

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

Company Appeal (AT) (Insolvency) No. 1823 of 2024

[Arising out of order dated 03.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench- I in IA (Plan)/ 18/2024, IA/900/2024 and IA/576/2024 in C.P (IB) No. 111(AHM)/2022]

IN THE MATTER OF:

**FINTECH RESTRUCTURING LLP,
THROUGH MR. NIRAJ KUMAR,**

Resolution Professional of
M/s Fairdeal Multifilament Private Limited E/47 I ARI
Pusa Campus, New Delhi-110012
E-mail ID: fintechipe@gmail.com

...Appellant

Versus

1. M/s Fairdeal Multifilament Private Limited

Plot No 49, near Gopinath Industrial, Jain Park,
Vasna Chacharavadi, Gujarat 382210
E-mail ID: faridealcirp@gmail.com

...Respondent No.1

2. Manoj Zabbarraj Shanklecha,

801 Rajnigandha Tower,
Near Sujata Flat, Shahibuag,
Ahmedabad-380004
E-mail ID: manojshanklecha@hotmail.com

...Respondent No.2

3. Zabbarraj Shanklecha

801 Rajnigandha Tower, Near Sujata Flat,
Shahibuag, Ahmedabad-380004.
E-mail ID: manojshanklecha@hotmail.com

...Respondent No.3

4. Parth Poly Coat Yarn Pvt. Ltd.

Shed No.53 Mahashakti Industrial Asset,
Behind Anil Starch Mill, Opp,
Arvind Park Soc., Bapunagar,
Ahmedabad-380024
E-mail ID: admin@ppcypl.com

...Respondent No.4

Present:

For Appellant : Ms. Neha Agarwal, Advocate.

**For Respondents : Mr. Ravinder Kumar Goyal and Mr. Samaksh Goyal,
Advocates for RP.**

WITH

Company Appeal (AT) (Insolvency) No. 1824 of 2024

[Arising out of order dated 03.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-I in IA (Plan)/18/2024, IA/900/2024 and IA/576/2024 in C.P (IB) No. 111(AHM)/2022]

IN THE MATTER OF:

**FINTECH RESTRUCTURING LLP,
THROUGH MR. NIRAJ KUMAR,**

Resolution Professional of
M/s Fairdeal Multifilament Private Limited E/47 I
ARI Pusa Campus, New Delhi-110012
E-mail ID: fintechipe@gmail.com

... Appellant

Versus

1. M/s Fairdeal Multifilament Private Limited

Plot No 49, Near Gopinath Industrial,
Jain Park, Vasna Chacharavadi,
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E-mail ID: faridealcirp@gmail.com

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E-mail ID: manojshanklecha@hotmail.com

...Respondent No.2

3. Zabbarraj Shanklecha

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Shahibuag, Ahmedabad-380004.
E-mail ID: manojshanklecha@hotmail.com

...Respondent No.3

4. Parth Poly Coat Yarn Pvt. Ltd.

Shed No.53 Mahashakti Industrial Asset,
Behind Anil Starch Mill, Opp,
Arvind Park Soc., Bapunagar,
Ahmedabad-380024
E-mail ID: admin@ppcypl.com

...Respondent No.4

Present:

For Appellant : Ms. Neha Agarwal, Advocate.

**For Respondents : Mr. Ravinder Kumar Goyal and Mr. Samaksh Goyal,
Advocates for RP.**

WITH
Company Appeal (AT) (Insolvency) No. 1915 of 2024

[Arising out of the Impugned Order dated 03.09.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench-I in IA/900/2024 in C.P. (IB) No.111 (AHM) of 2022]

In the matter of:

SARASWAT CO-OPERATIVE BANK LTD,
RECOVERY DEPARTMENT
AT 74-C, SAMADHAN BUILDING,
SENAPATI BAPAT ROAD,
DADAR (WEST), MUMBAI 400 028
Email: Vidyesh.dalvi@saraswatbank.com

...Appellant

Versus

1. MANOJ ZABBARAJ SHANKLECHA
801 Rajnigandha Tower,
Near Sujata Flat, Shahibuag,
Ahmedabad-380004.
Email: manojshanklecha@hotmail.com

...Respondent No.1

2. ZABBARAJ SHANKLECHA
801 Rajnigandha Tower,
Near Sujata Flat, Shahibuag,
Ahmedabad-380004.
Email: manojshanklecha@hotmail.com

...Respondent No.2

3. FINTECH RESTRUCTURING LLP
THROUGH:
Resolution Professional of
M/S Fair Deal Multifilament Pvt. Ltd (IN CIRP)
E/47 I Ari Pusa Campus,
New Delhi-110012.
Email : faridealcirp(a)gmail.com

...Respondent No.3

4. PARTH POLY COAT YARN PVT. LTD

Shed No.53 Mahashakti Industrial Asset,
Behind Anil Starch Mill,
Opp, Arvind Park SOC.,
Bapunagar, Ahmedabad-380024
Email: info@ppcypl.com

...Respondent No.4

Present:

For Appellant : Mr. Janener Kumar Chumbak, Ms. Radhika, Advocates.

For Respondent : Mr. R.K. Goyal, Mr. Samaksh Goyal, Advocates for RP.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present set of two appeals filed under Section 61(1) of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellants arises out of a common Order dated 03.09.2024 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-I) in IA (Plan)/18/2024, IA/900/2024 and IA/576/2024 in C.P (IB) No. 111(AHM)/2022. By the impugned order, the Adjudicating Authority has directed that the Corporate Insolvency Resolution process (**"CIRP"** in short) of the Corporate Debtor be reinitiated and completed within 90 days from the date of the impugned order and for that purpose extended the CIRP period besides replacing the Resolution Professional-Fintech Restructuring LLP with Shri Ravindra Kumar Goyal. Aggrieved by the

impugned order, one set of appeal has been preferred by the Saraswat Cooperative Bank Ltd.-Financial Creditor and the other appeal has been preferred by the erstwhile Resolution Professional- Fintech Restructuring LLP.

2. The facts in both these appeals being common, the same are being briefly and conjointly outlined as below:

- Adjudicating Authority initiated CIRP against the Corporate Debtor on 21.02.2023 and appointed Interim Resolution Professional.
- A public announcement in Form-A was made on 25.02.2023. The IRP duly collated and verified the claims received and CoC was constituted. The CoC comprised of Saraswat Cooperative Bank Ltd. ("**Saraswat**" in short) as Secured Financial Creditor and other individual unsecured financial creditors. The Secured Financial Creditor held 41.95% share of voting.
- On 09.10.2023 the Adjudicating Authority appointed the Fintech Restructuring LLP ("**Fintech**" in short) as the Resolution Professional ("**RP**" in short).
- On 07.11.2023, Fintech published Form-G for inviting Expressions of Interest. Form-G was issued again on 23.12.2023 and Expressions of Interest were received from eleven eligible parties.
- Fintech issued Provisional List of Eligible Prospective Resolution Applicants to the CoC members and to all the PRAs on 02.01.2024.
- CoC in its 8th meeting on 31.01.2024 passed a resolution for extension of CIRP period from 20.08.2023 to 30.04.2024.

- Three resolution plans out of the eleven Prospective Resolution Applicants (“**PRAs**” in short) submitted the resolution plan which were opened in the presence of PRAs in the 10th CoC meeting held on 21.02.2024.
- Resolution plans were received from three Resolution Applicants:
 - (i) Mr Manoj Sanklecha (Suspended Director)
 - (ii) Parth Poly Coat Yarn Private Limited
 - (iii) Kanter Steel (India) Private Limited
- In the 11th CoC meeting held on 06.03.2024, all the PRAs were invited to present their proposed plans and discuss the terms and conditions stipulated by them therein.
- Since Adjudicating Authority on 25.02.2024 had extended CIRP period until 30.03.2024, the CoC in the 12th CoC meeting held on 23.03.2024, passed a resolution for extending CIRP period upto 30.04.2024 and also discussed the plans in the presence of the PRAs. IA No. 576 of 2024 was filed by the RP to extend the CIRP time limit by 30 days from 31.03.2024 to 30.04.2024. The Adjudicating Authority had listed IA 576 of 2024 filed by the RP for extension of CIRP which application was listed on 16.04.2024 but was adjourned to 13.05.2024.
- In the 13th CoC meeting on 27.03.2024, the Fintech on the instructions of the CoC, shared the draft bidding documents with the CoC members and the PRAs. The CoC also approved the bidding process.
- The e-bidding process for negotiation in the resolution plan with the PRAs was held on 29.03.2024 and was successfully completed.

- In the 14th CoC meeting on 30.03.2024, Fintech reported e-bidding result to the CoC members. The highest bid was of M/s Parth Poly Coat Yarn Pvt Ltd. (**“Parth”** in short) for Rs 9,36,00,000/- and the second highest bid was of Mr Manoj Sanklecha & Zabbarraj Sanklecha (**“Sanklecha”** in short) for Rs 9,26,00,000/-.
- In the 15th CoC meeting on 02.04.2024, the CoC members called the PRAs for further negotiations and asked them to submit their revised resolution plans on or before 03.04.2024. The plan submitted by M/s Kanter Steel (India) Pvt. Ltd. was found non-compliant and not taken into consideration.
- Thereafter, Sanklecha, suspended director of Corporate Debtor, submitted the revised resolution plan of Rs 9.76 cr. on 03.04.2024. However, Parth did not revise their plan and their plan value remained at Rs 9.36 cr. Fintech submitted the revised plans of both PRAs to the CoC members on 03.04.2024.
- Fintech opened the e-voting platform on 04.04.2024 to enable the CoC members to cast their votes. The e-voting was closed on 08.04.2024.
- As per the result of e-voting on 08.04.2024, the Resolution Plan submitted by Parth was approved by the CoC with a majority of 84.52%. Fintech issued the Letter of Intent to Parth.
- Fintech filed IA No. (Plan)/18(AHM)2024 on 24.04.2024 before the Adjudicating Authority for approval of the resolution plan submitted by Parth under Section 31(1) of IBC. However, IA 900 of 2024 was filed by

the Sanklecha before the Adjudicating Authority for setting aside the 15th CoC meeting proceedings and the voting results.

- The Adjudicating Authority on 03.09.2024 passed the impugned Order rejecting the application for approval of the resolution plan with directions to re-initiate the CIRP process from the stage of issuance of Form-G. The Adjudicating Authority while observing that Fintech has not discharged their duty in line with the provisions of the IBC and the Regulations therein also removed them as RP and appointed Mr Ravindra Kumar Goyal as the new RP of the Corporate Debtor.
- Aggrieved by the impugned order, Fintech has filed Company Appeal No. 1823-1824 of 2024 while Saraswat Cooperative Bank Ltd. as Secured Financial Creditor preferred the other Company Appeal No. 1915 of 2024.

3. Before we proceed further, it may be useful at this stage to note the relief/prayers claimed by Fintech and Saraswat in their respective Appeals which is as extracted below:

Prayers made by Fintech

- a) *Allow the present appeal;*
- b) *Set aside the Impugned Order date 03.09.2024 passed by the Ld. Adjudicating Authority in IA(Plan)/18/2024 and IA/900/2024 IN C.P. (I.B) No. 111(AHM) 2022;*
- c) *Set aside the directions passed in the Impugned Order in paragraph 27 in removing the Appellant as the Resolution Professional of the Corporate Debtor along with the observations passed against the Appellant;*
- d) *Pass such other or further order(s)/direction(s) as the Hon'ble Appellate Authority deems fit in the facts and circumstances of the case.*

Prayers made by Saraswat

a. Set aside the impugned Order dated 03.09.2024 passed by the Hon'ble NCLT, Ahmedabad ("Ld. Adjudicating Authority") in Interlocutory Application No. IA/900/2024 in C.P. (IB) No. 111 (AHM) of 2022.

b. And/or pass any other such order(s) as this Hon'ble Appellate Tribunal may deem fit in the interests of Justice, Equity and Good Conscience.

4. We have perused the records carefully and heard the Ld. Counsel for both the Appellants i.e. the erstwhile RP-Fintech and the Financial Creditor who have both assailed the impugned order. We have also heard the submissions made by the Ld. Counsel on behalf of the new RP-Mr. Ravindra Kumar Goyal. Interestingly, the PRAs have not challenged the impugned order and are not parties in the matter before us.

5. Making his submissions, the Ld. Counsel for erstwhile RP-Fintech stated that the primary reason for feeling aggrieved with the impugned order stems from the irregularities and non-compliance of CIRP Regulations identified by the Adjudicating Authority purportedly committed by Fintech in the CIRP of the Corporate Debtor. These irregularities have been summarised by the Adjudicating Authority at para 23 of the Impugned Order which is as reproduced below:

"23....The irregularities observed are thus summarized as below:

- a) Multiple revisions in the plan allowed in violation of Regulation 39(1A) of the CIRP Regulations.*
- b) Voting by members of CoC in violation of Regulation 25(3).*
- c) Non consideration of plan dated 03/04/2024 submitted by the applicant of IA/900/2024 by the CoC and marking on basis of the*

evaluation matrix was carried out by CoC on 02.04.2024, while the plan was received on 03.04.2024.”

6. It is the contention of the erstwhile RP that the finding of the Adjudicating Authority that multiple revisions in the plan is not permissible is erroneous. In support of their contention, reliance was placed on the decision of this Tribunal in ***Vistra ITCL (India) Ltd. Vs Torrent Investments Pvt. Ltd.*** in ***CA(AT)(Ins) No. 132,133 & 134 of 2023*** wherein it has been held that CIRP Regulation 39(1-A) cannot be read as a fetter on the powers of the CoC to take up further negotiations with the Resolution Applicants to increase the plan value. It was also asserted that this Tribunal in ***Jindal Stainless Ltd. Vs Shailendra Ajmera*** in ***CA(AT)(Ins.) No. 1058 of 2022*** had also held that the CoC had the power to cancel or modify any negotiation with the Resolution Applicant and that exercise of any such discretion was the commercial wisdom of the CoC. It was therefore asserted that when the CoC had decided to hold further negotiations and called for revised plans, the RP could not have come in the way of the CoC’s exercise of commercial wisdom towards seeking revised plans and hence the RP cannot be faulted on this score for having committed any material irregularity in the conduct of CIRP.

7. It was further contended by the Ld. Counsel of the erstwhile RP that the other observation made by the Adjudicating Authority that the RP had irregularly allowed voting by members of CoC who were not physically present for discussion in the 15th CoC meeting as this step was in violation of CIRP Regulation 25(3) was yet another erroneous finding. It was pointed out that the Adjudicating Authority in the impugned order had observed that as per

CIRP Regulations 25(3), only those members of the CoC who are present in the meeting, when the discussion on resolution plan takes place, have a right to cast their vote on such a resolution plan. The Adjudicating Authority had observed that in the present case though only 9 members had attended the 15th CoC meeting, e-voting was done by 50 members and held this to be an irregularity in the e-voting process. It was contended by the Ld. Counsel for Fintech that the reliance placed by the Adjudicating Authority on the judgment of this Tribunal in **TATA Steels Ltd. Vs Liberty House Group Pvt. Ltd.** in **CA(AT)(Ins) No. 198 of 2018** wherein it has been held that only those members who attend the meeting of CoC can exercise voting power and that voting shares of those members who are absent from the meeting cannot be counted is inapplicable as this judgment did not consider Regulation 25(5)(b) of CIRP Regulations. It was asserted that the amended Regulation 25(5)(b) of CIRP Regulations clearly permits the RP to seek votes of those CoC members who are not physically present at the meeting by electronic means.

8. On the third ground of irregularity pointed out by the Adjudicating Authority that marks based on the evaluation matrix could not have been allocated on the resolution plans of the PRAs by the CoC on 02.04.2024 since the resolution applicants were granted time to submit a modified resolution plan till 03.04.2024, it was contended by the Ld. Counsel for Fintech that this was yet another erroneous finding on the part of the Adjudicating Authority. It was pointed out that the Adjudicating Authority had arrived at this wrong finding since it relied on the unamended Regulation 39(3) of the CIRP Regulation which provided that CoC is required to evaluate the resolution plans strictly as per evaluation matrix. However, the amended Regulation

39(3)(B) makes it clear that the resolution plan which receives the highest vote is to be considered as approved. Thus, when there is no mandatory requirement to use the evaluation matrix to identify the best resolution plan and the resolution plan of Parth had been voted upon and approved with a majority of 84.52% vote share, it amounted to be the commercial wisdom of the CoC in which the RP could not have interfered. It was also asserted that the Adjudicating Authority failed to take into account the judgment of the Hon'ble Supreme Court in ***K. Sashidhar Vs Indian Overseas Bank (2019) 12 SCC 150*** wherein the Apex Court has held that as long as the resolution plan meets the requirements of Section 30(2) of the IBC, the plan cannot be subjected to judicial scrutiny. It is a well settled principle that the commercial wisdom of CoC in the approval/rejection of resolution plan enjoys supremacy.

9. It was therefore contended that the Adjudicating Authority had erred in holding that there were irregularities in the process of approval of resolution plan. It was submitted that the Appellant had performed its duties under the IBC and had followed the procedure as laid down under CIRP Regulations. The RP had acted on the directions and commercial wisdom of the CoC and there is no evidence that the approved resolution plan of Parth contravened the provisions of any law for the time being in force. It was emphatically contended that there has been no material irregularity in the exercise of powers by the RP during CIRP. Hence, the adverse comments against the Appellant in the impugned order are unwarranted and must be expunged.

10. Coming to the submissions made on behalf of the Financial Creditor, the Ld. Counsel assailed the impugned order for having primarily rejected the resolution plan of the Corporate Debtor on the ground that the RP did not

discharge his duty in accordance with the provisions of the IBC and for non-compliances and irregularities of the RP in the CIRP process of the Corporate Debtor. It was vehemently contended that the 15th CoC meeting held on 02.04.2024 had considered the feasibility and viability of the resolution plans submitted by the PRAs. The CoC in the said meeting also decided to re-negotiate the terms of the plan with the PRAs and called them to participate in the meetings of CoC for further negotiations besides giving them a liberty to submit revised plan on or before 03.04.2024. The plan of Parth was thereafter approved by the CoC with a majority of 84.52% vote share. It is also their contention that once CoC has approved the resolution plan by requisite majority, there was limited scope of interference by the Adjudicating Authority since commercial wisdom of CoC is not justiciable. In such circumstances, when the CoC had approved the resolution plan with majority share, the Adjudicating Authority erred in setting aside the entire CIRP proceedings and re-initiating fresh proceedings merely on the grounds of irregularities purportedly committed by the RP.

11. It was further contended by the Ld. Counsel for the Financial Creditor that the Adjudicating Authority at best could have struck off the minutes of the meeting dated 02.04.2024 of the CoC wherein it had detected irregularities and ordered conduct of fresh voting in compliance with the CIRP regulations instead of ordering CIRP proceedings to be started anew from the stage of issue of Form-G as the existing proceedings had already consumed a period of two years. By starting the process afresh by issue of fresh Form-G, a lot of time would be consumed which would go against the principles of IBC where time is of essence and delay in the proceedings would cause grave injury to the

Financial Creditor. It was also contended that Secured Financial Creditor cannot be put to discomfiture on account of inaction or dereliction of duties on the part of the RP.

12. Having heard the Ld. Counsels for the two Appellants, we find that the erstwhile Fintech has assailed the impugned order seeking expunction of adverse remarks made against it by the Adjudicating Authority on irregularities perceived by it in the conduct of CIRP proceedings. As regards the other Appellant, Saraswat-Financial Creditor, it is their contention that instead of reinitiating the CIRP from the stage of issuance of Form-G which would be a time-consuming process, the CoC be directed to reconvene the holding of fresh voting on the plans of the two PRAs in compliance with CIRP Regulation. Since the appeals are confined to the above reliefs sought by the Appellant, we do not feel it necessary to expand the scope of our appellate adjudication beyond the ambit of aforementioned reliefs prayed by the Appellants.

13. This therefore brings us to the adverse comments made by the Adjudicating Authority on the discharge of professional duties by the erstwhile RP. We notice that in the impugned order, it has been observed by the Adjudicating Authority that the RP did not act in accordance with the provisions of the IBC and the CIRP Regulations framed thereunder in the conduct of CIRP of the Corporate Debtor and the issue before us is to decide on the tenability of these adverse remarks. When we see the facts on record, it is an admitted fact that the RP had taken the following steps as envisaged in the IBC for conduct of CIRP including the preparation of Information Memorandum; publication of Form-G inviting Expressions of Interest;

preparation of provisional list of eligible PRAs; appointment of Transaction Auditor; filing of Section 43 and 66 IBC applications; approval of CoC to the bidding documents and bid process etc. We also find that the RP had diligently taken steps to hold CoC meetings regularly and kept the CoC duly apprised of all matters which required its consideration including seeking of CoC's approval for extension of CIRP period from 20.08.2023 to 30.04.2024. Clearly therefore, until this stage the RP took appropriate and effective steps towards conduct of CIRP in inviting resolution plans for resolution of the Corporate Debtor and the Adjudicating Authority has also not detected any irregularity on the part of the RP until this stage.

14. The irregularities in the conduct of the RP have been observed in the impugned order by the Adjudicating Authority only after the stage of receipt of resolution plans from the three eligible PRAs. One allegation which has been taken note of by the Adjudicating Authority is that RP had allowed multiple revisions in the plan. When we look at the proceedings of the CoC meetings, it becomes clear that the decision for allowing modifications in the plan was taken by the CoC after due deliberations of the CoC in the 11th, 14th, and 15th meetings and the RP was merely carrying out the instructions of the CoC in this regard. It is a well settled legal precept as held by this Tribunal in ***Vistra ITCL (India) Vs Torrent Investment Pvt. Ltd.*** supra wherein it has been held at para 60 that *“Regulation 39(1A) cannot be read as a fetter on the powers of the CoC to discuss and deliberate and take further steps or negotiations with the Resolution Applicants, which resolutions are received after completion of Challenged Mechanism.”* Hence, it may not be fair to hold

the RP for being responsible for having committed infraction of the statutory provisions of the IBC on this count.

15. Another observation of irregularity on the part of the RP as made by the Adjudicating Authority was that the RP had allowed voting by Members of the CoC in violation of CIRP Regulation 25(3). However, the RP has contended that it did not commit any irregularity since Regulation 25(5)(b) of CIRP Regulation permitted him to act accordingly.

16. For clarity we may refer to Regulation 25(5)(b) of CIRP Regulation which is as reproduced below:

Regulation 25. Voting by the committee.

(5) The resolution professional shall-

(a) ...

(b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open, from the circulation of the minutes, for such time as decided by the committee which shall not be less than twenty-four hours and shall not exceed seven days:

Provided that on a request for extension made by a creditor, the voting window shall be extended in increments of twenty-four hours period:

Provided further that the resolution professional shall not extend the voting window where the matters listed for voting have already received the requisite majority vote and one extension has been given after the receipt of requisite majority vote.

When we peruse the above regulation, we are persuaded to accept the contention of the erstwhile RP that the RP was allowed to seek votes of even those CoC members who are not physically present at the meeting by electronic means.

17. The RP has also been held responsible by the Adjudicating Authority for having committed the irregularity in that the marking of resolution plans was done by the CoC on the basis of evaluation matrix on 02.04.2024 while the plan of Sanklecha was received on 03.04.2024. The Adjudicating Authority held that marks could not have been allocated by the CoC prior to the date allowed for submission of modifications to the resolution plan. It was held that CoC had never deliberated on the revised resolution plan of Sanklecha which was received on 03.04.2024 which was the last date granted by CoC to the PRAs for submitting resolution plan.

18. When we look at the chronology of the various stages of CIRP proceeding in the present case, we notice that the CoC in the 12th meeting had approved the bidding document and fixed 29.03.2024 for holding the e-bidding process. The e-bidding process was completed by the RP on 29.03.2024 which has not been contested by any party. The RP had duly reported the e-bidding results to the CoC in the 14th CoC meeting held on 30.03.2024 and requested the CoC members to deliberate on the plan. The CoC directed the RP to call the final plan after incorporating the e-bidding amount and to put it on vote on 03.04.2024. Subsequently, in the 15th CoC meeting held on 02.04.2024, the CoC had again deliberated on the feasibility and viability of the resolution plan and directed the RP to call for further negotiation with the PRAs and seek revised plan from the by 03.04.2024. Accordingly, the RP had opened the e-voting platform on 04.04.2024. In this e-voting process which ended on 08.04.2024, the plan of Parth was approved by the CoC with a majority of 84.52%. Further, the contention of erstwhile RP is that the amended CIRP Regulation 39(3)(B) makes it clear that the resolution plan which receives the

highest vote is to be considered as approved and there is no mandatory requirement to use the evaluation matrix to identify the best resolution plan.

19. For clarity we may refer to Regulation 39(3)(B) of CIRP Regulation which is as reproduced below:

Regulation 39. Approval of resolution plan.

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

*(b) [***]; and*

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) The resolution professional may, if envisaged in the request for resolution plan-

(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or

(b) use a challenge mechanism to enable resolution applicants to improve their plans.

(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).

(2) The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: -

(a) preferential transactions under section 43;

(b) undervalued transactions under section 45;

(c) extortionate credit transactions under section 50; and

(d) fraudulent transactions under section 66,

and the orders, if any, of the adjudicating authority in respect of such transactions.

(3) The committee shall-

(a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;

(b) record its deliberations on the feasibility and viability of each resolution plan; and

(c) vote on all such resolution plans simultaneously.

(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:

Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:

Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

In the given circumstances, the RP cannot be blamed for having breached the IBC for the CoC to have approved the resolution plan of Parth with requisite majority share which action was taken by the CoC in the exercise of its

commercial wisdom. We also find that the erstwhile RP has acted in deference to the wisdom of the CoC which is in line with the well settled legal precept of attaching paramount importance to the commercial wisdom of the CoC.

20. In view of the persuasive reasoning and cogent explanation offered by the erstwhile RP, we are not inclined to agree with the adverse observations made by the Adjudicating Authority on the professional conduct of the RP. The adverse remarks against the erstwhile RP-Fintech therefore deserves to be expunged.

21. We now come to the relief sought by the Financial Creditor that the voting process initiated earlier should be continued with the two PRAs instead of reinitiating the CIRP process from the stage of issue of Form-G by the new RP.

22. At this stage, it is relevant to note the submissions made before us by the new RP appointed by the Adjudicating Authority in terms of the impugned order. It was submitted that the CIRP process undertaken anew is progressing smoothly and proceeding as per timelines. It was submitted that the new RP had already received the documents/records of the Corporate Debtor from erstwhile RP-Fintech on 09.09.2024. Form-G also stands published on 14.09.2024. Fresh RFRP were also issued to PRAs on 15.10.2024. It was further stated that six PRAs, including Parth and Sanklecha, have shown their interest for submission of resolution plans. It was further added that since the ongoing CIRP proceedings are progressing smoothly as per timelines and is likely to be completed by December 2024, removal of new RP-Mr. Ravindra Kumar Goyal at this stage and reverting to the earlier voting process

would only derail the ongoing process and add to delay which would not serve any meaningful purpose.

23. We are quite mindful of the fact that maximisation of the value of assets of the Corporate Debtor and the timely resolution of the Corporate Debtor constitutes the bedrock of IBC scheme. In the present facts of the case, we find that the Adjudicating Authority has fixed a very tight time-line of 90 days from the date of impugned order for the new RP to complete the CIRP process. Moreover, the ongoing process has reached an advanced stage and the 90 days period fixed by the Adjudicating Authority is nearing an end. If the ongoing proceedings are stalled now it would be setting the clock back. This would add to delay which will only lead to further destruction of the value of the Corporate Debtor. Moreover, by inviting fresh resolution plans which has led to participation by six PRAs, the new RP has engendered sufficient competition to fetch an optimal value of the Corporate Debtor. Furthermore, since both the PRAs, namely Parth and Sanklecha who had earlier participated have been allowed to participate again with other competing PRAs in the fray, this is likely to yield more competitive resolution plan and lead to maximisation of assets. In the given facts and circumstances, we are not impressed by the rationale of the Financial Creditor to set aside the ongoing CIRP proceedings undertaken by the new RP and restore the earlier proceedings and commence voting thereon.

24. In view of the foregoing discussion, the impugned order at para 27 is modified to the extent that the observations made by the Adjudicating Authority on the performance and conduct of the RP is expunged. Rest of the

operative portion of the impugned order contained in paras 25 to 28 remain unchanged. We dispose of both the appeals on the above terms. No orders as to cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 03.12.2024

Abdul/ Harleen