

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

Company Appeal (AT) (Insolvency) No. 1274 of 2024

[Arising out of Order dated 14.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No.1 in IA 1891/2024 in C.P. (IB)/3080(MB)2018]

In the matter of:

**Adroit Pharmaceuticals Pvt. Ltd. Through Its
Director Sanjay Kukreja
Vs.**

...Appellant

Amit Poddar Resolution Professional & Ors.

...Respondents

For Appellant: Mr. Krishnendu Dutta, Sr. Advocate with Mr. Neeraj Kant Singh, Ms. Alina Merin Mathew, Advocates.

For Respondent: Mr. Arun Kathpalia, Sr. Advocate with Mr. Bharat Gupta, Mr. Varun Tyagi, Ms. Akshita Harjai, Mr. Ishan Srivastava, Ms. Saurabh Khanijon and Mr. Vishvesh Chauhan, Advocates for R-1 & R-2. Mr. Anant Gautam, Mr. Dinesh Sharma and Mr. Kushagra Nilesh, Advocates for R-4/CoC.

**J U D G M E N T
(3rd January, 2025)**

Ashok Bhushan, J.

This appeal has been filed challenging the order dated 14.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in IA No.1891 of 2024 filed by the Appellant in CP(IB) No.3080(MB)2018. By the impugned order, IA filed by the Appellant has been dismissed. Aggrieved by the order dated 14.05.2024, this Appeal has been filed.

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

2.1. CIRP against the Corporate Debtor- 'Unijules Life Sciences Limited' commenced vide order dated 08.03.2019 passed by the Adjudicating Authority. The Resolution Professional published Invitation for Expressions of Interest on 20.05.2019 in response to which Appellant also submitted its Resolution Plan. The Resolution Plan submitted by the Appellant was approved on 30.12.2019 by 75.49% voting share. On 06.02.2020, an IA No.102 of 2020 was filed by the Resolution Professional for approval of the Resolution Plan. An IA No.1434 of 2020 was filed by an unsecured financial creditor seeking direction from the Adjudicating Authority to send back the Resolution Plan for consideration of the CoC. It was further prayed that the exercise of valuation is required to be undertaken with respect to an intangible asset of the corporate debtor. The Resolution Professional informed the Appellant about the IA No.1434 of 2020. By order dated 04.08.2023, IA No.1434 of 2020 was allowed and the Resolution Professional was directed to engage a valuer for valuation of the intangible assets of the corporate debtor. Adjudicating Authority further directed the Resolution Professional to place valuation report before the CoC and CoC to vote on the Resolution Plan of the Appellant. The order dated 04.08.2023 was not challenged by any one including the Appellant. The valuation reports were received on 04.01.2024 and 05.01.2024. Notice was issued for considering revised valuation report and Appellant's plan in terms of the order dated 04.08.2023 to all concerned including the Appellant. In 19th CoC meeting held on 10.01.2024, CoC resolved to put the plan of the

Appellant to vote. The Appellant engaged with the CoC in connection with revising its Resolution Plan. In the 20th CoC meeting held on 01.03.2024, Appellant submitted revised offer. In 21st CoC meeting held on 04.03.2024, Appellant requested time for amendment of plan to improve plan value. On 22nd CoC meeting held on 07.03.2024, Resolution Professional brought into the notice of the CoC that Appellant has sent communication on 05.03.2024 that it shall increase offer by Rs.125 lakhs to overall plan value. CoC decided not to accept revised offer of the Appellant. Consequently, plan stood rejected. On 11.03.2024, the Adjudicating Authority took note of rejection of the plan by CoC and dismissed IA No.1022 of 2020 for approval of the plan as infructuous. Resolution Professional was also directed to issue fresh Form G by order dated 11.03.2024. The order dated 11.03.2024 was not challenged and fresh Form G was issued on 11.04.2024 by the Resolution Professional with last date of EoI as 26.04.2024. Form G was also sent to the Appellant. Appellant thereafter filed an IA No.1891 of 2024 on 18.04.2024 for improving Resolution Plan. On 14.05.2024, Adjudicating Authority noticing the statement of the Resolution Professional that Appellant shall not be disqualified on account of past conduct and they can very well participate in the process. Adjudicating Authority took the view that reliefs sought in the application IA No.1891 of 2024 stands addressed, hence, application as dismissed. Aggrieved by the order dated 14.05.2024, this Appeal has been filed.

3. We have heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant and Shri Arun Kathpalia, Learned Senior Counsel for the

Respondent Nos.1 and 2 and Shri Anand Gautam, Learned Counsel for the CoC.

4. Counsel for the Appellant challenging the order submits that there was gross material irregularity in the conduct of the CIRP. Fresh valuation of intangible assets after approval of the plan was impermissible under law. IRP did not amend the Information Memorandum even after fresh valuation. Under Section 30(2), the Adjudicating Authority is entitled to examine the validity of the Resolution Plan and cannot direct the CoC to further negotiate with the Successful Resolution Applicant. Adjudicating Authority travelled beyond its scope while issuing direction on 04.08.2023 and by directing reissuance of Form G, there is no consideration of substantially revised financial proposals given by the Appellant. Appellant has revised its financial proposal to the extent of 14% including the timelines. Appellant was not aware of the proceedings nor party to the IA No.1434 of 2020 seeking revaluation. Adjudicating Authority has failed to consider the IA filed by the Appellant being IA No.1891 of 2024 in its right perspective. Appellant's revised plan was also required to be considered along with consideration of the other Resolution Plans.

5. Counsel for the Resolution Professional refuting the submissions of the Appellant submits that the Appellant was fully aware of the IA No.1434 of 2020 filed by the unsecured financial creditor. Appellant also participated in the proceeding in IA No.1434 of 2020. Resolution Professional has sent e-mail to all the stakeholders including the Appellant apprising about NCLT proceedings including IA No.1434 of 2020. Order dated 04.08.2023 directing

for revaluation and placing the Resolution Plan of the Appellant before CoC for re-voting was not challenged by the Appellant. After revaluation the Resolution Plan of the Appellant was submitted before the CoC. Appellant also revised its financial proposal. CoC in its 22nd CoC meeting decided not to accept revised offer of the Appellant. The Adjudicating Authority noticing the rejection of the Resolution Plan of the Appellant dismissed IA No.102 of 2020 for approval of the Resolution Plan as infructuous and directed for issuance of fresh Form G. The order dated 11.03.2024 was not challenged by the Appellant or any other stakeholders. Form G was issued by the Resolution Professional on 11.04.2024 which was also sent to the Appellant. Resolution Plans were received in pursuance of the fresh Form G, Appellant did not file any Resolution Plan. IA No.1891 of 2024 was filed by the Appellant seeking direction to permit the revised Resolution Plan to be reconsidered which has been rightly rejected by the Adjudicating Authority noticing the submissions of the Resolution Professional that it is open for the Appellant to submit Resolution Plan in pursuance of fresh Form G.

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

7. There is no dispute between the parties that initially Resolution Plan filed by the Appellant was approved on 30.12.2019 and Resolution Professional has also filed IA No.102 of 2020 for approval of the Resolution Plan. Unsecured financial creditor filed an IA No.1434 of 2020 seeking direction for valuation of intangible assets of the corporate debtor. It was also prayed that the Resolution Plan be sent back to the CoC for

reconsideration. IA No.1434 of 2020 was allowed by the Adjudicating Authority on 04.08.2023 copy of which has been filed as Annexure A-6. Adjudicating Authority issued direction for valuation of intangible assets. Paragraphs 55 and 56 of the order is as follows:-

“55. In the present matter we observed that the Intangible Assets of the Corporate Debtor were not valued separately. In such peculiar situation, at this juncture to set the record straight and to meet the ends of justice. We are of the considered view that the Intangible Assets of the Corporate Debtor shall be valued and categorized separately. Hence Ordered.

56. The Resolution Professional is directed to engage the services of IBBI Registered valuer for valuation of Intangible Assets of the Corporate Debtor. Further, the Resolution Professional is also directed to prepare a comprehensive valuation report categorizing assets in following category:

- a. Land & Building*
- b. Plant & Machinery*
- c. Securities and Financial Assets*
- d. Intangible Assets*

The Report prepared by the Resolution Professional be placed before CoC for consideration and in terms of the said Report, the CoC is directed to vote on the Resolution Plan of the SRA. Thereafter, the Resolution professional is directed to place the

minutes of the CoC meeting by way of an affidavit before this Tribunal.”

8. Subsequent to the order dated 04.08.2023, valuers were engaged and fresh valuation of intangible assets was received by the Resolution Professional on 04.01.2024 and 05.01.2024 and thereafter the valuation report was taken for consideration in the 19th CoC meeting held on 10.01.2024 in which Appellant participated and CoC resolved to put plan of the Appellant to vote. Appellant thereafter engaged with the CoC in connection with the revision of the plan. In 20th CoC meeting, Appellant submitted revised offer. In 22nd CoC meeting held on 07.03.2024, the Resolution Plan of the Appellant was considered and CoC decided not to consider the revised offer. In Item No.6, following was minuted by the CoC:-

“6. TO CONSIDER THE REVISED OFFER RECEIVED FROM ADROIT PHARMACEUTICALS PVT. LTD.”

The RP mentioned that he had shared the final offer received from Adroit Pharmaceuticals Pvt. Ltd., and also mentioned that he had received another email dated 07.03.2024 from the consultant of Adroit Mr. Raviraj which stated that they will be increasing the offer by Rs.50.00 lakhs towards/ employees workmen, in lines with the affidavit submitted by them before NCLT in support of their earlier resolution plan. The RP requested the CoC members to share their views on the same.

Mr. Praful Kalika was of the view that there was no substantial increase in the Resolution Plan amount and therefore his revised offer should not be put up for e-voting. Mr. Shantanu Bal. Mr. Mayur Maloo, Mr. Raghava Lakhotia, Mr. Prashanth Kamath also agreed for the same. However, Mr. Sushil Kumar opined that the revised offer could be put up for e-voting subject to approval of Hon'ble NCLT.

In view of the above, it was decided not to consider the revised offer received from Adroit Pharmaceuticals Pvt. Ltd. for putting the same for e-voting.”

9. Subsequently, on 11.03.2024 order was passed by the Adjudicating Authority noticing that the Resolution Plan of the Appellant has not been approved and holding that application IA No.102 of 2020 has become infructuous. Adjudicating Authority by order dated 11.03.2024 further directed the Resolution Professional to issue fresh Form G. It is useful to extract paragraphs 3 to 6 of the order dated 11.03.2024, which is as follows:-

“3) In that view of the matter, the present Interlocutory Application bearing IA No. 102 of 2020, filed for approval of the Resolution Plan has become infructuous; accordingly, the same is disposed of as dismissed.

4) Thereafter, the question arises whether the Corporate Debtor be put to Liquidation Process or a

fresh Corporate Insolvency Resolution Process be started. However, Ld. Counsel for the Resolution Professional informs that the Committee of Creditors is likely to take decision on the matter whether to Liquidate the Corporate Debtor or to start fresh Resolution Process, for which purpose the voting is about to commence, which will take another Two weeks.

5) After taking into consideration of all facts, we direct the Resolution Professional to re-initiate Corporate Insolvency Resolution Process of the Corporate Debtor by publish fresh Form G afresh for inviting Expression of Interest for the Corporate Debtor.

6) Resolution Professional shall take out appropriate Application for extension of Corporate Insolvency Resolution Process period of the Corporate Debtor and regularisation of period which has already expired.”

10. It is relevant to notice that the order dated 11.03.2024 was not challenged by any stakeholders including the Appellant. The order dated 11.03.2024 dismissing IA No.102 of 2020 for approval of the Resolution Plan as infructuous and the Adjudicating Authority having directed for issuance of Form G and the said order having not been challenged, the order dated 11.03.2024 has become final and it is not open for the Appellant to now claim any right on the basis of its earlier Resolution Plan.

11. It is useful to notice prayers made in IA No.1894 of 2024 filed by the Appellant. In the application, Appellant prayed following prayers:-

“In light of the above, the Applicant prays that:

a. This Hon'ble Tribunal be pleased to exercise its powers under the Insolvency and Bankruptcy Code and rules made thereunder and permit the Applicant-to-suitably modify their Resolution Plan in pursuance, and in terms of the Order dated 11 March 2024;

b. Ad-interim relief in terms of prayer clauses (a) and (b);

c. pass any other order or issue any other directions as may be appropriate.”

12. The prayer of the Appellant, as noted above, is that the Appellant be permitted to suitably modify its Resolution Plan in pursuance of the order dated 11.03.2024. The order dated 11.03.2024 as noted above directed for issuance of fresh Form G and dismissed the IA No.102 of 2020 filed by the Resolution Professional for approval of the Resolution Plan as infructuous. In the fresh process which was initiated by issuance of Form G on 11.04.2024, it was open for the Appellant to submit a Resolution Plan and the statement of Resolution Professional was recorded in the impugned order that Appellant can very well participate in the plan. It is useful to extract the impugned order dated 14.05.2024 passed in IA No.1891 of 2024 which is as follows:-

“IA 1891/2024

Ld. Counsel for the Resolution Professional clarifies that the Applicant shall not be disqualified on account of past conduct and they can very well participate in the plan. This application seeks the participation of the Applicant in the fresh round of the process. In view of specific statement made by the Resolution Professional, we are of the considered opinion that the relief sought in the present Applicant stands addressed. Accordingly, this IA is rendered meaningless. Accordingly, IA 1891 of 2024 is dismissed and disposed of.”

13. Application praying for approval of the Resolution Plan of the Appellant having been dismissed by the Adjudicating Authority and direction was issued for issuance of fresh Form G on 11.03.2024, it was open for the Appellant to participate in the Resolution Process initiated by issuance of Form G. The order impugned noticing the statement of Resolution Professional that Appellant can very well participate in the process has rightly observed that the grievance of the Appellant stands addressed and the IA has become meaningless. As noted above, the orders passed by the Adjudicating Authority dated 04.08.2023 directing for revaluation and placing the plan of the Appellant for voting was never challenged. After the order dated 04.08.2023, Appellant has submitted its revised Resolution Plan which was considered and was not approved by the CoC which is clear from 22nd CoC meeting. Direction to issue fresh Form G was in consequence of non-approval of the Resolution Plan of the Appellant.

Thus, Appellant was free to participate in the fresh process initiated by issuance of Form G on 11.04.2024.

14. We, thus, do not find any error in the impugned order by which liberty was given to Appellant to participate in the process. We, thus, are of the view that there is no illegality in the order impugned. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali