

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI  
(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH)(Ins) No.11 of 2021**

**(Under Section 61 of the Insolvency and Bankruptcy Code 2016)**

**(Arising out of Order dated 8.2.2021 passed by the Hon'ble National Company Law Tribunal,  
Hyderabad Bench**

**IN THE MATTER OF:**

1. Sri Chandra Kali  
Prasada Enterprises  
Private Limited  
H. No. 12-2-12, Ayyagarivari Street, Gunupudi,  
Bhimavaram, West Godavari, Andhra Pradesh,  
India – 534201.
  
2. Vinamratha  
Industries Limited  
Plot No. 304-L-III, 2<sup>nd</sup> Floor, Road No. 78, Jubilee  
Hills, Hyderabad – 500096, Telangana.

... Appellants

**V**

1. RESOLUTION PROFESSIONAL  
MR. B. NAGA BHUSHAN  
FOR SRI GURU PABHA LIMITED.

2. Punjab national Bank

... Respondents

**Present :**

**For Appellant : Mr.Praveen Kumar Jain, Advocate**

**ORDER**  
**(VIRTUAL MODE)**

Heard the Learned Counsel appearing for the Appellant.

2. After hearing the Learned Counsel for the Appellant in the instant Company Appeal (AT)(Ins) No.11 of 2021, when this Tribunal posed a query to the Learned Counsel for the Appellant as to how the instant appeal is per se maintainable in the

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teeth of ingredients of Section 33(2) of the Insolvency & Bankruptcy Code, 2016, coupled with the judgement of the Hon'ble Supreme Court dated 10.3.2021 in Civil Appeal 2943-2944/2020 with Civil Appeal Nos.3138-3139 of 2020, Civil Appeal No.2949-2950 of 2020, Civil Appeal No.847-848/2021 (D.No.24125 of 2020) in the matter of Kalpraj Dharamshi & Anr. V. Kotak Investment Advisors Ltd. & Anr. Wherein and where under at Paragraphs 155 to 159, it is observed as under :

*Para 155. "It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.*

*156. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section(3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of 'commercial wisdom', NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.*

157. *It is further to be noted, that after the resolution plan of Kalpraj was approved by NCLT on 28.11.2019, Kalpraj had begun implementing the resolution plan. NCLAT had heard the appeals on 27.2.2020 and reserved the same for orders. It is not in dispute, that there was no stay granted by NCLAT, while reserving the matters for orders. After a gap of five months and eight days, NCLAT passed the final order on 5.8.2020. It could thus be seen, that for a long period, there was no restraint on implementation of the resolution plan of Kalpraj, which was duly approved by NCLT. It is the case of Kalpraj, RP, CoC and Deutsche Bank, that during the said period, various steps have been taken by Kalpraj by spending a huge amount for implementation of the plan. No doubt, this is sought to be disputed by KIAL. However, we do not find it necessary to go into that aspect of the matter in light of our conclusion, that NCLAT acted in excess of jurisdiction in interfering with the conscious commercial decision of CoC.*

158. *It is also pointed out, that in pursuance of the order dated 5.8.2020 passed by NCLAT, CoC has approved the resolution plan of KIAL on 13.8.2020. However, since we have already held, that the decision of NCLAT dated 5.8.2020 does not stand the scrutiny of law, it must follow, that the subsequent approval of the resolution plan of KIAL by CoC becomes non-est in law. For, it was only to abide by the directions of NCLAT. We are of the view that nothing would turn on it. The decision of CoC dated 13/14.2.2019 is a decision, which has been taken in exercise of its 'commercial wisdom'. As such, we hold, that the decision taken by CoC dated 13/14.2.2019, which is taken in accordance with its 'commercial wisdom' and which is only approved by NCLT, will prevail. Further, NCLAT was not justified in interfering with the stated decision taken by CoC.*

*159. In that view of the matter, we find, that Civil Appeal Nos.2943-2944 of 2020 filed by Kalpraj:Civil Appeal Nos.2949-2950 of 2020 filed by RP and Civil Appeal Nos.3138-3139 of 2020 filed by Deutsche Bank deserve to be allowed. It is ordered accordingly. The order passed by NCLAT dated 5.8.2020 is quashed and set aside and the orders passed by NCLT dated 28.11.2019 are restored and maintained”*

and at this stage, the Learned Counsel for the Appellant seeks permission from this Tribunal to withdraw the instant Appeal.

3. Further, the 'Adjudicating Authority'(NCLT, Hyderabad) had also observed in the 'impugned order' dated 8.2.2021 in IA No.791 of 2020, IA NO.792 of 2020 and IA No.1176 of 2020 inter alia to the effect that the direction sought for to interfere with the decision of 'Committee of Creditors' cannot be considered in as much as 'Resolution Plan' was submitted after the last date was over etc.
4. In the light of the above, acceding to the request of the Learned Counsel for the Appellant to the withdrawal of the present Appeal, this Tribunal dismisses the instant Comp.App.(AT)(Ins)11/2021, as 'withdrawn'. All connected 'Interlocutory Applications' are closed. There shall be no order as to costs.

***[Justice Venugopal M]  
Member (Judicial)***

***[V.P.Singh]  
Member (Technical)***

***15 .03.2021***

**HR**

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