

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

Company Appeal (AT) (Ins.) No.376 of 2024

IN THE MATTER OF:

Shrinivas Spintex Pvt. Ltd

...Appellant

Versus

Hinganghat Infrastructure Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Jatin Kumar, Mr. Ankit Agarwal, Advocates.

**For Respondents: Mr. Arvind Varma, Sr. Advocate with Mr. Asav Rajan and Ms. Charu Trivedi, Advocates.
Mr. Krishnendu Datta, Sr. Advocate with Mr. Raghav Sabharwal, Advocates for R-2.**

ORDER
(Hybrid Mode)

22.02.2024: Heard Shri Abhijeet Sinha, learned senior counsel for the Appellant, Shri Arvind Varma, learned senior counsel appearing for Respondent No.1 and Mr. Krishnendu Datta, learned senior counsel appearing for the Resolution Professional. This Appeal has been filed against the order dated 08.02.2024 by which order the Adjudicating Authority has passed an order in I.A. No.437/MB/2024 in the CIRP process. The Appellant as well as the Respondent No.1 both have submitted their Resolution Plans they being the Resolution Applicants. The Resolution Plans were opened by the Resolution Professional.

2. Learned counsel for the Resolution Professional submits that revised plans were received from all Resolution Applicants and put for voting on 03.01.2024 and till the date of passing of order the voting was not concluded.

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3. An application was filed by the Respondent No.1 who was one of the Resolution Applicant. The prayers made in the application are as follows:

- “a.
- b. *In the alternate of prayer clause (a), this Hon'ble Tribunal be pleased to reverse the process followed by the Respondent No. 1 for submission of Final Resolution Plans and allow for all the Resolution Applicants in the Final List of PRAs to negotiate with the CoC Members/ Respondent No. 2 and submit fresh Resolution Plans for their consideration in a fair and transparent manner.*
- c. *In the interim, this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to keep on hold the voting process of the Final Resolution Plans by the CoC Members/ Respondent No 2 till the pendency of the present Application.*
- d. *That this Hon'ble Tribunal be pleased to direct IBBI/ Respondent No 3 to take appropriate actions against the Respondent No 1 given the breach of duties committed by the Respondent No 1 in the present circumstance.*
- e. *That this Hon'ble Tribunal be pleased to pass any other order or orders as this Hon'ble Tribunal deems fit and proper in favour of Applicant in the interest of justice.”*

4. The Adjudicating Authority partly allowed the application and while allowing the application following has been stated in Para 3 and 4:

“3. Counsel for the Applicant submits that the main allegation against RP, is that the plan was submitted by the PRA in the sealed cover which was opened by the RP in the absence of CoC and PRAs which is against the Regulations. Ld. Counsel for the Applicant stated that this constitutes violation of the process of conducting the approval of the plan.

4. Counsel for the RP admits that he opened the cover due to non-availability of the password of the PRA. The reasons submitted by the RP is not satisfactory and we note that the RP has violated the due process under law. Hence, this Bench directs the concern RP to call for fresh bids from all the PRAs and table the same before the CoC for taking a considered decision on the Plan.”

5. Learned counsel for the Appellant submits that the application which was filed by the Respondent No.1 was allowed without issuing any notice to any of the Resolution Applicants and only Resolution Professional was heard. It is further submitted that the Resolution Plan has to be opened by the Resolution Professional then only it will be placed before the CoC. It is submitted that the order passed by the Adjudicating Authority is contrary to the provisions of I&B Code and CIRP Regulations.

6. Learned counsel for the Respondent No.1 submits that it was due to transparency that password was not given by Respondent No.1 to the Resolution Professional and hard copy was opened by the Resolution Professional which is not in accordance with Regulations.

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

8. Section 30 Sub-section (2) and Section 30 Sub-Section (3) provides as follows:

“30(2). The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ²[payment] of other debts of the corporate debtor;

³(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.--For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-- For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor--

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

⁴[Explanation.-- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law];”

30(3). The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).”

9. Regulation 39 of the CIRP Regulations, 2016 also requires the Resolution Professional to look into the Resolution Plan submitted by the Applicants and to place the plan before CoC which is in compliance with Section 30(2). The opening of Resolution Plan by Resolution Professional is

essential for further process in the CIRP. The Resolution Professional without opening the plan cannot come to any opinion whether the plan is complaint to Section 30(2) or not. There is no regulation or law which provide that the Resolution Professional should open the plan in presence of CoC and PRAs. Learned counsel for the Respondent No.1 has been unable to show any provision of law which require that the Resolution Professional shall open the plan in presence of CoC and PRAs.

10. It is further submitted by the Appellant that in the application the Applicant has not disclosed the fact that voting has commenced on 03.01.2024 and the application was filed only on 02.02.2024.

11. We are of the view that order passed by the Adjudicating Authority is unsustainable. In result, Appeal is allowed. Order dated 08.02.2024 is set aside. It will be open for the Resolution Professional and the CoC to take further steps in the CIRP, in accordance with law.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice Yogesh Khanna]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

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