

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

Company Appeal (AT) (Insolvency) No.464 of 2024

IN THE MATTER OF:

Ashdan Properties Pvt. Ltd.

...Appellant

Versus

Mamta Binani (RP of Rolta India Ltd.) & Ors.

...Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Sonam Mhatre, Mr. Akash Kakade, Mr. Darshil Thakkar, Mr. Somnath Padhan, Ms. Namrata Saraogi, Mr. Swetab Kumar, Mr. Kartik Pandey, Mr. Pawan Kaushik, Advocates.

For Respondents: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms. Gunjan Nauyar, Advocates for R1

Mr. Gautam Singh, Mr. Aditya Vaibhav Singh, Advocates for R3

Mr. Gaurav Mitra, Sr. Advocate for CoC

Mr. Sameer Pandit, Ms. Sarreh Khambati, Mr. Aman Raj Gandhi, Ms. Saloni Kumar, Mr. Devanshu Behl, Advocates.

With

Company Appeal (AT) (Insolvency) No.459 of 2024

IN THE MATTER OF:

Ashdan Properties Pvt. Ltd.

...Appellant

Versus

Mamta Binani, RP of Rolita India Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Sonam Mhatre, Mr. Akash Kakade, Mr. Darshil Thakkar, Mr. Somnath Padhan, Ms. Namrata

**Saraogi, Mr. Swetab Kumar, Mr. Kartik Pandey,
Mr. Pawan Kaushik, Advocates.**

**For Respondents: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms.
Gunjan Nauyar, Advocates for R1**

**Mr. Satwinder Singh, Mr. N.P.S Chawla, Mr. Sujoy
Datta, Mr. Vibhor Kapur, Ms. Mathai, Mr.
Aarshuya Shanda, Advocates for R3**

**Mr. Gaurav Mitra, Sr. Advocate with Ms. Neha
Bhosle, Ms. Laveena Tejwani, Advocates for CoC**

O R D E R
(Hybrid Mode)

18.03.2024: These two appeals have been filed by the same Appellant challenging the orders dated 12.02.2024 and 21.02.2024 passed by the Adjudicating Authority in I.A. No.345 of 2024 and I.A. No.624 of 2024, respectively. In Company Appeal (AT) (Ins.) No.459 of 2024, the order under challenge is order passed in I.A. No. 345 of 2024 by which order the Adjudicating Authority directed following in Para 7 and 8:

“7) Heard the Counsel, this Bench allows the Committee of Creditors to consider the Resolution Plan of the Applicant subject to condition that fresh opportunity be allowed to revise the bid to all the Resolution Applicants. The Resolution Professional is directed to file appropriate Application to seek further extension of time.

8) With the aforesaid observations and directions, the Interlocutory Application bearing IA No. 345 of 2024, is disposed of as Allowed. There would however be no order as to costs. Ordered Accordingly.”

2. In Company Appeal (AT) (Ins.) No.464 of 2024, the order under challenge is order dated 21.02.2024 passed in I.A. No.624 of 2024. In I.A. No.624 of 2024, the Adjudicating Authority issued following directions in Para 5, 6 and 7:

“5) Hence, in the interest of justice, we direct the Resolution Professional to place the Plan for the Corporate Debtor filed/to be filed by B-RIGHT REALESTATE LTD and Intervenor MGN Agro Properties Private Limited, for the consideration of the Committee of Creditors, with similar terms and conditions, in case the Committee of Creditors wants to proceed further

6) No further opportunity shall be granted to any person beyond 25.02.2024 for placing Resolution Plan before the Committee of Creditors for their Consideration, unless the Committee of Creditors considers it appropriate to extend the same; however, the period so extended by the CoC shall not be extended by more than 15 days in aggregate beyond 25.02.2024.

7) With the aforesaid observations and directions, the Interlocutory Application bearing IA No. 624 of 2024, is disposed of as allowed.”

3. The Appellant aggrieved by the aforesaid orders dated 12.04.2024 and 21.04.2024 has come up in these appeals. Appellant's case is that it underwent 33 rounds of bidding and was declared H1 and it was thereafter IA was filed by Patanjali Ayurveda Ltd. and other two applicants namely B-Right

Realestate Ltd. and MGN Agro Properties Private Limited, on whose application direction has been issued to place their Resolution Plan before CoC for consideration. It is submitted that neither Patanjali nor the other two applicants who subsequently filed applications were included in the list of Prospective Resolution Applicants (PRAs), hence, there was no occasion to issue direction to the CoC to consider their application or Resolution Plan. It is submitted that as per Regulation 39(1)(b) of the CIRP Regulation, the Applicant whose name is not included in the list of PRAs cannot be considered.

4. Order was passed in these Appeals by this Tribunal on 07.03.2024, which is as follows.

“O R D E R
(Hybrid Mode)

07.03.2024: *Shri Gaurav Mitra, learned counsel for the appearing for the CoC seeks liberty and is allowed to file an affidavit on behalf of the CoC.*

*As prayed, list this Appeal on **11.03.2024.**”*

5. An affidavit has been filed by the CoC in pursuance of our order dated 07.03.2024. In the affidavit in Para 1 and 2 following has been stated:

“1. I state that I am conversant with the facts and circumstances of the case and am able, competent and authorized to depose the same. I say that I have gone through the captioned petition, i.e. Company Appeal (AT) (Insolvency) No. 459 of 2024 and Company Appeal (AT) (Insolvency) No. 464 of 2024 ("Appeals") in

Company Appeal (AT) (Insolvency) No.459 of 2024 and 464 of 2024

detailed. The Corporate Debtor is making this Limited Affidavit in Reply to the Appeals ("Affidavit-in-Reply") pursuant to the order dated 07 March 2024 of the Hon'ble NCLAT. Hereto annexed and marked as Annexure-1 is the copy of the order dated 07th March 2024 of the Hon'ble NCLAT.

2. I say that I am filing this Limited Affidavit-in-Reply only to place on record the extract of 20 Committee of Creditors Minutes of Meeting ("CoC Meeting") held on 07th March 2024 at 12:00 noon. I state that the all the lenders forming the part of Respondent no.2 i.e. the committee of creditors were present during the 20th CoC Meeting and the quorum of the 20% CoC Meeting was complete and thereafter the meeting was commenced. In the 20th CoC Meeting, the Respondent no.2 passed a resolution and the same was approved by majority vote of the Committee of Creditors. Hereto annexed and marked as Annexure-2 is the copy of the extract of the 20th CoC Meeting."

6. The Minutes of the meeting of CoC dated 07.03.2024 has also been brought on the record where the CoC has resolved following:

"RESOLVED THAT in supersession of earlier decisions and resolution(s) passed by Committee of Creditors, within the strict timelines and with a view to maximise the value of the assets of the Corporate Debtor where addition of the new entrants and negotiation with them may delay the whole process which would not be in the interest of stakeholders, the Committee do hereby decide to consider and renegotiate only with the

existing 8 Resolution Applicants, whose names were reflected in the final list of Prospective Resolution Applicants dated 07.11.2023 and conclude the CIR Process at the earliest possible within the available timelines.

RESOLVED FURTHER THAT the Committee of Creditors hereby authorises its legal counsel to present the above, before the Hon'ble National Company Law Appellate Tribunal.”

7. We have heard Shri Ramji Srinivasan, learned senior counsel for the Appellant, Shri Gaurav Mitra, learned senior counsel for the CoC and Shri Arun Kathpalia, learned senior counsel on behalf of MGN Agro Properties Private Limited. Shri Kathpalia submitted that the CoC has earlier accepted the application submitted by the Patanjali Ayurdeva Ltd., hence, now CoC cannot take a turn and refuse to consider the application of other intervenors/ applicants.

8. We have considered the submissions of learned counsel for the parties and perused the record.

9. Regulation 39(1)(b) of CIRP Regulations, 2016 provides as follows:

“39. Approval of resolution plan..... (1B) *The committee shall not consider any resolution plan- (a) received after the time as specified by the committee under regulation 36B; or (b) received from a person who does not appear in the final list of prospective resolution*

applicants; or (c) does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1).”

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

11. Regulation 36A which provide for Invitation for Expression of Interest also empowers the CoC to modify the invitation for Expression of Interest. It is always open for the CoC to take a decision to not proceed on the Applications, EOI received and take a decision for issuance of fresh Form G and permit other applicants to participate. When no fresh Form G has been issued, it is not open for any new applicant to submit application before the Adjudicating Authority for being permitted to participate in the CIRP and submit Resolution Plan.

12. In any view of the matter, affidavit has been filed by the CoC where resolution has been brought on record that the CoC has now decided not to consider any additional new entrants and they will confine their consideration to Resolution Applicants whose names were reflected in the final list of Prospective Resolution Applicants dated 07.11.2023.

13. Learned counsel for the Appellant referred to RFRP clause 48 to submit that committee shall proceed in accordance with the procedure.

14. The Committee of Creditors having taken resolution not to consider any additional new entrants, we are of the view that impugned order dated 12.02.2024 and 21.02.2024 cannot be sustained. Both the Appeals are allowed. Orders impugned dated 12.02.2024 and 21.02.2024 are set aside. Appeals are disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/md