NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1608 of 2025

(Arising out of Order dated 08.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court-III in I.A.198/2025 IN C.P. (IB) 4135/MB/C-III/2018)

IN THE MATTER OF:

Ashdan Properties Pvt. Ltd. ...Appellant

Versus

Hemant J. Mehta & Ors. ...Respondents

Present:

For Appellant	**:**	**Mr. Nalin Kohli, Sr. Advocate with Mr. Puneet Singh, Ms. Charu Modi, Ms. Kriti Dang, Mr. Rishabh Gupta, Ms. Shaanya Shukla, Ms. Sukriti Seth, Mr. Chandraraj Singh, Mr. Anshul Malik and Mr. Ayushman Arora, Advocates.**
For Respondents	**:**	**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Orijit Chatterjee, Ms. Swati Dalmia, Mr. Shubham Raj and Ms. Neha Sinha, Advocates for R1** **Mr. P. Nagesh, Sr. Advocate with Mr. Ankur Mittal, Ms. Sabhya Jain and Mr. Akshay Sharma, Advocates for R2 (SBI).** **Mr. Sanyam Goel and Mr. Mohtashim Kibriya, Advocates for R-4.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Resolution Applicant has been filed challenging the order dated 08.10.2025 passed by National Company Law Tribunal, Mumbai Bench Court-III in IA No.198 of 2025 filed by the Appellant. By the impugned order, the application filed by the Appellant has been dismissed. Aggrieved by which order, this Appeal has been filed.

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

(i) The Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor ("**CD**") Lok Housing and Constructions Limited commenced vide order dated 03.06.2019. RP issued Form-G inviting Expression of Interest ("**EoI**") on 03.04.2024, inviting Prospective Resolution Applicants to submit their Resolution Plans. The last date for submission of the Resolution Plan was 18.06.2024.

(ii) The Appellant being one of the Resolution Applicant submitted its Resolution Plan on 18.06.2024. The Appellant subsequently revised its Resolution Plan on 27.08.2024. On 16.09.2024, the Appellant submitted an Addendum to its Resolution Plan pursuant to the request made by Respondent Nos.1 and 2, consequent to the discussions held in 33rd Committee of Creditors' ("**CoC**") Meeting held on 16.09.2024.

(iii) Apart from the Appellant, there were other Resolution Applicants, who had submitted the Resolution Plans. The Resolution Plan submitted by the Appellant and other Resolution Applicants were discussed, deliberated and negotiated by the Members of the CoC in 35th CoC Meeting. In the 35th CoC Meeting held on 1st and 2nd

October, 2024, the issue with regard to adoption of Challenge Mechanism was taken up and deliberated by the CoC. During the discussion, the Representative of the State Bank of India ("**SBI**"), who held 82.46% voting shares opined that conducting a Challenge Mechanism is not practicable approach due to non-comparability of the Resolution Plans, differing value propositions. During the extended CoC Meeting held on 24.10.2024, the Authorized Representative of the homebuyers opined that Challenge Mechanism should be adopted for value maximization, which was objected to by the representative of SBI. The SBI communicated its decision that its Members have decided against adopting Challenge Mechanism. In the extended 35th CoC Meeting held on 24.10.2024, it was decided that Plans would be placed for voting from 16th November to 22nd November, 2024.

(iv) The Appellant, who was one of the Resolution Applicant on 16.09.2024 sent an email dated 05.11.2024 to the RP informing "*in event outbidding is not happening, we must clarify that we intend to make all the payments within 1 year at 10% discount rate. The CoC should take note of this and consider the same while evaluating our Plan commercial offer*". The Appellant again sent an

email dated 13.11.2024 requesting that SBI will opt for inter-se bidding to ensure value maximization. Another email was sent on 03.12.2024, requesting to forward the emails to entire CoC.

(v) The CoC held its 36th Meeting, where CoC suggested that agenda for approval of adopting Challenge Mechanism shall be put for voting. The RP to put agenda for voting. Voting over the agenda item was discussed again in 37th CoC Meeting, and the agenda item was put for voting which was rejected with 99.45% vote shares regarding conducting the Challenge Mechanism.

(vi) The RP filed an application being IA No.5840 of 2024 praying for extension of CIRP period. The NCLT granted extension of 75 days from 30.0.2024 till 14.12.2024, which had already elapsed.

(vii) The RP by email dated 13.01.2025 informed the Appellant that RFRP does not make it mandatory to conduct an 'Outbidding Process' and the same is to be adopted only on instructions of CoC.

(viii) The Appellant on 13.01.2025, filed an IA No.198 of 2025 seeking directions to RP to adhere to the process laid down under the RFRP.

(ix) On 14.01.2025, the Adjudicating Authority passed an interim order that post conclusion of the voting process, the result may be kept in a sealed envelope and no LOI be issued to the selected PRA till the next date of hearing.

(x) The RP and CoC in the reply to IA No.198 of 2025 opposed the prayers made by the Appellant. Respondent No.3 has filed an application for intervention opposing the application filed by the Appellant.

(xi) IA No.198 of 2025 was heard by the Adjudicating Authority and by the impugned order dated 08.10.2025 rejected the IA. Aggrieved by which order, this Appeal has been filed.

3. The prayers made in IA No.198 of 2025 have been noticed by the Adjudicating Authority in Paragraph 2 of the order, which are as follows:

"a To direct Respondent No. 1 and the Members of the CoC i.e. the Respondent No. 2 to conduct the inter-se bidding/ challenge mechanism as mandated under clause 2.2.4 of the RFRP issued on 3rd April 2024 (Annexure "A").

b. To direct Respondent No. 1 and the Members of the CoC ie. the Respondent No. 2 to strictly adhere to the process laid down under the RFRP issued on 3rd April 2024 (Annexure "A") to conclude the CIRP of the Corporate Debtor.

c. Pending the hearing and final disposal of the present Application this Tribunal may be pleased to pass an order

restraining the Respondent No. 2 from considering or voting upon any Resolution Plan;

d. During the pendency and final disposal and adjudication of the present Application, this Court be pleased to stay the CIRP of the Corporate Debtor."

4. We have heard Shri Nalin Kohli, learned Senior Counsel appearing for the Appellant; Shri Abhijeet Sinha, learned Senior Counsel appearing for Respondent No.1; Shri P. Nagesh, learned Senior Counsel appearing for the CoC; Shri Sanyam Goel and Shri Mohtashim Kibriya, learned Counsel appearing for Respondent Nos.3/4.

5. Shri Nalin Kohli, learned Senior Counsel appearing for the Appellant submits that as per the RFRP Clause 2.2.4, for evaluation of the revised Resolution Plan by the CoC, the adopting of conduct of inter-se bidding/ Challenge Mechanism is contemplated. Learned Counsel for the Appellant has referred to Clause 2.2.4 (a), (c), (d) and (g). Learned Counsel for the Appellant submits that it is true that the Appellant and other Resolution Applicant have submitted their revised Resolution Plans and the CoC has also carried out negotiations with both the Resolution Applicants, the Respondent is obliged to conduct an inter-se biding or Challenge Mechanism to maximize the value of the CD. The Appellant has also sent an email dated 05.11.2024 and other emails requesting for conducting of Outbidding Process. The Appellant has clearly indicated that the Appellant intended to make all the payments within 1 year and 10% discount rate and further increase the commercial offer by at least 10%. The action of the CoC and the RP in not conducting the Outbidding

Process is not in accordance with RFRP and is against the objectives of the IBC, which is to maximize the assets of the CD. The decision of the CoC subsequently taken not to hold Challenge Mechanism in its Meeting dated 27.12.2024 is not in conformity with RFRP, due to which the Appellant has to file an IA No.198 of 2025 seeking directions. Learned Counsel for the Appellant submits that in the negotiations process, the Resolution Applicants were advised to increase their Plan and revised Plans were filed, but at what stage the CoC decided to complete the negotiation process and proceed for voting is not in the knowledge of the Appellant. The Appellant was always under the impression that after negotiations with the Appellant and Respondent No.3, Outbidding Process shall be conducted.

6. Learned Counsel for the RP refuting the submissions of the learned Counsel for the Appellant submits that the Appellant was never informed or told by anyone that Outbidding Process/ Challenge Mechanism shall be conducted after negotiations with both the Resolution Applicants. The Appellant was given full opportunity to submit its revised Plan and in the 35th CoC Meeting the Resolution Plans submitted by Appellant and Respondent No.3 were discussed, deliberated and negotiated. The Appellant was free to give its best offer and the Appellant having revised his Plan also filed Addendum to the Plan, it cannot be allowed to contend that opportunity was not given to it. It is submitted that Clause 2.2.4 of the RFRP does not mandate that Outbidding Process/ Challenge Mechanism should be conducted in all cases. It is submitted that it is the

discretion of the CoC to adopt any method or mechanism and the CoC in the present case did not decide to conduct any Challenge Mechanism, which was specifically discussed and rejected. When the CoC has taken a decision not to conduct Challenge Mechanism, it is not open for the Appellant to challenge the decision of the CoC or to ask for conducting Challenge Mechanism. The commercials of Resolution Applicants are not liable to discuss with other Resolution Applicants. Both the Resolution Plans, which have been received in the CIRP are yet to be voted upon. The application, which was filed by the Appellant was meritless and has rightly been rejected by the Adjudicating Authority.

7. Learned Counsel appearing for the CoC has also refuted the submissions of the Appellant. It is submitted that the Appellant was given full opportunity to submit its Resolution Plan. Revised Resolution Plan received from the Appellant was discussed and deliberated by the CoC in the presence of the Appellant. The interpretation put by the Appellant on Clause 2.2.4 of the RFRP is not correct. To conduct Outbidding Process or Challenge Mechanism is enabling provision for CoC. It is for the CoC to decide as to what method or mechanism should be adopted for evaluation of the Resolution Plan. Learned Counsel for the CoC referring to Clause 2.2.4 (d) submits that the said clause provides "*CoC may, at their sole discretion, decide any method or process for evaluation the Resolution Plans".* It is submitted that the CoC having not decided to adopt the process of Outbidding or Challenge Mechanism, no grievance can be raised by the Appellant, who was given full opportunity

to participate in the process. The Appellant having given its best proposal, subsequent emails sent by the Appellant intending to enhance its offer, cannot be looked into. The Resolution Plan submitted by all the Resolution Applicants is a final offer received by the CoC. It is submitted that on account of the application filed by the Appellant and an interim order dated 14.01.2025, the entire process is held up, which is causing delay in the resolution of the CD.

8. Learned Counsel appearing for Respondent Nos.3 and 4 refuting the submissions of the Appellant submits that the Adjudicating Authority has correctly interpreted Clause 2.2.4 of the RFRP. Learned Counsel for Respondent Nos.3 and 4 has referred to paragraph 29 of the impugned order, where Clause 2.2.4 (c) and (d) have been referred to and Adjudicating Authority has noticed the word "***may***". It is submitted that Adjudicating Authority has rightly rejected the application filed by the Appellant and there is no merit in this Appeal.

9. We have considered the submissions of learned Counsel for the parties and have perused the record.

10. From the facts as has been noticed above, all the Resolution Applicants were permitted to file their Resolution Plans as well as the revised Resolution Plans. The Resolution Plan was submitted by the Appellant and other Resolution Applicants within time. The Appellant submitted its revised Resolution Plan on 27.08.2024. The Appellant also submitted an Addendum to the Resolution Plan. All the Resolution Applicants including the Appellant were invited by the CoC and the Plan

submitted by the Appellant and other Resolution Applicants were discussed and deliberated by the CoC on several dates. The RP has filed reply to IA No.198 of 2025. It is useful to notice certain facts pleaded in the reply of the RP with respect to facts and events, which took place regarding consideration of the Resolution Plan. In paragraph 2 (xx), (yy) and (zz), following have been pleaded:

> "xx. It is pertinent to mention here that after the discussion held at the 33rd CoC meeting on 16th September, 2024, the Applicant therein submitted an addendum to its resolution plan which was a part of the discussion held on 21st and 25th September, 2024.
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> yy. Thereafter, the Resolution Plans submitted by the Applicant and Consortium led by Aakshya Realty Private Limited were further discussed, deliberated and negotiated at length by the members of the CoC in presence of, inter alia, the Applicant herein at the 35th CoC meeting held on 1st October, 2024 2nd October, 2024, 4th October, 2024, 5th October, 2024, 8th October, 2024, 22nd October, 2024, 24th October, 2024 and 8th November, 2024, respectively. The Respondent No. 1 crave leave to reply upon the minutes of the 35th CoC meeting at the time of hearing, if necessary.
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> zz. During the 35th CoC meeting held on 1st and 2nd October, 2024, the issue with regard to the adoption of challenge mechanism was taken up and deliberated by the CoC members."

11. The facts, thus, clearly indicate that all Resolution Applicants, including the Appellant, were given opportunity to revise their Plans and the Plans were discussed in the Meeting of the CoC on several dates. The issue of conducting Challenge Mechanism was also raised before the CoC

in 35th CoC Meeting held on 24.10.2024, where SBI, who has 82.46% vote share has expressed its view against conduct of Challenge Mechanism. The part of the 35th CoC Meeting held on 24.10.2024 has been extracted by the RP in paragraph 2(aaa). It is useful to extract the aforesaid, which is to the following effect:

> "aaa. However, on 24th October, 2024 during the extended 35th CoC meeting, while discussing the feasibility and viability of the resolution plans amongst the CoC, the authorised representative of the homebuyers stated that challenge mechanism should be adopted for value maximisation. To which the representative of SBI stated as follows:
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> *"SBI representative stated that the RFRP states that Challenge mechanism shall be limited only to the pre-determined parameters – Payment to the financial creditors, whether as Upfront Cash to financial creditors or NPV of recovery to financial creditors and that shall be sole prerogative of the CoC to decide on the requirement of Challenge mechanism. He added that after submission of 1st Plans by the PRAs, rounds of negotiation were made by CoC and again after submission of Revised Plans by PRAs, another round of negotiation had taken place consequent to which PRAs submitted one Addendum further improving the terms of payments and as such sufficient and equal opportunity has been afforded to all PRAs which has already led to value maximization. Further, the plans for CD as a whole are having several non comparable offers (including downsides and upsides) made by the PRAs which cannot be harmonized through the Challenge mechanism that has to be necessarily confined to the assured amount to be paid to the financial creditors. In view of the above reasons, SBI representative stated that it is on commercial wisdom and an overall assessment of the 2 Plans for CD as a whole, that SBI*

as a member of CoC has decided against adopting a Challenge mechanism in this particular case, apart from the fact that a process cannot be endlessly continued despite and after being declared as 'final' at one stage.

Process Advisor added that on conduct of several rounds of negotiations, the increment in Plan amounts has already led to value maximization.""

12. The CoC was conscious of process of Challenge Mechanism and has deliberated on the same. As noted above, in the 37th CoC Meeting held on 27.12.2024, the CoC with 99.45% voting shares rejected the Resolution for conducting the Challenge Mechanism.

13. The issue which has been raised by learned Counsel for the parties is on correct interpretation of Clause 2.2.4 of RFRP. Clause 2.2.4 of the RFRP is as follows:

"2.2.4. **Step IV - Evaluation of the revised Resolution Plans by the CoC and initial approval of the successful Resolution Plan by the CoC**

a) The CoC reserves the right to negotiate any of the terms of the Compliant Resolution Plan(s) with one or more Resolution Applicants to maximize the value for all the stakeholders of the Corporate Debtor. However, it is clarified for abundant caution that the CoC reserves the right to negotiate with all Resolution Applicants. The venue and timelines for the negotiation shall be determined and/or communicated, if necessary, at a later date. The Resolution Applicants may be required to re-submit their revised proposals based on such discussions and negotiations. The timelines for submission of the revised proposals/plans shall be determined and/or communicated, if necessary, at a later date. It is clarified that in terms of Regulation 39(1A) of the CIRP Regulations, the Resolution Applicant shall be permitted to modify its Resolution Plan not more than once.

b) The CoC shall, with the assistance of PA/RP, shall evaluate the revised Resolution Plan(s)in accordance with the Evaluation Matrix as approved by the COC.

c) Upon evaluation of all the Resolution Plans in accordance with the Evaluation Matrix, the Resolution Professional shall rank the Resolution Plans as R1, R2, R3, R4 and so on (in descending order from highest scoring resolution plan to lowest). Thereafter, the Resolution Professional (on the instructions of the CoC) shall conduct inter-se bidding/ challenge mechanism (Physical or Electronic) of all the Resolution Applicants on certain pre-determined parameters as laid down in the outbidding process annexed hereto as Annexure 2 ("Outbidding Process"), or any such process as may be decided by the CoC for the purposes of maximization of the value of the assets of the Corporate Debtor.

d) It is clarified that the CoC and/or the Resolution Professional (acting on the instructions of the CoC) may, at their sole discretion, decide any method or process for evaluating the Resolution Plans, which may include, but shall not be limited to, the price discovery process, outbidding process, challenge mechanism and/or such other commercial evaluation process as may be applied by the CoC, and each Resolution Applicant shall bebound by the terms governing such a process, which shall be decided by the CoC.

e) The CoC may call all such Resolution Applicants for further negotiations/discussions/suggestions/modifications of their Resolution Plan. The Resolution Applicants shall thereafter submit its final Resolution Plan after carrying out the necessary modifications.

f) Provided that where the negotiations are unsuccessful, the CoC reserve the right to conduct any of Step 1, Step II and Step III (given above) again, as required, within the

stipulated time period, in order to maximize the value of the assets of the Corporate Debtor.

g) In accordance with Regulation 39 of the CIRP Regulations, all the Resolution Plans, revised after the aforesaid Outbidding Process and after CoC's deliberations [which shall be recorded) on the feasibility and viability, shall be then simultaneously put for vote by the members of CoC and then the Successful Resolution Plan shall be determined in the following manner.

- In a case where only one Resolution Plan is put to vote, it shall be considered approved if it receives requisite votes i.e. not less than 66% of voting share of the financial creditors.
- Where two or more resolution plans are put to vote simultaneously, then the Resolution Plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved.
    - Provided that where two or more Resolution Plans receive equal votes, but not less than requisite votes, the CoC shall approve any one of them, as per any tie-breaker formula approved by the CoC which shall be announced before voting.
    - Provided further that where none of the resolution plans receives requisite votes, the CoC shall again vote on the resolution plan that received the highest votes, subject to the timelines under the IB Code.

h) For avoidance of doubt, such selection of a Successful Resolution Applicant by the CoC shall be done in accordance with Regulation 39 of the CIRP Regulations and be final and binding on all the Resolution Applicants.

14. Clause 2.2.4 is part of Resolution Plan evaluation process. The submission of the learned Counsel for the Appellant and the prayers

made in IA No.198 of 2025 are based on interpretation put by the Appellant to the RFRP. The Appellant's case is that it was mandatory for the Committee of Creditors/ RP to have adopted the Challenge Mechanism/ Outbidding Process for maximizing the value of the CD. It is submitted that action of the CoC and the RP is contrary to the requirements of RFRP Clause 2.2.4. Thus, the bone of the contention between the parties is the true interpretation of Clause 2.2.4 of RFRP. Clause 2.2.4 (c) of RFRP uses the expression "*Thereafter, the Resolution Professional (on the instructions of the CoC) shall conduct inter-se bidding/ challenge mechanism (Physical or Electronic) of all the Resolution Applicants on certain pre-determined parameters as laid down in the outbidding process annexed hereto as Annexure 2, or any such process as may be decided by the CoC for the purposes of maximization of the value of the assets of the Corporate Debtor*". The above Clause provides that RP shall, on instructions of the CoC conduct inter-se bidding/ challenge mechanism. The obligation of the RP thus starts only when the CoC directs for inter-se bidding/ Challenge Mechanism. Further, the last line of Clause 2.2.4 (c) envisages "or any such process as may be decided by the CoC for the purposes of maximization of the value of the assets of the Corporate Debtor", clinches the issue, which clearly indicates that it is not mandatory for the CoC to direct inter-se bidding or Challenge Mechanism. Any process can be adopted by the CoC for maximization of the value of the assets. Furthermore, when we look into Clause 2.2.4 (d), which is a clarificatory, it clarifies that CoC and/ or the Resolution

Professional (acting on the instructions of the CoC) may, at their sole discretion, decide any method or process for evaluating the Resolution Plans, which may include, but shall not be limited to, the price discovery process, outbidding process, challenge mechanism and/ or such other commercial evaluation process as may be applied by the CoC. The above Clause does not dispel or doubt regarding the true nature of Clauses 2.2.4 (c) and (d). The above clarification clarifies that it is not mandatory to hold inter-se bidding or Challenge Mechanism as contended by the Appellant. It is the sole discretion of the CoC to decide any method or process for evaluation of Resolution Plan, which is specifically provided in Clause 2.2.4 (d), which may include Outbidding Process/ Challenge Mechanism. We, thus, are of the view that submission of the Appellant that it was mandatory for the CoC to conduct Challenge Mechanism or inter-se bidding with regard to Appellant or other Resolution Applicants as per RFRP is incorrect. The Adjudicating Authority has rightly interpreted Clause 2.2.4. We may refer to Paragraphs 29 and 30 of the impugned order, which are as follows:

> "29. In fact, the ambiguity in the interpretation of clause 2.2.4 (c), if any, is cleared out in clause 2.2.4 (d) wherein it is clearly stated that CoC and/or the RP (at the instructions of the CoC) may at its sole discretion decide any method/process for evaluating the resolution plans. Had there been an intention to mandate the CoC to conduct challenge mechanism process, the RFRP would not have used different words in two consecutive clauses i.e. usage of "shall" in clause 2.2.4 (c) while referring to the RP only and usage of "may" in clause 2.2.4 (d) while referring to the RP as well as the CoC. This itself clears the doubt that the intention of the RFRP was to give

> CoC the discretion to decide on whether or not to adopt the challenge mechanism.
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> 30. Thus, we do not find any conflict in the interpretation of clauses 2.2.4 (c) and (d) of the RFRP as they all convey the same intention i.e. to give the CoC the power to adopt challenge mechanism or any other process for evaluation of the resolution plans at its sole discretion. In view of the same, the arguments of the Applicant and reliance on case laws on the interpretation of the statues has become superfluous and do not support the case of the Applicant."

15. The emails, which were sent by the Appellant to the RP on 05.11.2024 and 13.11.2024 and thereafter clearly indicate that the Appellant himself was conscious while stating that "*in the event the outbidding is not happening*". Thus, the Appellant was well aware that it is not mandatory to hold Outbidding Process. The submission of the Appellant that despite his final revised Resolution Plan, he intended to increase his financial offer has no legs to stand. After final Resolution Plan given by Resolution Applicants, which is under process of evaluation by the CoC, no Resolution Applicant can be allowed to increase his financial offers. We have already noticed that the requirement of holding Challenge Mechanism was deliberated by the CoC in the CoC Meetings, which we have already noticed above. The SBI, which has more than 82% vote share of CoC has clearly opined in the CoC Meetings that it is not in favour of Challenge Mechanism. Looking to the nature of the Clauses of Resolution Plan, the CoC, thus, after considering all aspects of the matter had ultimately resolved to vote on the said Resolution and by 99.45% vote share it rejected the holding of any Challenge Mechanism, which decision

was taken in the CoC Meeting held on 27.12.2024. The present application has been filed by the Appellant subsequently to the above decision, which infact is nothing but challenging the decision of the CoC, where CoC decided not to adopt Challenge Mechanism and vote on both the Resolution Plans. The CoC has jurisdiction under the RFRP read with CIRP Regulations, 2016 to take decision regarding mode and manner of conducting a process for maximization of value of the assets of the CD and the CoC having been satisfied that the necessary process has already been taken, we do not find any error in the decision of the CoC, not to conduct Challenge Mechanism. We, thus, are satisfied that Adjudicating Authority did not commit any error in rejecting the application of the Appellant seeking directions to CoC and RP to conduct inter-se bidding/ Challenge Mechanism. The Adjudicating Authority has rightly rejected the application filed by the Appellant.

16. Learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***(2022) 9 SCC 803 in Vallal RCK vs. Siva Industries and Holdings Limited and Ors.***, wherein it was held by the Hon'ble Supreme Court that when a decision of the CoC in event it is capricious or arbitrary, the Adjudicating Authority or the Appellate Tribunal can very well interfere with the said decision. In Paragraphs 24 and 25 of the judgment, the Hon'ble Supreme Court has laid down following:

> "**23.** As already stated hereinabove, the provisions under Section 12-A IBC have been made more stringent as compared to Section 30(4) IBC. Whereas under Section 30(4) IBC, the voting share of

> CoC for approving the resolution plan is 66%, the requirement under Section 12-A IBC for withdrawal of CIRP is 90%.
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> **24.** When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and dehors the provisions of the statute or the Rules."

17. In the above case, the Appeals were filed before the Hon'ble Supreme Court challenging the order of NCLAT dated 28.01.2022 where application filed under Section 12A was rejected by the NCLT. In the above case, the CoC with its more than 90% vote share has taken a decision to withdraw the CIRP. The issue was noticed in Paragraph 2 of the judgment, which is as follows:

> "**2.** A short question that falls for consideration in the present appeal is as to whether the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors (hereinafter referred to as "CoC") or not."

18. The Hon'ble Supreme Court after considering all aspects, took the view that the decision of the CoC was taken after the Members of the CoC had due deliberation. In Paragraph 26, following was laid down:

> "**26.** It is thus clear that the decision of the CoC was taken after the members of the CoC, had due deliberation to consider the pros and cons of the settlement plan and took a decision exercising their commercial wisdom. We are therefore of the considered view that

neither the learned NCLT nor the learned NCLAT were justified in not giving due weightage to the commercial wisdom of CoC."

19. The Hon'ble Supreme Court allowed the Appeal and set aside the impugned order.

20. In the present case, the decision of the CoC not to adopt the Challenge Mechanism cannot be said to be capricious or arbitrary. The above judgment relied by the Appellant in no manner supports the case of the Appellant.

21. We, thus, do not find any error in the order passed by the Adjudicating Authority. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

23rd December, 2025

Ashwani