

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No.1496 of 2024

(Arising out of Order dated 11.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench) in IA No.4219/2022 in Company Petition No.IB-1058 (ND)/2018)

IN THE MATTER OF

Prateek Jain

C-27, TF-4, Surya Nagar,
Ghaziabad, UP – 201011

...Appellant

Versus

1. Mr. Anurag Nirbhaya,

Resolution Professional,
Registered Office:
204, Sagar Plaza, Plot No. 19,
District Centre, Laxmi Nagar,
New Delhi – 110092

...Respondent No.1

2. M/s. Red Apple Buyers Welfare Association, SRA

Society Registered under
the Societies Registration Act, 1908
Registered Address:
AE-10, 3rd Floor, Tagore Garden,
New Delhi-110027

...Respondent No. 2

3. M/s. Windsor Paradise Heights Pvt. Ltd.

Registered Address:
B-4/3035, Vasant Kunj,
New Delhi-110070

...Respondent No. 3

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Utsav Saxena, Mr. Aditya Ladha, Mr. Navay Huria and Mr. Harsh Gurbani, Advocates

For Respondent : Mr. Ashutosh Gupta, Mr. Ajitesh Kumar, Ms. Kritika Mehrotra, Advocates for R1
Mr. Abhishek Naik, Ms. Gulafsha Kureshi and
Ms. Harshita Chaturvedi, Advocates for R2 and R3.
Mr. Sumant Batra, Mr. Mrinal Harshvardhan,

Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Aditya Jain, Ms. Rituparna Patra and Mr. Abhinav, Advocates

JUDGEMENT

Per Justice Sharad Kumar Sharma, Member (Judicial)

The challenge in the instant Company Appeal, is to the impugned Order of 11.06.2024, as it has been passed by the learned NCLT, New Delhi Bench, in a proceedings those were held under Section 30(6) to be read with Section 31 of I&B Code of 2016, along with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2. The effect of the impugned Order had been that the learned Tribunal after considering the clarificatory letter dated 02.06.2022 in relation to the approved resolution plan submitted by M/s. Red Apple Buyers Welfare Association, had further proceeded to approve the resolution plan, by the impugned Order, resulting into the I.A. No.4219/ND/2022 being allowed.

3. The appellant questions the approval of the resolution plan that has been submitted by M/s. Red Apple Buyers Welfare Association i.e. respondent No.2 herein. The approval, which was carried by the COC was with 100% voting in its 18th meeting that was held on 23.05.2022. Subsequent to the modification to the resolution plan including upon consideration of the memorandum of understanding dated 08.11.2023, that was entered into with respondent No.3 – M/s. Windsor Paradise Heights Pvt. Ltd., the Ld. NCLT had approved the

modified plan despite there being significant alternation introduced post COC's approval.

4. The Ld. NCLT has proceeded to approve the resolution plan that has been submitted by respondent No.2, as it stood revised on 14.05.2022 along with the subsequent memorandum of understanding dated 08.11.2023, which was entered into between the Successful Resolution Applicant and M/s. Windsor Paradise Heights Pvt. Ltd.

5. The argument of the appellant is that since there had been a wide ranging modification, which was introduced through the memorandum of understanding including the transfer of equity and the corresponding responsibilities of the corporate debtor, to respondent No.3, the approval granted without these factors being considered by the COC, its argued that the approval of the plan contravenes the provisions of I&B Code, because of the fact that the COC's deliberation, would be constituting of material irregularity under Section 61(3)(ii) of I&B Code. Besides that, the plan contravenes, the ratio propounded by the Hon'ble Apex Court in the matters of "**M. K. Rajagopalan v. Periasamy Palani Gounder**", (2024) 1 SCC 42, which prescribes for, that COC's approval for any post approval modification, which happens to be in contravention with the resolution plan, such as pertaining to the transfer of equity and allegation of construction responsibilities, etc., would be bad in the eyes of law.

6. There had been various facets, which has been argued by the respective Counsel for the parties, but the moot question that falls for consideration before

us is that except for the appellant, the plan thus approved, has already attained finality. The question that arises for consideration is that the appellant in the capacity of admittedly being a *shareholder can maintain a company petition* as against the impugned order of granting an approval to the resolution plan. The learned Counsel for the appellant submitted that the restrictions imposed by the Judgement of “**Park Energy Pvt. Ltd. v. State Bank of India and another**” as rendered by this Tribunal in CA (AT) (CH) (Ins) No.62 of 2023, that will not operate or create an absolute bar in maintaining the company appeal, at the behest of the shareholder, as against the impugned Order of granting approval of the resolution plan and in relation thereto, the learned Counsel for the appellant had referred to yet another judgement as rendered by this Tribunal in the matters of “**Balkishan Shrikisan Baldawa vs. Agri-Tech (India) Limited and others**” as it was rendered in CA (AT) (Ins) No. 970 of 2025. He submitted that owing to the fact that the Judgement of **Park Energy Pvt. Ltd.** (supra) which has been decided by larger Bench *upon a reference* being made in Company Appeal (AT) (CH) (Ins) No.62 of 2023 due to two conflicting views of two coordinate Member Bench, since the same was considered in the subsequent Judgment of **Balkishan Shrikisan Baldawa** (supra) and the coordinate Bench has carved out an exception vide its Judgement of 15.12.2025 pertaining to an exercise of fraud or collusion between the parties for initiation of insolvency proceedings. There could still be an exception where a proceeding in a company petition or in a company appeal would be maintainable, even at the behest of the shareholders.

7. We are afraid to accept this argument extended by the learned Counsel for the appellant, and the reason being that, so far as the matter pertaining to the **Balkishan Shrikisan Baldawa** (supra) is concerned, though it apparently seems to have been rendered by three Judges Bench, but that was a regular constitution of Bench according to the roster assigned by Hon'ble Chairperson and mainly that judgement has been rendered by Bench constituting of three Members, will not have a precedence over the Judgement rendered by three Members answering a legal question, which has been referred to be decided by a specially constituted Bench of Park Energy Ltd. The reason being that the Judgement of Park Energy Pvt. Ltd. will have the precedence and the binding effect over the Judgement of Balkishan Shrikisan Baldawa, for the reason that the Judgement of Park Energy Pvt. Ltd. has been affirmed by the Hon'ble Apex Court, as the SLP preferred against it, has been dismissed. In that situation, where a ratio decidendi is based upon a reference being answered by us in the matters of Park Energy Ltd., that will have precedence and binding effect over Judgement of Balkishan Shrikisan Baldawa, which cannot be treated to have been passed by a coordinate Bench of 3 Members, because that Bench would be treated as to be a Regular Bench in accordance with the roster as assigned by the Chairperson. Merely because of the fact that it was constituted by the three Members, that will not have a superseding or binding effect over and above the ratio answered in the judgement of Park Avenue Pvt. Ltd. (supra). Because the constitution of 3 Member Bench in the matters of Balkishan Shrikisan Baldawa, would be treated to be the regular Bench, not a larger Bench constituted by

special order to answer a question. And that too when the Park Avenue Pvt. Ltd. (supra), was carried unanimously by a Bench having two Judicial Members and a Technical Member, answering the limits of rights of a shareholder to traverse to the proceedings under the Code, alleging to be aggrieved person.

8. The case of the appellant has been that since the challenge to the approval of the resolution plan is founded upon so called fraud caught due to an active collusion between the SRA, the RP and the Windsor and since there had been a concealment of the material fact from the COC and the Ld. NCLT, it could still be kept open to be argued at the behest of the solitary shareholder. This argument is not tenable, because this concept of fraud is a very fertile ground, which keeps upon evolving to be ploughed, itself depending upon the perception and need of the party who is aggrieved against the Order passed by the Tribunal. Evaluation of fraud even take for an example, if it is presumed to be there, though not substantially established herein by any specific documents, it cannot be accepted unless proved for the purposes to maintain a proceedings of the Company Appeal, by an assigned person, not a shareholder. As against the impugned order dated 11.06.2024, granting an approval of the resolution plan, owing to the fact that, no proceedings at the behest of the shareholder, the position of shareholder which is admitted by the appellant, would be maintainable, as he individually as being an exclusive shareholder cannot be brought within the ambit of the definition of an “aggrieved person”, as prescribed under Section 61 of I&B Code, to treat himself to be an aggrieved person.

9. The impugned order of approval of the resolution plan was rendered by the learned Tribunal on 11.06.2024. All the documents, incidents and facts, which have been pleaded by the appellant, qua the impact of the memorandum of understanding as executed after the order of the Ld. NCLT dated 31.10.2023 were the facts which were already available and considered too at the stage when the plan was put for approval before the Adjudicating Authority and that too, more particularly, when the Ld. NCLT vide its Order of 30.10.2023, prior to grant of an approval of the plan, has confirmed the financial viability of the SRA, and the source of funding and it is there upon only, the approval had been granted.

10. The learned Counsel for the appellant had been attempting to argue the instant Company Appeal, as if he was venturing to argue the appeal, de novo right from the inception of the proceedings and that too, at the behest of the shareholder. Entertaining of such appeal during the subsistence of the ratio laid down by the larger Bench in the matters of Park Energy (supra) would not be maintainable, since it is admitted position is that the appellant admits his position to be that of the shareholder. Hence, we have not hesitation to hold that in the light of the judgement of Park Energy (supra), he cannot be treated as to be an aggrieved person, who could at all maintain the appeal against the Order of approval of resolution plan because apart from being the exclusive shareholder, the appellant - Mr. Prateek Jain, no one else has questioned the propriety of the approval of the plan as granted by the learned Adjudicating Authority, which as of now is informed to have been implemented.

11. So far, during the course of argument, the other home buyers too, through this Company Appeal by shareholder attempted to participate in the proceedings raising allegations qua the process adopted for the purposes of approval of the resolution plan, they are indirectly putting a challenge by supporting the shareholder appellant, without they independently challenging the approval of resolution plan. This has been cleverly done to travel in the proceedings of shareholder by supporting, because otherwise also proceedings at their behest now could have been barred by limitation. The respondent homebuyers cannot do something indirectly, which otherwise they cannot do directly under law.

12. May be that there are number of anxieties as graftly expressed by the appellant and the other homebuyers, who wanted to interfere in the proceedings, but the litigations are not decided by the anxieties or number of litigants, but rather by way of law, and the homebuyers, and because respondents have not drawn any proceedings independently till now upon their own challenging the resolution plan, they cannot step into the proceeding at the behest of the appellant, who exclusively only happens to be the shareholder, by stepping into the shoes of the proceedings and trying to portray their case pertaining to the rights, which they contend that they are likely to be hampered because of the approval of the plan.

13. The aforesaid facet about the rights of the shareholder has been settled by us in para – 16, 17 and 18 of the Judgment rendered by us in the matters of Park Energy and while affirming the view expressed by the three Member Bench

of NCLAT in the matter of **“M/s Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd.”**, Company Appeal (AT) (Ins) No.1522 of 2023, and also because of the Judgement in the matter of **“GLAS Trust Company LLC v. BYJU Raveendran & Ors.”** (2024 SCC OnLine SC 3032) as recently rendered by the Hon’ble Apex Court, it has already been settled that the issue of maintainability of the proceedings at the behest of shareholder is no more a question, which is res integra, relevant para – 16, 17 and 18 of Park Energy Pvt. Ltd. is extracted hereunder:-

“16. We are of the considered view that when rendering a Judgment in an adjudicatory capacity, the Tribunals or the Courts, while exercising their adjudicatory powers will have to consider the rationale, and thought process, i.e., under what circumstances and backdrop a superior court has decided the matter and the interpretation made therein cannot be automatically derived to be applied to an issue until or unless, that particular issue was the specific question to be determined before the superior court, calling for an adjudication. A court decides a matter based on which is actually placed before it. In BYJU Raveendran's case, the question of the sustainability of the proceedings at the behest of the shareholder was not an issue to be decided before Hon'ble Apex Court and therefore, the limited expression given therein to the term "aggrieved person" as given in the Judgment of BYJU Raveendran cannot automatically be inferred to conclude that it would automatically make the proceedings to be tenable at the behest of the shareholders also. We are of the view that the ratio propounded by the Hon'ble Apex Court in the said Judgment,

has to be applied only in the context in which it has been rendered and that we cannot expand its applicability to the issue of whether a shareholder can be an aggrieved person which was not even the subject matter or was at all addressed before the Hon'ble Apex Court, while the aspect of determination of "the aggrieved person" was being considered by it.

17. This is to be considered from yet another perspective, as argued by the Learned Counsel for the Appellant herein, as to what would the term "any person" mean, as it had been referred to in para 75 of the Judgment of BYJU Raveendran which is extracted hereunder: -

"75. The provision stipulates that "any person" who is aggrieved by the order of the National Company Law Appellate Tribunal may file an appeal before the Supreme Court within the prescribed limitation period. Similar language is used in section 61 of the Insolvency and Bankruptcy Code, which provides for appeals to the National Company Law Appellate Tribunal from orders of the National Company Law Tribunal ["61. Appeals and Appellate Authority (1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal. "]. The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement to institute an appeal challenging an order of the National Company Law Tribunal, before the National Company Law

Appellate Tribunal or an order of the National Company Law Appellate Tribunal, before this court. Any person who is aggrieved by the order may institute an appeal, and nothing in the provision restricts the phrase to only the applicant creditor and the corporate debtor. As noted above, once the corporate insolvency resolution process is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor but rather become collective proceedings (in rem), where all creditors, such as the appellant, are necessary stakeholders. The appellant is not an unrelated party to the corporate insolvency resolution process, but is in fact, an entity whose claims had been verified by the interim resolution professional vide letter dated August 19, 2024. The appellant who claims to be a financial creditor, has expressed reasonable apprehensions about the prejudice it would face if there were round-tripping of the funds, and the prioritisation of the debts of the second respondent, an operational creditor".

18. Once again, the answer to the conclusion given by BYJU Raveendran Judgment (supra) as contained in para 75, would be similar to the one which has already been answered by us in the preceding paragraphs. The Hon'ble Apex Court in the para 75 above was dealing with the issue of aggrieved person, in extension to the observation already made in the preceding part of the Judgment of BYJU Raveendran. The para 75 itself cannot be exclusively extracted to be read, as if the reference made to the word "any person or aggrieved person" as considered therein will include shareholders because it was

made in the context of observation made in para 42 which limits the expression to a class of creditors and therefore it would not automatically be made applicable to the shareholders too, even if the Judgment refers, the term 'person aggrieved, as "any person" who would be affected by the order. The word aggrieved person would be the person who is affected by the order, would be a person who does not have any other forum or a platform under law available to safeguard his right or interest, arising from the proceedings which are being held before the Tribunal. However as far as the interest of the shareholders is concerned, it is protected by the agent or the authority appointed by the NCLT i.e., Resolution Professional, or the liquidator, where the liquidation has been ordered and the shareholders are taken care of by the aforesaid two agents who are appointed by the court under law. Therefore, the proceedings at the behest of the shareholders, in their individual capacity will not be maintainable as in case the shareholders are permitted to maintain the proceedings under the I & B Code, it would run contrary the very object of the Code of timely resolution of insolvency, and would rather be an abuse the process, in a proceeding where time plays an important role to conclude the proceedings in a time bound basis."

14. If that being the situation, where the principal proceedings of the company appeal at the behest of the appellant is not maintainable, since his position being that of the admitted shareholder and he will not be falling within the definition of an aggrieved person, the company petition at his behest or even the company appeal too at his behest is not maintainable.

15. Exclusively, owing to the fact that, the appellant is a shareholder, the company appeal at his behest against an order of approval of the resolution plan, would not be maintainable, as he will not be or even treated to be an aggrieved person as per the judgement of Park Energy Pvt. Ltd. (supra). Hence, the company appeal held to be not maintainable at the behest of the appellant. The same is accordingly dismissed.

All interlocutory applications, if any, pending consideration before this Tribunal, would stand rejected.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

30.09.2026

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