NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1482 of 2023

[Arising out of the Impugned Order dated 09.08.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-II in I.A. No. 5617/ND/2022 in C.P. (IB) No. 1243(ND)/2018]

In the matter of:

DR. ARABINDA KUMAR RATH
Suspended Board of Director of
The Corporate Debtor
S/o Sasibhushana Rath,
D-155, Sarita Vihar, New Delhi- 110076
e-mail: akrath.dr@gmail.com

...Appellant

Versus

SIBA KUMAR MOHAPATRA
Resolution Professional
Medirad Tech India Limited
Flat No. E/402, Baishnav Vihar,
Bomikhal, Near Durga Mandap,
Bhubaneswar- 751010
ip.medirad@gmail.com

...Respondent

Present:

For Appellant : Mr. Tishampati Sen, Mr. Shubhanshu Gupta, Advocates.

For Respondent : Mr. Gaurav Mitra, Mr. Shouryendu Ray, Ms. Vatsala Poddar, Ms. Aarushi Mishra, Ms. Neelu Mohan, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 09.08.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-II) in

I.A. No. 5617/ND/2022 in C.P. (IB) No. 1243(ND)/2018. By the impugned order, the Adjudicating Authority has approved the Resolution Plan of the Successful Resolution Applicant (**"SRA"** in short) and dismissed the objections raised by erstwhile management of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant who is a member of the suspended Board of Director of the Corporate Debtor.

2. Coming to the brief factual background of the present case at hand, M/s Medirad Tech India Ltd.-Corporate Debtor was admitted into the rigours of Corporate Insolvency Resolution Process (**"CIRP"** in short) following the admission of Section 7 application filed by M/s India SME Assets Reconstruction Company Ltd. **(ISARC)** on 08.12.2021. Following the initiation of CIRP, the Interim Resolution Professional who was later confirmed as the Resolution Professional (**"RP"** in short) constituted the Committee of Creditors (**"CoC"** in short) comprising of two members, namely, Technology Development Board **(TDB)** and ISARC and invited plans for resolution of the Corporate Debtor. The RP had submitted before the CoC two resolution plans received from Prospective Resolution Applicants (**"PRAs"** in short) as may be seen from the minutes of the 5th CoC meeting held on 05.05.2022. After due scrutiny of the plans on the basis of the evaluation matrix, Asian Institute of Oncology Pvt. Ltd. **(AIOPL)** emerged as SRA in the 9th CoC meeting. The RP submitted IA No. 5617 of 2022 before the Adjudicating Authority seeking approval of the resolution plan submitted by the SRA. The Adjudicating Authority approved the resolution plan dismissing the objections raised by the present Appellant to the said resolution plan. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

3. Making his submissions, Shri Tishampati Sen, Ld. Counsel for Appellant submitted that the RP had conducted the CIRP of the Corporate Debtor in a malafide manner whereby recovery by the secured Financial Creditors was accorded undue primacy at the cost of the interests of the Corporate Debtor. The RP had allowed the secured Financial Creditors to unduly inflate their claims which claims did not mirror the position reflected in the financial records of the said Financial Creditors. The Adjudicating Authority had also brushed aside the objections raised by the Appellant to the exaggerated claims filed by the Financial Creditors on the pretext that there was no *inter se* complaint or objections by the Financial Creditors in respect of each other's claim. It was emphatically asserted that this was not a fair and transparent manner of handling the serious objections raised by the Appellant with regard to inflated claims having been allowed by the RP. The Adjudicating Authority also erred in approving the resolution plan even though the plan attributes were not beneficial for the Corporate Debtor on account of inflated claims having been allowed for the Secured Financial Creditors.

4. The valuation of the Corporate Debtor had been artificially exaggerated with the fair value having been kept at Rs 50.73 Cr. and the liquidation value at Rs 40.51 Cr. The basis for arriving at the above valuation figures was not clear. Inspite of the request of the Appellant made to the RP for providing the valuation report, the request had been rejected. Assertion was also made that the RP did not disclose all requisite material information in the RFRP while inviting plans from the PRAs. It was not disclosed that the land on which the hospital business of the erstwhile Corporate Debtor was running was lease land granted by the

Government of Odisha which lease was for a specific purpose. The PRAs and SRA were unaware of the conditions of the lease basis. The Lease Deed clearly stipulated that the land was given to the Corporate Debtor for a specific purpose and any change of the conditions of lease would lead to its termination. As this aspect was not brought to the attention of either the CoC or the PRAs by the RP, hence, the resolution plan of the SRA did not deal with these aspects of Lease Deed and the permission to mortgage. It was therefore contended that the current resolution plan of the SRA was bound to fail.

5. Refuting the contentions of the Appellant, Shri Gaurav Mitra, Ld. Counsel for the Respondent-RP asserted that the Appellant who was a member of the suspended management of the Corporate Debtor has failed to substantiate any of the grounds enumerated under Section 61(3) of the IBC basis which the approval of the resolution plan could have been challenged. It was further added that the plan submitted by the SRA has been fully implemented. The SRA had already paid Rs 47.05 Cr. to both Financial and Operational Creditors besides paying for CIRP costs. The SRA had also infused fresh capital by issue of shares and put in place a new Board of Directors and the cancer hospital was already operational under the leadership of a reputed, experienced and highly decorated oncologist. It was also submitted that the objections raised by the Appellant with regard to alleged inflated claims of the Financial Creditors was misleading. Emphasising that both the Secured Financial Creditors had public profile and therefore could not have behaved in an unbecoming manner, it was added that TDB was a statutory body set up by the Ministry of Science and Technology,

Govt. of India, while the other Financial Creditor-ISARC was a consortium of banks which included a public-sector bank namely IDBI Bank.

6. It is also contended that the charge made by the Appellant that the resolution plan of the SRA suffered from deficiencies as the RFRP was silent about the land lease deed of the erstwhile Corporate Debtor lacks foundation. Asserting that there was no evidence of non-compliance of the lease-deed, it was submitted that there was no change in the land-use since the SRA was also running a hospital akin to what was being run by the Corporate Debtor but for the fact that it was being run on a more expanded scale along with scope for development of a Research Centre in the future. It was vehemently contended that the Appellant had no locus to comment on whether there had been any breach of any conditions of the lease as it was the Government of Odisha which was the appropriate entity to decide on whether there was any deviation from the terms and conditions of the Lease Deed. Furthermore, the RP had taken appropriate and sufficient steps to keep the Government of Odisha apprised of the status of CIRP and the filing of resolution plan. Moreover, the fact that the SRA was to take all steps in line with the order of the NGT for forest clearance had also been communicated by the RP to the CoC including the factum that additional time was required by the SRA for filing of application for forest clearance under the Forest Conservation Act, 1980.

7. We have duly considered the arguments advanced by the Learned Counsels for both the parties and perused the records carefully.

8. The primary objection of the Appellant on the conduct of the RP was that the claims admitted in respect of the two Financial Creditors were not in

conformity with their respective financial records and that the RP had manipulatively allowed them to artificially balloon their claims. Elucidating their arguments, it was stated that the claim of ISARC as on 10.06.2018 was Rs 39.20 Cr. However, the amount which had been admitted by the RP was Rs 60.04 Cr. It was alleged that the RP has also not taken into consideration the fact that the Corporate Debtor had paid certain sums of money to one of the consortium lenders - IDBI Bank. As regards TDB, it was pointed out that as against the 24th Annual Report of the TDB for 2020-21 which depicted only an amount of Rs 11.14 Cr. as due from the Corporate Debtor, the claim which had been admitted by the RP was Rs 30.19 Cr. Like in the case of ISARC, even in the case of TDB, the RP did not factor in the payment of certain sums of money by the Corporate Debtor to TDB. The quantum of debt was thus not quantified by the RP appropriately as it did not take into consideration the paid amounts. It was vehemently contended that though serious objections were raised by the Appellant before the Adjudicating Authority on the manner in which the RP had admitted the claims, the same was dismissed by the Adjudicating Authority on the flimsy and technical ground that since there was no *inter se* complaint on the quantum of claims amongst the two Secured Financial Creditors, the Appellant had no grounds to press on with their objections. Simply because TDB which had initially contested the claims filed by ISARC but did not persist with their objection to the claim of ISARC, this was not a valid ground to dismiss the objections raised by the Appellant.

9. Per contra, the RP contended that the Appellant has cleverly attempted to truncate the claims of the Secured Financial Creditors by selective use of

documents to misrepresent facts. It was submitted by the RP that with a view to buttress their distorted contention that the outstanding amount of TDB was only Rs 11.14 Cr, the Appellant has relied on the 25th Annual Report of TDB for 2021 and selectively confined itself to the entry made therein under the heading "Provision of interest and additional interest". The Appellant has deliberately not brought to the fore the fact that following an arbitration initiated by them, an Arbitration Award was announced on 25.05.2015. This award granted TDB Rs 14.98 Cr. along with interest pendente lite @ 15% p.a. from 19.08.2011 till the date of award and future interest @ of 15% till realization. When reckoned along with arbitration award amount, the outstanding dues to TDB worked out to Rs 30.19 Cr. and hence the claim of Rs 30.19 Cr. has been correctly admitted by the RP on the basis of documents appended to Form-C. As regards their allegations that the claim raised in respect of ISARC was also inflated, it was asserted that the allegation of the Appellant was equally misconceived. It was pointed out that the order of the Adjudicating Authority admitting the Corporate Debtor into CIRP was based on the default submitted by the ISARC-Financial Creditor as on 10.06.2018. However, since the Corporate Debtor was admitted into CIRP on 08.12.2021, interest amount had clearly accrued thereon as follows: (a) loan of Rs 1,00,00,000 at 14% for IDBI's facility dated 06.08.2000 along with 2% penalty and 16.5% along with 2.05% penalty for IDBI loan dated 23.04.2004; and (b) loan of Rs 5,00,00,000 at 11.5% for Axis Bank's term loan and Rs 10,77,88,871 at 10.75% on its funded interest term loan. Hence the claim of ISARC was realistic and not artificially bloated as alleged by the Appellant. Moreover, the Appellant had only taken cognisance of the orders of the DRT

dated 22.04.2022 in respect of ISARC claim. It is the case of the RP that the order of DRT was only in respect of the loan obtained from Axis Bank and did not reflect the loan received by the Corporate Debtor from the other consortium lender that is the IDBI Bank.

10. At this stage it may be useful to notice the treatment given by Adjudicating Authority in the impugned order to the purported allegation of the Appellant that the claims lodged by the two Financial Creditors were inflated and unrealistic. We find that the Adjudicating Authority has noticed that on an earlier occasion, TDB had raised concerns on the veracity and tenability of the claims lodged by ISARC. The TDB had objected to the claim amount of ISARC as accepted by the RP. Aggrieved with the RP in this regard, the TDB had filed IA No. 903 of 2021 before the Adjudicating Authority seeking details of Form-C which had been filed by the ISARC regarding their claims. This prayer of the TDB had been allowed by the Adjudicating Authority on 04.10.2022 following which the RP had furnished the detailed particulars contained in Form-C filed by the ISARC to TDB. We notice that the TDB after receiving Form-C of ISARC did not pursue the matter any further which amply manifests that the doubts entertained by TDB regarding the claims filed by ISARC stood dissipated. This clearly exhibits that the TDB had elected not to dispute the claims admitted qua ISARC and did not raise any further discrepancies on the claims of ISARC.

11. In such circumstances, we are of the considered view that it was only reasonable on the part of the Adjudicating Authority to infer that the apprehensions of the TDB in respect of the claim filed by ISARC stood allayed. We are also inclined to agree with the RP that when there were only two Financial

Creditors in the CoC and they had settled their doubts and ambiguities about each other's claim and there was no *inter se* dispute between them on the quantum of claim, they had actually opted and chosen to put a quietus to the matter. That being the ground situation, the suspended management of the Corporate Debtor has no locus to raise unfounded allegations about the quantum of claims claimed by the Financial Creditors and admitted by the RP. When TDB was fully satisfied about the fairness and reasonableness of the claim filed by the other Financial Creditor, we find no reasons to disagree with the findings returned by the Adjudicating Authority that merely because the Appellant was the personal guarantor of the ex-management, they cannot be seen to unduly persist with their allegations that the claims of the Financial Creditor were inflated and exaggerated to the detriment of the Corporate Debtor.

12. We now proceed to peruse the resolution plan of the SRA to see how it has dealt with the claims lodged by the Secured Financial Creditors and Operational Creditors. In respect of the proposed payment to the Secured Financial Creditors, the plan abstract of the SRA is as reproduced below:

	Secured Financial Creditors (Payment Bifurcation)	Amount Claimed	Claim Admitted	90 days from termination of Lease and Service agreements (charge free) or NCLT order whichever is later	Total	% of claim admitted
a	Technology Development Board	3028,38,962	3019,15,435	1419,00,000	1419,00,000	47%
b	India SME Asset Reconstruction Company Limited	6004,96,232	6004,97,968	2881,00,000	2881,00,000	48%

	Secured financial creditors (other than financial creditors belonging to any class of creditors)	9033,35,194	9024,13,403	4300,00,000	4300,00,000	

We find that as against the admitted claim of Rs 30.19 Cr. of TDB, the latter had received Rs 14.19 Cr. which is 47% of their admitted claim. ISARC had also been paid Rs 28.81 Cr. which was 48% of their admitted claim. The Operational Creditors including workmen, employees, statutory government dues and other Operational Creditors have all been provided for 100% of their admitted claim in the plan as may be seen at page 146 of Appeal Paper Book (**"APB"** in short). It is also an undisputed fact that the SRA has paid the CIRP costs. When the resolution plan of the SRA took care of the interest of every stakeholder substantively and no complaint has been received from either the Secured Financial Creditors or Operational Creditors of having been made to suffer any arbitrary hair-cut, we do not see any merit in the bogey of admission of inflated claims by the RP as raised by the Appellant.

13. This brings us to the second limb of argument of the Appellant that the RP failed to effectively discharge his statutory responsibilities under the IBC in not having disclosed crucial material information in the RFRP document with regard to the land on which the hospital of the erstwhile Corporate Debtor was running, in that it was a leased property, the lease having been granted by the Government of Odisha on 02.11.2000. Submission has been pressed by the Appellant that the lease was for a specific purpose and the Lease Deed clearly

specified that any change in the conditions of the lease would lead to its termination. It is the case of the Appellant that the RP did not include the termination aspect of the lease in the RFRP and the resolution plan of the SRA was silent on this count. The CoC was also informed about the lease much later on 03.05.2023 during the 12th CoC meeting by the RP by which time the plan of the SRA had already been approved by the CoC. The RP had only apprised the CoC of the forest clearance aspect while keeping the CoC in the dark regarding the directions of the Government of Odisha regarding compliance with the condition of the Lease Deed and mortgage permission. Pointing out another fallacy of the RP, it was submitted that the resolution plan of the SRA got approved without taking consent from the Government of Odisha. It was therefore strenuously contended by the Appellant that the Adjudicating Authority had erroneously held that the RP had taken sufficient steps to keep the Government of Odisha informed about the CIRP of the Corporate Debtor and the resolution plan of the SRA. Attention was adverted to the decision of this Tribunal in ***SEL Manufacturing Company Ltd. Vs Punjab Small Industries & Export Corporation Ltd.*** in ***CA(AT)(Ins) No. 881 of 2022*** wherein it has been held by the Tribunal that the rights of Land Development authorities on assets owned by them cannot be overridden by provisions of IBC. It was canvassed that present is a case where non-compliance to the terms and conditions of the Lease Deed was writ large and hence their objections to the resolution plan ought to have been sustained by the Adjudicating Authority.

14. To arrive at our findings on this issue, it would be constructive to notice the relevant excerpts of the letter dated 03.09.2022 from the Government of

Odisha addressed to the RP with respect to the Lease Deed which reads as follows:

> *C. The land schedule involved in the case is a leasehold land allotted by the GA & PG Deptt. for the purpose of establishment of "Information Technology Project on Radiation Therapy, Allied Sciences and Cancer Institute". GA & PG Deptt. has not been impleaded as a party before the Hon'ble Tribunal.*
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> *The clause (xiv) of the Register Lease Deed provides that, the lessee shall not without the consent in writing of the lessor use or permit the use of the said land for any purpose other than that for which it is leased or transfer the same without such consent. Further Clause-(xvi) of the Register Lease Deed provides that in the event of the closure/dissolution/defunct of the institution M/s Medirad Tech India Ltd., New Delhi, the lease land along with building if any thereon shall be the property of Government.*
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> *Further, it is pertinent to mention here that the land schedule involved in respect of the land relating to Mz-Jayadev Vihar is recorded in forest classification. As per the order of the Hon'ble National Green Tribunal in OA No. 29/2019, the user agency is required to regularise the matter by filing forest diversion proposal before the competent authority as per the provisions of F.C. Act, 1980.*
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> *You are therefore requested to take cognizance of the specific conditions contained in the Registered Lease Deed No. 6193 dtd. 03.11.2000 and No. 1435 dtd. 24.02.2006 read with the conditions mentioned in the NOC Order No. 2597 dtd. 28.02.2001 and No. 13985 dtd. 31.12.2002, while proceeding to resolve the insolvency matter as per the provisions of Insolvency & Bankruptcy Code (IBC) with the orders of Hon'ble National Company Law Tribunal (NCLT). Any deviation in overriding the terms and conditions of lease deeds executed by Government in GA & PG Department and the orders of the NOC issued at Government level may lead to future litigation.*
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> *(Emphasis supplied)*

15. When we see the above letter from the Government of Odisha dated 03.09.2022 addressed to the RP, we find that the Government of Odisha had clearly noticed that the Corporate Debtor had been admitted into CIRP vide order dated 08.12.2021. This letter only informs the RP that while proceeding to

resolve the insolvency matter in terms of the provisions of IBC, the RP may take cognisance of the specific condition contained in the Registered Lease Deed No. 6193 dated 03.11.2000 and No. 1435 dated 24.02.2006 to desist from any deviation in adhering to the terms and conditions of the Lease Deeds to avoid future litigations. Perusal of the contents of this communication does not in any manner manifest that the RP had committed any breach of the Lease Deed. All that the Government of Odisha had communicated in the said letter to the RP was to take adequate safeguards and precaution that the terms and conditions of Lease Deed were not deviated from or get overrun in any manner. Material placed on record also show that the RP had sent a reply on 29.08.2022 and 18.11.2022 to the Government of Odisha that all the points contained in their letter of 03.09.2022 had been taken cognisance of.

16. We therefore do not find any material on record which substantiates that the Lessor-Government of Odisha had raised any such objection that the land lease deed has been violated. No permission was either necessary from Government of Odisha since there was no change in the purpose of the use of the land. Neither was the land being put for sale. The business activity of the SRA pursuant to approval of resolution plan was for the same purpose for which Lease Deed had been granted to the suspended management. Furthermore, as to whether the terms of conditions of the Lease Deed had been breached or not is an issue to be examined and determined by the Government of Odisha, the latter being the Lessor. The Appellant being the suspended management of the Corporate Debtor has no locus standi to decide whether the Lease Deed had been breached or not. Furthermore, when we see the manner how the Corporate

Debtor was using the leased land, admittedly it was for the purpose of running a 50 bedded cancer hospital. When we see the terms of the resolution plan, the SRA was also intending to continue with running a cancer hospital, albeit, with an expanded capacity of 150 beds. It is therefore self-evident that there is no change in the land-use except that the scale of the hospital has been enlarged. We also notice that the Adjudicating Authority at paragraphs 18 to 25 of the impugned order noticed in detail the exchange of communication between the RP and the Government of Odisha about the status and progress of the CIRP proceedings. Hence, the Adjudicating Authority did not commit any error in coming to the conclusion that the RP had taken appropriate steps to keep the Government of Odisha apprised of the status of the CIRP and on the filing of resolution plan duly approved by the CoC. As regards forest clearance too, the RP had sent a letter to the Government of Odisha on 18.11.2022 requesting for additional time to file an application seeking forest clearance under the Forest Conservation Act 1980, since the resolution plan was pending approval of the Adjudicating Authority and that the SRA was to take necessary steps in line with the order of the NGT for forest clearance. We therefore do not find any infirmity in the finding returned by the Adjudicating Authority that no breach of the lease deed had been pointed out by the Government of Odisha and that the RP had scrupulously complied to the suggestions and directions of the Government of Odisha which was the Lessor.

17. The reliance placed by the Appellant on ***SEL Manufacturing Company Ltd judgment supra*** is also misplaced since in that case there was non-compliance to the terms and conditions of the Lease Deed with the SRA not

having paid the demand for enhanced land cost raised by the land holding authorities much before the initiation of CIRP. The present is not a case, where any such demand from any sovereign land authority remained unmet. Nor do we find any communication from the Government of Odisha citing breach of the terms of Lease Deed by the SRA.

18. It is also one among the many objections raised by the Appellant that the RP did not conduct the valuation exercise properly. The valuation exercise was allegedly facilitated by the RP in a manner which unduly benefitted the Secured Financial Creditor at the cost and detriment of the interest of the Corporate Debtor. It was also contended that the valuation report of the Corporate Debtor was not shared with the Appellant inspite of requesting for these reports.

19. When we see the material available on record, we notice that in accordance with the CIRP Regulations and Section 25 of IBC, the RP had appointed registered valuers for conducting valuation exercise. The obligation of the RP under CIRP Regulations and IBC is limited only to the appointment of the registered valuers, while the valuation is to be approved by the CoC under the mandate of commercial wisdom. Thus, the RP cannot be faulted on this count as it had discharged its statutory responsibility having appointed the valuers and submitted their report to the CoC for its consideration.

20. The approval of the valuation of Corporate Debtor is an exercise which falls under the purview of commercial wisdom undertaken by the CoC. The scope of interference by the Adjudicating Authority in the commercial wisdom exercised by the CoC is minimal. Since the Appellant had no right to vote in the meeting of the CoC, they cannot be said to have suffered from any prejudice for

not being provided with the valuation report. Whether the detailed valuation report was placed before the Appellant or not is immaterial and irrelevant since it is only the members of the CoC who were required to exercise the commercial wisdom on the valuation reports placed before them and not the Appellant who did not have the right to exercise their vote.

21. Coming to the non-sharing of the valuation reports, as per the CIRP regulations, the RP is not required to share the valuation with any entity except the members of the CoC that too after obtaining confidentiality undertaking. The Adjudicating Authority has rightly held at para 29 that there is no provision under IBC or the CIRP Regulations framed thereunder which necessitates the valuation report of the Corporate Debtor to be shared with the suspended management of the Corporate Debtor. The confidential nature of the fair value and liquidation value of the Corporate Debtor is highlighted in Regulation 35(2) of the CIRP Regulations and the RP is not obligated to share these reports with anyone but for the members of the CoC. The RP had not violated the statutory construct of the IBC in not acceding to the request of the Appellant to provide them with the valuation report. We therefore do not find any merit in the contention of the Appellant that by not getting access to the valuation reports, they were denied their due. On the contrary, we affirm the decision of the Adjudicating Authority that in the given circumstances, no irregularity stands proven to have been committed by the RP.

22. Another argument canvassed by the Appellant was that the settlement proposed by them under Section 12(a) had not been paid any heed either by the RP or the CoC. We have no doubt in our mind that the RPs jurisdiction is

restricted only to presenting any settlement offer before the CoC and it strictly lies on the commercial wisdom of the CoC to accept or reject the aforesaid offer. Having placed the Appellant's settlement offer before the CoC, the RP therefore cannot be faulted on this score. The settlement offer of the Appellant under Section 12-A had been discussed in the 6th CoC meeting. ISARC during the said CoC meeting had agreed to review the settlement offer though it is also an undisputed fact that the Appellant did not receive any response from ISARC on their settlement offer. The representatives of TDB during the meeting had also stressed that any repayment plan in terms of the settlement had to also cater to the interests of TDB and not only that of ISARC. If the Financial Creditors did not respond to the offer and CoC proceeded ahead to approve the resolution plan of the SRA, it was an act of exercise of commercial wisdom of the CoC. The Financial Creditors were not obligated to respond to the settlement offer. It is settled law that the collective business decision of the CoC cannot be interfered with either by the RP or the Adjudicating Authority. Hence the complaint of the Appellant that their settlement offer did not receive deserve due regard is misplaced and cannot be sustained.

23. Much emphasis was laid by the Respondent that it is settled law that to challenge the order of the Adjudicating Authority approving a resolution plan, the same has to be strictly confined to the grounds set out in Section 61(3) of the IBC as has been held by the Hon'ble High Court in ***Arcelor Mittal (P) Ltd. Vs Satish Kumar Gupta 2018 SCC Online SC 1733*** wherein it has been held that *"an appeal from an order approving such plan is only on the limited grounds laid down in Section 61(3)".* It was vehemently contended that the Appellant has

failed to show any irregularity or infraction or breach of any of the grounds outlined under Section 61(3) of the IBC. Since the Appellant is trying to reopen the resolution plan for adjudication on grounds which are beyond the purview of the Appellate Authority, the appeal deserves to be set aside.

24. The resolution plan was approved with 100% vote share in the 9th CoC meeting on 06.06.2022. The plan having been approved by full majority, we are of the considered view that the Adjudicating Authority did not commit any error while approving the resolution plan after noting its satisfaction about the plan being compliant to the provisions of the IBC in terms of Section 30(2) of the IBC. Law is now well settled that the jurisdiction of the Adjudicating and Appellate Authorities to interfere with approval of the resolution plan is limited. The scope of judicial review is confined to the provisions contained in Section 30(2) of the IBC for the Adjudicating Authority and Section 61(3) for the Appellate Authority. There is only limited review which can be exercised by the Adjudicating Authority or the Appellate Authority.

25. We are guided by the judgement of the Hon'ble Supreme Court in ***Ngaitlang Dhar v. Panna Pragati Infrastructure Private Limited*** in ***CA No. 3665-3666 of 2020*** wherein it has been held: -

> *"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.*
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> *It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, 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

(ii) Committee of Creditors of Essar Steel India Limited through authorized signatory v. Satish Kumar Gupta,

(iii) Maharashtra Seamless Limited v. Padmanabhan Venkatesh,

(iv) Kalpraj Dharamshi v. Kotak Investment Advisors Limited,

(v) *Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director"*

26. As long as the statutory provisions of the IBC and the CIRP Regulations framed thereunder are complied with, it is the commercial wisdom of the requisite majority of the CoC which is to negotiate and accept a resolution plan. Once all the mandatory requirements have been duly complied with and taken care of, the Adjudicating Authority cannot deal with the merits of Resolution Plan unless it is found it to be contrary to the express provisions of law and against the public interest. There is neither any material irregularity nor contravention of any provision of law by the CoC which has been justifiably substantiated by the Appellant. In the present case when no valid grounds have been made out to challenge the approval of the resolution plan, the legislative fiat of the IBC that the Adjudicating Authority cannot trespass upon the business decision of the CoC holds ground. We have no doubts in our mind that the plan has been rightly approved by the Adjudicating Authority on having successfully passed the muster of commercial wisdom of CoC.

27. In view of the reasons stated above, we find no good grounds to interfere with the impugned order. We find no merit in the Appeal. The Appeal is dismissed with no costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 07.05.2025

Abdul/ Harleen