

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

**Company Appeal (AT) (Insolvency) No. 995 & 996 of 2024**

**[Arising out of the Impugned Order dated 22.03.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Court-II in I.A. No.- 15/KB/2024 in T.A. No. 8/KB/2022 and I.A. No.2/KB/2024 in TP No. 4/KB/2022]**

**In the matter of:**

**Sylvan Commercial Private Limited**

A Company incorporated under the provisions  
Of the Companies Act, 1956 and  
having its Registered Office at:  
238A, AJC Bose Road, 2<sup>nd</sup> Floor,  
Suit No. 2B, Kolkata, West Bengal-  
700020, India.

...Appellant

**Versus**

**1. Nitin Daga**

Resolution Professional of Rishra Steel Limited  
Appointed in terms of the Order dated 17<sup>th</sup> June,  
2022 passed by the National Company Law Tribunal,  
Kolkata Bench

...Respondent No.1

**2. The Official Liquidator**

High Court at Calcutta

...Respondent No.2

**3. Geepee Softech Services Private Limited**

Through its Director  
House No.-54, Khasra No.74,  
Green Meadows Farm, Shahoor Pur,  
Chhattarpur Mandir Road, New Delhi  
India, 110074

...Respondent No.3

**4. JK Urbanscapes Developers Limited**

(Formerly known as "JK Cotton Limited")  
Through its Director  
Kamla Tower, Kanpur,  
Uttar Pradesh, India, 208001

...Respondent No.4

**Present:**

For Appellant : Mr. Gaurav Mitra, Mr. Animesh Kumar, Mr. Tanay Agarwal, Mr. Kunal Godhwani, Mr. Nishant Kumar, Mr. Sumit Kumar, Mr. Aprajit, Ms. Aishwarya Modi and Ms. Palak Joshi, Advocates.

For Respondent : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Sameer Jain, Mr. Syed Fazl Askari, Mr. Akshat Jain and Mr. Saikat Sarkar, Advocates for R-1.

Mr. Sunil Fernandes, Sr. Advocate with Mr. Himanshu Satija, Ms. Ankita Shanker & Mr. Harsh Saxena, Advocates for R-3 & R-4.

Ms. Madhumita Bhattacharya, Advocate for Intervener/State of West Bengal.

**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 two sperate orders dated 22.03.2024 (hereinafter referred to as **Impugned Orders**) passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata, Bench-II) in I.A. No. 15/KB/2024 in T.A. No.8/KB/2022 and I.A. No.2/KB/2024 in TP No. 4/KB/2022. By the impugned orders, the Adjudicating Authority has dismissed I.A. No.15 of 2024 upholding the rejection of claims of the Appellant filed with the Resolution Professional and approved I.A. No.2 of 2024 approving the resolution plan of the Corporate Debtor. Aggrieved by the impugned orders, the present appeal has been preferred by the Appellant.

**2.** Outlining the factual matrix of the matter, the salient events are as under:

- The genesis of the present proceedings arises out of the winding up orders issued by the Hon'ble Calcutta High Court on 04.06.1990 in respect of Rishra Steel Ltd.
- A Single Judge Bench of the Calcutta High Court on 02.05.1997 approved a scheme of revival of Rishra Steel by inducting Sylvan Commercial Pvt. Ltd. (**'Sylvan'** in short) as a promoter. In terms of the revival scheme, Sylvan-present Appellant was required to make certain investments to restart production. In terms of the above directions of the Calcutta High Court, the Appellant was to work under the supervision of an Administrator, namely, Shri B.L. Jain who was appointed by the Calcutta High Court.
- The revival scheme of 02.05.1997 was set aside by the Division Bench of the Calcutta High Court on 03.10.1997 and remitted back to the Trial Judge for continuing on with the liquidation process. Accordingly, the Official Liquidator (**'OL'** in short) took possession of the assets of the company in liquidation. This order of 03.10.1997 recorded the fact that the Appellant had made certain investments in the company to be considered by the Trial Judge at the time of liquidation. The Calcutta High Court also directed the Administrator on 19.12.1997 to submit a Report with regard to the accounts of the company supported by the relevant vouchers to the OL.
- On 17.01.1998, the Administrator certified the accounts submitted by the Appellant and the expenses incurred basis an Auditor's Certificate.

This Auditor's Certificate was issued by M/s Kuldeep Jaiswal & Co., the internal Auditor of Sylvan.

- On 17.08.2006, the High Court of Calcutta directed Sylvan to file its claim with the OL in accordance with law.
- On 26.11.2019, the Hon'ble Supreme Court directed the OL to adjudicate the claim of the Appellant following which the Appellant submitted its claim before the OL on 07.02.2020.
- On 24.02.2020, the OL partially admitted the claim of Sylvan for an amount of Rs.57.68 lakhs while rejecting the remainder sum of Rs.1.57 cr.
- The finding of the OL regarding admission of only Rs.57.68 lakhs was objected to by the Appellant following which on 06.08.2021, the Hon'ble Supreme Court transferred the winding-up proceedings to the National Company Law Tribunal, Kolkata Bench and directed NCLT to consider the Report of the OL and the objections filed by the parties so as to adjudicate on merits the claim of the Appellant. On 07.09.2022, the OL issued a letter stating that the originals of the documents pertaining to the claim of the Appellant had been transferred to the Resolution Professional ('**RP**' in short).
- CIRP was initiated against Rishra Steel Ltd.- Corporate Debtor by the Adjudicating Authority on 18.07.2022 with the last date of claims filing being 01.08.2022. The CoC approved the plan of Successful Resolution Applicant ('**SRA**' in short) on 15.05.2023 following which the RP filed I.A. No. 85 of 2023 before the Adjudicating Authority for approval of the

plan. The plan was remitted back to the CoC by the Adjudicating Authority for certain procedural compliances with regard to participation of suspended management in terms of Section 24 of IBC.

- IA No.145/KB/2023 was filed by Sylvan in the meantime before the Adjudicating Authority to adjudicate on their claims in terms of the order of the Hon'ble Supreme Court of 06.08.2021. On 05.10.2023, the Adjudicating Authority while disposing of IA No.145/KB/2023 directed Sylvan to submit its claims before the RP irrespective of claims filed by Sylvan before the OL during the earlier winding-up process by distinguishing it from current insolvency proceedings.
- The Appellant filed their claim of Rs. 245 cr. before the RP on 04.11.2023 to which the RP informed the Appellant on 08.11.2023 that the claim was not submitted in the prescribed format.
- The Appellant submitted their claim in the prescribed form for Rs.245 cr. on 09.11.2023 to which the RP sent a communication to the Appellant seeking original documents to substantiate their claim. On 14.11.2023, the RP was informed by the Appellant that the original documents had already been transferred to the RP earlier.
- On 21.11.2023, the RP denied having received the original documents and sought these documents from the Appellant. On 30.11.2023, the Appellant sent an email providing original balance sheets and Auditor's Report depicting expenses incurred by the Appellant. On 12.12.2023, the Appellant addressed a letter to the OL seeking original copies of the documents to prove the claim of the Appellant. The OL however sent

their response on 15.01.2024 stating that all documents including original had been sent to the RP for adjudication of claims.

- On 19.12.2023, the RP communicated to the Appellant rejecting their claim. Consequent upon rejection of their claim, the Appellant filed IA No. 15 of 2024 in TA No. 8/KB/2022 on 07.01.2024 challenging the rejection of their claims. IA No. 15 of 2024 was rejected by the Adjudicating Authority on 22.03.2024 and the rejection of the claim by the RP was upheld.
- In the meantime, the CoC had approved the resolution plan submitted by the Successful Resolution Applicant (**'SRA'** in short) with 100% vote-share on 21.12.2023. The Adjudicating Authority approved the resolution plan of the SRA on 22.03.2024 which had been placed before its consideration by the RP vide IA No. 2 of 2024 in T.P. No. 4/KB/2022.
- Aggrieved by the orders passed by the Adjudicating Authority in IA No. 15 of 2024 and IA No. 2 of 2024, the Appellant has come up in appeal.

**3.** Making his submissions on behalf of the Appellant, Shri Gaurav Mitra, Ld. Counsel submitted that the Adjudicating Authority had committed an error in approving the resolution plan of the Corporate Debtor at a time when the RP failed to consider the claims of Sylvan though it had incurred expenses amounting Rs.2.15 crore in refurbishing plant and machinery, restoring electricity, rebuilding infrastructure and paying off creditors in pursuance of orders of the Single Bench of Calcutta High Court dated 02.05.1997. It was asserted that these expenses had been made under the supervision of a court appointed Administrator who had certified these expenses and accepted the

expenses claimed by the Appellant amounting Rs.2.15 cr. While admitting that the Division Bench of Calcutta High Court had set aside the Single Bench Order on 03.10.1997, it was asserted that the Division Bench had taken notice that the Appellant had made considerable investments. Directions had been issued thereafter by the Calcutta High Court on 17.08.2006 allowing Sylvan to lodge their claims with the OL which was affirmed by the Hon'ble Apex Court on 26.11.2019. However, as the OL admitted their claim only partially, this was challenged by them before the Hon'ble Apex Court which transferred the matter to NCLT, Kolkata for adjudication on 06.08.2021 while also directing that the OL's report and objections thereto of the Appellant be also considered.

**4.** Elaborating further it was stated that in pursuance of the orders of the Hon'ble Supreme Court, the Adjudicating Authority had entrusted the RP to collate the claims of the Appellant. The Appellant had submitted their claim of Rs.245 Cr. in the prescribed format before the RP on 09.11.2023 along with supporting documents. It was further asserted that though the OL had already sent the original records to the RP as borne out by their communications dated 07.09.2022 and 15.01.2024, it was added that the RP falsely denied receipt of the original records relating to the claim accounts and arbitrarily rejected the claim on 19.12.2023. This conduct of the RP was in violation of Regulation 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as '**CIRP Regulations**'). It was also submitted that the rejection of the claim of the Appellant by the RP though these claims

had already been judicially acknowledged is violative of the principles of equity, transparency and fairness.

5. It was vehemently contended that the Appellant cannot be made to suffer loss due to reversal of judicial order. In support of their contention, reliance was placed on the judgments of the Hon'ble Supreme Court in ***Motors & Investments Ltd. v. New Bank of India & Ors. (1997) 11 SCC 271*** in which it was held that when a court-sanctioned sale was set aside, the purchaser was entitled to restitution. It was also pointed out that in a similar set of facts, the Hon'ble Supreme Court in ***South Eastern Coalfields Ltd. v. State of MP & Ors (2003) 8 SCC 648*** had held that no party shall suffer because of an act of court.

6. It was also contended that the rejection of their claim by the RP was challenged by them in IA No. 15 of 2024. However, the Adjudicating Authority wrongly dismissed I.A. No. 15 of 2024 and proceeded to approve the resolution plan. The Adjudicating Authority could not have decided on the application for approval of the resolution plan without first deciding on the challenge to the wrongful rejection of their claims by the RP. The approval of the resolution plan without considering the claim of the Appellant undermine the sanctity of the resolution process and compromises its purity. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr. (2024) 6 SCC 767*** to contend that the RP was under a statutory obligation to verify the claims on the basis of records available before it and that the Appellant was a creditor superior to even secured creditor in terms of the Single Bench order. It was



contended that rejection of their claims by the RP tantamount to material irregularity, hence, the Appellant has challenged the resolution plan.

**7.** Refuting the contentions made by the Appellant, Shri Abhijeet Sinha, Ld. Senior Counsel representing the RP submitted that the Appellant was not entitled to refund of any amount which it had invested in the Corporate Debtor company as the orders of the Single Bench of the Calcutta High Court had clearly stipulated that the liability created by Sylvan shall be their own liability and not that of the company or the OL. Further, it was pointed out that when the Single Bench order of 02.05.1997 clearly held Sylvan to be a 'promoter', it could not claim to be a creditor but was present in the capacity of investor-promoter. While such a claim by an investor-promoter was permissible for collation under Section 528 of the Companies Act, 1956 in winding-up proceedings, IBC only recognizes admission of claim only in respect of creditors. Much emphasis was laid on the fact that the Report of the Administrator, basis a certificate issued by the internal Auditor of Sylvan, without any independent assessment/verification made by the Administrator cannot be held to have substantiated the claim of Sylvan.

**8.** Furthermore, when the Hon'ble Supreme Court on 06.08.2021 vide its orders transferred the winding-up proceedings to the NCLT, it was clear that the Hon'ble Supreme Court intended further adjudication of the claims to be made not under the winding-up provisions of the Companies Act but under the provisions of the IBC. The Adjudicating Authority on 05.10.2023 had thereafter passed an order holding that with the commencement of CIRP, Sylvan was required to file a proper claim afresh in accordance with the IBC.

In such circumstances, all prior assessment of the claim made by the Administrator or by the OL stood superseded and rendered irrelevant. It was also emphatically asserted that neither the decision of the Single Bench, Division Bench of the Calcutta High Court or the Hon'ble Supreme Court had adjudicated on the right of the Appellant to be entitled to refund of the amounts allegedly spent/invested by them in the company.

**9.** Contrary to the claims made by Sylvan, the RP was never provided with the relevant documents by the OL in respect of the purported claims made by Sylvan. In any event, dispensing with the procedural requirement of filing claims does not arise. In spite of being aware of the CIRP proceedings, the Appellant for inexplicable reasons was not prompt in filing their claim. The Appellant had not filed their claim by the last date for filing which came to an end on 01.08.2022. They filed their claim only after the Adjudicating Authority directed them to file their claim vide its order dated 05.10.2023 and that too only after it was followed by another reminder from the RP on 01.11.2023.

**10.** It is asserted by the RP that in spite of repeated requests made the RP and opportunities given to the Appellant, they failed to provide sufficient evidentiary proof by way of bank statements; proofs of disbursement; vendor invoices linked to the Corporate Debtor; invoices with regard to services provided to the Corporate Debtor to substantiate their claims. It has also been contended that the Appellant has claimed an exorbitant and unsustainable interest claims of Rs. 213 cr. as against a principal amount of Rs. 2.15 cr. The claim of interest was unsupported by any contract or document. There is no substantiation of the services rendered by the Appellant or to show that the

Corporate Debtor had been a recipient or beneficiary of their services. Most invoices were uncorroborated, artificially generated and not even related to revival of the Corporate Debtor but were of a frivolous nature. Under such circumstances, the RP could not have accepted these claims without proper verification. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***Umesh Kumar v. Narendra Kumar Sharma in CA (AT)(Ins) No. 100 of 2024*** in which it has been held that the RP is expected to exercise due diligence while examining invoices and could exercise the discretion of seeking additional information for this purpose.

**11.** It was further submitted that the Adjudicating Authority had bestowed the indulgence of allowing the Appellant to file their claim even at the stage of approval of the resolution plan by the Adjudicating Authority. No prejudice was caused to the Appellant since adequate opportunity was provided to submit their claim. However, the RP is not expected to wait indefinitely for any claimant to submit their claims. The process of plan approval cannot remain an open-ended and a never-ending process at the whims and fancies of a solitary claimant who falters to file the claim despite being shown leniency to submit belated claims. It was therefore contended that now that the resolution plan stood approved and the CIRP stood concluded, consideration of belated and unsubstantiated claim by the Appellant cannot be allowed as it would undermine the sanctity of the stringent timelines of the IBC and render topsy-turvy a duly approved resolution plan.

**12.** Echoing similar arguments, Shri Sunil Fernandes, Ld. Senior Counsel representing the SRA submitted that the resolution plan submitted by the SRA

along with addendum was approved by the CoC with 100% majority vote on 15.05.2023. Though the resolution plan had been remitted back by the Adjudicating Authority to the CoC on 05.10.2023, this was on account of technical non-compliance. Subsequently, all procedural compliances in terms of the IBC had been met and the reconstituted CoC had approved the resolution plan of the SRA with 100% vote share on 22.12.2023 which was thereafter approved by the Adjudicating Authority on 22.03.2024. The failure of the Appellant to submit their claims within the given timeframe cannot entitle them to any relief at a belated stage. The present appeals by Sylvan seek to modify/create additional liability in a resolution plan which is already being implemented which if allowed would jeopardise the revival of the Corporate Debtor. This is a classic case of hydra head popping-up after the approval of the resolution plan which is hit by judicial precedent in ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta and Others (2020) 8 SCC 531*** and ***Ghanshyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd & Ors. (2021) 9 SCC 657***.

**13.** The SRA through the resolution plan revived the corporate debtor steering it back to the life from a state of liquidation since 1989. It was therefore contested that by raising bald allegations of material irregularities, the Appellant was derailing the resolution of the Corporate Debtor which had come on track after a prolonged period of remaining under liquidation process. The challenge to the resolution plan on the ground of material irregularities was a bald allegation made by Sylvan-Appellant without any specific

documentary evidence. It was contended that the Appellant was interested only in delaying the revival of the Corporate Debtor at a time when the Adjudicating Authority acting in consonance with the intent and objective of IBC had revived the Corporate Debtor whose CIRP had commenced way back on 18.07.2022 by approving their resolution plan.

**14.** It was further asserted that the SRA had not only infused the committed amount but had cleared the entire admitted claims of creditors including government dues under the resolution plan without making any haircut. Not only were the admitted claims honoured but done within the committed timelines in accordance with the clauses of the resolution plan. The plan had also been consummated to the satisfaction of the Monitoring Committee. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***Bharat Petroresources Ltd. v. Monnet Ispat and Energy Ltd. in CA (AT) (Ins) No. 550 of 2018*** wherein challenge to a resolution plan was rejected on implementation of the plan having taken place.

**15.** We have also heard Ms. Madhumita Bhattacharya, Ld. Advocate for the State of West Bengal who has filed an impleadment application. It was submitted that subject land measuring 37.56 acres under Mouza-Rishra and Konnagar, Hooghly was allowed to be retained by the Corporate Debtor for the purpose of running the mill. Hence, the Corporate Debtor was only a retainer and not the owner of the said land, thus the RP could not have dealt with this asset in the CIRP of the Corporate Debtor.

**16.** We have exhaustively heard all the parties and duly considered the arguments advanced by the Learned Counsels representing them and perused the records carefully.

**17.** At the very outset we would like to deal with the impleadment application filed by the Govt. of West Bengal which was vehemently opposed by both the RP and the SRA. It was submitted that the Intervenor had earlier filed IA No. 165 of 2023 before the Adjudicating Authority praying for rejection of the resolution plan of the SRA on the ground that the subject land was being transferred to a third party via the said resolution plan. This application had already been dismissed by the Adjudicating Authority on 05.10.2023 which not having been challenged by the present Intervenor has attained finality. The intervenor also did not challenge the order passed by the Adjudicating Authority on 22.03.2024 approving the resolution plan of the SRA. It was contended that this is an indirect attempt under the garb of an impleadment application to seek relief which cannot be claimed at this stage. The present impleadment application, at this belated stage, in an appeal filed by an unrelated third party on uncommon grounds to reopen settled matters cannot be countenanced. We, therefore, do not find any merit in the impleadment application filed by the Govt. of West Bengal and dismiss the same.

**18.** Coming to our analysis and findings, to begin with, we would like to observe from the chronology of events that the entire matter has protracted historical roots commencing from 1990 spanning more than three decades. It is equally significant to note that the litigious journey has traversed a maze of

judicial proceedings including the Single Bench and Division Bench of Calcutta High Court, Hon'ble Supreme Court, NCLT and also the instrumentalities of a court appointed Administrator and an OL. More importantly, the contentious dispute between the parties has meandered its way through the regime of liquidation proceedings conducted under the provisions of Companies Act to the regime of insolvency proceedings regime under special legislative enactment of IBC.

**19.** For a proper and holistic appreciation of the issue at hand, it may be worthwhile to track the multiple layers of judicial proceedings and consequential orders/directions churned out from the time the Corporate Debtor underwent liquidation proceedings and capture the essence of each these orders/directions.

**20.** The first in the sequence of court proceedings purportedly bearing relevance on the present matter is the decision of the Single Bench of the Calcutta High Court dated 02.05.1997. The relevant excerpts of the said order are as extracted below:-

“.....

*c) The said Promoter Company will restart production for the purpose of providing employment to the workers of the Company in liquidation and will carry on business by utilising the assets, properties, plants and machinery of the said Company under the supervision and control of Shri B.L Jain, a retired Judge of the Court who will act as Administrator and for his services will be entitled to monthly remuneration .....*

*l) Any liability created by the said promoter company in course of running management and/or controlling the said company will be the exclusive liability of the said promoter company and same shall not be the liability of the official Liquidator or the said company in*

liquidation or the company in liquidation. Similarly, if any asset is newly created by the promoter, such asset shall belong to the promoter.

.....

*p) In the event of the possession of the factory premises, assets and properties of the said company in liquidation being retaken by the Official Liquidator for any default in payment made by the said promoter company and in the event of the scheme framed by this order being abandoned, the promoter will not be entitled to the refund of all moneys invested by him for alteration, renovation and addition to plant & machinery to bring the same into running condition after the dues of the Allahabad Bank and the authorities mentioned in Sections 529A of the Companies Act, 1956 have been duly satisfied, and in that event the administrator, appointed herein will stand discharged. The dues of the said promoter company in other words, will be paid in preference to the dues of the unsecured creditor/creditors.*

*q) The said promoter company under the supervision of said administrator Shri B. L. Jain, the administrator will prepare and submit to the court the annual audited accounts and all sums brought in by the said promoter company shall be clearly specified in such account and the administrator will also file his own report to Court. The said promoter company shall have second charge over the assets of the company and all materials to the extent investment has been made by him.....*”

*(Emphasis supplied)*

It is clear from the above Single Bench order that Sylvan was inducted by the Calcutta High Court to revive Rishra Steel Ltd. and make certain investments to restart production under the supervision of Shri B.L. Jain, the Court appointed Administrator. This revival scheme expressly stipulated that any liability incurred by Sylvan would be at their own risk and not reimbursable by the Corporate Debtor or OL. The Administrator was to also file a report before the Court of all the sums brought in by Sylvan and Sylvan would enjoy second charge over the assets of the Corporate Debtor to the extent of investment made by it.



**21.** The revival scheme was challenged before the Division Bench of Calcutta High Court which in its order dated 03.10.1997 directed that the affairs of the Corporate Debtor was to return to the OL and remitted the matter back to Trial judge. The relevant excerpts of the said order is as reproduced below:

“.....

*For the foregoing, reasons, the impugned order cannot be sustained and is set aside. The matter is remitted back to the learned Company Judge for passing a fresh order in accordance with law and after giving an opportunity of hearing to all concerned. The learned Company Judge may issue an appropriate advertisement. The official liquidator shall take over possession of the properties in question and shall take all steps to preserve the same efficiently and diligently.*

*The learned trial Judge is requested, keeping in view the peculiar facts and circumstances of this case, to give top most priority to the hearing of the matter and disposed of the same at his earliest convenience. We are not unmindful of the fact that in the meantime the Respondent no 1 has incurred certain expenditures. The learned trial Judge, we are sure, would consider the said question as also the question that the workmen are out of employment for a long time. They have also not been paid their dues and allegedly (illegible text) out of starvation and as such it would be fit and proper that the matter is disposed of at an early date.....*”

*(Emphasis supplied)*

When we read the Division Bench order, it is unmistakably clear that the order of the Single Bench has been “*set aside*” and therefore rendered null and void. Be that as it may, the Division Bench Order while directing the matter back to the Trial Judge and also directing the OL to take possession of the properties of the Corporate Debtor also made a significant observation that Sylvan had incurred certain expenditure on the Corporate Debtor which has to be kept in mind.

**22.** At this stage, it would suffice to note that in terms of an order of the Calcutta High Court dated 19.12.1997, the Administrator submitted a Report on the accounts of the Corporate Debtor on 17.01.1998. The Report is placed at pages 196-202 of Appeal Paper Book (**'APB'** in short). When we peruse the above Report of the Administrator, we notice that the Administrator recorded that copies of cash vouchers, journal vouchers, labour vouchers etc. in ten boxes were received towards accounts of the Corporate Debtor, with the originals continuing to remain part of the records of the Corporate Debtor. The Administrator further admitted that his report of accounts of Sylvan expending Rs.2.15 cr. was submitted on the basis of "Certificate of Auditors" and the "Statement of Affairs" as submitted by the internal auditors of the Corporate Debtor.

**23.** By a subsequent order of the Calcutta High Court dated 17.08.2006, Sylvan was given the liberty to lodge its claim in the ongoing liquidation with the OL in accordance with law. In the ongoing liquidation proceedings, the Hon'ble Supreme Court vide its order dated 26.11.2019 also took note of the investment of certain amounts made by Sylvan in the Corporate Debtor and directed adjudication of these claims. The relevant excerpts of the order of Hon'ble Supreme Court are as reproduced below:

*"Date: 26-11-2019*

*...Having heard learned counsel appearing for the parties and upon perusal of the record, we are of the view that the claim of newly added respondent viz., Sylvan Commercial Pvt. Ltd., that it has invested certain amount in the company during the period when they were in-charge of the company, needs to be adjudicated upon. The appropriate authority for such adjudication is the official liquidator who is present before us today.*

*In the circumstances, we direct the official Liquidator respondent no.2 of the Calcutta High court who is represented by Mr. Sanjoy Kumar Ghosh, learned counsel, to adjudicate the claim dated 09.07.2008 of the new added respondent viz M/s Sylvan Commercial Pvt. Ltd., within a period of three months from today.”*

*(Emphasis supplied)*

From a plain reading of the above orders, we find that Hon’ble Supreme Court had only observed that certain amount had been invested by Sylvan which required adjudication by OL while leaving it to the OL to crystallize the amount purportedly invested by the Sylvan- Appellant in the Corporate Debtor.

**24.** In pursuance of the directions of the Hon’ble Supreme Court, the claim of Sylvan of Rs.2.15 cr. was adjudicated upon by the OL as may be seen at page 206-213 of APB. The relevant portion of OL’s report on adjudication of Sylvan’s claim is as reproduced below:

“ .....

*Subsequently, hearings have been held on 14.01.2020, 05.02.2020 and 07.02.2020 when the parties for and against the claim have been heard, extensively. Stack of documents relating to the said claim of Sylvan Commercial Pvt. Ltd. were submitted in 11 files bearing Nos. Vol. 1 to Vol. 11 in two sets, one comprising the photocopies of vouchers/ invoices/bills and the other comprising the originals thereof. The photocopies of the documents comprising in 11 volumes (contained in 11 files) have also been served on the ARC Holdings Ltd. and M/s Deccan Traders Pvt. Ltd. As directed by Official Liquidator, both M/s ARC Holdings Ltd. and M/s Deccan Traders Pvt. Ltd., meanwhile, filed their respective written objections to the claim of Sylvan Commercial Pvt. Ltd.*

.....

#### **CONCLUSION**

*Therefore, upon lawful adjudication, an expenditure to the tune of Rs.57,86,335.00 has been found to be in order based on the supporting vouchers and invoices and, thus, admitted as legitimate claim of Sylvan Commercial Pvt. Ltd. while claim of Sylvan Commercial Pvt. Ltd. amounting to Rs.1,57,81,878.54 is rejected.*

*(Emphasis supplied)*

The OL in its report dated 24.02.2020 clearly mentions admittance of Rs.57.68 lakhs as expenditure incurred by Sylvan while giving detailed reasons for rejection of the balance claim of Rs.1.57 Cr. including setting out reasons for rejection of interest component.

**25.** Objections on the report of OL was filed before the Hon'ble Supreme Court by Sylvan. The matter was heard by the Hon'ble Apex Court and the relevant excerpts of the order passed on 06.08.2021 is as reproduced below:

*".....By an Order dated 26.11.2019, this Court directed the Official Liquidator to adjudicate the claim of Sylvan Commercial Pvt. Ltd. within a period of three months. The Official Liquidator submitted a report to this Court to which objections have been filed by the Ist respondent and M/s. Sylvan Commercial Pvt. Ltd.*

*.....*

*Proviso to Section 434 (1) (c) of the Companies Act contemplates transfer of proceedings relating to winding up of companies pending before any court to the NCLT at the request made by a party.*

*Company Petition No.519 of 1989 shall be transferred to the NCLT, Kolkata Bench. Needless to say that the report filed by the Official Liquidator and the objections filed to the said report by the parties shall be considered by the NCLT.*

*In view of the pendency of the Company Petition for a very long period of time, we direct the NCLT to dispose of the Company Petition expeditiously....."*

The Hon'ble Supreme Court had merely directed transfer of the report of OL on the claims of Sylvan to NCLT without making any observations on the amount claimed by Sylvan or applicability of any interest thereon. This order of Hon'ble Apex Court also marks a defining watershed moment in that the ongoing adjudication of claims of the Sylvan under the Companies Act ended and transitioned to adjudication by NCLT under the IBC insolvency regime.

**26.** Having referred the matter to the fold of the NCLT, the matter was heard by NCLT acting as the Adjudicating Authority and an order was passed on 05.10.2023, the relevant excerpts which are as reproduced below:-

*“5. The Applicant has annexed several invoices/bills to the said application in question, and even if we consider the fact that the Applicant had filed its claim with the Official Liquidator, and the Official Liquidator had accepted its claim, but the same was done during the winding up period.*

*6. After the case was transferred to this Adjudicating Authority and the Rishra Steel Limited was admitted into Corporate Insolvency Resolution Process, which is not related to the winding up proceedings. After publication of notice in Form A by the Insolvency Resolution Professional, inviting claims from creditors, it was the responsibility of the Applicant to file its claim in the respective form with the Resolution Professional irrespective of the fact that the Official Liquidator had admitted its claim or not. In the entire pleadings, the Applicant has not stated of doing so, but has continuously sought for production of its documents.*

*7. After transfer of winding up petitions to the NCLT, the same is treated under the Insolvency and Bankruptcy Code, 2016 (“Code”) and hence, the process under the Code is to be followed, which has not been done in the present case. Hence, we do not find any merit in allowing the prayer of the Applicant to direct the Resolution Professional to produce the invoices, that was submitted to the official Liquidator, which in turn has been given to Resolution Professional.*

*8. Be that as it may, in view of the order of the Hon’ble Supreme Court 06 August 2021, and the order wherein we have sent the Resolution Plan for reconsideration by the CoC, we direct the Applicant to file its claim before the Resolution Professional, and the Resolution Professional is directed to collate the claim accordingly.”*

*(Emphasis supplied)*

**27.** In the above orders, we notice that the Adjudicating Authority has clearly mapped the distinction between the methodology followed in the treatment of claims of Sylvan by the OL as part of winding-up proceedings and the modalities proposed to be adopted under the IBC regime through the

medium of the RP. In terms of Section 18(b) of the IBC, since the RP is entrusted with the duty of receiving and collating the claims submitted by creditors, the Adjudicating Authority directed the Appellant-Sylvan to file their claims in the requisite Form before the RP.

**28.** When we look at the Claim Form-B which had been filed with the RP by Sylvan as Operational Creditor, the principal amount claimed is Rs.2.15 Cr. along with interest of Rs.243.32 Cr. The documents which have been referred to by Sylvan to substantiate their claim includes the Report of the Administrator and the accompanying Auditor's Certificate; invoices, bills showing materials bought for the upkeep of the factory premises to start production as well as copy of the interest calculation sheet. The said Claim Form also states that all the above documents pertaining to the claim of Sylvan had been submitted to the RP by the OL and that the claim can be verified from those documents lying with the OL. The Claim Form may be seen at pages 868-877 of APB.

**29.** It is the contention of the RP that in terms the order of the Single Bench on the event of the Corporate Debtor going back to the hands of the OL or on the abandonment of the revival scheme, the right to refund on the part of Sylvan would stand extinguished. It is also their contention that the role of Sylvan was that of a promoter who had agreed to undertake commercial risk while making investment in the Corporate Debtor. Moreover, no evidence of service rendered had been placed on record before the RP. Hence their claim did not qualify to be that of an Operational Creditor in terms of the statutory construct of IBC. It was also contended that the Report of the Administrator

certifying the claim stood clearly supervened by the orders of the Division Bench of the Calcutta High Court which had directed Sylvan to file their claim with the OL. The partial admission of the claim by the OL could not have been accepted by the RP since the OL had acted in terms of the provisions of the Companies Act which did not entail proper scrutiny or substantiation of the evidence of actual disbursement.

**30.** When we look at the relevant portions of the impugned order of the Adjudicating Authority as reproduced below, we find that the Adjudicating Authority while rejecting the claim of Sylvan inter alia relied on the findings of the Single Bench order to take a stand that Sylvan fell in the category of an investor and not a financial creditor or operational creditor of the Corporate Debtor and therefore no claim of financial debt or operational debt could have been made by them.

*“35. In view of this Order, we now proceed to examine the claim made by the applicant.*

*.....*

*e. On careful examination of the said Order of the Hon’ble High Court at Calcutta we understand that the appointment of Sylvan is in the nature of investor coming and running the factory for ultimate ownership.*

*h. We are of the view that the applicant herein is not a financial creditor or operational creditor of the company in any way and therefore, no claim as financial debt or operational debt can be made.*

*i. We are of the view that it is only with reference to money spent in creation of new asset/modification or restoration of any asset, reimbursement is contemplated that too after paying all the dues of Allahabad Bank and authorities mentioned in Section 529A of the Companies Act, 2013. This is as per our understanding of Para (l) and (p) of the order of the Honorable High Court dated 02/05/1997....”*

*(Emphasis supplied)*

**31.** We are not inclined to agree with the above finding returned by the Adjudicating Authority since this finding is fixated around the orders of the Single Bench which order having been clearly set aside by the Division Bench lacked the force of law and thus could not have been relied upon. We would also like to clarify that any contention made by the Appellant or the RP by relying upon any part of the judgment of Single Bench also does not meet with our countenance.

**32.** Having so said, we however cannot be oblivious of the fact that the Division Bench of the Calcutta High Court had taken cognisance of the fact that investments had been made by the Appellant in pursuance of a court-mandated revival scheme. Even though the revival scheme did not survive, it does not wipe away the factual position of expenses having been incurred by the Appellant-Sylvan in the affairs of the Corporate Debtor. Furthermore, on 19.12.1997, it was the Calcutta High Court which directed the Administrator to submit report on the accounts of Sylvan to the OL. Subsequently on the directions of the Calcutta High Court on 17.08.2006 and of the Hon'ble Apex Court on 26.11.2019, the OL actually verified the Administrator's Report and acknowledged/admitted expenditure incurred by the Appellant to the tune of Rs.57.68 lakhs. We also notice that when the finding of the OL on Administrator's Report was challenged before the Hon'ble Supreme Court, the latter in its order dated 06.08.2021 did not shun or reject the report of the OL on the claims of Sylvan but only referred it to the NCLT. From a reading of the order of the Hon'ble Supreme Court dated 06.08.2021 it becomes clear that



the Hon'ble Apex Court had not rejected or disregarded the Report of the OL but had only desired that the Report be appraised by the NCLT.

**33.** Given this factual backdrop that expenses incurred by Sylvan on the Corporate Debtor has been acknowledged up to the level of the Hon'ble Supreme Court, we do not find substance in the findings returned by the Adjudicating Authority that the Appellant cannot have right to claim financial or operational debt qua the Corporate Debtor. The emphasis laid in the impugned order on the Single Bench order of the Calcutta High Court that the amount invested was not reimbursable is misplaced as the Single Bench order had already been set aside. By the same logic that the Single Bench order was overturned, we also hasten to add that the contention of the Appellant that their status as creditor was even superior to that of a secured creditor by relying on this order is misplaced. We would also like to add that the ratio of ***Prabhjit Soni judgement*** is also not applicable in the facts of this case because in that case Greater Noida was claiming status of secured creditor by operation of law and for reasons of having statutory charge over the assets which is not the case here.

**34.** This brings us to the next limb of the argument canvassed by the Appellant that when the claim of the Appellant had been recognized by the High Court of Calcutta as well as the Hon'ble Supreme Court and the claims had already been certified by the Administrator and even partially admitted by the OL, it clearly substantiated that the Appellant had made investments in the Corporate Debtor. It was submitted that the claim of the Appellant was rejected by the RP without consideration of the report of the OL which

examination was integral to the order of the Hon'ble Supreme Court dated 06.08.2021.

**35.** Repelling the argument of the Appellant that rejection of their claim was in the teeth of binding judicial orders, it has been contended by the RP that the Adjudicating Authority had acted in deference to the directions of the Hon'ble Apex Court of 06.08.2021 to independently look at the report of the OL. Elaborating further it was submitted that the Adjudicating Authority had thereafter passed an order dated 05.10.2023 holding that the claim of Sylvan was required to be adjudicated under the statutory construct of IBC and directed the Appellant to file their claims accordingly before the RP. This order of the Adjudicating Authority passed on 05.10.2023 not having been challenged by the Appellant, it was contended by the RP that the same had acquired finality and constituted the foundational basis thereafter for determining the manner in which claims had to be filed by the Appellant and its adjudication.

**36.** We have already noticed the order of the Adjudicating Authority dated 05.10.2023 at para 26 above. The Adjudicating Authority had clearly observed therein that post-transfer of the matter to it by the Hon'ble Apex Court, the IBC regime was required to be followed and the claims submitted during winding-up proceedings to the OL, even though accepted partially, would not suffice for the purpose.

**37.** In pursuance of the order of Adjudicating Authority dated 05.10.2023, the Appellant was required to file a fresh claim under the IBC dehors any claim

previously submitted by the Appellant under the winding-up regime. This order not having been challenged has attained finality and cannot be reopened at this stage. The very fact that the Hon'ble Supreme Court had transferred the winding-up proceedings under the Companies Act to the NCLT and directed adjudication under the statutory provisions of IBC, we are inclined to agree with the inference drawn by the Adjudicating Authority that the assessment of the OL having been done under the Companies Act, the same was now required to be seen again from the prism of the IBC. We therefore do not find any irregularity in the RP asking the Appellant to file their claims.

**38.** This brings us to the bone of contention between the Appellant and the RP which stems from the manner of collation of claims and the issue of timeliness in the filing of claims. Submission has been pressed by the RP that CIRP of the Corporate Debtor had commenced even before the order of Adjudicating Authority dated 05.10.2023. The public announcement for claims was made on 20.07.2022 with the last date of claim being 01.08.2022. The Appellant had not filed their claim within the stipulated timeline of 01.08.2022. The Appellant filed their claim only after the Adjudicating Authority directed them to file their claim vide its order dated 05.10.2023 and that too only after being reminded by the RP on 01.11.2023. Thereafter, the Appellant filed claim for the first time on 04.11.2023. However, as the claim was filed wrongly, the Appellant revised their claim in Form-B on 09.11.2023. Apart from the delay in filing their claim, it was contended by the RP that the Appellant had failed to provide bank statements; proofs of disbursement; vendor invoices linked to the Corporate Debtor; invoices with regard to

services provided to the Corporate Debtor inspite of repeated requests made to them and ample opportunities given to produce the same. The invoices were not addressed to the Corporate Debtor and therefore not having any nexus with the Corporate Debtor, the same could not be accepted as authentic. There is nothing placed on record to show that the Corporate Debtor had been a recipient or beneficiary of any services provided by the Sylvan. Many of the invoices were not related to revival of the Corporate Debtor but were of a frivolous nature like alcohol, cigarettes, mithai, pan-parag, payment of bribe etc. The exaggerated nature of the claim is also evident from the fact that as against a claim made of Rs.2.15 cr., the Appellant had added thereto an interest amount of Rs.243.32 cr. Emphasis was also laid that the interest had been charged without any supporting contract or agreement between the Appellant and the Corporate Debtor. No proof had also been furnished to show that these payments were actually made by Sylvan against these invoices. The absence of bank statements, payment confirmations or delivery receipts also put a question mark on the evidentiary value of these invoices under the IBC framework. Thus, when the burden of substantiating claims rested on the Appellant which however remained unmet, under such circumstances, the RP could not have accepted these claims without proper verification and was obligated to seek additional information for this purpose.

**39.** It is the counter contention of the Appellant that all the documents in support of their claim had been provided by them to the OL which the OL had transferred to the RP. On 14.11.2023, the RP had been informed by the Appellant that the original documents had already been transferred to the RP

earlier. Further, on 30.11.2023, the Appellant sent an email providing original balance sheets and Auditor's Report depicting expenses incurred by the Appellant. Hence the repeated demand of original documents made by the RP was an impossible request to be met by the Appellant since all these documents were in the custody of the OL who in turn had already handed over the same to the RP. Hence when relevant documents required for adjudication of their claims was already available with the RP including documents evidencing the disbursement of money from the Appellant to the Corporate Debtor, no further substantiation was required on their part. It was asserted that not only had they submitted substantiated claims but had submitted these claims well within the timeline. Denying the allegation of frivolous claims, it was added that interest amount computed cannot be looked upon as an exorbitant amount since they have been waiting for last 28 years for recovery of their investment made towards revival of the Corporate Debtor on the express directions of the Calcutta High Court. When the Appellant has been out of pocket for its rightful claims for such a long period, there was nothing unusual on their part in claiming interest.

**40.** When we look at the impugned order passed by the Adjudicating Authority, we find that the grounds on which the claims of Sylvan have been rejected are that there was no proof of disbursement for any of the bills submitted; no agreement on payment of interest and considerable delay in submission of claims. For easy reference, we are reproducing the relevant portions of the impugned order as under:

*“35. In view of this Order, we now proceed to examine the claim made by the applicant.*

*.....*

*f. Therefore, it appears that there is no debt owed by either liquidator or Rishra Steel Limited to Sylvan based on the transaction carried out pursuant to the Order of the Hon’ble High Court at Calcutta. When that being the case, the question of claiming any money from the resolution professional of Rishra Steel Limited as reimbursement for day-to-day running of business does not arise. Even otherwise there is no agreement on payment of interest and consequently, the entire claim of interest will have to be rejected forthwith.*

*g. With reference to principal amount, we are unable to understand as to how official liquidator has admitted a partial claim for an amount of Rs. 57 lakhs which in our view, is not supported by any contract or document which entails Sylvan for claiming day to day expenditure incurred for running the factory. Even otherwise, the applicant has not produced proof of disbursement for any of the bills submitted. We have perused copies of some of the bills and see that they are unrelated to the business.*

*j. Further, we also find that that there has been a considerable delay in submitting the claim under the pretext that all the documents have been submitted by the Official Liquidator to Resolution professional and yet Resolution professional kept asking for several other documents. We would rely upon the judgment of the Hon’ble Apex Court in RPS Infrastructure Ltd. v. Mukul Kumar, reported at (2023) 10 SCC 718: 2023 SCC OnLine SC 1147 at page 724, held that “the mere fact that the adjudicating authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.”*

*l. We are of the view that any expenditure to be reimbursed should be backed by a contract (court order in this case) apart from proof of disbursements. Neither there is any contract, nor the court order supports their case for reimbursement of such expenses and therefore no fault can be attributed on the part of Resolution professional.*

*m. In view of the above, looking at any angle, we find no merit in the application, and accordingly dismiss it.”*

*(Emphasis supplied)*

**41.** Before we come to our analysis and findings, it may be necessary to notice whether the Appellant had been able to substantiate their claims. We have no doubts that the RP had sent several communications to the Appellant seeking basis and evidence to substantiate their claims along with original documents. However, we also notice that the Appellant had been forthcoming in making available whatever documents/materials available with it to the RP. We also find that it was unreasonable on the part of the RP to insist on original documents from the Appellant particularly when the Corporate Debtor was in the hands of the OL during the winding up proceedings prior to the matter being transferred to NCLT. The OL had also sent a letter to the RP on 07.09.2022 (at page 1082 of APB) and 10.10.2022 (at page 83 of reply of RP) intimating the handing over all available records and original files to RP. Further we find that there is an order by the Adjudicating Authority dated 20.03.2023 wherein it is noted in no uncertain terms that all documents had been handed over by the OL to the RP. The relevant order is as placed below:

**20<sup>TH</sup> MARCH, 2023**

**ORDER**

1. *Ld. Counsel for the applicant present. Mr. A. Akash, Assistant Official Liquidator, on behalf of the Official Liquidator, Kolkata present.*
2. *Mr. A. Akash, Assistant Official Liquidator submits that all documents relating to this matter have been handed over to Mr. Nitin Daga, RP.*
3. *Issue notice to Mr. Nitin Daga, RP by speed post and e-mail, regarding documents forwarded by the Official Liquidator to the RP including the latest report.*
4. *List the matter on 03/05/2023.*

*(Emphasis supplied)*

We do not find any evidence of the above order having been challenged at any stage by the RP. Hence, we not persuaded enough to accept the contention of the RP that it was not having access to the documents handed over by the OL.

**42.** We now may advert our attention to the orders of the Hon'ble Supreme Court dated 06.08.2021 wherein the latter had directed that the report of the OL admitting part of the claim along with the objections of the Appellant thereto was to be considered by the NCLT as the Adjudicating Authority. The above order of the Hon'ble Supreme Court cannot be construed in any manner to hold that it gave immunity to the RP from examining the report of the OL. Quite to the contrary, we do not find any mention made by the RP that it had gone through the report of the OL. When we peruse the report of the OL dated 24.02.2020, the report clearly acknowledges that it received documents in 11 files in two sets comprising of original and photocopies. It is noteworthy that OL gave detailed reasons for accepting only part of the claims and rejecting the balance Rs.1.57 Cr. claim of Sylvan. The grounds for rejection were that several vouchers/invoices were beyond the scope of settlement. OL had also noted that though substantial amount was claimed on account of purchase of tools and machinery, no supporting documents of delivery receipts of such machines/tools were available nor money receipts from parties were available on record. Hence, only expenditure of Rs.57.86 lakhs was admitted by the OL based on supporting vouchers and invoices while the remaining claim amount of Sylvan was rejected. Even the issue of levy of interest was considered by the OL and observed that there was no stipulation for payment of interest in the revival scheme. Further, the interest charged was not only exaggerated but



the rate of interest charged was found to be inconsistent varying between 18% to 24% and hence found to be unacceptable. It may also not be out of place to mention here that the Appellant while coming before the Hon'ble Supreme Court challenging the report of the OL had also not raised the issue of interest on their claim and the Hon'ble Supreme Court also did not make any remarks or observation on the applicability of any interest on the claim amount. That being the case the Appellant cannot be seen to rely on the judgements of ***Motors & Investments Ltd.*** and ***South Eastern Coalfields Ltd. supra*** to claim interest amount of Rs. 243 Cr on a principal amount of Rs. 2.45 Cr. in which the issue of interest had been actively considered by the Hon'ble Apex Court. In fine, we therefore do not hesitate to add that the report of the OL appears to be reasonable and deserved cognisance.

**43.** Prima facie, this shows that there was sufficient application of mind on the part of the OL in examining the tenability of the claims of the Appellant and that being so, the RP ought to have clearly spelt out the reasons for accepting/rejecting the report of the OL. Merely because the claims were to be collated and verified by the RP in terms of IBC and CIRP Regulations does not mean that the report of the OL was to be outrightly rejected and junked sans justifiable reasons. We are therefore of the view that the report of the OL deserved more focussed and serious consideration of the RP.

**44.** It is pertinent to add here that during the course of hearing before this Tribunal, the Learned counsel for the SRA had orally offered to pay Rs.57.68 lakhs to the Appellant to cover the claim admitted by the OL during liquidation without touching the total plan value and proceeds already earmarked for

distribution to the creditors. The SRA however offered to pay this amount subject to the Appellant not pressing any further claims. However, we must also add that the offer was not found to be acceptable by the Appellant. We find that this offer of *modus vivendi* proposed by the SRA is a practical suggestion which would put a quietus to the ongoing protracted litigation and can be a meaningful step in securing the ends of justice for all stakeholders.

**45.** This now brings us to the question of the Appellant on the alleged infirmity in the decision of the Adjudicating Authority to have approved the plan without first deciding on the wrongful rejection of their claims. It is the case of the Appellant that merely because the resolution plan has been approved, the Appellant cannot be disentitled of reliefs to which they had a right under law. It was contended that because of this material irregularity, their challenge to the approval of the resolution plan should be sustained.

**46.** Per contra, it is the contention of both RP and SRA that the Appellant was trying to derail and scuttle the resolution plan of the Corporate Debtor with the motive of creating additional liability in the resolution plan which would affect the viability and feasibility of the plan and jeopardise the revival of the Corporate Debtor. It was emphatically asserted by the RP that the CIRP process was conducted in a fair and non-discriminatory manner and the allegations made by the Appellant were unsubstantiated. It was added by the SRA that there is an imperative need to impart finality to the resolution process as the legislative intent behind IBC is to freeze all the claims so that the resolution applicant starts on a clean slate. In the present case, the plan

has already been implemented to the satisfaction of the creditors and the Monitoring Committee.

**47.** Coming to the statutory construct of the IBC, Section 30(2)(b) of IBC requires every resolution plan to provide for payment of at least the liquidation value to all operational creditors. Further Regulation 38(1)(b) of the CIRP Regulations provides that liquidation value must be paid to operational creditors prior in time to all financial creditors and within thirty days of approval of resolution plan by the NCLT. The ultimate discretion of how much to pay to each class or sub-class of creditors lies with the CoC which cannot be subjected to judicial review as long as the decision of the CoC reflects that it has taken into account maximization of assets of the Corporate Debtor and that the interest of all stakeholders including operational creditors have been adequately balanced. Thus, as the law stands today, no exception can be taken to any such plan which provides for payment to Operational Creditor in accordance with Section 30(2)(b) of the IBC read with Regulation 38(1)(b) of the CIRP Regulations.

**48.** As per requirement of Regulation 38 of CIRP Regulations, a resolution plan has to contain a statement as to how it has dealt with the interest of all stakeholders, including the Financial Creditor and the Operational Creditor of the corporate debtor. We have noticed that in paragraph 42 of the impugned order of the Adjudicating Authority, the treatment of financial creditors, operational creditors, workmen, employees, Government dues and Operational Creditor, other than Government dues, employees and workmen and Sylvan has been provided for under the heading 'H' which reads as under:

“42. The amounts provided for the stakeholders under the Resolution Plan as provided in Form “H” are as under:

<b>Sl. No</b>	<b>Category of Stakeholder*</b>	<b>Sub-Category of Stakeholder</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Amount Provided under the Plan</b>	<b>Amount Provide d to the Amount Claimed</b>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditor	(a) Creditors not having a right to vote under Sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	Rs. 27,465.88 Lakh	Rs. 2,950.14 Lakh	Rs. 2,950.14 Lakh	100%
		<b>Total [(a) + (b)]</b>	<b>Rs. 27,465.88 Lakh</b>	<b>Rs. 2,950.14 Lakh</b>	<b>Rs. 2,950.14 Lakh</b>	<b>100%</b>
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under Sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL

		(ii) who voted in of favour the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
3.	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i)Government	Rs. 9.30 Lakh	Rs. 9.30 Lakh	Rs. 9.30 Lakh	100%
		(ii) Workmen	Rs. 1.00 Lakh	NIL	NIL	NIL
		(iii)Employees	Rs. 54.25 Lakh	NIL	NIL	NIL
		(iv) Other than (I, ii, and iii) i.e., Sylvan Commercial Private Limited	Rs. 24547.97 Lakh	NIL	NIL	NIL
		<b>Total[(a) + (b)]</b>	<b>Rs. 24612.52 Lakh</b>	<b>Rs. 9.30 Lakh</b>	<b>Rs. 9.30 Lakh</b>	<b>100%</b>
4.	Other debts and dues	NIL	NIL	NIL	NIL	NIL
<b>Grand Total</b>			<b>Rs. 52,078.40 Lakh</b>	<b>Rs. 2,959.45 Lakh</b>	<b>Rs. 2,959.45 Lakh</b>	<b>100%</b>

**49.** In the present factual matrix, the CoC in its commercial wisdom has decided after due deliberations not to allocate any amount to the operational creditors other than the government dues while following the waterfall mechanism under Section 53 of IBC. Thus, even if we proceed on the

assumption that the RP had wrongly rejected the claims of the Appellant, this rejection could not have caused any prejudice to the interests of the Appellant. Thus, even if the Appellant had filed their claims before the RP, no amount would have been payable to them since they would not have been allocated more than Nil amount which was due to Operational Creditors in terms of the resolution plan. The Appellant would not have been entitled to any proceeds of distribution under the resolution plan since the liquidation value payable to them as Operational Creditors would also have remained Nil. Thus, the provisions in the resolution plan cannot be said to violate in any manner the provisions of Section 30(2)(b).

**50.** It is well settled that Adjudicating Authority can interfere with the commercial wisdom of CoC only when Resolution Plan violates any of the provisions of Section 30(2)(b). As long 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. Such opinion expressed by the CoC after due deliberations in the meetings through voting is the collective business decision and constitutes an expression of the CoC's commercial wisdom. And it is here that primacy of the commercial wisdom of the CoC comes into play.

**51.** We may also notice a judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 3665-3666 of 2020 in the matter of **Ngaitlang Dhar vs. Panna Pragati Infrastructure Private Limited & Ors.** where in para 31, the following has been held:-

*“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*
- (ii) Committee of Creditors of Essar Steel India Limited Through Authorized Signatory v. Satish Kumar Gupta and Others,*
- (iii) Maharashtra Seamless Limited v. Padmanabhan Venkatesh and others,*
- (iv) Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another.*
- (v) Ghanashyam Mishra and Sons Private Limited Through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through the Director & Ors.”*

**52.** We are also guided by the legal precepts propounded by the Hon’ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 OF 2020** which reads as under:

*“The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been*

*provided for repayment in priority or the resolution plan does not comply with any other criteria specified by the Board.”*

**53.** There is neither any material irregularity nor contravention of any provisions 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 Adjudicating Authority cannot meddle with the business decision of the CoC. Furthermore, the resolution plan having been approved by 100% of vote share by the CoC, such plan cannot be interfered with by the Adjudicating Authority merely on the grounds that the claims of the Appellant had been rejected at a time particularly so when no amount has been specified for Operational Creditors in terms of liquidation value. Once all the mandatory requirements of a plan have been duly complied with and taken care of, judicial review cannot be extended to analyse and look into the dissatisfaction evinced by any particular creditor or stakeholder. We have no doubts in our mind that the plan has been rightly approved by the Adjudicating Authority. We are of the firm view that the Adjudicating Authority did not commit any error in approving the resolution plan and therefore concur in the impugned order of the Adjudicating Authority approving the resolution plan.

**54.** Given this backdrop, we dispose of the Appeal in the following terms:

- (i) The resolution plan as approved by the Adjudicating Authority vide impugned order in I.A. No 2 of 2024 is affirmed. The SRA may proceed further in terms of the approved resolution plan.



- (ii) The impugned order dismissing the I.A. No.15 of 2024 is partially modified. To secure the ends of justice, the claims admitted in the erstwhile liquidation proceedings by the erstwhile Official Liquidator to the tune of Rs. 57.68 lakhs is allowed to be reimbursed by the SRA as offered by the SRA.
- (iii) In terms of the aforesaid voluntary offer proposed to be performed by the SRA, while making this payment, SRA will ensure that this payment does not affect the overall proceeds of distribution already approved in respect of all creditors in terms of the approved plan. The payment of Rs. 57.68 lakhs shall be made by the SRA within 30 days from the date of this order subject to the Appellant agreeing not to press any further their claims or interest and on any other terms and conditions as found to be mutually acceptable.
- (iv) All other pending I.A.s stand closed. No costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

**Place: New Delhi**

**Date: 18.09.2025**

Harleen/ Abdul