was not included in the first final list of PRAs but after extension of timeline when final list of PRA was published on 28.02.2023, the name of Pinax Paper Mills Private Limited was very much there. Thus, we are not satisfied that there is any breach of provisions of

Regulation 39(1-B). The final list published on 28.02.2023 has already been extracted above as is on the record of the Appeal.

23. Counsel for the Appellant placed much reliance on judgment of this Tribunal in **“Ashdan Properties Pvt. Ltd.”** (supra). The above was the case where order passed by the Adjudicating Authority on 12.02.2024 and 21.02.2024 was challenged by which order the Adjudicating Authority on an application filed by two interveners directed the Resolution Professional to place their Resolution Plans before CoC for consideration which order was challenged by the Appellant whose case was that Appellant- Ashdan Properties Pvt. Ltd. has been selected as H-1 bidder after 33 rounds of bidding and name of two applicants were not included in the list of PRAs. The Appeal filed by the Appellant was allowed and this Tribunal after referring to Regulation 39 (1-B) laid down following in paragraphs 10 and 11:-

“10. The Regulation thus clearly provides that the committee shall not consider a resolution plan received from an application whose name does not appear in the list of PRAs. Admittedly, neither Patanjali nor other two applications have submitted any EOI nor their name was reflected in the List of PRAS.

11. Regulation 36A which provide for Invitation for Expression of Interest also empowers the CoC to modify the invitation for Expression of Interest. It is always open for the CoC to take a decision to not proceed on the Applications, EOI received and take a decision for issuance of fresh Form G and permit other applicants to

participate. When no fresh Form G has been issued, it is not open for any new applicant to submit application before the Adjudicating Authority for being permitted to participate in the CIRP and submit Resolution Plan.”

24. There can be no dispute to the proposition laid down by this Tribunal in the aforesaid judgment. Those two applicants whose plans were directed by the Adjudicating Authority to place before the CoC were not included in the list of PRAs. However, when we apply the aforesaid judgment in the facts of the present case, it is apparent that in the present case after extension of timeline, fresh list of PRA was published on 23.02.2023 and final list of PRA was published on 28.02.2023 in which list the name of Pinax Paper Mills Private Limited- SRA was included. Thus, the ratio laid down in paragraphs 10 and 11 of the above judgment is not attracted in the facts of the present case where PRA was included in the final list of the PRAs published by the Resolution Professional and after the issuance of final list of PRA on 28.02.2023, several meetings of the CoC was held. Appellant and other Prospective Resolution Applicants were permitted to present their plans before the CoC and no objections were taken to the participation of Pinax Paper Mills Private Limited in the process.

25. Counsel for the Respondent has relied on judgment of the Hon'ble Supreme Court in **“Kalpraj Dharamshi and Anr.”** (supra). In **“Kalpraj Dharamshi and Anr.”** (supra), the last date for submission of the Resolution Plan as per 5th Form G was 08.01.2019. Kalpraj who did not submit any EoI filed Resolution Plan on 27.01.2019 i.e. subsequent to the

last date for submission of Resolution Plan. In paragraphs 6 and 7 of the judgment, following facts have been noticed by the Hon'ble Supreme Court:-

“6. On the said date i.e. 9-7-2018, analogously, the first Form ‘G’ also came to be notified. Vide the said Form ‘G’, the last date prescribed for submission of resolution plan was on or before 21-9-2018. The second Form ‘G’ came to be issued on 24-8-2018, which required the resolution plans to be submitted on or before 28-9-2018. The third Form ‘G’ came to be issued on 28-9-2018, which required the resolution plans to be submitted on or before 25-10-2018. The fourth Form ‘G’ came to be issued on 9-11-2018, which required the resolution plans to be submitted on or before 13-12-2018. The fifth and the last Form ‘G’ came to be issued on 11-12-2018, which required the resolution plans to be submitted on or before 8-1-2019.

7. KIAL, the appellant before NCLAT (Respondent 1 herein) and one Karvy Data Management Systems Ltd. submitted their resolution plans on the last date as stipulated in the last and fifth Form ‘G’ i.e. on 8-1-2019. One another applicant i.e. WeP Solutions Ltd. submitted its resolution plan jointly with one Sattva Real Estate Private Ltd. (hereinafter referred to as “WeP”) on 13-1-2019. The appellant in Civil Appeals Nos. 2943-44 of 2020 i.e. Kalpraj submitted its EOI and resolution plan to RP on 27-1-2019.”

26. Kotak Investment Advisors Limited (KIAL) immediately raised the objection permitting Kalpraj to submit Resolution Plan on 29.01.2019. However, the plan of Kalpraj was placed before the CoC and was approved

by the CoC on 13.02.2019 and 14.02.2019. Application was filed by the Resolution Professional before the NCLT which by its order dated 28.11.2019 approved the Resolution Plan against which an appeal was filed by the Appellant in this Tribunal by KIAL which appeal was allowed by the Appellate Tribunal accepting the objection raised by KIAL. NCLAT also held that the procedure adopted by the Resolution Professional and CoC is in breach of the provisions of the IBC which has been noticed in paragraph 12 of the judgment, which is as follows:-

“12. KIAL thereafter filed appeals before NCLAT on 18-2-2020. The appeals were opposed by Kalpraj and also by RP on the ground, that the appeals were filed beyond the limitation period prescribed under the I&B Code and as such, ought not to be entertained. However, vide order dated 5-8-2020 [Kotak Investment Advisors Ltd. v. Krishna Chamadia, 2020 SCC OnLine NCLAT 590] , NCLAT did not find favour with the objections raised by the respondents before it, with regard to limitation and further found that the procedure adopted by RP and CoC was in breach of the provisions of the I&B Code and therefore, allowed the appeals filed by KIAL.”

27. Appeals were filed challenging the order of the Appellate Tribunal by Kalpraj, Resolution Professional and others where the Hon’ble Supreme Court had occasion to consider submission of the parties. The Hon’ble Supreme Court noticed in the judgment that under Section 61(3)(ii), the Resolution Plan can be interfered with when there is a material irregularity in exercise of powers by the Resolution Professional. However, in the facts of

the case, the Hon'ble Supreme Court took the view that all actions taken by the Resolution Professional were with the approval of the CoC, hence, the Hon'ble Supreme Court approved the action of the CoC consciously approving acceptance of the plan of Kalpraj which was filed after expiry of timeline. In paragraph 172 of the judgment, the Hon'ble Supreme Court laid down following:-

“172. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form ‘G’, in the event he found, that the proposals received by it prior to the date specified in last Form ‘G’ could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of “commercial wisdom”, NCLAT was not correct in law in interfering with the commercial

decision taken by CoC by a thumping majority of 84.36%.”

28. Counsel for the Appellant contended that the above judgment of the Hon’ble Supreme Court is not attracted in the facts of the present case since the judgment of the Hon’ble Supreme Court was delivered on 10.03.2021 and the Regulation 36A (4A) as well as Regulation 39 (1B) were inserted in the CIRP Regulations 2016 on 30.09.2021 i.e. subsequent to the judgment. No dispute to the fact that the judgment of the Hon’ble Supreme Court was delivered prior to amendment in Regulations 36A and 39 of the Regulations 2016. The Hon’ble Supreme Court, however, was considering challenge to approval of the Resolution Plan within the meaning of Section 61(3). Section 61(3) enumerates the grounds on which appeal can be filed against the order approving the Resolution Plan. Sub-section (3) of Section 61 provides as follows:-

“61. Appeals and Appellate Authority. -(3) *An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely: –*

- (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*
- (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;*
- (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*

- (iv) *the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or*
- (v) *the resolution plan does not comply with any other criteria specified by the Board.”*

29. In the present case also, the ground taken by the Appellant is under Section 61(3)(ii) i.e. material irregularity in exercise of the powers by the Resolution Professional during the CIRP. Whether in the present case by non-publication of Form G after extension of timeline by the CoC in its 12th CoC meeting can be said to be material irregularity leading to scrapping of the entire CIRP process subsequent to the extension of timeline is the question to be considered. We are of the view that the present is not a case where approval of the Resolution Plan by the Adjudicating Authority need to be interfered with in exercise of appellate jurisdiction under Section 60(ii) for which there are more than one reasons i.e.

(i) The Form G on 23.10.2022 by which last date for submission of EoI was provided also contained Clause 6 by which last date for submission of EoI could be extended by the Resolution Professional with the approval of the CoC and in the present case, last date for submission of the EoI was extended by the CoC in 12th CoC meeting held on 09.02.2023 on the basis of which communication dated 13.02.2023 was issued to Resolution Professional. Thus, extension of timeline is in accordance with EoI itself. Original EoI was published on 23.10.2022.

(ii) After extension of timeline by the CoC on 09.02.2023 and communication dated 13.02.2023, all Resolution Applicants including the Appellant were given liberty to file fresh Resolution Plans and Appellant filed fresh Resolution Plan by deleting Nippon Ispat Pvt. Ltd. as one of the members of the consortium who had submitted the Resolution Plan in pursuance of the earlier RFRP. We have noticed above that EoI was issued by Brand Steel & Power Limited in consortium with Bhagwati Vintrade Private Limited and Nippon Ispat Pvt. Ltd. was added in Resolution Plan was non-compliant which was also pointed out in the meeting of the CoC as well as by the Resolution Professional. After extending the timeline, the Appellant deleted Nippon Ispat Pvt. Ltd. as a Resolution Applicant and made the Resolution Plan compliant. Thus, the extension of timeline was availed by the Appellant to its benefit by filing a revised resolution plan making it compliant.

(iii) Appellant or any other Resolution Applicants at no point of time has raised any objection against extension of timeline for submitting the EoI and the Resolution Plan or against the inclusion of Pinax Paper Mills Private Limited as one of the Resolution Applicants.

(iv) Appellant participated in process of evaluation of Resolution Plan and it was only after voting has commenced on the Resolution Plan as per the decision of the CoC taken in its meeting held on 22.07.2023 that Appellant filed IA No.1407/KB/2023 objecting to the inclusion of Pinax Paper Mills Private Limited as a Resolution Applicant.

(v) The Resolution Professional has taken all actions under the directions and approval of the CoC. We thus, are of the view that there are no such material irregularity committed by the Resolution Professional so as to exercise our appellate jurisdiction under Section 61(3)(ii) to set aside the approval of the Resolution Plan by the Adjudicating Authority. It is well settled that the scope of interference with the decision of the CoC approving Resolution Plan is minimal. The jurisdiction of the Appellate Tribunal is also circumscribed under Section 61(3) and as observed above, no grounds in the present case have been made out to interfere with the order approving the Resolution Plan.

30. We, thus, do not find any good ground to interfere with the impugned order. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali