

NIVAYA RESOURCES PVT. LTD. V. ASSET RECONSTRUCTION COMPANY (INDIA) LTD. & ANR.

Nivaya Resources Pvt. Ltd.

...Appellant

Vs.

Asset Reconstruction Company (India) Ltd. & Anr.

...Respondents

Case No: Company Appeal (AT) (Insolvency) No. 1186 of 2022

Date of Judgement: 22nd December, 2023

Judges:

[Justice Ashok Bhushan]

Chairperson

[Barun Mitra]

Member (Technical)

For Appellant: Mr. Virender Ganda, Sr. Advocate, Mr. Raghav Kakkar, Mr. Deepak Agrawal, Mr. Ayandeb Mitra, Mr. Tushar Bharti, Advocates.

For Respondents: Mr. Arun Kathpalia, Senior Advocate with Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Ashish Parwani, Mr. Rajeev Nair, Ms. Gitika Makhija, Mr. Anurag Anand, Mr. Himanshu Kaushal, Mr. Mukul Kulhari, Advocates for R-2.
Mr. Deep Roy, Mr. Rony Oommen John, Mr. Piyush Swami, Mr. Anuj Dubey, Advocates for CoC.

Facts:

Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor 'GPT Steel Ltd' on 02.05.2019. The Appellant Nivaya Resources Pvt. Ltd submitted a Resolution Plan which was approved by the Committee of Creditors (CoC) with 82.41% voting on 18.02.2020. Letter of Intent (LoI) was issued to the Appellant on 20.02.2020. The Resolution Professional filed IA No. 159 of 2020 seeking approval of the Resolution Plan. Another bidder 'Panch Tatva Promoters Pvt Ltd' challenged the approval of Appellant's Resolution Plan. Their challenge was dismissed by NCLT and later by NCLAT and Supreme Court. The Appellant submitted a renewed Bank Guarantee of Rs. 5 crores on 18.02.2022. Financial Creditor 'Asset Reconstruction Company (India) Ltd' (ARCIL) filed IA No. 239 of 2022 seeking reconsideration of Appellant's Resolution Plan alleging:

- a) Failure to implement Resolution Plans of 'Allied Strips Limited' and 'Tirupati Infraprojects Pvt Ltd'**
- b) Freezing order against parent company 'Gulf Petroleum FZC' from Delhi HC restraining it from selling assets**
- c) Downgrading of Appellant's credit rating**

NCLT vide order dated 27.07.2022 allowed IA 239/2022 filed by ARCIL, directing the Resolution Plan to be remanded back to CoC for reconsideration. On 01.08.2022 when IA 159/2020 seeking approval of Resolution Plan was listed, NCLT disposed it off observing that the plan had been remanded back to CoC vide order in IA 239/2022. Aggrieved by the orders dated 27.07.2022 and 01.08.2022, the Appellant has filed the present Appeals.

Court's Opinions:

Resolution Plan approved by CoC is binding between CoC and Successful Resolution Applicant even before approval by NCLT, as per Sec 30 and the principle laid down in 'Ebix Singapore Pvt Ltd vs CoC of Educomp Solutions Ltd' 2022. NCLT has power

to remit an approved Resolution Plan back to CoC for reconsideration only if it violates Sec 30(2) of IBC, as per SC decision in 'CoC Essar Steel vs Satish Kumar Gupta' 2020 and NCLAT decision in 'Bank of Maharashtra vs Videocon Industries' 2021 which have been relied upon by NCLT. However, facts of present case show that CoC did not allege any violation of Sec 30(2) and only sought review citing Appellant's failure to implement other plans, freezing order against parent entity, and downgrading of credit rating. These grounds on failure to implement other plans had already been raised by the other bidder 'Panch Tatva' and considered by CoC in its commercial wisdom before approving Appellant's plan for current CD. The same was recorded in CoC minutes and considered by NCLAT in its order dated 18.08.2021 in Company Appeal 642/2020, so CoC cannot now take a U-turn. Out of the 2 entities cited, the Appellant has managed to implement the plan for one i.e. Allied Strips Ltd. For the other i.e. Tirupati Infraprojects Pvt Ltd, there is only delay in implementation and it does not make the Appellant ineligible under Sec 29A. Merely citing Reg 38 is not sufficient to hold Appellant ineligible. Freezing order against parent entity or downgrading of Appellant's credit rating by itself does not amount to ineligibility of Appellant or impose any bar on implementation of the Resolution Plan. Unless the Appellant has acquired any ineligibility subsequently or there is breach of conditions under the approved Resolution Plan that prevents its implementation, NCLT cannot remit the plan back to CoC for reconsideration after it has attained finality. Relying on the ratio in 'Ebix Singapore' 2022, 'Kalinga Allied Industries' 2021 etc, any withdrawal or reconsideration of Resolution Plan at the current stage will breach the strict timelines under IBC, already extended multiple times, and will make the process endless.

Arguments:

Arguments by Appellant:

NCLT had no jurisdiction to allow ARCIL's application for reconsideration of approved Resolution Plan binding on CoC. Grounds raised in IA 239/2022 like failure to implement other plans were already considered by CoC applying its commercial wisdom before approval. 'Panch Tatva's challenge raising similar grounds was also rejected right upto SC, hence cannot be re-agitated. Out of the 2 CDs cited, Appellant implemented plan for one i.e Allied Strips Ltd. For the other CD there was only delay in implementation which does not attract ineligibility under Sec 29A. Freezing order against parent entity and downgrading of Appellant's credit rating does not impose any bar on implementation of approved Resolution Plan. CIRP already stretched for over 3 years 10 months beyond expiry of statutory timeline. Approval attained finality so cannot be reconsidered without specific reasons like ineligibility of Appellant or breach of conditions under the approved plan.

Arguments by Resolution Professional and CoC:

NCLT has jurisdiction to remit approved Resolution Plan for reconsideration based on SC decision in 'CoC Essar Steel'2020 and NCLAT decision in 'Bank of Maharashtra' 2021.As Appellant failed in implementation of 2 Resolution Plans and its credit rating downgraded, CoC has doubts on viability of Appellant implementing the current plan. Hence it can review subsequent events and reconsider appointment based on its commercial wisdom. Merely directing reconsideration does not amount to starting the CIRP process afresh. Interests of maximization of value of assets envisaged under IBC warrant reconsideration if a higher value could be availed.

Sections:

Section 12 – Time limit for completion of Corporate Insolvency Resolution Process; Section 29A – Persons not eligible to be Resolution Applicant; Section 30 – Submission of Resolution Plan; Section 30(2) – Requirements of Resolution Plan; Section

60(5)(c) – Residual powers of NCLT

Cases Referred:

Ebix Singapore Pvt Ltd vs Committee of Creditors of Educomp Solutions Ltd (2022); Committee of Creditors of Essar Steel India Ltd vs Satish Kumar Gupta (2020); Bank of Maharashtra vs Videocon Industries Ltd (2021); K Sashidhar vs Indian Overseas Bank (2019); Kalinga Allied Industries India Pvt Ltd vs Committee of Creditors (2021); Steel Strips Wheels Ltd vs Shri Avil Menezes (NCLAT); Siva Rama Krishna Prasad vs Sri Satyanarayana Nanduri (NCLAT); Gulabchand Jain vs Om Boseco Rail Products Ltd (NCLAT)

Laws Referred:

Insolvency and Bankruptcy Code, 2016; CIRP Regulations, 2016; Regulation 38 – Disclosure norms for prospective resolution applicants

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Court

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Full Text of Judgment:

1. These two Appeals have been filed by same Appellant challenging the orders dated 27.07.2022 and 01.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench-II in IA No. 239/AHM/NCLT/2022 and IA No. 159 of 2020 respectively.
2. Brief facts of the case necessary to be noticed for deciding these Appeals are:-
 - 2.1. Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor commenced on 02.05.2019. With regard to Corporate Debtor- 'GPT Steel Ltd.', Resolution Plan was submitted by the Appellant which was approved by the Committee of Creditors (CoC) on 18.02.2020. On 20.02.2020, Letter of Intent (LoI) was

issued to the Appellant and IA No. 159 of 2020 was filed by the Resolution Professional for approval of the Resolution Plan before the Adjudicating Authority and IA No.116 of 2020 was filed by one 'M/s. Panch Tatva Promoters Private Limited' who was H-2 Bidder challenging the Resolution Plan of the Appellant which was dismissed.

2.2. An Appeal being Company Appeal (AT) (Insolvency) No. 642 of 2020 was filed by 'M/s. Panch Tatva Promoters Private Limited' challenging the order of the Adjudicating Authority which too was dismissed by this Appellate Tribunal by order dated 18.08.2021. This Tribunal held that the Code and Regulations does not empowers the CoC to get a second chance to review earlier approval and additional time for another Resolution Plan. A Civil Appeal bearing 5630 of 2021 was filed by 'M/s. Panch Tatva Promoters Private Limited' challenging the order of this Appellate Tribunal which too was dismissed on 17.09.2021. Appellant submitted renewed Bank Guarantee of Rs.5 Crores on 18.02.2022. Respondent No.1, a Financial Creditor filed an application being IA No.239 of 2022 seeking reconsideration of the Resolution Plan of the Appellant. The Adjudicating Authority reserved the order on 01.06.2022 after hearing the objection of the Respondent No.1. Order dated 27.07.2022 has been passed by the Adjudicating Authority by which, application being IA No.239 of 2022 was allowed and the Adjudicating Authority directed the Resolution Plan be remanded back to the CoC to re-consider all the Resolution Plans submitted during the CIRP of the Corporate Debtor. Aggrieved by the above order dated 24.07.2022, Company Appeal (AT) (Insolvency) No. 1184 of 2022 has been filed.

2.3. On 01.08.2022, IA No.159 of 2020 filed by the

Resolution Professional for approval of the Resolution Plan came for consideration. Adjudicating Authority disposed of the application observing that by order passed on IA No. 239 of 2022, now the Resolution Plan is being sent back to the CoC. Company Appeal (AT) (Insolvency) No. 1186 of 2022 has been filed against the said order.

3. We have heard Shri Virender Ganda, Learned Senior Counsel appearing for the Appellant, Shri Arun Kathpalia, Learned Senior Counsel appearing for the Resolution Professional and Mr. Deep Roy, Learned Counsel appearing for the CoC.

4. Learned Senior Counsel for the Appellant challenging the order of the Adjudicating Authority submits that after approval of the plan of the Appellant by the CoC, the Adjudicating Authority had no jurisdiction to allow the application of the Financial Creditor for reconsideration of the Resolution Plan. The grounds which were sought to be raised in the application being IA No.239 of 2022 filed by the Financial Creditor were already noticed by the CoC at the time of approval of the Resolution Plan. H- 2 bidder filed an Appeal being Company Appeal (AT) (Insolvency) No.642 of 2020 in which Appeal the submissions now sought to be raised by the CoC were also noticed namely- the Successful Resolution Applicant has failed to implement the Resolution Plans of 'Allied Strips Limited' and 'Tirupati Infraprojects Private Limited'. The intent of Financial Creditor was to obtain an order from the Adjudicating Authority to consider the Resolution Plan of 'M/s. Panch Tatva Promoters Private Limited' whose Appeal has already been dismissed on 18.08.2021 which issue cannot be allowed to re-agitated. Insofar as credit rating which was relied by some agency by the Financial Creditor, the credit agency in its own report has stated that they did not guarantee the accuracy, adequacy or completeness of any

information. There was no sufficient reason to send back the Resolution Plan for re-consideration by the CoC. Appellant has successfully implemented the Resolution Plan of 'Allied Strips Limited' and with regard to Resolution Plan of 'Tirupati Infraprojects Private Limited', this Tribunal in appeal has held that there is no wilful contravention in implementation of the Resolution Plan. As a consequence of sending the Resolution Plan back, the CIRP has been stretched for additional period of 3 years and 10 months after expiry of the CIRP period on 19.02.2020.

5. Learned Senior Counsel for the Resolution Professional refuting the submissions of the Counsel for the Appellant submits that the Adjudicating Authority has jurisdiction to remit the Resolution Plan for re-consideration. It is submitted that the Appellant having failed to implement two Resolution Plans of entities namely- 'Allied Strips Limited' and 'Tirupati Infraprojects Private Limited' there is no credibility of the Appellant to implement the Resolution Plan, hence, CoC is entitled to review the subsequent events and take over all view of the matter. With regard to 'Gulf Petroleum FZC' parent entity of the Appellant, there has been restrained order from selling, transferring and alienating assets by Delhi High Court. The 'Gulf Petroleum FZC' has given letter of comfort to the Appellant. In view of the subsequent events, CoC has great doubt regarding viability of the Appellant in implementing the plan, hence, CoC is entitled to reconsider. It is submitted that the CoC is not starting the process afresh of inviting Resolution Plans. It is submitted that the power of the Adjudicating Authority to remit the Resolution Plan for reconsideration has been accepted by this Tribunal as well as the Hon'ble Supreme Court.

6. Learned Counsel for the CoC also supported the

submission of the Resolution Professional and submitted that the CoC have cogent material to re-consider the Resolution Plan submitted by the Appellant which became necessary on account of several factors coming into knowledge of the CoC regarding failure of the Appellant to implement two Resolution Plans and the credit rating of the Appellant having gone down and it is unable to service its debt.

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

8. There is no dispute between the facts of the case that the CoC in its meeting dated 18.02.2020 on the basis of e-voting approved the Resolution Plan with 82.41% voting share of the members. Another Resolution Applicant- 'M/s. Panch Tatva Promoters Private Limited' being aggrieved by the approval of the Resolution Plan of the Appellant had filed an application before the Adjudicating Authority objecting to the Resolution Plan of the Appellant which was dismissed by the Adjudicating Authority which order was affirmed by this Appellate Tribunal as well as by the Hon'ble Supreme Court. The claim of 'M/s. Panch Tatva Promoters Private Limited' for consideration of his plan who was H-2 Bidder in CIRP having been rejected by the Hon'ble Supreme Court, the only plan which was in the CIRP was of the Appellant. In the application filed by the Respondent No.1, IA No. 239 of 2022, following prayers were made:-

"i. Direct that the resolution plan of the Respondent No.1 be remanded back to the CoC so that the CoC can reconsider all the resolution plans submitted during the corporate insolvency process of the corporate debtor
ii. Provide any other directions which this Hon'ble Tribunal may deem fit in the facts and circumstances of the matter."

9. Learned Counsel for the parties relied on the judgments of the Hon'ble Supreme Court as well as this Appellate Tribunal in support of their submissions which shall be referred to while considering the submissions in detail.

10. The rival submission which has been raised by the Learned Counsel for the parties is regarding the power of the Adjudicating Authority to remit the Resolution Plan for consideration before the CoC.

11. In "Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Limited and Anr.- (2022) 2 SCC 401", the Hon'ble Supreme Court has considered a case where Successful Resolution Applicant sought to withdraw the Resolution Plan and third withdrawal application before the Adjudicating Authority for permitting withdrawal of the Resolution Plan was allowed which order was set aside by this Appellate Tribunal against which the Civil Appeal was filed before the Hon'ble Supreme Court. While considering the scheme of the IBC in the above background, the Hon'ble Supreme Court has observed that even prior to the approval of the Adjudicating Authority is binding inter se between the CoC and the Successful Resolution Applicant. In paragraph 115, following has been laid down:-

"115. While the above observations were made in the context of a scheme that has been sanctioned by the court, the resolution plan even prior to the approval of the adjudicating authority is binding inter se the CoC and the successful resolution applicant. The resolution plan cannot be construed purely as a "contract" governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the adjudicating authority. Even at that stage, its binding effects are produced by IBC framework. The BLRC Report mentions that "[w]hen 75% of the creditors agree on a

revival plan, this plan would be binding on all the remaining creditors". The BLRC Report also mentions that, "the RP submits a binding agreement to the adjudicator before the default maximum date". We have further discussed the statutory scheme of IBC in Sections I and J of this judgment to establish that a resolution plan is binding inter se the CoC and the successful

resolution applicant. Thus, the ability of the resolution plan to bind those who have not consented to it, by way of a statutory procedure, indicates that it is not a typical contract."

12. The law is thus well settled that the Resolution Plan approved by the CoC is binding on the CoC and it cannot have reviewed its own decision or pray for review of its opinion. Adjudicating Authority in the impugned order has taken the view that the Resolution Plan can be sent for re-consideration to the CoC. It is relied on the judgment of this Appellate Tribunal in "Bank of Maharashtra vs. Videocon Industries Ltd. & Ors.- CA (AT) (Insolvency) No.503 of 2021" and further the judgment of the Hon'ble Supreme Court in "Committee of Creditors of Essar Steel India Ltd., Through authorised signatory vs. Satish Kumar Gupta & Ors.- (2020) 8 SCC 53".

13. Both the above judgments where the Resolution Plan approved by the Adjudicating Authority came for consideration and this Tribunal as well as the Hon'ble Supreme Court took the view that if the plan is not in accord with Section 30(2) of the Code, it can be sent back for re-consideration before the Adjudicating Authority. There can be no quarrel to the proposition that if the Resolution Plan submitted by the Resolution Applicant is not in accord with Section 30(2), it can be sent back to the CoC. There can also be no dispute to the proposition laid down by the Hon'ble Supreme Court

in “K. Sashidhar vs. Indian Overseas Bank and Ors.- (2019) 12 SCC 150” that the commercial wisdom of the CoC has been given paramount status and the commercial wisdom of the CoC is not to be challenged or adjudicated by the Adjudicating Authority. Thus, the law is well settled that the Adjudicating Authority has ample power to remit the Resolution Plan for reconsideration by the CoC when there is violation of Section 30(2).

14. Now we refer to the facts of the present case. Present is not a case where CoC is claiming in its application that the Resolution Plan which was approved by the CoC is in violation of any provisions of Section 30(2). When we look into the pleadings in the application and submissions advanced before the Adjudicating Authority as well as before us, it is clear that the CoC was sought review of the Resolution Plan on the grounds:

(a) Resolution Applicant after approval of the plan has failed to implement two Resolution Plans i.e. ‘Allied Strips Limited’ and ‘Tirupati Infraprojects Private Limited’.

(b) Against parent company of the Appellant, there is freezing order by the Delhi High Court that it shall not alienate its assets.

(c) Credit rating of the Appellant has gone down.

15. Before we proceed to examine those submissions, it is relevant to notice that in the application which was filed by the CoC in prayer (i) direction was sought for remanding back to the CoC so that the CoC can reconsider of the Resolution Plan submitted during the CIRP of the Corporate Debtor. Present is not a case where any other Resolution Applicant was coming forward who has submitted its plan in the CIRP claiming reconsideration of its plan. One Resolution Applicant i.e. ‘M/s. Panch Tatva Promoters Private Limited’ who was H-2 Bidder had

unsuccessfully challenged the plan before this Tribunal and before the Hon'ble Supreme Court, hence, the claim of H2 Bidder 'M/s. Panch Tatva Promoters Private Limited' was out of all consideration due to finality of the order.

16. Learned Counsel for the Appellant has referred to judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 642 of 2020. There are two concurring judgments delivered by two Hon'ble Members in the Appeal where both the Members have clearly held that 'M/s. Panch Tatva Promoters Private Limited' have no right to claim its consideration. The ground which was raised by the 'M/s. Panch Tatva Promoters Private Limited' was also based on the submission that Resolution Applicant has failed to implement two Resolution Plans which submission was also noticed by this Tribunal in its judgment. With regard to 'Allied Strips Limited', the allegation of ineligibility of the Resolution Applicant was noted and rejected. Paragraph 6 of the judgment reads as follows:-

"6. Going through such affidavit of the Respondent No.1-Resolution Professional, it is clear that the Appellant had multiple opportunities and the Resolution Plans filed one after the other were considered and which were found to be conditional. The CoC in 16th meeting read with the 17th meeting and voting thereon approved the Resolution Plan of Respondent No.3. The grievance raised by the Appellant with regard to ineligibility of Respondent No.3 were also considered by the CoC with regard to the 'Allied Strips Limited' which was pointed out and CoC still took a conscious decision to accept the Resolution Plan of Respondent No.3."

17. In another judgment given by the Hon'ble Technical Member, again the submissions were advanced that Appellant has failed to implement the plan. The

submission of the CoC that the CoC is ready to consider if the Court directs them to reconsider the plan of 'M/s. Panch Tatva Promoters Private Limited' noticed and rejected. It is useful to refer paragraphs 43, 48, 49, 50 and 51, which is as follows:-

"43. It is pertinent to mention that neither Insolvency and Bankruptcy Code 2016 nor the Regulations made thereunder empowers the COC to get a second chance to review earlier approval and additional time for another Resolution Plan. In the instant case, the time limit for completion of the Insolvency Resolution Process as provided under Section 12 of the Code has already expired. Proviso to Sub-section (3) of Section 12 provides that extension of the period of CIRP under this section shall not be granted more than once. In this case, the extended period has also expired after the first extension. Therefore, the question of further seeking an extension or granting time does not arise.

48. In fact, after the approval of the Resolution Plan by the COC, pending adjudication before Adjudicating Authority, the COC cannot be permitted to take a U-turn from its earlier stand and reverse the decision already taken by it. Indeed, COC exercises its commercial wisdom in approval of the Resolution Plan. However, once the COC completes the exercise of approval of the Resolution Plan, the role of COC comes to an end.

49. Since the statutory time limit for completion of the Corporate Insolvency Resolution Process has already expired, the COC cannot seek additional time to complete the Corporate Insolvency Resolution Process and review its decision after approval of the Resolution Plan. The position of law is clear that once the Resolution Plan has been approved by COC and it is pending adjudication u/s Section 31 before the Adjudicating Authority, the COC does not contain any power to review its earlier decision to approve the Resolution Plan.

50. *It is made clear that that the Appellant's Plan was conditional and is rejected by COC. Therefore, the Appellant has no right to insist that its Plan should be accepted. Under its commercial wisdom, COC has accepted the Resolution Plan of Respondent No. 3 with open eyes regarding developments in the matter of Allied Strips. The decision of COC in approving the Resolution Plan was its commercial decision which needs no interference. Therefore, the Appellant has no locus to question the commercial decision.*

51. *For the reasons discussed above, the Appeal is not maintainable. Once COC accepts the Resolution Plan, the Adjudicating Authority may consider if it is to be accepted or rejected. The Appellant has no right to stall the proceeding for the approval of the Resolution Plan by challenging commercial decisions of the COC. However, it is to be taken into consideration that the statute is to be workable."*

18. We, thus, are of the view that this Tribunal in earlier judgment dated 18.08.2021 is clearly held that the CoC cannot get a chance to review its decision and take a u-turn and reverse its decision already taken. It is also relevant to notice the submission on the basis of the fact that the Appellant has failed to implement the Resolution Plan of 'Allied Strips Limited' was also noticed. There is a delay in implementation of the Resolution Plan of 'Allied Strips Limited' and 'Tirupati Infraprojects Private Limited' by the Appellant was very much raised before the CoC and were considered by the CoC before approving the Resolution Plan of the Appellant and the CoC is well aware that there is delay in implementation of the plans of 'Allied Strips Limited' and 'Tirupati Infraprojects Private Limited' which was noticed in its minutes as has been brought on the record.

19. Learned Counsel for the Appellant has brought on record the order of this Tribunal where the Appeal filed by the Successful Resolution Applicant was allowed and Successful Resolution Applicant was permitted to implement the Resolution Plan of 'Allied Strips Limited' which has actually been implemented. Insofar as another Resolution Plan of 'Tirupati Infraprojects Pvt. Ltd.', it is true that in view of the order passed by this Tribunal on 15.12.2022 in Company Appeal (AT) (Insolvency) No. 14 of 2022- "GP Global Energy Pvt. Ltd. vs. Mr. Anil Kohli", it was held that the Successful Resolution Applicant failed to implement the plan. Reference has been given to Regulation 38 of the CIRP Regulations, 2016, according to which, the Appellant was liable to disclose, Regulation 38 (1B) mandate the Resolution Applicant to give reasons leading to the failure of implementation of a Resolution Plan. Provision of Regulation 38 (1B) which requires giving reason is not akin to Section 29A which impart ineligibility of the Resolution Applicant.

20. From the facts of the present case, out of two entities for which allegation was made of non-implementation. Admittedly, for one i.e. 'Allied Strips Limited' has been implemented and for other plan has not been implemented but that itself shall not impart any ineligibility.

21. Now coming to the submission that the parent company is under a freezing order for not sale of its assets. Suffice it to say that there was no such condition in the Resolution Plan that if the parent company is under some freezing order the plan may not be implemented and any disqualification shall attach with the Resolution Applicant.

22. As far as the submission of down grading of the credit rating of the Appellant that itself will not

attach any ineligibility of the Resolution Applicant. It is not a case of the Respondent that there was any clause in the Resolution Plan that on down grading of the credit rating or parent company under some freezing order, the Resolution Plan shall not be implemented. As noted above, the Resolution Plan can be remitted back for reconsideration if there is any violation of Section 30(2).

23. There can be other circumstances under which Resolution Plan can be remitted by the Adjudicating Authority those may be where the Resolution Applicant acquires any ineligibility subsequent to the approval of the Resolution Plan or there is breach of any condition of the Resolution Plan which make Resolution Applicant not entitle to implement the plan but the present is not a case where any such circumstances are attracted on which the Resolution Plan can be sent back.

24. Learned Counsel for the Appellant has relied on the judgment of this Tribunal in "Kalinga Allied Industries India Private Limited vs. CoC and Ors.- Company Appeal (AT) (Insolvency) No. 689 of 2021" in which case this Tribunal relying on the judgment of Ebix Singapore took the view that the plan could not be sent back for reconsideration of the CoC. In paragraph 8, following was laid down:-

"8. Though the main issue raised in 'Ebix Singapore Pvt. Ltd.' (Supra) is with respect to withdrawal/modification of a Resolution Plan by an SRA, the Hon'ble Supreme Court has clearly laid down that 'the NCLT is Residuary Jurisdiction [under Section 60(5)(c)] though vide, is nonetheless defined by the text of the Code. Specifically, the NCLT cannot do what the IBC consciously did not provide it the power to do'. Further, the Court observed that 'this Court must adopt an interpretation of the NCLT is Residuary Jurisdiction

which concurs with the broader goals of the Code'. 'Ebix Singapore Pvt. Ltd.' (Supra) has observed that strict timelines have to be adhered to and that the Adjudicating Authority lacks the authority to allow the withdrawal/modification of the Resolution Plan by an SRA, as this would defeat the very objective of the statute. In the instant case, though it is not the SRA which is seeking withdrawal, the effect of the CoC seeking withdrawal of an already approved Resolution Plan would have identical repercussions with respect to 'timelines' as the same would have the effect of restarting the CIRP Process from the valuation stage when all the statutory timelines have long since been exhausted. The principle with respect to 'timelines' is applicable to the facts of this case. At the cost of repetition, it is crystal clear that any modification or a withdrawal (by SRA or otherwise) after approval by the CoC and submission to the Adjudicating Authority, 'irrespective of the content' of the terms envisaged by the Resolution Plan, would only lead to further delay and defeat the very scope and objective of the Code. The existing framework does not provide any scope for effecting any further modifications or withdrawals of the CoC approved Resolution Plan by the SRA or the Creditors. The Adjudicating Authority can interfere only if the Plan is against the provisions of the Code. Once the Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code. This Tribunal in 'Steel Strips Wheels Ltd.' Vs. 'Shri Avil Menezes Resolution Professional of AMW Autocomponent Ltd. & Ors.'⁸ , placing reliance on 'Ebix Singapore Pvt. Ltd.' (Supra), observed that any consideration of a belated Plan would breach both the timelines as well as the finality of a Resolution Plan approved by the CoC on an earlier date. The contention of the Learned Counsel for the first Respondent that the Code provides for

'Maximisation of the Value of Assets' and therefore a higher value offered is to be considered, is untenable, as in the instant case, the maximum timeline permissible for completion of the said process has lapsed and the CIRP has been ongoing since 11.05.2018 and more than four years have lapsed since then. The decisions relied upon by the Respondents in 'Siva Rama Krishna Prasad' (Supra) and in 'Gulabchand Jain' (Supra), are not applicable to the facts of this case as the issues raised in those cases is with respect to withdrawal of the approval by the CoC to the Resolution Plan, recommending Liquidation of the 'Corporate Debtor'. In this case, the CoC sought fresh consideration for another Plan after completion of all timelines. It is pertinent to mention that these Judgements are prior to the ratio laid down by the Hon'ble Apex Court in 'Ebix Singapore Pvt. Ltd.' (Supra). It is the case of the Interveners that I.A. (IB) No. 815/2021 in C.P. IB No.-60(PB)/2018 is still pending Adjudication before the Adjudicating Authority and that the Appellant has no vested right for consideration of its Resolution Plan as they only continue to remain a prospective Resolution Applicant. At this juncture, it is significant to mention that the Order passed by this Tribunal in 'Kalinga Allied Industries India Pvt. Ltd.' (Supra), has set aside the Order of the Adjudicating Authority observing as follows:

"With the aforesaid, we are of the view that when the Application for approval of Resolution Plan is pending before the Adjudicating Authority at that time the Adjudicating Authority cannot entertain an Application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful Resolution Applicant. If a Resolution Plan is considered beyond the time-limit then it will make a Company Appeal (AT) (Ins.) No. 518 of 2020 never-ending process. Thus, impugned order is not sustainable

in law as well as in fact. The impugned Order is hereby set aside."

25. In "Kalinga Allied Industries India Pvt. Ltd." (supra), prayer was sought for directing consideration of the Resolution Plan. This Tribunal took the view that after approval of the plan there is no occasion to permit such withdrawal. It is further held that any such withdrawal of an already approved Resolution Plan would have identical repercussions with respect to timelines.

26. Counsel for the Appellant has also relied on the Judgment of this Tribunal in "Noble Marine Metals Co Wll vs. Kotak Mahindra Band Ltd. and Anr.- Company Appeal (AT) (Insolvency) No. 653 of 2022" where this Tribunal held that the law is well settled that after approval of the resolution plan, it is binding on the CoC. In paragraph 8, following was stated:-

"8. The law is thus well settled that Resolution Plan is approved by the CoC is binding between the CoC and SRA. The question to be considered in this Appeal is as to whether, there are any circumstances and conditions, where Resolution Plan can be sent back for carrying out any changes. In this context, we refer to the Judgement of the Hon'ble Supreme Court in "Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors." [2020 8 SCC 531]. The Hon'ble Supreme Court in the above judgement had occasion to consider the scope of judicial review of the Adjudicating Authority in the context of Resolution Plan approved by the CoC. In paragraph 73, following has been held:

"This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law

for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

27. This Tribunal has, however, in the said judgment permitted matter to go back to CoC since all parties had agreed before the Adjudicating Authority and the prayer of the CoC was with regard to one clause which according to the submission was violative of Section 30(2)(e).

28. We, thus, are satisfied that in the present case, there were no grounds on which the plan could have been sent back for reconsideration before the CoC. In result, both the Appeals are allowed. Orders passed by the Adjudicating Authority dated 27.07.2023 in IA No. 239 of 2022 is set aside. Company Appeal (AT) (Insolvency) No. 1186 of 2022 is allowed. Order dated 01.08.2022 passed in IA No.159 of 2020 is set aside. Company Appeal (AT) (Insolvency) No. 1184 of 2022 is allowed. Adjudicating Authority is directed to consider IA No.159 of 2020

afresh. There being enormous delay on account of the application filed by the CoC for sending back the Resolution Plan, we request the Adjudicating Authority to pass order in IA No.159 of 2020 within three months from the date copy of this order is produced.

29. Both the parties shall bear their own costs.