

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.242 of 2025

(Arising out of Order dated 24.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Prayagraj in IA No.507/2024 in CP (IB) No.25/ALD/2023)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd.
Acting in its capacity as a trustee of
EARC Trust SC – 23)
Registered Office at Edelweiss House,
Off CST Road, Kalina Mumbai,
Maharashtra – 400098

...Appellant

Versus

Chirag Rejendrakumar Shah
Resolution Professional
Usha India Limited
Add: 208, Ratnaraj Spring,
Opp. HDFC Bank House,
Beside Navnirman Co-op Bank,
Navrangpura, Ahmedabad-380009, Gujarat

...Respondent

Present:

For Appellants : Mr. Krishnan Venugopal, Sr. Advocate with Mr. Kaushik Mishra, Mr. Abhinabh Mathew, Advocates.

For Respondent :

With

Company Appeal (AT) (Insolvency) No.243 of 2025

(Arising out of Order dated 24.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Prayagraj in IA No.425/2024 in CP (IB) No.25/ALD/2023)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd.
Acting in its capacity as a trustee of
EARC Trust SC – 23)
Registered Office at Edelweiss House,
Off CST Road, Kalina Mumbai,
Maharashtra – 400098

...Appellant

Versus

Chirag Rejendrakumar Shah
Resolution Professional

Usha India Limited
Add: 208, Ratnaraj Spring,
Opp. HDFC Bank House,
Beside Navnirman Co-op Bank,
Navrangpura, Ahmedabad-380009, Gujarat

...Respondent

Present:

For Appellants : Mr. Krishnan Venugopal, Sr. Advocate with Mr. Kaushik Mishra, Mr. Abhinabh Mathew, Advocates.

For Respondent :

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed by a dissenting Financial Creditor, challenging orders of the same date dated 24.01.2025 passed by National Company Law Tribunal, Allahabad Bench, Prayagraj in IA No.507 of 2024 in CP(IB) No.25/ALD/2023 and IA No.425/2024 in CP(IB) No.25/ALD/2023. By the impugned order, the Adjudicating Authority has allowed IA No.425 of 2024 granting exclusion of 60 days and has rejected IA No.507 of 2024 filed by the Appellant. The Appellant aggrieved by the aforesaid two orders, has come up in these Appeal(s).

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

- (i) The Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor (“**CD**”) – M/s Usha India Ltd. commenced by order dated 05.10.2023. The Committee of Creditors (“**CoC**”) was constituted by the Resolution

Professional. The Appellant – Edelweiss Asset Reconstruction Company Ltd. has vote share in CoC of 0.17%.

- (ii) The RP published Form-G thrice. In pursuance of first publication of Form-G, no Plan was received. However, after second Form-G published Expression of Interests/ Resolution Plans were received from two entities. However, requisite Bank Guarantee being not provided by either of the parties, a decision was taken to publish fresh Form-G. Third Form-G was published on 10.05.2024 with deadline of submitting the Resolution Plan was set as 06.07.2024.
- (iii) On 01.07.2024, the Adjudicating Authority excluded 60 days period for completion of the CIRP, i.e. upto 31.08.2024. In 16th CoC Meeting held on 12.07.2024, RP informed that two Resolution Applicants have failed to deposit the requisite committed amount and Resolution Applicant – Dr. Mukesh Kumar Agarwal and Mr. Divyansh Agarwal have issued an email seeking withdrawal on the ground of ongoing litigation with regard to assets of the CD.
- (iv) On 08.08.2024, in 17th Meeting of the CoC, the CoC resolved to extend the period of submission of Plan by 14.08.2024. In the 18th Meeting of the CoC held on 20.08.2024, the RP informed the CoC that he has received one Resolution Plan from Dr. Mukesh Kumar Agarwal and other from two

prospective Resolution Applicants, who have not submitted their Plan till 14.08.2024. On 23.08.2024, in 19th Meeting of the CoC, an agenda was put for exclusion of 60 days of CIRP period, which was voted and was approved with more than 95% vote share.

- (v) In pursuance of resolution of the CoC dated 23.08.2024, IA No.425 of 2024 was filed by the RP seeking exclusion of 60 days. The RP also filed a supplementary affidavit in IA No.425 of 2024, explaining the basis of exclusion of time. On 08.10.2024, IA No.507 of 2024 was filed by the Appellant praying for rejection of IA No.425 of 2024 and further praying for direction for liquidation of the CD.
- (vi) The Adjudicating Authority vide order dated 24.01.2025 allowed IA No.425 of 2024 and granted exclusion of 60 days and by an order of the same date, i.e. 24.01.2025, dismissed IA No.507 of 2024. The Appellant aggrieved by the above orders, has filed these Appeal(s).

3. We have heard Shri Krishnan Venugopal, learned Senior Counsel appearing for the Appellant(s).

4. Learned Senior Counsel appearing for the Appellant submits that inspite of Form-G published thrice, no Resolution Plan could be received and the Resolution Applicant Dr. Mukesh Kumar Agarwal has also withdrew his Resolution Plan by email dated 29.07.2024. The CD had

fixed deposit amounting to Rs.19.68 crores and had three immovable properties. The Appellant has security interest in Badarpur property and liquidation of the CD shall be more beneficial to the stakeholders. No compliant Resolution Plan having been received within the timeline, even after publication of Form-G thrice, there was no ground for further exclusion of 60 days as allowed by the Adjudicating Authority on 24.01.2025. It is submitted that RP is prolonging the CIRP without there being any valid cause. It is submitted that the Adjudicating Authority also committed error in rejecting IA No.507 of 2024 by which liquidation was sought by the Appellant.

5. We have considered the submissions of Learned Counsel for the Appellant and have perused the record.

6. IA No.425 of 2024 was the IA, which was filed by the RP for exclusion of 60 days time, which IA was filed on the basis of 19th Meeting of the CoC held on 23.08.2024. The Appellant has brought on record Minutes of 19th Meeting of CoC. The resolution was passed by the CoC with 95.01 %, which is recorded in the Item No.7, which is as follows:

“7. To discuss on the requirement for Exclusion of 45/60 days' time period and appointment of Advocate Gunjan Jadwani for filing of Exclusion Application before Hon'ble NCLT Allahabad Bench

The Resolution Professional discussed with the CoC Members at length about the requirement of the Exclusion citing the following major reasons in the completion of the CIRP Period.

- 1) Pending Outcome of the Writ Petition filed for Fixed Deposit before Delhi High Court

- 2) Pending receipt of the Improved Resolution Plan from the Resolution Applicant pursuant to pending outcome of Fixed Deposit Matter
- 3) Pending decision about approval or rejection of the Resolution Plan by the CoC Members I
- 4) Pending Outcome of SIDCUL Application filed before NCLT Allahabad Bench
- 5) Pending Adjudication of SUUTI's Claim and Pending Reconstitution of CoC

Authorized Representative from IFCI Limited, Stressed Assets Stabilization Fund & UTI Mutual Fund apprised the Resolution Professional that they have decided to go for the Exclusion of 60 days' time period whereas Authorized Representative from Administrator of the Specified Undertaking of The Unit Trust of India (SUUTI), Edelweiss ARC and LIC of India objected to the Exclusion of time period and apprised for the Liquidation of the corporate debtor apprising that the reasons stated above are delaying the CIRP Proceedings and there is no reason to proceed for the Exclusion of time period. Mr. Akash Deep from Edelweiss ARC further stated that Litigant Fixed Deposit can be opted for Not Readily Realizable Assets (NRRA) Sale under Liquidation Process.

B. List of issues to be voted upon after discussion in the meeting

1. **To approve the Exclusion of 60 days' time period for completing the Corporate Insolvency Resolution Process of the Corporate Debtor for the reasons deliberated by the CoC Members.**

Following thorough discussion and deliberation among the CoC members. the following resolution was proposed for voting at the meeting:

"RESOLVED THAT Exclusion of 6.0 days' time period for completing the Corporate Insolvency Resolution Process of the Corporate Debtor for the reasons deliberated by the CoC Members including Pending Outcome of the Writ Petition filed for Fixed Deposit before Delhi High Court, Pending receipt of the Improved Resolution Plan from the Resolution Applicant pursuant to pending outcome of Fixed Deposit Matter. Pending decision about approval or rejection of the Resolution Plan by the CoC Members, Pending Outcome of SJDCUL Application filed before NCLT Allahabad Bench, Pending Adjudication of SUUTI's Claim and Pending Reconstitution of Coe is be and hereby approved by the CoC Members."

"RESOLVED FURTHER THAT the Resolution Professional is authorised to file an Application before the Hon'ble National Company Law Tribunal, Allahabad Bench to exclude such time period of the Corporate Insolvency Resolution Process."

The Resolution Professional, apprised the CoC Members that as per Regulation 25(3) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016, **the Resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.**

Further, as per Regulation 25(4) of IBBI (Insolvency Resolution Process For Corporate Persons), 2016 states that **at the conclusion of a vote at the meeting the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting.**

The Resolution Professional asked the CoC Members to cast their vote through show off hands and the below responses were received from each of the present CoC Members.

Authorized Representative from IFCI Limited, Stressed Assets Stabilization Fund & UTI Mutual Fund voted in favour of the Resolution for approval of Exclusion of 60 days' time period and authorization of the RP to file Exclusion Application before NCLT Allahabad Bench.

Authorized Representative from Administrator of the Specified Undertaking of The Unit Trust of India (SUUTI). Edelweiss ARC and LIC of India voted against the Resolution for approval of Exclusion of 60 days' time period and authorization of the RP to file Exclusion Application before NCLT Allahabad Bench.

E-Voting Result:

Sr. No.	Name of the CoC Member	Voting Share for this meeting	Assent (FOR)	Dissent (AGAINST)	Abstained
1	IFCI Limited	65.40	65.40%	0.00%	0.00%
2	Stressed Assets Stabilization Fund	29.08	29.08%	0.00%	0.00%
3	The Administrator of the Specified Undertaking of the Unit Trust of India	2.41	0.00%	2.41%	0.00%
4	Life Insurance	1.34	0.00%	1.34%	0.00%

	Corporation of India				
5.	UTI Mutual Fund	0.53	0.53%	0.00%	0.00%
6	The New India Assurance Company Limited	0.46	0.00%	0.00%	0.46%
7	General Insurance Corporation of India	0.37	0.00%	0.00%	0.37%
8	The Oriental Insurance Company Limited	0.20	0.00%	0.00%	0.20%
9	Edelweiss ARC Limited	0.17	0.00%	0.17%	0.00%
10	Technology Development Board	0.04	0.00%	0.00%	0.04%
	Total	100.00%	95.01%	3.92%	1.07%

Since the votes are in favor of the resolution with 95.01 % of voting rights, the resolution was declared as approved.

7. The resolution by the CoC was passed with 95.01% vote share, whereas the Appellant, who has 0.17% vote share dissented against the resolution.

8. In the Application, which was filed by the RP as well as by the supplementary affidavit, various reasons have been mentioned seeking exclusion of the time. The Adjudicating Authority in its order dated 24.01.2025 passed in IA No.425 of 2024 has also noticed the order of Delhi High Court dated 27.08.2024 passed in Writ Petition, by which Delhi High Court has directed the Bank to release the amount in two FDRs, which fact have been noticed in paragraph 14 of the order, which is as follows:

“14. After reviewing the record and considering the submissions made, we are of the view that the requested exclusion of 60 days, from 01.07.2024 to 30.08.2024, is justified as the application (i.e., W.P .(C) No. 16187 /2023) filed for

immediate release of the sums of the two Fixed Deposits, maintained in the name of the Corporate Debtor, by Indian Bank was allowed by the Hon'ble Delhi High Court vide order dated 27.08.2024. The relevant portion of the judgment dated 27.08.2024 is reproduced below: -

“11. Accordingly) there is no legal hindrance in allowing the relief claimed by the petitioner. Thus) the present writ petition is allowed. The respondent bank is directed to immediately release the amount in the two Fixed Deposits held under Accounts No. [6274490077 and 6274489584 in the name of 'Registrar DRT-1 A/c Usha India Limited, Upper Ground Floor, Babur Road, New Delhi-110001] in favour of Usha India Limited i.e., the Corporate Debtor company through its IRP.”

9. From the facts, as noted above, it is clear that the Resolution Applicant Dr. Mukesh Kumar Agarwal, who had withdrawn his Plan vide email dated 29.07.2024, subsequent to extension of time by CoC for submission of the Plan had submitted its Resolution Plan, which could not be considered on account of expiry of period of CIRP on 30.08.2024. The Adjudicating Authority has further noticed that Resolution Plan, which have been submitted has exceeded the liquidation value, which fact is noted in paragraph 15 of the order dated 24.01.2025 passed in IA No.507 of 2024, which is as follows:

“15. It is also to be noted that the Applicant, himself, has admitted that the Corporate Debtor holds significant assets, including a fixed deposit worth Rs.18.98 crores and three properties. Moreover, the earlier resolution plan received by RP exceeded the liquidation value of the Corporate Debtor as per the valuation report dated 11 .07 .2024. Thus, pursuing liquidation directly would negate the possibility of maximizing the value of the Corporate Debtor through the

resolution process. Reliance is placed on the matter *Gayatri Polyrub Pvt. Ltd. Vs. Anil Kohli & Anr. (2023) ibclaw.in 645 NCLAT* wherein the Hon'ble NCLAT held as follows;

“5. In view of the facts of the present case, we are of the view that ends of justice be served in giving one opportunity to the CoC to consider the Plan/Revised Offer and take decision on the said offer.

6. It is well settled that the objective of the IBC is to revive the (Corporate Debtor and liquidation is the last resort. In view of the aforesaid) we set aside order directing for liquidation and extend the CIRP for a period of 60 days from today to complete the process.”

10. In any view of the matter, according to own case of the Appellant that fixed deposits, which have now been directed to be released is more than Rs.21 crores as on date and there are three properties of the CD, the resolution of the CD being in sight, the CoC with vote share of 95.01% decided to extend the period of 60 days, for which IA No.425 of 2024 was filed, which has been allowed by the Adjudicating Authority by the impugned order. The law is well settled that liquidation should be the last resort and liquidation is the corporate death of the CD. We may refer to the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. and Anr. vs. Union of India and Ors. – (2019) 4 SCC 17*** in paragraph 28 held following:

“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors.....”

11. When 95.01% Members of the CoC, after considering all aspects have passed the resolution for extension of period of 60 days, we are of the view that at the instance of a dissenting Financial Creditor, who has only 0.17% vote share, the said decision, could not have been overturned by the Adjudicating Authority. A dissenting Financial Creditor, who has security of one property is more interested in liquidation, but that cannot be a ground to direct the liquidation of CD, when 95.01% of CoC decides to seek extension. The exclusion has been granted on 24.01.2025. The Application, which was filed by the Appellant being IA No.507 of 2024, praying for rejection of IA 425 of 2024 and direction for liquidation, the prayers made in IA No.507 of 2024 have been quoted in paragraph 1 of the order of the Adjudicating Authority, which are as follows:

"In view of the facts and circumstances enumerated herein above, this Hon'ble Adjudicating Authority may be pleased to:

- a. Stay the hearing of I.A. No . 425 of 2024, until the disposal of the present application.*
- b. Allow the Applicant to bring on record additional documents if required;*
- c. Dismiss I.A. No. 425 of 2024 filed seeking extension/ exclusion of CIRP beyond 330 days.*
- d. Direct the initiation of Liquidation of Corporate Debtor; and*
- e. Pass any such further/ other order as may be pleased to based on the facts and circumstances of the case. "*

12. When the Adjudicating Authority has decided to allow IA No.425 of 2024 granting exclusion of 60 days, the consequence of the said order is rejection of IA No.507 of 2024. We, thus, do not find any error in the

order dated 24.01.2025 allowing IA No.425 of 2024 granting exclusion of 60 days and further order dated 24.01.2025 rejecting IA No.507 of 2024. We do not find any merit in the Appeal(s). The Appeal(s) are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

NEW DELHI

18th February, 2025

Ashwani