NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 433 of 2026

[Arising out of Order dated 21.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Court V, Mumbai Bench), in IA(PLAN)/6/2025 in C.P. (IB)/1152(MB)2023]

IN THE MATTER OF:

Consortium of Wafi Investments Ltd.
And Suhail Sameer **...Appellant**

Versus

Vishal Jain
Resolution Professional of
Green Soul Ergonomics Pvt. Ltd. & Ors. **...Respondents**

Present:

For Appellant : **Mr. Jayant Mehta, Sr. Advocate with Ms. Shraddha Deshmukh, Mr. Sanchit Singh, Mr. Sarthak Gupta, Mr. Kaustubh Khanna and Mr. Om Shetat, Advocates.**

For Respondent : **Mr. Gopal Jain, Sr. Advocate with Mr. Madhav Kanoria, Ms. Neha Shivhare and Ms. Anoushka Chauhan, Advocates for RP/R-1.**

Mr. Vishal Jain, Advocate for RP.

Mr. Krishnendu Datta, Sr. Advocate with Mr. Rahul Kumar, Advocates for R-2/CoC.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Kaustubh Rai, Advocates for Intervenors.

Ms. Pooja and Mr. Aishwarya, Advocates for Intervenors.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by the appellant challenging the order dated 21.01.2026 passed by the adjudicating authority (National Company Law

Tribunal, Court V, Mumbai Bench) disposing of the IA (Plan)/6/2025 in C.P. (IB) No.1152(MB)2023. By the impugned order, adjudicating authority observed that resolution plan reapproved by the Committee of Creditors (CoC) on 09.12.2024 is not in compliance with the provisions of law and it need to be remanded back to the CoC for the reconsideration and requisite action. Appellant who was Successful Resolution Applicant (SRA) has filed this appeal, challenging the said order.

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

i. The corporate debtor – Green Soul Ergonomics Pvt. Ltd. was admitted into Corporate Insolvency Resolution Process (CIRP) vide order dated 01.05.2024.

ii. The R-1 was appointed as an Interim Resolution Professional (IRP) who was subsequently confirmed the Resolution Professional (RP).

iii. On 09.06.2024, RP issued 'Form-G' inviting Expression of Interest (EoI). Appellant submitted EoI as a consortium consisting of Wafi Investments Ltd. (60% shareholding) and Mr. Suhail Sameer holding 40% shareholding.

iv. Provisional list of Prospective Resolution Applicant (PRA) and final list of PRA was issued in which consortium of Wafi Investments Ltd. and Suhail Sameer was one of the resolution applicants with two others namely IRIS Tech and Retail EZ Pvt. Ltd.

v. Request for Resolution Plan (RFRP) and Information Memorandum was issued to the PRAs. Appellant submitted a resolution plan dated 16.09.2024. Only 2 Resolution Applicants including the appellant and Retail EZ Pvt. Ltd. has submitted the resolution plan.

vi. The 7th CoC Meeting held on 01.10.2024, where reports were submitted by valuers appointed by the Resolution Professional (RP). There being certain objections regarding CIRP cost being deducted from financial creditor's share, appellant submitted the first Addendum to the plan on 03.10.2024.

vii. On 07.11.2024 appellant submitted second Addendum for changes/addition of clauses in the resolution plan.

viii. 10th CoC Meeting was convened on 11.11.2024, in which the plan submitted by the appellant with first Addendum and second Addendum was approved with 95.44% voting share.

ix. On 25.11.2024, appellant sent an email seeking induction of OTP Venture Funds Scheme I, appellant as an additional consortium member. RP sought clarification on the permissibility of such induction and requested submission of requisite document.

x. Revised Consortium Agreement dated 27.11.2024 was submitted by appellant were between Wafi Investment Ltd. with 60% shareholding and Mr. Suhail Sameer with 1% shareholding and OTP Venture Funds Scheme I with 39% shareholding.

xi. 11th Meeting of the CoC was held on 04.12.2024. The CoC approved the reconstitution of the consortium. Extension in the submission of Performance Bank Guarantee (PBG) was also granted for 3 working days.

xii. On 07.12.2024, the appellant submitted third Addendum to the plan. 12th CoC Meeting was convened on 09.12.2024, on which date, the CoC re-approved the resolution plan with Addendum 1, Addendum 2 & Addendum 3.

xiii. On 10.12.2024, RP filed an application being I.A. Plan 6/2025 seeking approval of the resolution plan of the consortium of Wafi Investments Ltd. and Suhail Sameer and OTP Venture Funds Scheme I.

xiv. On 03.06.2025, adjudicating authority directed the consortium of Wafi Investments Ltd., Suhail Sameer and OTP Venture Funds Scheme I to file a detailed affidavit clarifying the necessity for adding OTP Venture Funds Scheme I. An affidavit was filed on 04.07.2025. Adjudicating authority after hearing the parties passed the impugned order 21.01.2026 holding that plan once approved cannot be re-approved by CoC by adding a third new Member to the consortium.

xv. Resolution plan was held to be not in compliance with Section 30(2)(e) & (f). In paragraphs 63 & 64, adjudicating authority held:

> *"63. The above judgements appropriately apply to the present case. Further from a bare perusal of the above regulations and provisions of IBC we also note that it is nowhere mentioned in the Regulations or the provisions of IBC that a Resolution Plan once approved*

can be reapproved by the CoC by adding a third and new member to the Consortium. Further, the Resolution Plan which was reapproved by the CoC on 09.12.2024 is not in compliance with Section 30(2)(e) & (f) of the Code and in violation of Regulation 36(1A)(a), 39(1), 39(1B)(a), 39(1B)(b), 36B(7), 39(3) of the IBBI (CIRP) Regulations, 2016.

64. In light of the above discussions and the provisions of law, it is held that the Resolution Plan approved by the CoC on 09.12,2024 is not in compliance of Section 30(2)(e) & (f) of the Code and is in violation of Regulation 36(1A)(a), 39(1), 39(1B)(a), 39(1B)(b), 36B(7), 39(3) of the CIRP Regulations, 2016 and also certain clauses of its own RFRP and therefore, it needs to be remanded back to the CoC for their reconsideration and requisite action in light of the above observations within 60 days from the date of this order, which may be considered as time extended in CIRP of the Corporate Debtor. Directed accordingly."

xvi. Aggrieved by the order, this appeal has been filed.

3. We have heard learned Sr. counsel Mr. Jayant Mehta along with Ms. Shraddha Deshmukh appearing for the appellants, learned Sr. counsel Mr. Gopal Jain appearing for the Resolution Professional (RP) as well as learned Sr. counsel Mr. Krishnendu Dutta appearing for the CoC and learned Sr. counsel Mr. Abhijeet Sinha along with Ms. Pooja Mahajan appearing for the intervenors, who were also Resolution Applicant in the CIRP Process.

4. Learned Sr. counsel Mr. Jayant Mehta appearing for the appellant submits that adjudicating authority committed error in not approving the resolution plan as approved on 09.12.2024. It is submitted that RFRP's Clause 1.7.7 (f) provided for permitting change in the consortium with the approval of the CoC. In the present case, CoC has granted the approval to change in the consortium by inducting OTP Ventures Fund Scheme I as

additional Member of the consortium which action was in accordance with the RFRP and cannot be said to be impermissible. It is submitted that Suhail Sameer, who was one of the Members of the consortium was also promoter of the OTP Ventures Fund Scheme I and addition of OTP Ventures Fund Scheme I as one of the consortium Members does not violate any provisions of RFRP and the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (for short the 'CIRP Regulations, 2016'). Induction of OTP Ventures Fund Scheme I enhanced financial robustness, strategic depth and implementation capability. Appellant has given financial offer of Rs.52 crore which was much more than liquidation value of the corporate debtor. The OTP Ventures Fund Scheme I was fully eligible under Section 29A and CoC being satisfied by the eligibility of OTP Ventures Fund Scheme I granted its approval of induction. The induction of OTP Ventures Fund Scheme I no stakeholder was going to adversely affected nor there is any change in financial offers given in the resolution plan. The change was permitted by RFRP in the consortium, no exception can be taken for addition of OTP Ventures Fund Scheme I. Adjudicating authority committed error in not approving resolution plan submitted by the appellant.

5. Learned counsel appearing for the RP refuting the submissions of the appellant submits that appeal filed by the appellant deserves to be dismissed. RP subsequent to the order dated 21.01.2026 has issued information memorandum to PRAs in the final list. CoC on 19.02.2026 decided to reissue RFRP and run the fresh CIRP by inviting resolution plans of all legible PRAs to ensure fresh, transparent and predictable CIRP Process. It is submitted

that in pursuance of fresh process, appellant and other 2 PRAs have resubmitted its resolution plan. Appellant having actively participated in the renewed process, the present appeal need to be dismissed. The resolution plan once approved is binding it cannot be modified either by the Resolution Applicant or the CoC. There cannot be any change in the composition of Resolution Applicant after the approval of the resolution plan by the CoC.

6. Learned counsel for the CoC submits that CoC has chosen to reissue RFRP, where appellant is participating, the decision to reissue lies in the domain of commercial wisdom. Appellant has submitted resolution plan on 09.03.2026 in the terms of the reissued RFRP. Appellant now is estopped from challenging the process.

7. Learned counsel for the parties have placed reliance on the various judgments of this Tribunal and Hon'ble Supreme Court which we shall notice hereinafter.

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

9. From the facts as noted above and submissions made by the counsel for the parties, the issue which has emerged for consideration in this appeal is as to whether after approval of the resolution plan by the CoC, the consortium whose plan was approved can change its composition by inducting a new member. Learned counsel for the appellant to support his submission that it is permissible under the RFRP to change the composition of constitution with the approval of CoC, CoC has placed reliance on Clause

1.7.7 (f) of the RFRP. From the facts as noted above, it is clear that in the final list of PRAs, the consortium of Wafi Investments Ltd. and Suhail Sameer who was one of the Resolution Applicants who had also submitted the plan on 16.09.2024. In the discussion of the 8th CoC Meeting held on 16.10.2024 certain issues were raised by the Member of the CoC regarding the payment of CIRP cost. First Addendum to the plan was submitted by the consortium on 03.10.2024 which Addendum was claimed to have been submitted pursuant to direction given by RP to amend certain clauses of RP. The second Addendum dated 07.11.2024 was submitted by the consortium pursuant to directions of the RP with the second Addendum contained certain amendment in the clauses with respect to payment of CIRP cost which was proposed to be paid from cash balance of the corporate debtor and if it is not sufficient, there is an unpaid CIRP cost will be paid by the Resolution Applicant if required. First and second Addendum along with the resolution plan submitted by the appellant came to be considered in the 10th CoC Meeting held on 11.11.2024. On the basis of voting on the plan, the resolution plan of the appellant with first and second Addendum came to be approved by CoC with 95.44% vote shares. It was on 25.11.2024 email was sent by appellant desiring to add one addition member in the consortium with OTP Ventures Fund Scheme I. RP after asking certain information and documents has placed the matter before the CoC and in 11th CoC Meeting on 04.12.2024, the CoC approved the reconstitution of the consortium by adding OTP Ventures Fund Scheme I. It was thereafter third Addendum was approved on 07.12.2024 by the consortium where shareholding was changed, Wafi Investments Ltd. being

60%, OTP Ventures Fund Scheme I being 39% and Suhail Sameer being 1%. In the 12th CoC Meeting held on 09.12.2024, resolution plan was re-approved by Addendum 1, Addendum 2 & Addendum 3, which was approved with 82.06% vote shares and it was thereafter the application was filed by the RP for approval of the plan being application I.A./6/2024.

10. Adjudicating authority in the impugned order has found the resolution plan as re-approved on 09.12.2024 being contrary to provisions of Section 30(2)(e) and violation of Regulations. Adjudicating authority had held that there is a procedural violation of the RFRP since after approval of the resolution plan Letter of Intent (LoI) was not issued within one day and the Performance Bank Guarantee (PBG) which was required to be paid within three working days was not done. In paragraph 49 of the order, following has been observed:

> *"49. However, it is noted from the RFRP clause 1.11 which states that, "Receipt of Performance Bank Guarantee from RA and Issuance of Letter of Intent ("Lol") by the RP or CoC - Lol shall be issued within one working day of approval of plan by the CoC, and PG to be submitted within three (3) working days of issuance of LoI". In the present case, there exists an unexplained gap of 14 days between the date of approval of the Resolution Plan and the Original Consortium's email dated 25.11.2025 seeking inclusion of OTP Ventures. This lapse raises a pertinent question as to why the Applicant failed to issue the LoI to the Original Consortium within the mandated one-day period following the plan approval on 11.11.2024 and why within 3 working days the Original Consortium did not provide Performance Bank Guarantee. Accordingly, it is evident that the procedural requirements under the RFRP were violated and not duly complied with."*

11. Adjudicating authority also took the view that provisions governing the invitation from EoI and RFRP makes it clear that it does not intend to permit neither explicitly allowed any change in the composition of consortium particularly after approval of the resolution plan. In paragraphs 52 & 53, following was held:

> *"52. Also, a harmonious reading of the provisions governing the Invitation for EOI and the RFRP makes it clear that the legislature did not intend to permit and neither it explicitly allows any change in the composition of a consortium, particularly after approval of the resolution plan as the reconstituted consortium is a different person under law than the original consortium. Thus in the present facts the above regulations have been violated and the clauses of RFRP have been misused and violated.*
>
> *53. It is further noted that pursuant to this Tribunal's Order dated 03.06.2025, directing the Original Consortium and the CoC to file an affidavit explaining the basis for inducting OTP Ventures into the Consortium, no satisfactory or cogent justification has been provided, However, it was submitted that the needed funds would be brought by a new consortium partner, in this regard it is noted that the net worth of each members of the Consortium (mentioned in para no.29 above) shows that Wafi Investment Ltd's net worth is Rs.197,16,86,500/-, Mr. Suhail Sameer's net worth is Rs. 26,28,94,90,944/-, OTP Ventures Scheme's net worth is merely Rs.19,35,00,000/-. Since the net worth of Wafi Investment and Mr. Suhail Sameer individually is more and far higher than the requirement of funds for the Resolution Plan, such submission does not justify the addition of OTP Ventures Scheme in the Original Consortium for infusion of funds. Jurisprudence under the IBC consistently requires that any modification to a consortium, that too for implementation of the plan at the preapproval stage of the plan, must be supported by transparent and bona fide reasons— such as bridging gaps in technical, financial, or sector-specific expertise. In this respect it is noted that OTP Ventures Scheme is an Alternative Investment Fund. In no respect can an investment fund be expected to possess*

technical expertise in on furniture products business in which the Corporate Debtor is. In the absence of a credible explanation, the proposed inclusion appears arbitrary and raises concerns regarding the possibility of extraneous motives, contrary to the objectives of the Code."

12. Further adjudicating authority referring to Regulation 39(1B)(a) of the CIPR Regulations, 2016 held that CoC was not to consider any resolution plan submitted after timeline specified in Regulation 36B or by a person who was not included in the list of resolution applicant. We may refer to Regulation 39(1B) which is 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).]]"

13. As noted above, the principal issue to be answered in the appeal is as to whether after approval of the resolution plan submitted by consortium Members who were part of the final list of the PRAs whether the consortium can be allowed to be changed. In the above context, we need to notice certain clauses of the RFRP. Copy of the RFRP dated 07.08.2024 has been brought on the record as Annexure A-13 to the appeal. In the definition clause, resolution applicant(s) has been defined in following words:

""Resolution Applicant(s)" *or* ***"RAs"*** *means, a Person who has submitted an EOI along with the affidavit in relation to declaration of eligibility under section 29A of the IBC, shortlisted by the Resolution*

Professional, in consultation with the Committee of Creditors of Green Soul Ergonomics Private Limited and invited to submit the Resolution Plan(s)."

14. Resolution plan process is defined in following words:

> *""**Resolution Plan Process"** means the process set out in this RFRP for submission, evaluation and selection of Resolution Plan and activities in relation thereto."*

15. Clause 1.1 deals with resolution plan process. Clause 1.1.9 of the RFRP provides as follows:

> *"1.1.9 A resolution plan, once approved, must be implemented. In furtherance of this, the Insolvency and Bankruptcy Board of India has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019 on 24th January 2019, to discourage persons, other than genuine, capable and credible resolution applicants, to submit resolution plans."*

16. Performance security as contemplated by Regulation 36B(4A) is required to be submitted within the time specified. Clause 1.7 deals with the preparation and submission of the resolution plan. Clause 1.7.7 is as follows:

> *"1.7.7 In case of submission of the Resolution Plan by a consortium (whether incorporated or not), the Resolution Plan along with all requisite documents required to be submitted pursuant to this RFRP shall be signed by an authorized signatory of the lead member of such consortium. The authorized signatory shall have a designation of no less than a director of the lead member of the consortium supported by evidence of such authority by way of a board resolution authorizing such director. The authorize signatory may also be a person holding a designation equivalent to a key managerial personnel (as defined under the Companies Act, 2013) authorized in terms of a power of attorney in his favor executed under the authority of a board resolution of such lead member of the consortium. In event the Resolution Applicant(s) is*

a consortium, it shall comply with the following requirements:

a. A Person cannot be part of more than one consortium submitting Resolution plans for Green Soul Ergonomics Private Limited

b. Consortium shall submit the copy of consortium agreement entered into between the consortium members, setting out the respective obligations of the consortium members, and shall be in accordance with the RFRP.

c. Each member of the consortium shall nominate and authorize the Lead Member to represent and act on behalf of the members of the consortium, receive instructions and submit the Resolution Plan on behalf of all the consortium members including prepare and submit all related documents / clarifications and to negotiate with the members of the CoC, for and on behalf of the consortium, and to agree and finalize the terms and conditions of the Resolution Plan.

d. The Lead Member shall be the single point of contact on behalf of the consortium with the Resolution Professional, Resolution Process Advisor and the CoC in connection with all matters pertaining to the consortium; and if an intimation of approval is issued to such consortium, then such intimation of approval shall be issued to the Lead Member on behalf of the consortium.

e. In the event that a consortium is selected as the Successful Resolution Applicant(s) by the CoC, the consortium shall identify/incorporate a Special Purpose Company (being a Company incorporated under the Companies Act, 2013) ***("SPC").*** *SPC and/or Green Soul Ergonomics Private Limited (as the case may be) shall enter into the relevant Definitive Agreements and shall implement the Approved Resolution Plan. The Consortium shall collectively hold entire share capital and the ownership interest in the SPC with a minimum lock in period for the* ***term of the Resolution Plan.*** *The SPC shall contribute, hold and maintain* ***100%*** *of the shares and voting rights of Green Soul Ergonomics Private Limited with a minimum lock in period for the* ***term of the***

Resolution Plan, *and control the management and affairs of Green Soul Ergonomics Private Limited*

f. No change in consortium shall be allowed without prior approval of the Financial Creditor (which shall be banks and financial institutions which are Financial Creditors to Green Soul Ergonomics Private Limited at such time, if any) by requisite majority required under IBC.

g. No change in shareholding or Control of the SPC shall be permitted without prior approval of Financial Creditors (which shall be banks and financial institutions which are Financial Creditor to Green Soul Ergonomics Private Limited at such time, if any) by requisite majority required under IBC. Provided that inter-se transfer of shareholding shall be permitted with prior intimation to the Financial Creditor (which shall be banks and financial institutions which are Financial Creditor to Green Soul Ergonomics Private Limited at such time, if any).

h. There shall be no change in SPC's shareholding in Green Soul Ergonomics Private Limited or change in Control of Green Soul Ergonomics Private Limited without prior approval of the Financial Creditors (which shall be banks and financial institutions which are Financial Creditor to Green Soul Ergonomics Private Limited at such time, if any).

i. All the members of the consortium shall be jointly and severally liable in respect of obligations under the RFRP, the Resolution Plan and for the implementation of the Approved Resolution Plan.

j. All the members of the consortium shall issue a power of attorney in the format provided in herein (Appendix 5) for appointing the Lead Member of the consortium.

k. In an event any member of the consortium is disqualified under this RFRP, a decision on the disqualification of the other members of the consortium shall be at the discretion of the CoC.

l. No dispute amongst the constituents of the consortium (including the Lead Member), shall

affect the obligations of the consortium and / or the members of the consortium under this RFRP and the Resolution Plan."

17. Clauses (a) to (l) has referred in Clause 1.7.7 are requirement which has to be complied by the resolution applicant when it is a consortium. Sub-clause (f) on which much reliance is placed by the appellant is as follows:

"f. No change in consortium shall be allowed without prior approval of the Financial Creditor (which shall be banks and financial institutions which are Financial Creditors to Green Soul Ergonomics Private Limited at such time, if any) by requisite majority required under IBC."

18. Clause 1.1.8 deals with Earnest Money Deposit (EMD) to be submitted along with the resolution plan. Clause 1.9 deals with Performance Guarantee Security. The question to be answered is as to whether the Clause 1.7.7 (f) which permits change in the consortium with the approval of the CoC is required to be made, can be done even after approval of the resolution plan. The present is a case where plan submitted by consortium of Wafi Investments Ltd. and Suhail Sameer who had shareholding of 60% & 40% in the consortium came to be approved with first and second Addendum on 11.11.2024 in the 10th CoC Meeting with 95.44% vote shares. Request for addition of one more consortium Member was received from appellant on 25.11.2024 after approval of the plan. CoC has permitted the reconstitution vide its decision dated 04.12.2024 and subsequently re-approved the resolution plan with first, second and third Addendum on 09.12.2024.

19. Clause 1.7.7(f) finds place in the RFRP under the heading **"Resolution Plan Process".** Clause1.7.7 (f) which permits change in the consortium by

approval of the CoC has to take place prior to approval of the resolution plan. In event, it is accepted that change in the consortium is permitted after approval of the resolution plan it shall not be in accordance with the various provisions of the RFRP and the scheme of resolution plan approval as delineated by the CIRP Regulations, 2016. When the resolution plan is submitted by a consortium, eligibility of the Members of consortium and their financial capacity, viability and feasibility of the plan are all examined on the basis of credentials of the Members of the consortium. RFRP also contains the evaluation matrix in Appendix I which Appendix I is as follows:

"APPENDIX 1

EVALUATION MATRIX

S. No.	*Parameter and Score Matrix*	*Max Score*
	Quantitative Parameters (A)	
1	*Upfront Cash Recovery as per Resolution Plan*	*50*
2	*NPV of deferred cash recovery (Rate of discounting 9%)*	*25*
3	*Term / Tenure of Resolution Plan*	*25*
	Total weight of Quantitative Parameters (A) 80% - Total Score 100%	*100*

S. No.	*Parameter and Score Matrix*	*Max Score*
	Quantitative Parameters (B)	
1	*Experience of Resolution Applicant / Group in Same Business*	*25*
2	*Financial Strength of Resolution Applicant determined by RP in consultation with CoC*	*75*
	Total Weight of Qualitative Parameters (B) 20% - Total Score 100%	*100*

Scores allotted to each RA with Quantitative Parameters (A) will be reduced to 80% & with

Qualitative Parameters (B) will be reduced to 20%.

Total Score of the Resolution Applicant (A+B) = 100%

Sd/-

Vishal Ghisulal Jain"

20. Marks are allocated on the experience of Resolution Applicant group in same business and financial strength of Resolution Applicant which are determined by the RP in consultation with the CoC. When composition of consortium is changed subsequent to approval of resolution plan, it cannot be said that evaluation matrix for finding feasibility and viability of the resolution plan including implementability of the plan shall remain same as was of earlier consortium Member. When plan is submitted by consortium, each Member has its own obligations. We may refer to Clause 1.7.7(b) & (e) which is as follows:

> *"1.7.7 In case of submission of the Resolution Plan by a consortium (whether incorporated or not), the Resolution Plan along with all requisite documents required to be submitted pursuant to this RFRP shall be signed by an authorized signatory of the lead member of such consortium. The authorized signatory shall have a designation of no less than a director of the lead member of the consortium supported by evidence of such authority by way of a board resolution authorizing such director. The authorize signatory may also be a person holding a designation equivalent to a key managerial personnel (as defined under the Companies Act, 2013) authorized in terms of a power of attorney in his favor executed under the authority of a board resolution of such lead member of the consortium. In event the Resolution Applicant(s) is a consortium, it shall comply with the following requirements:*
>
> > *b. Consortium shall submit the copy of consortium agreement entered into between the consortium members, setting out the respective obligations of the consortium members, and shall be in accordance with the RFRP.*
> >
> > *e. In the event that a consortium is selected as the Successful Resolution Applicant(s) by the CoC, the consortium shall identify/incorporate a Special*

> *Purpose Company (being a Company incorporated under the Companies Act, 2013)* ***("SPC").*** *SPC and/or Green Soul Ergonomics Private Limited (as the case may be) shall enter into the relevant Definitive Agreements and shall implement the Approved Resolution Plan. The Consortium shall collectively hold entire share capital and the ownership interest in the SPC with a minimum lock in period for the* ***term of the Resolution Plan.*** *The SPC shall contribute, hold and maintain* ***100%*** *of the shares and voting rights of Green Soul Ergonomics Private Limited with a minimum lock in period for the* ***term of the Resolution Plan,*** *and control the management and affairs of Green Soul Ergonomics Private Limited*

21. The respective obligation of consortium Members who submitted the plan is relevant factor after the approval of resolution plan by induction of new Member composition of consortium has changed since new Member has been allocated shareholding of 39% and Suhail Sameer who had earlier 40% shareholding is now reduced to 1% shareholding. Implementation of plan thus is now sought to be undertaken by a new consortium which was never contemplated in the resolution plan.

22. Learned counsel for the appellant in support of his submissions has submitted that commercial wisdom of the CoC in approving the resolution plan cannot be interfered with by the adjudicating authority, since the adjudicating authority has been given a very limited scope for interference that is when the plan is not in accordance with the Section30(2) of the IBC. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in ***'Pratap Technocrats Pvt. Ltd. & Ors.' Vs. 'Monitoring Committee of Reliance Infratel Ltd. & Anr.'*** reported in **[(2021) 10 SCC 623].** It was held by the Hon'ble Supreme Court that

jurisdiction which is confirmed by the adjudicating authority in regard to approval of the resolution plan is statutory structure and is limited to determine whether requirement which are specified in Section 30(2) of the IBC have been fulfilled. In paragraphs 28 & 39 of the judgment, following was laid down:

> ***"28.*** *The function of the adjudicating authority under Section 31 is to determine whether the resolution plan "as approved by the CoC" under Section 30(4) "meets the requirements" under Section 30(2). If the adjudicating authority is satisfied that the resolution plan, as approved, meets the requirements under sub-section (2) of Section 30, "it shall by order approve the resolution plan" which shall then be binding on the corporate debtor and all the stakeholders, including those specifically spelt out:*
>
> > *"**31. Approval of resolution plan**.—(1) If the adjudicating authority is satisfied that the resolution plan as approved by the Committee of Creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan."*
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> ***F.3. Exercise of jurisdiction***
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> ***39.*** *Mr Dushyant Dave, learned Senior Counsel, sought to place emphasis on the abovementioned observations in para 73 of the decision in Essar Steel India Ltd. [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] to submit that the decision of the CoC must reflect that it has taken into account the need to:*
>
> > *(i) maximise the value of assets of the CD; and*

(ii) adequately balance the interest of all stakeholders, including of operational creditors.

The submission of the learned counsel is that in the present case, there was a failure to maximise the value of the assets and to balance the interests of the stakeholders."

23. Learned counsel for the appellant has also relied on paragraph 37 of the judgment, which is as follows:

***"37.** The above principles have been re-emphasised and taken further by a three-Judge Bench in Essar Steel India Ltd. [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] The Court, speaking through R.F. Nariman, J., held : (SCC p. 593, para 73)*

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. 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."

24. There cannot be any dispute to the proposition laid down by the Hon'ble Supreme Court in the above cases. The jurisdiction of the adjudicating authority to interfere with the commercial wisdom of the CoC is limited. Adjudicating authority in the impugned order has also noticed and come to conclusion that resolution plan violates Section 30(2)(e) of the IBC also which provide that plan does not contemplate provisions of the law to the time being enforced.

25. In the 12th CoC Meeting held on 12.12.2024, the resolution plan which came to be re-approved was resolution plan with Addendum1, Addendum 2 and Addendum 3 has to be treated as resolution plan submitted by reconstituted consortium. Reconstituted consortium was not part of the final list of PRAs, the same cannot be approved. Regulation 39 of the CIRP Regulations, 2016, which deals with approval of resolution plan. We having already found that Clause 1.7.7(f) which permit change of the composition a consortium can only be prior to approval of the resolution plan. The said clause which has been relied by the appellant for change in the composition of consortium subsequent to the approval of the resolution plan on

11.11.2024 does not help the appellant. Thus, re-approval of resolution on 09.12.2024 was contrary to the RFRP.

26. Learned counsel for the appellant placing reliance on Clause 1.7.7(g) submits that even after approval of the resolution plan, change in shareholding or control of the Special Purpose Company (SPC) is permitted, SPC as contemplated in Clause 1.7.7(e) which is to be identified/incorporated after the approval of the plan which is submitted by consortium, the RFRP itself contemplate implementation of plan by SPC in case of consortium and change in shareholding or control of SPC is permitted which is subsequent to the approval of resolution plan, hence change in consortium can also be permitted after approval of plan. The Clauses 1.7.7(e) & 1.7.7(g) cannot be read to mean that after approval of the plan, change in composition of the consortium is also permissible. The change in shareholding or control of the SPC is permitted which SPC is identified or incorporated after approval of the resolution plan, the said explicit provision is for purpose and object but reliance on said clauses to hold that change in composition of consortium is also permissible after approval of the resolution plan cannot be accepted.

27. It is to be noticed that RFRP which is approved by the CoC is provided for in Regulation 36B of the CIRP Regulations, 2016, in the resolution process all steps in the process have to be complied with. When we read RFRP as well as the CIRP Regulations, 2016, there is no indication that change in composition of consortium is permissible after a plan is approved by the CoC. The submission of the appellant cannot be accepted that change in

composition of consortium is permissible even after approval of the resolution plan.

28. Learned counsel for the respondent has placed reliance on the judgment of this Tribunal in ***'UV Asset Reconstruction Company Limited & Anr.' Vs. 'Aircel Ltd. through its Monitoring Committee'*** in **[Comp. App. (AT) (Ins.) No.333/2024],** where appellant had filed an application for substituting another entity in its place, which application was rejected. Adjudicating authority has rejected the application against which the appeal was filed which was dismissed by this Tribunal. In paragraphs 2, 3 & 5 following was held:

> *"2. Learned counsel for the Appellant submits that in view of the circular issued by the Reserve Bank of India, Asset Reconstruction Companies cannot be Resolution Applicant unless they have achieved certain net worth which the present Appellant has not. Reserved Bank of India has also issued show cause notice against the Appellant which matter has been taken before the Hon'ble Delhi High Court which is pending consideration. Learned counsel for the Appellant submits that the Appellant cannot be Resolution Applicant in view of the clouds on the eligibility of the Appellant, hence, he has prayed for substituting another Resolution Applicant.*
>
> *3. The Adjudicating Authority after hearing learned counsel for the Applicants as well as learned counsel for the Monitoring Committee took the view that new Resolution Applicant cannot be brought in nor can be substituted with another Resolution Applicant and rejected the application. Learned counsel for the Appellant submits that the Appellant cannot be Resolution Applicant in view of the clouds on the eligibility on the Appellant, hence, the Adjudicating Authority ought to have been found certain via media with regard to implementation of the resolution or initiate fresh process.*

5. The present Appeal has been filed against the order by which application filed by the Appellant has been rejected and we fully agree with the reasons given by the Adjudicating Authority for rejecting the application filed by the Appellant for substituting another Resolution Applicant in place of the Appellant. When plan of the Appellant as Resolution Applicant was approved, the Adjudicating Authority rightly refused to substitute another Resolution Applicant, in which order no infirmity is found."

29. Learned counsel for the respondent has also relied on the judgment of this Tribunal in ***'M/s. Sawan Energy Limited' Vs. 'Chandra Prakash Jain & Ors.'*** in **[Comp. App. (AT) (Ins.) No.313/2024].** In the above case also in place of the Resolution Applicant it was submitted, in event, Asset Securities and Reconstruction Pvt. Ltd. another entity Westend Investment and Finance Consultancy Private Limited was permitted to be substituted by the CoC which plan was approved. The order passed by the adjudicating authority approving the plan was challenged. Paragraph 1 of the judgment reads as follows:

"1. *This Appeal by a Resolution Applicant has been filed challenging the order dated 04.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Division Bench, Court-1 by which order Adjudicating Authority while allowing IA No.764 of 2021 filed by the Resolution Professional for approval of the Resolution Plan which was submitted by the Respondent No.3- 'Invent Assets Securitization & Reconstruction Private Limited' has approved the Resolution Plan which was submitted by Respondent No.4- 'Westend Investment and Finance Consultancy Private Limited' who was permitted to be substituted in place of 'Invent Assets Securitization & Reconstruction Private Limited' with the approval of the Committee of Creditors (CoC). Adjudicating Authority by impugned order has approved the Resolution Plan of Respondent No.4, aggrieved by which order this Appeal has been filed."*

30. This Tribunal in the above case has held that plan submitted by R-4 could not be treated to be plan submitted by R-3, whose name was included in the list of PRAs. In paragraphs 28 & 29, following was held:

> *"28. The clear provision of the statute is that the Resolution Plan received from a person who does not appear in the final list of Prospective Resolution Applicants (PRAs) cannot be considered. In the present case, there is no dispute that the Respondent No.4 has never submitted a Resolution Plan and he was not included in the list of PRA. The CoC has no jurisdiction to approve the Resolution Plan treating it to be the plan of Respondent No.4 or to substitute Respondent No.4 as Resolution Applicant. The outcome of the CoC approval and filing of revised Form-H is that now the Respondent No.4 has become the SRA whose plan has been approved. The approval of the Resolution Plan of Respondent No.4 is clearly in breach of Regulation 39(1)(B).*
>
> *29. Right from Request for Resolution Plan and mandatory contents consideration of the Resolution Plan, there are different stages for reevaluation of the Resolution Plan and applicant who has not participated in any of the stages of CIRP process cannot suddenly be substituted as SRA to implement the plan of Corporate Debtor. We, thus, are of the opinion that substitution of Respondent No.4 in the Resolution Plan is contrary to the statutory scheme of the IBC read with CIRP Regulations 2016."*

31. Ultimately, this Tribunal in paragraphs 44 & 45, following was held:

> *"44. The above judgment does support the submission of the Appellant. Counsel for the Respondents sought to distinguish the above judgment on the ground that in the above case, it was after approval of the plan by Adjudicating Authority, application was filed to substitute the SRA and the present case is a case where approval by Adjudicating Authority has not yet been granted. When the SRA cannot be substituted, the above analogy shall also apply to the change of SRA after approval of the Resolution Plan by the CoC. Thus, the above judgment of this Tribunal in "UV Asset Reconstruction Company Ltd. vs. Aircel Ltd." fully*

supports the submission of the Appellant. The above judgment of this Tribunal has also been affirmed by the Hon'ble Supreme Court by its order dated 10.07.2024 in Civil Appeal (D. No.16938 of 2024).

45. In view of the aforesaid discussions, we are of the view that the Adjudicating Authority committed error in approving the Resolution Plan which was modified Resolution Plan substituting Respondent No.4 as SRA. Order of the Adjudicating Authority is unsustainable and cannot be approved."

32. Learned counsel for the appellant has also relied on the judgment of the Hon'ble Supreme Court in ***'Ramakrishna Forgings Limited' Vs. 'Ravindra Loonkar, Resolution Professional of ACIL Ltd. & Anr.'*** reported in **[(2024) 2 SCC 122],** where Hon'ble Supreme Court has reiterated the limits of jurisdiction of adjudicating authority in approving the resolution plan. In the above case, order passed by NCLT and order of this Tribunal was questioned where adjudicating authority kept the approval in abeyance and directed the official liquidator to carry out re-evaluation the assets of the corporate debtor and to provide exact figures value of the assets and exact valuation details. Appeal was filed by against the said judgment which appeal was allowed directing the NCLT to pass orders on approval application. In the above judgment, Hon'ble Supreme Court in paragraphs 30 & 31 laid down following:

"30. *Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the adjudicating authority — NCLT as also Nclat. The moot question involved is the extent of the jurisdiction and powers of the adjudicating authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the resolution plan which was sent to the adjudicating authority — NCLT for approval. Further, the statutory requirement*

of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the corporate debtor.

31.*K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] and Essar Steel (CoC) [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in Maharashtra Seamless [Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467 : (2021) 1 SCC (Civ) 799] , which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of Nclat to direct the successful resolution applicant to enhance its fund flow was disapproved of by this Court. Thus, if the CoC, including the FC(s) to whom money is due from the corporate debtor, had undertaken repeated negotiations with the appellant with regard to the resolution plan and thereafter, with a majority of 88.56% votes, approved the final negotiated resolution plan of the appellant, which the RP, in turn, presented to the adjudicating authority — NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 and 31, no interference was warranted."*

33. There cannot be any dispute to the proposition laid down by the Hon'ble Supreme Court in the above case, however the above case, order by which valuation of assets directed by adjudicating authority while putting the plan approval application in abeyance.

34. Learned counsel for the appellant has further relied on the judgment of this Tribunal in ***'Committee of Creditors of Rajesh Business and Leisure Hotels Pvt. Ltd., Through its Member, ICICI Bank Limited' Vs. 'Rajesh Business and Leisure Hotels Pvt. Ltd., Through Its Resolution***

Professional Mr. Rohit Mehra and Ors.' reported in **[(2025 SCC OnLine NCLAT 2149].** Reliance has been placed on paragraph 64. This Tribunal in paragraph 88 held following:

> ***"88.*** *We have seen earlier the resolution plan was submitted by Rare ARC who was a prospective Resolution Applicant and in the plan Check-Inn Hotels was shown as Strategic Investor. The plan was not submitted by Check-Inn Hotels, but by Rare ARC which has come out very clearly in the resolution plan. At the same time Naman was a PRA and Check-INN was its wholly owned subsidiary. Two PRAs were permitted to form a consortium, nomination of a subsidiary of the one of the eligible bidders is a standard and approved practice which has been upheld by courts. The consortium was formed with the view to implement the resolution plan as an Asset Reconstruction Company cannot participate in the equity of CD as provided in the master circular of the RBI. The consortium was created as an entity for implementation of resolution plan to meet the requirements under SARFESI Act which is the regulating act for ARCs and RBI is the regulator. This structure is compliant with both SARFESI and IBC."*

35. In the above case, the Court held that consortium was formed as an entity for implementation of the resolution plan. In paragraphs 92 & 93 following was laid down:

> ***"92.*** *In the present case, Check-Inn Hotels cannot be treated as an outsider when its parent, Shree Naman Developers, was in the final list of PRAs. Treating them as a single economic group aligns with the approach adopted by the Supreme Court in 'Titagarh Firema Adler S.P.A. v. Nagpur Metro Rail Corporation Ltd., (2017) 7 SCC 486', where entities within a group were considered together for purposes of eligibility. The relevant paras of the Judgment are extracted below:*
>
> > *"**37.** With regard to the satisfaction of the 1st respondent, it has been highlighted before us that the said respondent had thoroughly examined the bid documents and satisfied itself*

about the capability, experience and expertise of Respondent 2 and there has been a thorough analysis of the technical qualification of Respondent 2 by the independent General Consultant and the reports of the Appraisal and Tender Committee of the 1st respondent and also the no objection has been received from KfW Development Bank, Germany which is funding the entire project.

38. *As is noticeable, there is material on record that Respondent 2, a government company, is the owner of the subsidiary companies and subsidiary companies have experience. The 1st respondent, as it appears, has applied its commercial wisdom in the understanding and interpretation which has been given the concurrence by the Committee concerned and the financing bank. We are disposed to think that the concept of "government-owned entity" cannot be conferred a narrow construction. It would include its subsidiaries subject to the satisfaction of the owner. There need not be a formation of a joint venture or a consortium. In the obtaining fact situation, the interpretation placed by the 1st respondent in the absence of any kind of perversity, bias or mala fide should not be interfered with in exercise of power of judicial review. Decision taken by the 1st respondent, as is perceptible, is keeping in view the commercial wisdom and the expertise and it is in no way against the public interest. Therefore, we concur with the view expressed by the High Court."*

93. *In our considered view, the induction of Check-Inn Hotels into the consortium of Rare ARC was not in violation of Regulation 39(1B). The purpose of the regulation was served since the identity of the strategic investor was disclosed, verified, deliberated upon, and approved by the CoC in a transparent manner. The contractual flexibility under Clause 15(1)(xi) of the RFRP was exercised consistently with the statutory framework and did not undermine it. Accordingly, the objection raised by Sankalp on this ground fails."*

36. In the above case, the entity was already indicated in the plan as strategic investor. In the above background, the Court set aside the order of

the adjudicating authority rejecting the resolution plan. Judgment of this Tribunal in the above case was on its own facts.

37. Learned counsel for the appellant has also relied on the judgment of this Tribunal in ***'Vistara ITCL (India) Ltd.' Vs. 'Torrent Investments P. Ltd. & Ors.'*** reported in **[2023 SCC OnLine NCLAT 110].** Reliance has been placed on paragraphs 52 & 53 which is as follows:

> ***"52.*** *The concept of negotiation, thus, itself contemplate dialogue between one party with another party for the purpose of reaching an understanding or completing a bargain. The concept of negotiation and statutory scheme negate the submission of Shri Rohatgi that regulation 39(1A) has substituted the earlier acts of negotiations, which used to be undertaken by the CoC.*
>
> ***53.*** *There is one more reason due to which interpretation suggested by Mr. Rohatgi cannot be accepted. Reference to regulation 39(1A) contemplate modification of the resolution plan and improvement of the resolution plan at the instance of the resolution applicant. The above modification or improvement in the plan cannot be confined only to plan value, rather, it shall cover the entire plan and if it is held that any modification or improvement is not permissible after conclusion of process under regulation 39(1A), it shall become handicap in successful resolution of the corporate debtor, since the CoC may opine that certain modification and improvement in plan are necessary for successful resolution of the corporate debtor. Thus, we are of the considered opinion that regulation 39(1A) does not prohibit CoC from negotiating with the resolution applicants or asking the resolution applicants to further increase the plan value."*

38. What was held by this Tribunal in the above case that CoC is not prohibited under Section 39(1A) from negotiating with the Resolution Applicant or asking the Resolution Applicant to further increase the plan value. There can be no dispute to the proposition of law that under the

direction of the CoC Resolution Applicant be asked to amend the resolution plan. In the present case, amendment in the composition of consortium was sought by the appellant by email dated 25.11.2024 after approval of the resolution plan. The said amendment in the consortium was not at the instance of the CoC. The above judgment of this Tribunal does not help the appellant in any manner.

39. To the same effect is the another judgment of this Tribunal relied by the appellant in ***'Sagar Stone Industries' Vs. 'Sajjan Kumar Dokania & Ors.'*** reported in **[2025 SCC OnLine NCLAT 629],** where this Tribunal in paragraph 8 has reiterated that Regulation 39(1A) does not bind the CoC and CoC has unfettered rights to ask for revision of plan. Paragraph 8 of the judgment is as follows:

> ***"8.*** *Regulation 39(1A) is a regulation which provides that Resolution Professional shall not permit modification to resolution plan more than once, which regulation, however, does not bind the CoC and the CoC has unfettered right to ask for revision of plan or negotiate with all Resolution Applicants once or more. In so far as holding challenge mechanism, it is an enabling mechanism for the CoC for value maximisation and not holding challenge mechanism cannot be a ground on which approval of plan can be questioned."*

40. Present is not a case where CoC had directed the appellant to change the constitution of consortium by adding one Member. The request for change in the consortium emanated from the appellant vide its email dated 25.11.2024 subsequent to the approval of the plan on 11.11.2025, thus the above judgment of this Tribunal does not come to any aid of the appellant.

41. We thus are of the view that impugned order passed by the adjudicating authority remanding the resolution plan for reconsideration cannot be interfered with but for the reasons as indicated above. We have been informed that after the impugned order, all Resolution Applicants have been given opportunity to again participate in the process. It shall be open for the appellant to participate in the process.

42. We thus do not find any good ground to interfere with the impugned order. The appeal is dismissed with the above observations.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

23rd April, 2026

himanshu