

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.3665-3666 OF 2020**

NGAITLANG DHAR

...APPELLANT(S)

VERSUS

**PANNA PRAGATI INFRASTRUCTURE
PRIVATE LIMITED & ORS.**

.... RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 3742-3743 OF 2020

J U D G M E N T

B.R. GAVAI, J.

1. Civil Appeal Nos.3665-3666 of 2020 are filed by Ngaitlang Dhar, the successful Resolution Applicant (H-1 bidder), and Civil Appeal Nos. 3742-3743 of 2020 are filed by Amit Pareek, the Resolution Professional.

2. These appeals assail the judgment and order passed by the National Company Law Appellate Tribunal,

New Delhi (hereinafter referred to as “the NCLAT”) dated 19th October, 2020, in Company Appeal (AT) (Insolvency) Nos. 515 of 2020 and 516 of 2020, thereby allowing the appeals of the respondent No.1-Panna Pragati Infrastructure Private Limited (hereinafter referred to as “PPIPL”) and the respondent No.2-Arihant International Limited.

3. Company Appeal (AT) (Insolvency) No.515 of 2020 was filed assailing the order dated 18th March, 2020, passed by the National Company Law Tribunal, Guwahati Bench, Guwahati (hereinafter referred to as “the NCLT”), in I.A. No.27 of 2020 in CP (IB) No.13/GB/2019, filed by PPIPL and another, by which the application seeking direction to the Resolution Professional (hereinafter referred to as “the RP”) to take on record and consider its revised offer submitted by email dated 14th February, 2020, came to be rejected.

4. Company Appeal (AT) (Insolvency) No.516 of 2020 was filed assailing the order dated 18th May, 2020 passed by the NCLT, in an unnumbered I.A. filed by the RP, vide which

the appellant-Ngaitlang Dhar's (H-1 bidder) Resolution Plan came to be approved by the NCLT.

5. Vide the impugned judgment and order dated 19th October, 2020, the NCLAT has set aside both the orders, dated 18th March, 2020, and 18th May, 2020, and directed the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") to be resumed from the stage of consideration of the Resolution Plans.

6. The facts in brief giving rise to the present appeals are as under:

7. An application being CP(IB) No.13/GB/2019 came to be filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the IBC") for initiation of CIRP in respect of Meghalaya Infratech Ltd. (hereinafter referred to as "the Corporate Debtor") by the Allahabad Bank (now known as Indian Bank) (hereinafter referred to as "the Allahabad Bank"). The NCLT vide order dated 28th August, 2019 admitted the petition and as such, the CIRP came to be initiated in respect of the Corporate

Debtor and Mr. Amit Pareek came to be appointed as the Interim RP, who was subsequently confirmed as the RP in the first Committee of Creditors (“hereinafter referred to as “the CoC”) meeting, held on 25th September, 2019.

8. It is not in dispute that the Allahabad Bank and the Corporation Bank (now known as Union Bank) (hereinafter referred to as “the Corporation Bank”) were the only financial creditors.

9. In accordance with the provisions of the IBC, Expression of Interest (hereinafter referred to as “EOI”) was invited from the prospective Resolution Applicants by the RP.

10. Appellant-Ngaitlang Dhar, respondent No.1-PPIPL, Mr. Abhishek Agarwal and Mr. Ashish Jaisasaria submitted their EOI. All the four Resolution Applicants submitted their Resolution Plans. In the CoC meeting held on 11-12th February, 2020, the appellant-Ngaitlang Dhar emerged as H-1 bidder, whereas Mr. Abhishek Agarwal emerged as H-2 bidder.

11. At the 7th CoC meeting, held on 6th March, 2020, the CoC, with a 100% voting share, approved the Resolution Plan of the appellant-Ngaitlang Dhar (H-1 bidder), which was further approved by the NCLT vide order dated 18th May, 2020.

12. The respondent No.1-PPIPL contended that in the proceedings before the CoC held on 11-12th February, 2020, it had sought for one or two days' time to submit its revised Resolution Plan, and accordingly, it submitted the same on 14th February, 2020. The respondent No.1-PPIPL, accordingly, filed I.A. No. 27 of 2020 in CP(IB) No.13/GB/2019 before the NCLT, seeking a direction to the RP to take on record its revised Resolution Plan, dated 14th February, 2020. The same came to be rejected by the NCLT, vide order dated 18th March, 2020. The RP thereafter filed an unnumbered I.A. seeking approval to the Resolution Plan submitted by the appellant-Ngaitlang Dhar (H-1 bidder). The said unnumbered I.A. was allowed by the NCLT vide order dated 18th May, 2020. Both these orders came to

be challenged before the NCLAT by way of aforesaid Company Appeals by the respondent No.1-PPIPL. As stated above, by the impugned judgment and order dated 19th October, 2020, the appeals were allowed. Being aggrieved thereby, the present appeals are filed before this Court.

13. We have heard Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant-Ngaitlang Dhar, the successful Resolution Applicant (H-1 bidder) and Shri Abhijeet Sinha, learned counsel appearing on behalf of the respondent No.1-PPIPL.

14. Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of Ngaitlang Dhar, the successful Resolution Applicant (H-1 bidder), submitted that the entire approach adopted by the NCLAT in the impugned judgment and order was erroneous. He submitted that the NCLAT ought to have taken into consideration that the CoC after exercising its 'commercial wisdom' has resolved to accept the Resolution Plan submitted by Ngaitlang Dhar. He submitted that the RP had given an equal opportunity to all

the bidders/resolution applicants. He submitted that though adequate opportunity was given to all the Resolution Applicants by adjourning the proceedings in CoC meetings on number of occasions, the respondent No.1-PPIPL failed to revise its bid within the stipulated period. He submitted that the CoC, in its meeting, held on 11-12th February, 2020, had resolved to declare Ngaitlang Dhar as the successful resolution applicant. He submitted that, not only that, thereafter the NCLT had also allowed the application filed by the RP to approve the Resolution Plan of Ngaitlang Dhar.

15. Shri Rohatgi submitted that it is only after 12th February, 2020, the respondent No.1-PPIPL, on 14th February, 2020, had sent an email to the RP, revising its offer to Rs.65.65 crore. He submitted that when an initial offer given by the respondent No.1-PPIPL was only of making an upfront payment of Rs.24 crore, it is clear that the revised offer of Rs.65.65 crore was only with a *mala fide* intention of protracting the proceedings. He submitted that

the NCLAT ought not to have interfered with the 'commercial wisdom' of the CoC. In this respect, he relies on various judgments of this Court.

16. Shri Rohatgi further submits that the Resolution Plan of Ngaitlang Dhar now stands implemented, inasmuch as the dues of all the Banks (financial creditors) have been repaid and now the Corporate Debtor, i.e., Meghalaya Infratech Ltd. is an on-going concern.

17. Shri Abhijeet Sinha, learned counsel appearing on behalf of the respondent No.1-PPIPL would submit that there is a distinction between the decision of the CoC and the procedure adopted by the RP and the CoC to arrive at that decision. He submitted that though a final decision of the CoC cannot be a matter of challenge on the ground that the 'commercial wisdom' of the CoC should not be interfered with, yet if there is a material irregularity in the procedure adopted by the RP, an appeal under Section 61(3) of the IBC would be tenable. He submitted that the RP acted with undue haste in the present matter. Learned counsel

submitted that in the proceedings of the meeting of the CoC, held on 11-12th February, 2020, the Director of PPIPL, had sought one or two days' time to submit its revised offer. He submitted that, however, the said time was not granted. He further submitted that the revised offer was submitted within two days and it was the duty of the RP to present its revised offer before the CoC. Having not done that and having hastily approved the plan of Ngaitlang Dhar, the NCLAT has rightly interfered with the decision of the CoC. In this respect, he relies on the judgment of this Court in the case of ***Pratap Technocrats (P) Ltd. and others v. Monitoring Committee of Reliance Infratel Limited and another***¹.

18. Shri Sinha further submitted that when the NCLT itself had extended the period of CIRP by another 90 days beyond 180 days vide order dated 26th February, 2020, there was no reason for the RP to have hastily accepted the bid of Ngaitlang Dhar.

¹ 2021 SCC OnLine SC 569

19. Learned counsel appearing on behalf of the respondents – Banks (the financial creditors) also support the arguments of the learned counsel appearing on behalf of Ngaitlang Dhar. They submit that the Banks have received the entire payment that was owed to them. It is further submitted that the email dated 14th February, 2020 sent by PPIPL was also endorsed to the Allahabad Bank as well as the Corporation Bank. It is submitted that both the Banks had refused to consider the said offer inasmuch as such an offer was not valid in law.

20. The facts are not in dispute in the present matter.

21. Vide order dated 28th August, 2019, the application filed by Allahabad Bank under Section 7 of the IBC for initiation of CIRP in respect of the Corporate Debtor came to be allowed. Vide the said order dated 28th August, 2019, Mr. Amit Pareek came to be appointed as the Interim RP.

22. The interim RP, in compliance with Section 15 of the IBC, made public announcement calling for claims from

creditors of the Corporate Debtor. Upon receipt of claims from the creditors, the CoC came to be formed on 17th September, 2019. Thereafter, in the first meeting of the CoC, held on 25th September, 2019, the Interim RP came to be appointed as the RP. Thereafter, the RP invited EOI from the prospective Resolution Applicants. Four EOIs came to be received from (a) PPIPL & others; (b) Mr. Ngaitlang Dhar; (c) Mr. Abhishek Agarwal; and (d) Mr. Ashish Jaisasaria & others. The provisional list of Resolution Applicants came to be published and objections to the provisional list were invited by 25th December, 2019. Since no objection in respect of any of the prospective Resolution Applicants was received, a final list of prospective Resolution Applicants was placed before the CoC for evaluation. Thereafter, all the Resolution Applicants were invited to submit their respective Resolution Plans by 24th January, 2020. In response to that, four Resolution Plans were received from the four prospective Resolution Applicants.

23. The 5th meeting of the CoC was held on 11th February, 2020. The minutes of the said meeting, particularly Agenda No.6, would reveal that the RP informed the CoC that there were numerous anomalies and deficiencies observed in the Resolution Plan of PPIPL and the same was intimated to the Resolution Applicant through email dated 30th January, 2020 with a request to rectify/correct the same and submit the same by 1st February, 2020. However, PPIPL had failed to do so within the stipulated period. It would further reveal that an email dated 1st February, 2020, was received from PPIPL with a request to grant time for submission of rectified Resolution Plan by 3rd February, 2020. Accordingly, the rectified Resolution Plan came to be filed by PPIPL on 3rd February, 2020. In the said meeting, the CoC evaluated the Resolution Plans of all the four prospective Resolution Applicants. Paragraph 5 of the consideration of the proposed Resolution Plan of PPIPL reads thus:

“5. The CoC requested PRA to improve their bid amount the PRA refused to do

so unless individual score of all disclosed further for increase of the bid amount he has to discuss with BOD of the applicant”

24. It would further reveal that the CoC continued the second round of negotiation after a lunch break. It will be relevant to refer to the following excerpt of the minutes of the meeting of the CoC dated 11th February, 2020:

“2. The CoC decided to invite Panna Pragati Infrastructure Pvt. Ltd. for further negotiation. The RP informed that in first round of negotiation the PRA has not revised their bid amount and informed the CoC about the brief details of plan. The PRA also want to know about the basis of score, the RP & CoC informed at this mature stage of CIRP this is not the right time and place to discuss about the evaluation and also informed that the evaluation has been done as per the RFRP, IM & evaluation matrix which has been circulated to all the PRA in due time.

3. The CoC & RP informed the PRA about the anomalies & deficiency in the rectified Resolution Plan submitted by them still persist despite of given them opportunity earlier after the submission of original resolution plan for the rectification. The PRA requested to allow some more time for the rectification and

submit revise plan. The casual approach of PRA noted.

4. The CoC requested to improve the bid amount to the PRA, the PRA states that at this stage we will not increase the bid amount”

25. The minutes of the 5th meeting of the CoC would further reveal that the CoC thereafter invited Ngaitlang Dhar for negotiation of the bid and requested him to enhance the bid amount. Ngaitlang Dhar agreed to enhance the bid amount from Rs.63 crore to Rs.64 crore. Thereafter again, the representative of PPIPL returned back and requested to adjourn the meeting for a few days. The said request was specifically rejected by the CoC informing the representative of PPIPL that they were bound to follow the IBC timeline and wanted to conclude the matter by next day. The said 5th meeting of the CoC was adjourned to next day and was held on 12th February, 2020. The minutes of the said meeting would further reveal that the representative of PPIPL had informed the CoC/RP that the Directors of their Company will not be available for the meeting to be held on 12th

February, 2020 and the meeting should be deferred by one or two days. The minutes of the meeting would further reveal that all the prospective Resolution Applicants present in the meeting sought clarification from the CoC members and the RP about the status of Resolution Applicant, who was absent in the meeting, as to whether it would be allowed to participate in the further bidding process or not. The CoC members specifically replied that since they were at the neck of the timeline (i.e. 180 days were to get over on 24th February, 2020), it was decided to exclude the respondent No.1-PPIPL, who was not present in the said meeting. The proceedings commenced after lunch break, wherein only two prospective Resolution Applicants, i.e., Ngaitlang Dhar and Mr. Abhishek Agarwal were present. Thereafter, the CoC adopted Swiss Challenge open bidding method. In the said bidding process, both prospective Resolution Applicants present increased their offer. In the said open bidding process between the two prospective Resolution Applicants present, Ngaitlang Dhar was found to

be the highest bidder/prospective Resolution Applicant having offered the bid of an upfront amount of Rs.64.30 crore plus CIRP costs. The said Resolution Plan of Ngaitlang Dhar was approved unanimously by Allahabad Bank having 68.34% voting rights and the Corporation Bank having 31.66% voting rights.

26. It is thus clear that the respondent No.1-PPIPL was very much aware that the CoC has decided to finalise the proceedings by 12th February, 2020. It is also clear that though PPIPL was first called upon by the CoC to enhance the bid amount, it had specifically rejected the same. It insisted on disclosing the basis of score. In the proceedings of the 5th meeting of the CoC dated 11th February, 2020, post lunch, though Ngaitlang Dhar had enhanced his bid from Rs.63 crore to Rs.64 crore, the representative of PPIPL subsequently came and requested for adjourning the meeting for few days. The said request was specifically rejected by the CoC by informing the representative of PPIPL that it had to adhere to the IBC timeline and would have to

conclude the matter by next day. On the next day, i.e., 12th February, 2020, when the adjourned proceedings of the CoC were held, the respondent No.1-PPIPL had sent an email, stating therein that the Directors of its Company will not be available for the said meeting and requested for deferring the meeting by a day or two. On the insistence of all the prospective Resolution Applicants present, the CoC clarified that since the timeline was coming to an end, it had decided to exclude the prospective Resolution Applicants who were not present in the said meeting. In the said meeting, Ngaitlang Dhar came to be declared as the highest bidder after he improved his bid in the open bidding held between him and Mr. Abhishek Agarwal.

27. It could thus be seen that the RP as well as the CoC had acted in a totally transparent manner. An equal opportunity was accorded to all the prospective Resolution Applicants. However, the respondent No.1-PPIPL, without improving his bid amount, went on insisting for more time, which request was specifically rejected by the CoC.

28. Shri Abhijeet Sinha, learned counsel, fairly concedes that though the final decision of the CoC would not be challenged on the ground that the 'commercial wisdom' of the CoC should not be interfered with, it is only the process of decision making, which can be challenged if there is any material irregularity in the said proceedings.

29. As already discussed hereinabove, we find that the procedure adopted by the RP as well as the CoC was fair, transparent and equitable. The CoC was facing the timeline, which was to end on 24th February, 2020, before which it had to finalise its decision. In these circumstances, it cannot be said that the decision of the CoC, to not grant any further time to PPIPL for submission of its revised bid and to finalise the Resolution Plan on 12th February, 2020 itself, can be said to be falling in the category of the term 'material irregularity'.

30. We have extracted the minutes of the proceedings of the 5th meeting of the CoC in extenso. It could be seen

that the CoC, after due deliberations, evaluated all the proposed Resolution Plans submitted by all the prospective Resolution Applicants and after giving sufficient opportunity to all the prospective Resolution Applicants, arrived at a considerate decision of accepting the Resolution Plan of the appellant-Ngaitlang Dhar in its meeting held on 11-12th February, 2020.

31. It is trite law that ‘commercial wisdom’ of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the IBC. It has been consistently held that it is not open to the Adjudicating Authority (the NCLT) or the Appellate Authority (the NCLAT) to take into consideration any other factor other than the one specified in Section 30(2) or Section 61(3) of the IBC. It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that the decision of the CoC’s ‘commercial wisdom’ is non-

justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) of the IBC. This position of law has been consistently reiterated in a catena of judgments of this Court, including:

- (i) ***K. Sashidhar v. Indian Overseas Bank and Others***²
- (ii) ***Committee of Creditors of Essar Steel India Limited Through Authorized Signatory v. Satish Kumar Gupta and Others***³,
- (iii) ***Maharashtra Seamless Limited v. Padmanabhan Venkatesh and others***⁴,
- (iv) ***Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another***⁵.
- (v) ***Ghanashyam Mishra and Sons Private Limited Through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through the Director & Ors.***⁶

2 (2019) 12 SCC 150

3 (2020) 8 SCC 531

4 (2020) 11 SCC 467

5 (2021) SCC OnLine SC 204

6 (2021) 9 SCC 657

32. No doubt that, under Section 61(3)(ii) of the IBC, an appeal would be tenable if there has been material irregularity in exercise of the powers by the RP during the corporate insolvency resolution period. However, as discussed hereinabove, we do not find any material irregularity.

33. We may gainfully refer to the following observations of this Court in the case of ***Keshardeo Chamria v. Radha Kissen Chamria and others***⁷ while considering the scope of the words ‘material irregularity’, as are found in Section 115 of the Code of Civil Procedure, 1908:

“Reference may also be made to the observations of Bose, J. in his order of reference in *Narayan Sonaji v. Sheshrao Vithoba* [AIR 1948 Nag 258] wherein it was said that the words “illegally” and “material irregularity” do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law

7 (1953) 4 SCR 136

or fact after the formalities which the law prescribes have been complied with.”

34. In the present case, leave apart, there being any ‘material irregularity’, there has been no ‘irregularity’ at all in the process adopted by the RP as well as the CoC. On the contrary, if the CoC would have permitted the PPIPL to participate in the process, despite it assuring the other three prospective Resolution Applicants in its meeting held on 11-12th February, 2020, that the absentee prospective Resolution Applicant (PPIPL) would be excluded from participation, it could have been said to be an irregularity in the procedure followed.

35. Insofar as the contention of the learned counsel, Shri Abhijeet Sinha, that the NCLT had already extended the CIRP period by 90 days vide order dated 26th February, 2020 and therefore, there was no necessity to hastily approve the Resolution Plan of Ngaitlang Dhar on 12th February, 2020, is concerned, we find the same to be without substance. It will be relevant to mention that the

period of 180 days was to expire on 24th February, 2020, and therefore, in the meeting dated 12th February, 2020 itself, the CoC after resolving to declare Ngaitlang Dhar as H-1 bidder had resolved to authorise the RP to seek an extension of CIRP period before the NCLT.

36. It will be relevant to refer to paragraph 2 of the order dated 26th February, 2020 passed by the NCLT, which reads thus:

“2. It is the submission of the RP that the CoC in its 5th meeting held on 11.02.2020 concluded on 12.02.2020 declared one Mr. N. Dhar as highest bidder and the said decision of the CoC is under consideration for approval with the higher authority of the CoC and, therefore, prayed for further extension of CIRP period to 90 days with effect from 25.02.2020”

37. It could thus be seen that the contention in that regard is also without substance. It is further to be noted that, as has been consistently held by this Court in catena of judgments, referred to hereinabove, the dominant purpose of the IBC is revival of the Corporate Debtor and

making it an on-going concern. In the present case, the said purpose is already achieved, inasmuch as all the dues of the financial creditors, i.e., the Allahabad Bank and the Corporation bank, have already been paid, and the Corporate Debtor, in respect of which CIRP was initiated, is now an on-going concern.

38. We are, therefore, of the considered view that the NCLAT has grossly erred in interfering with the decision of the CoC, which was duly approved by the NCLT. The appeals are, therefore, allowed. The impugned judgment and order passed by the NCLAT, dated 19th October, 2020 is quashed and set aside. There shall be no order as to costs. All pending applications shall stand disposed of.

....., J.
[L. NAGESWARA RAO]

....., J.
[B.R. GAVAI]

**NEW DELHI;
DECEMBER 17, 2021**