**NATIONAL COMPANY LAW TRIBUNAL**
**CHANDIGARH BENCH (COURT-I), CHANDIGARH**

**IA (I.B.C)/483(CH)2024**
**in**
**CP(IB) No. 80/Chd/Hry/2018**
**(Admitted)**

**IN THE MATTER OF CP(IB) No. 80/Chd/Hry/2018:**

Tata Blue Scope Steel Ltd. …. Operational Creditor

Vs.

Richa Industries Ltd. ..... Respondent

**Under Section 60(5), of the Insolvency and Bankruptcy Code, 2016**

**IN THE MATTER OF IA NO. 483/2024:**

**Saariga Construction Pvt. Ltd.**
137, Sector 16A, Faridabad (Haryana)

……Applicant

Vs.

Mr. Arvind Kumar, Resolution Professional
Richa Industries Limited
303, 3rd Floor, Plot No. D-190, Industrial Area
Phase 8-B, Sector 74, SAS Nagar, Mohali (Punjab)
Email: irpricha@gmail.com

…Respondent/Resolution Professional

**Order delivered on: 11.06.2025**

**Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**HON'BLE SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

**Present:**

**For the Applicant in IA No. 483/2024:** Mr. Aalok Jagga, Mr. APS Madaan, Mr. Nahush Jain, Ms. Vibhu Aggarwal, Mr. Sahil Lohan, Advocates.

**For the Respondent RP :** Mr. Nitin Kant Setia, Advocate

**Per: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

**ORDER**

The Applicant, Saariga Constructions Pvt. Ltd., has filed the present application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking a direction to treat it as the successful resolution applicant and for approval of the resolution plan under Section 30(6) read with Regulation 39(4) of the CIRP Regulations, 2016. The prayer made by the Applicant reads as under:

a. *Allow the present Application and direct the Respondent Resolution Professional to treat the Applicant as a Successful Resolution Applicant and to seek approval of this Hon'ble Tribunal under Section 30(6) read with Section 31 of the IBC, 2016 and Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as submitted by the Resolution Applicant, Saariga Constructions Private Limited;*

b. *And pass any further necessary order as deem fit in the interest of justice*

2. The Applicant is an unsuccessful Resolution Applicant and he has stated the following in support of his prayer: -

(i) The Applicant, Saariga Constructions Pvt. Ltd., has filed the present

application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking a direction to treat it as the successful resolution applicant and for approval of the resolution plan under Section 30(6) read with Regulation 39(4) of the CIRP Regulations, 2016.

(ii) It is the case of the Applicant that it had earlier submitted a resolution plan which was considered in the 13th and 14th meetings of the Committee of Creditors but was rejected. Pursuant to the order of this Tribunal dated 01.02.2023, the Resolution Professional was directed to reinitiate the process by republishing Form G and inviting fresh expression of interest.

(iii) In compliance with the said directions, the Applicant once again submitted its resolution plan which was placed before the CoC for discussion in the 37th meeting held on 28.08.2023. Thereafter, the resolution plan was put to vote in the 38th and 39th meetings of the CoC with voting lines open from 04.09.2023 to 22.09.2023.

(iv) As per the voting result, 52.02% of the CoC members voted in favour of the resolution plan, 0.08% voted against it, and 47.90% abstained from voting. The Applicant contends that despite directions of this Tribunal and repeated deliberations, several CoC members abstained from voting, thereby defeating the CIRP process and leading to an unwarranted collapse of the resolution process.

(v) The Applicant relies upon Regulation 25(4) of the CIRP Regulations which states that at the conclusion of the vote at the meeting, the

Resolution Professional shall announce the decision along with the names of members who voted for, against, or abstained. The Applicant submits that the abstentions should not be counted in the denominator for computing whether the plan has been approved by the requisite percentage of CoC members.

(vi) In support of this contention, reliance has been placed by the Applicant on the judgment of the **Hon'ble NCLAT in Tata Steel Limited v. Liberty House Group**, where the Appellate Tribunal held that when a small percentage of CoC members did not participate in the vote (2.88%), the resolution plan was held to be passed, as the majority who participated voted in favour of the plan. It was observed that the abstaining members' voting share need not be included for the purpose of computing the voting result.

(vii) The Applicant has also cited the judgment of the **Hon'ble NCLAT in IDBI Bank Ltd. v. Mr. Anuj Jain, RP, JP Infratech Ltd**. **and Another (Company Appeal (AT) (Insolvency) No. 536 of 2019)**, where it was held that if a financial creditor remains absent from voting, such votes are to be excluded from the calculation of voting percentage and not taken into account in the denominator.

(viii) Based on these judgments, the Applicant contends that the votes cast in favour of the resolution plan constitute a majority of the votes actually cast and hence, the plan should be deemed to have been approved by the CoC. It is further argued that the conduct of certain CoC members in deliberately abstaining, despite specific directions

from the Tribunal to participate effectively, amounts to frustration of the CIRP process and undermines the objectives of the Code.

(ix) The Applicant submits that the plan meets all mandatory requirements under Section 30(2) and Regulation 38, and provides for payment to operational creditors, workmen, secured creditors, and the CIRP costs. The viability and feasibility of the plan were discussed at length, and a monitoring committee was proposed for implementation.

(x) It is also argued by the Applicant that the plan value exceeds the liquidation value and was revised to accommodate specific concerns of the members. The plan contemplates revival of the business and continuation of operations, which is in alignment with the objectives of resolution under the Code.

(xi) In view of the above submissions and the reliance placed on authoritative pronouncements of the Hon'ble NCLAT, the Applicant prays that the resolution plan be considered as duly approved and that the Respondent be directed to treat the Applicant as the successful resolution applicant and seek formal approval of the Tribunal under Section 30(6) read with Regulation 39(4).

3. The Respondent RP has filed its reply and has sated the following: -

(i) The Respondent, the Resolution Professional (RP) of Richa Industries Limited, submits that the present application filed by the Applicant seeking a declaration as a successful resolution applicant is wholly misconceived and liable to be dismissed. The application is

an attempt to override the commercial wisdom of the Committee of Creditors (CoC), which has categorically rejected the resolution plan proposed by the Applicant.

(ii) The RP respectfully submits that the resolution plan of the Applicant was put to vote in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (the Code) and the CIRP Regulations. As per Section 30(4) of the Code, a resolution plan shall be approved only if it receives not less than sixty-six percent of the voting share of financial creditors who are members of the CoC, present and voting.

(iii) The outcome of the voting, as placed on record, clearly shows that only 52.02% of the financial creditors voted in favour of the resolution plan, 0.08% voted against, and the remaining 47.90% abstained from voting. The plan thus failed to secure the statutorily required approval threshold of sixty-six percent. Therefore, in accordance with the statutory scheme, the plan was deemed rejected, and steps were taken to initiate liquidation proceedings.

(iv) The Applicant's submission that abstentions should be excluded from the denominator for computing the voting percentage is contrary to the plain language of Section 30(4). The phrase "not less than sixty-six percent of voting share of the financial creditors, who are members of the committee and are present and voting" clearly means that abstaining members, having been present during the process, are to be considered for the purpose of computing the total votes cast.

(v) It is further submitted that the reliance placed by the Applicant on the judgment in Tata Steel Ltd. v. Liberty House Group is misplaced. In that case, the issue related to the physical absence of certain members from the CoC meeting, and not mere abstention during voting. The present case is entirely distinguishable, as all members were present and the plan was duly circulated and discussed, but certain members consciously chose to abstain from voting.

(vi) The Applicant has also cited IDBI Bank Ltd. v. Anuj Jain, RP, JP Infratech Ltd., to suggest that the percentage of votes in favour should be determined without considering abstentions. This is a selective reading of the judgment. The ruling does not negate the requirement under Section 30(4), which mandates a minimum threshold based on the total voting share of members present and voting. The judgment does not alter the statutory requirement that sixty-six percent approval is mandatory for the resolution plan to pass.

(vii) The RP submits that the Applicant was aware of the voting requirement and participated in all discussions. Despite ample opportunity, the plan failed to garner the necessary support. The CoC, in the exercise of its commercial wisdom, decided not to approve the plan. Judicial interference with the commercial decisions of the CoC is extremely limited and ought not to be invoked unless there is patent illegality or procedural impropriety, neither of which is pleaded or proved by the Applicant.

(viii) The plan submitted by the Applicant was evaluated by the CoC in terms of feasibility, viability, and compliance with the Code and relevant regulations. While the plan was deliberated upon, and certain improvements were suggested and incorporated, the CoC ultimately chose not to approve the plan. The RP acted strictly in accordance with the directions of the CoC and the Code and cannot be compelled to treat a rejected plan as approved.

(ix) The RP further submits that the Applicant's grievance is essentially against the CoC's commercial decision, but the Applicant has sought to indirectly seek a judicial declaration overriding the CoC's vote. Such a course is not permissible in law, especially where the statutory requirement under Section 30(4) has not been met.

(x) In the alternative, and without prejudice, the RP submits that even if abstentions were to be excluded from the denominator as contended by the Applicant, the correct legal position remains that voting results must be interpreted in accordance with the binding provisions of the Code. There is no provision which permits treating a plan with 52.02% support as "approved."

(xi) In view of the above, the Respondent prays that the present application filed by the Applicant be dismissed as untenable and devoid of merit. The resolution plan having been lawfully rejected by the CoC in exercise of its commercial discretion, no direction can be issued to treat the Applicant as a successful resolution applicant.

4. The Applicant in compliance of the order dated 20.052025 has filed a short note vide diary no. 00389/4 dated 23.05.2025.

**ANALYSIS & CONCLUSION**

5. We have heard the submissions of both the parties and have perused the documents placed on record the issue which emerges for our consideration is "***Whether a resolution plan that receives approval from only 52.02% of the Committee of Creditors (CoC), with 47.90% abstaining and 0.08% voting against, can be deemed approved under Section 30(4) of the Insolvency and Bankruptcy Code, 2016, and whether abstentions should be excluded from the computation of the voting threshold."***

6. In order to decide the issue, we would first like to visit Section 30(4) of IBC, 2016 the contents of which reads thus:

> *Section 30: Submission of resolution plan.*
>
> *1..*
>
> *2..*
>
> *3..*
>
> *4 The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board.*

7. From perusal of the above it can be inferred that Section 30(4) of the Insolvency and Bankruptcy Code, 2016 mandates that the Committee of Creditors (CoC) may approve a resolution plan only by a vote of not less than 66% of the voting share of the financial creditors. The provision does not use the term "present and voting", and instead refers to the total voting share of the financial creditors who are members of the CoC. Therefore, the entire voting share of all financial

creditors forming the CoC — regardless of whether they vote in favour, against, or abstain — is to be considered when computing the 66% threshold. Abstaining from voting does not erase or neutralize the voting share of a CoC member.

8. The Applicant has relied upon the Judgement of Hon'ble NCLAT in **IDBI Bank Ltd. v. Mr. Anuj Jain, RP, JP Infratech Ltd**. **and Another (Company Appeal (AT) (Insolvency) No. 536 of 2019)**, wherein the Hon'ble Appellate Tribunal observed as follows:

> *"We make it clear that if any of the Financial Creditor remains absent from voting, their voting percentage should not be counted for the purpose of counting the voting shares, as held by this Appellate Tribunal in* ***'Tata Steel Ltd. Vs. Liberty House Group Pte. Limited & Ors.'****- Company Appeal (AT) (Insolvency) No. 198 of 2018' disposed of on 04th February, 2019."*

8.1 In this regard it is seen that the Applicant has lifted and quoted these lines out of context from an interim order of directions by Hon'ble NCLAT dated 10.06.2019 in IA No 1857 of 2019, wherein no final decision on the issue was given by the Hon'ble NCLAT. The full text of the order is as under:

> *"As the voting is on, which is likely to be completed today by 5.00 p.m., we are not inclined to pass any specific order in the present I.A. No. 1857 of 2019 filed by the 'IDBI Bank Limited'. After voting the decision if taken in terms of the earlier order passed by this Appellate Tribunal on 17th May, 2019, the 'Resolution Professional' instead of placing the matter before the Adjudicating Authority (NCLT), will first place the decision of the 'Committee of Creditors' before this Appellate Tribunal for further orders.*
>
> *We make it clear that if any of the 'Financial Creditor' remains absent from voting, their voting percentage should not be counted for the purpose of counting the voting shares, as held by this Appellate Tribunal in 'Tata Steel*

*Ltd. vs. - 2 – Liberty House Group Pte. Limited & Ors.' – 'Company Appeal (AT) (Insolvency) No. 198 of 2018' disposed of on 4th February, 2019.*

*Place the case 'for orders' along with 'Interlocutory Application' on 2nd July, 2019."*

8.2 The final order was passed on 30.07.2019 in Company Appeal (AT) (Ins) No 536 of 2019 with IA No 1857 of 2019, wherein the following was decided by Hon'ble NCLAT in this regard:

***"The voting share of the allottees should be counted in terms of 'I&B Code' as existing on the date of voting/'Regulations' and /or in accordance with the majority decision of the Adjudicating Authority."***

The majority decision of the Adjudicating Authority referred above, also finds place in the same order, as under:

*4. On 13th December, 2018 the Hon'ble Members of Adjudicating Authority (National Company Law Tribunal), Allahabad Division Bench expressed difference of opinion, as under:*

***Question of law raised in the order of NCLT, Allahabad Division Bench:***

*i. The question of law that has been raised in both applications, one by Nine Home Buyers Association and other by eight Financial Creditors, all of them being the members of the Committee of Creditors (CoC) is whether the various threshold voting share fixed for the decision of the CoC under various sections of the I & B Code needs to be followed literally or whether they are directory, and if so, what procedure has to be followed in determining the voting percentage among the CoC to pass a particular resolution.*

*Decision of Hon'ble Member (Judicial) ……..*
*Decision of Hon'ble Member (Technical) ……...*

*5. The matter was referred to the President, National Company Law Tribunal, Principal Bench, New Delhi to place the matter before the third Hon'ble Member, who by impugned order dated 24th May, 2019 observed:*

*"To sum up based on the above, this reference Bench of the Tribunal is hence of the considered view that*

*i. the Committee of Creditors (COC), taking into consideration Section 21(2) of IBC, 2016, shall comprise of all financial creditors and must be construed as one and cannot be segmented class wise particularly for the purpose of computation of voting share;*

*ii. The voting share as are prescribed and required to be achieved under the respective provisions of IBC, 2016 are mandatory in nature and cannot be held to be directory;*

***iii.** For the computation of voting share required to be achieved as prescribed in IBC, 2016, class wise voting of financial creditors, be it home buyers or lenders or otherwise and to treat the majority vote of that particular class in relation to a resolution, particularly **by adding the voting share of those financial creditors who had abstained, as the will and vote of the entire class in the COC cannot be accepted;"***

*(Emphasis supplied)*

8.3 Thus, the decision of Hon'ble NCLAT in Company Appeal (AT) (Ins) No 536 of 2019 relied upon by the Appellant doesn't help his case.

9. Further, the Applicant has also relied upon the Judgement of ***Hon'ble NCLAT in Tata Steel Ltd. vs. Liberty House Group Pte. Limited & Ors (supra),*** it was held that even if some members who are having voting share of 2.88% have remained absent and 97.12% voting shares of members being present in the meeting of the COC and voted for resolution, it was held that resolution plan was passed because voting share of 2.88% should not be counted for the purpose of counting the voting share of COC accordingly resolution was passed.

10. On the other hand, the Hon'ble Supreme Court in the matter of **K. Sashidhar Vs Indian Overseas Bank & Ors CIVIL APPEAL NO.10673 OF 2018 dated**

**05.02.2019** has held the following: -

> *29…..Concededly, Regulations 25 and 39 must be read in light of Section 30(4) of the I & B Code, concerning the process of approval of a resolution plan.* ***For that, the "per cent of voting share of the financial creditors" approving vis-à-vis dissenting – is required to be reckoned. It is not on the basis of members present and voting as such****. At any rate, the approving votes must fulfill the threshold percent of voting share of the financial creditors. Keeping this clear distinction in mind, it must follow that the resolution plan concerning the respective corporate debtors, namely, KS&PIPL and IIL, is deemed to have been rejected as it had failed to muster the approval of requisite threshold votes, of not less than 75% of voting share of the financial creditors. It is not possible to countenance any other construction or interpretation, which may run contrary to what has been noted herein before*.
>
> *(Emphasis added)*

11. The decision of Hon'ble NCLAT in Tata Steel Ltd. vs. Liberty House Group Pte. Ltd. & Ors., in Company Appeal (AT) (Insolvency) No. 198 of 2018 was passed on 04.02.2019, i.e. before the date of Hon'ble Supreme Court decision in K. Sashidhar (supra) case. Therefore, it can be said that the Hon'ble NCLAT did not have the benefit of the Hon'ble Supreme Court decision, while deciding the issue in that case.

11.1 Therefore, the reliance placed by the Applicant on the decision of the Hon'ble NCLAT in *Tata Steel Ltd. vs. Liberty House Group Pte. Ltd. & Ors.*, in Company Appeal (AT) (Insolvency) No. 198 of 2018, is misplaced. Further, the facts of that case are different and the decision is inapplicable to the facts of the present case. In the said case, more than 97% of the CoC members had voted in favour of the resolution plan, and the minority abstention did not affect the statutory threshold. In contrast, in the present case, a substantial

percentage—47.90%—of voting shareholders abstained from voting, resulting in only 52.02% approval, which clearly falls short of the mandatory 66% threshold as laid down under Section 30(4) of the IBC.

11.2 Further, the Hon'ble Supreme Court has categorically held in K. Sashidhar (supra) that a resolution plan must meet the statutory **voting threshold**, and abstentions cannot be treated as neutral or affirmative. The argument that abstentions should not be counted while computing the voting threshold has been rejected by the Apex Court, which has clearly laid down that the entire voting share of the CoC, including abstentions, is to be considered for determining whether the threshold under Section 30(4) has been met.

11.3 The concept of **"present and voting,"** which forms the basis of the Applicant's argument, has no statutory footing under the IBC, 2016, and stands directly overruled by the principles laid down in **K. Sashidhar (supra).** As such, any interpretation that seeks to segregate abstentions from the total voting share would amount to judicial legislation, which is impermissible.

12. To illustrate, let us consider a practical scenario akin to the present case. Suppose the Committee of Creditors (CoC) consists of 100 voting members holding equal voting shares. For the approval of a Resolution Plan under Section 30(4) of the IBC, at least 66 members must vote in favour. Now, if 48 members abstain from voting, and only 52 members cast their vote, all in favour, the approval percentage is to be taken as 52% of the total voting share and not 100% of those "present and voting." **This figure of 52% is much below the statutory threshold of 66% required for approval u/s 30(4) of the code.** Also as per the ruling in **K. Sashidhar (supra)**, the statutory

threshold must be calculated **with respect to the total voting share** of the CoC, not merely those who participated in the voting.

13. In the present case, the facts are analogous. Though there is a majority of those who voted for approval of the plan, but **the required 66% threshold has not been met**, since the abstentions cannot be disregarded or excluded from the computation. Therefore, the Appellant's Resolution Plan fails to satisfy the mandatory threshold and cannot be treated as approved merely on the basis of relative majority among those present and voting.

14. The Applicant has also placed reliance on the judgment passed by the **Hon'ble NCLT, Allahabad Bench, Prayagraj in the matter of Akul Securities Private Limited Vs. M/s. Gangotri Enterprise Limited, IA No. 556/2023 in CP (IB) No. 262/ALD/2019.** While the decision of a Coordinate Bench may carry persuasive value, it is well settled that such pronouncements are not binding on this Adjudicating Authority, particularly when the facts of the present case are distinguishable and the legal position has already been authoritatively settled by the **Hon'ble Supreme Court in the case of K. Sashidhar (supra)**. Therefore, the reliance placed on the Allahabad Bench's decision, though noted, cannot override the binding precedent laid down by the Hon'ble Apex Court.

15. On the other hand, in **Oriental Bank of Commerce vs. Shree Bhimeshwari Ispat Pvt. Ltd., IA 141/2023 IN CP (IB) No. 4550/MB-II/2018 NCLT Mumbai Bench (Order dated 28 April 2025)** after considering both the decisions *(i.e. Judgement of Hon'ble NCLAT - IDBI Bank Ltd. v. Mr. Anuj Jain, RP, JP Infratech Ltd. and Another (Company Appeal (AT) (Insolvency) No. 536 of*

*2019 and Judgement of Hon'ble NCLAT - Tata Steel Ltd. vs. Liberty House Group Pte. Limited & Ors (supra))* relied upon by the applicant in the present case, has held that abstaining members cannot be excluded from the denominator when computing whether the resolution plan has met the 66% threshold. The Tribunal observed:

> *"6.12….Nowhere in the Code or CIRP Regulations does it state that the voting share of the member who did not cast their vote should be excluded when calculating the percentage prescribed under the Code."*

16. This judgment reaffirms the position that abstention is treated as non-approval, and such voting shares must be included when calculating whether the resolution plan has received the requisite approval.

17. Applying these principles to the facts of the present case, the resolution plan submitted by Saariga Constructions Pvt. Ltd. received **52.02% votes in favour**, **0.08% against**, and **47.90% abstained**. When all CoC voting shares are accounted for, as required by law, the plan **falls short of the 66% approval requirement** under Section 30(4) of the Code. Consequently, the resolution plan stands rejected under the provisions of the code, and cannot be deemed to have been approved merely because the majority of votes cast by members present & voting were in favour and the issue stands decided accordingly.

18. The scope of judicial interference in the commercial wisdom of the CoC is extremely limited. The Hon'ble Supreme Court in *K. Sashidhar* (supra) and subsequent decisions has held that the adjudicating authority **cannot substitute its wisdom for the commercial judgment of the CoC**. Hence, under the given facts & according to law, the Tribunal **cannot treat the**

**applicant as a successful resolution applicant**.

19. **The IA- 483 of 2024 is accordingly dismissed with no order to costs.**

**-Sd-**

**(SHISHIR AGARWAL)**
**MEMBER (T)**

**-Sd-**

**(HARNAM SINGH THAKUR)**
**MEMBER (J)**

June 11, 2025

Japneet