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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6071 OF 2023

INDEPENDENT SUGAR CORPORATION LTD. APPELLANT(S)

VERSUS

GIRISH SRIRAM JUNEJA & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4954 OF 2023

CIVIL APPEAL NO. 4924 OF 2023

CIVIL APPEAL NO. 4937 OF 2023

CIVIL APPEAL NO. 5018 OF 2023

CIVIL APPEAL NO. 5401 OF 2023

CIVIL APPEAL NO. 6847 OF 2023

CIVIL APPEAL NO. 6055 OF 2023

CIVIL APPEAL NO. 6123 OF 2023

CIVIL APPEAL NO. 6177 OF 2023

CIVIL APPEAL NO. 7037 OF 2023

CIVIL APPEAL NO. 7038 OF 2023

CIVIL APPEAL NO. 6771 OF 2023

CIVIL APPEAL NO. 7428 OF 2023

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J U D G M E N T

Hrishikesh Roy, J.

FACTUAL MATRIX

1. These are statutory appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as 'IBC'] against the judgement dated 18.09.2023 (impugned order) passed

by the National Company Law Appellate Tribunal [hereinafter referred to as 'NCLAT'] in appeals, pertaining to the Corporate Insolvency Resolution Process of the Hindustan National Glass and Industries Ltd. [hereinafter referred to as 'HNGIL']. Additionally, there is a set of appeals arising out of the NCLAT Order dated 28.07.2023, pertaining to the approval accorded to the combination between HNGIL and AGI Greenpac. In this common judgment, the parties are identified from Civil Appeal No. 6071 of 2023.

2. One key party in this matter is HNGIL i.e., the Corporate Debtor/Target Company with a 60% market share of the glass packaging industry in India. The Resolution Professional represents them. Incorporated in 1946, HNGIL has manufacturing plants located in Bahadurgarh (Haryana), Rishra (West Bengal), Neemrana (Rajasthan), Naidupeta (Andhra Pradesh), Sinnar (Maharashtra), Puducherry and Rishikesh (Uttarakhand), catering to a wide range of industries, including pharmaceutical and wellness, cosmetics, food & beverage, and alco-beverages, etc.

3. Combining with HNGIL is AGI Greenpac Ltd. [hereinafter referred to as 'AGI Greenpac'] i.e., the Successful Resolution Applicant, which is the second largest company in the field of glass packaging and manufacturing in India, after HNGIL. With two manufacturing

plants in Telangana, AGI Greenpac is the leading manufacturer of container glass. The combination between AGI Greenpac and HNGIL, with potential market share of 80-85% in F&B segment and 45-50% in alco-beverage segment, is generating a key issue for adjudication since the combination of the two major players in this sector is likely to result in an Appreciable Adverse Effect on Competition [hereinafter referred to as 'AAEC'] in the glass packaging industry generally and in particular, within the sub-segments of F&B and alco-beverages.

4. The main contesting party to the aforementioned proposed combination is the Bermuda-registered Appellant – Independent Sugar Corporation Ltd. [hereinafter referred to as 'INSCO'], incorporated in 1984, which also submitted their Resolution Plan for HNGIL – the Corporate Debtor/Target Company in India.

5. After the CIRP was initiated against HNGIL by DBS Bank [hereinafter referred to as 'Financial Creditor'] under Section 7 of the IBC, the Adjudicating Authority i.e., National Company Law Tribunal (Kolkata Bench), admitted the matter on 21.10.2021. An Expression of Interest [hereinafter referred to as 'EOI'] was floated on 25.03.2022, by the Resolution Professional as per Form G under Regulation 36(A)(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016. Within the EOI, Clauses 3.3 & 4.1.1(k) prescribed a mandatory requirement of approval from the Competition Commission of India [hereinafter referred to as 'CCI'] prior to the approval of the Resolution Plan, by the Committee of Creditors [hereinafter referred to as CoC'].

6. In response to the above, both INSCO (Appellant) and AGI Greenpac submitted their respective Resolution Plans in April 2022, for consideration. On 19.05.2022, a provisional list of eligible Resolution Applicants was published with both the Resolution Applicants placed at Sl. No. 6 (INSCO/Appellant) and Sl. No. 5 (AGI Greenpac/Respondent 2), respectively.

7. Subsequently, in response to an e-mail by the Appellant seeking clarification with respect to the timeline for obtaining approval of CCI, the RP in an e-mail communication dated 25.08.2022, granted relaxation to Resolution Applicants, to procure CCI approval, after CoC's approval of the Resolution Plan but prior to filing the application before NCLT.

8. On 27.09.2022, AGI Greenpac submitted an application with the CCI under Form I under Regulation 5(ii) of the Competition Commission of India (Procedure in Regard to Transaction of Business relating to Combination) Regulations 2011 intimating that it proposed to enter into a combination with HNGIL, by

acquiring 100% of HNGIL's shareholding and business.

9. On 22.10.2022, CCI declared the application filed by AGI Greenpac as 'not valid'. Thereafter, final Resolution Plans were submitted for consideration by the CoC. It must however be noted that at that stage, neither AGI Greenpac's Resolution Plan had the requisite CCI approval nor did they have any pending application, seeking such approval from the CCI.

10. Immediately thereafter, the Appellant objected to the approval accorded to AGI Greenpac's Resolution Plan stating that they had not obtained the requisite CCI approval at the time, when their Resolution Plan had been put to vote, which had been the condition precedent. The Appellant also pointed out that Form I submitted by AGI Greenpac with the CCI had been rejected on 22.10.2022 and that a fresh Form II had been submitted which had not yet been approved till the date of the COC approval. Further, serious contradictions between the process undertaken and the process envisaged to be undertaken by the RP in an e-mail clarification dated 25.08.2022, were also highlighted to point out that preferential treatment had been granted to AGI Greenpac despite the rejection of their Form I, by the CCI.

11. However, on 28.10.2022, the CoC approved the AGI Greenpac's Resolution Plan with 98% votes, while Appellant INSCO's

Resolution Plan, received 88% votes.

12. Thereafter, on 03.11.2022, AGI Greenpac submitted a detailed application (Combination Registration No. C-2022/11/983) under Form II seeking approval before CCI. At the same time, the Resolution Professional filed an IA under Section 30(6) of the IBC before NCLT Kolkata, seeking approval for AGI Greenpac's Resolution Plan while INSCO filed an IA before NCLT Kolkata challenging the approval granted to AGI Greenpac's Resolution Plan, by the COC.

13. On 10.03.2023, AGI Greenpac submitted a divestment plan to CCI in respect of one of the seven HNGIL plants (situated in Uttarakhand), as part of a voluntary modification, to comply with the requirements of Competition laws. On 15.03.2023, CCI granted an approval to AGI Greenpac's combination proposal with HNGIL (Corporate Debtor/Target Company), subject to the compliance of certain modifications including the divestment of one of the seven HNGIL plants (Rishikesh, Uttarakhand).

14. Challenging the approval to HNGIL and AGI Greenpac's Resolution Plan and seeking reconsideration of INSCO's Resolution Plan, INSCO filed an application before NCLT Kolkata. On 28.04.2023, the NCLT rejected the application, thereby upholding the approval granted to AGI Greenpac's Resolution Plan, stating that the

required CCI approval under Section 31(4) IBC had been obtained in the meantime. While challenging the NCLT rejection dated 28.04.2023, the Appellant filed the Company Appeal (AT) (Insolvency) No. 735/2023 before the NCLAT.

15. The NCLAT vide judgment dated 18.09.2023 upheld the approval accorded to AGI Greenpac's Resolution Plan, stating that although the requirement of approval by the CCI was mandatory in nature, its prior approval by the CoC, was only directory. This is because the timeline for CCI to decide upon a combination proposal is much longer and should not lead to a situation where the CIRP is frozen or halted because of a pending application before the CCI.

16. Meanwhile, the Appellant INSCO challenged the CCI approval dated 15.03.2023 vide Competition Appeal (AT) No. 7/2023 before the NCLAT, which upheld the approval vide judgement dated 28.07.2023.

17. It is these above decisions of the NCLAT (dated 28.07.2023 and 18.09.2023) that have been challenged by INSCO in the lead Civil Appeal. Arguments in support of INSCO's stand have been advanced by learned Senior Advocates Dr. A. M. Singhvi and Mr. Mahesh Jethmalani. On the other side, the Successful Resolution Applicant i.e., AGI Greenpac is represented by learned Senior Advocates Mr. Mukul Rohatgi and Mr. Parag Tripathi. The learned

Solicitor General Mr. Tushar Mehta, appears for the CoC. The learned Senior Advocate Mr. P. Chidambaram appears for the Resolution Professional while the CCI is represented by learned Senior Advocate Mr. Balbir Singh. For the other parties, submissions were advanced by learned Senior Advocates Mr. Rana Mukherjee, Mr. Dushyant Dave, Mr. Amit Sibal, Mr. Dhruv Mehta, Mr. Neeraj Kishan Kaul and Mr. Rajshekhar Rao.

SUBMISSIONS

18. Dr. Abhishek Manu Singhvi, learned senior counsel for INSCO i.e., the unsuccessful Resolution Applicant. (Appellant in Civil Appeal No. 6071/2023), *inter alia*, made the following submissions:

18.1. According to the Appellant's counsel, the entire process from submission of AGI Greenpac's Resolution Plan to its approval by the CoC was riddled with irregularities and should have been nullified.

18.2. The appellant's counsel contends that the RP violated Section 31(4) of the IBC & its proviso, the RFRP and the RP's own e-mail dated 25.08.2022, by submitting AGI Greenpac's Resolution Plan to the NCLT for approval, without the required statutory approval from the CCI. This contradicts AGI Greenpac's undertaking before the NCLT (Clause 5.5), which stated that CCI approval would be

secured prior to CoC approval and submission of the plan to the NCLT.

18.3. While Section 31(4) of the IBC permits statutory approvals within one year of NCLT approval, the proviso excludes combinations under Section 5 of the Competition Act, 2002, requiring stricter compliance. This, according to Dr. Singhvi, underscores legislative intent for stringent adherence to the proviso.

18.4. It is contended that in case of non-compliance, both the CoC and RP are empowered to re-evaluate and approve any other compliant Resolution Plans. However, despite such circumstances existing here, neither the RP nor the CoC acted as needed, rendering the process invalid.

18.5. Relying on judicial precedents, the counsel emphasises that Section 31(4) of the Insolvency & Bankruptcy Code, 2016 (IBC), mandates statutory compliance before the Resolution Plan is approved by the CoC. However, the RP disregarding the law granted unwarranted relaxation to AGI Greenpac, from procuring the necessary approvals.

18.6. It is then contended that the NCLAT judgment (dated 18.09.2023) failed to observe that there is no inconsistency between the timelines given under the IBC and Competition Act, as the CCI is mandated to form a prima facie opinion on adverse effects within

30 days. In the context, it was pointed out that the IBC's 330 days' CIRP timeline can be extended in deserving cases.

18.7. The appellants argue that the entire framework as envisaged under Section 29(1) of the Competition Act was bypassed, as no mandatory SCN was issued to the Corporate Debtor/Target Company. Also, neither details were published nor were public objections invited by the CCI, before approving AGI Greenpac's Combination proposal on 15.03.2023.

18.8. The Competition Act, according to the appellants, allows only the CCI to propose modifications to combinations post-SCN under Section 29(1) IBC, whereas the modifications in this case were done on the basis of suggestions by AGI Greenpac, contrary to the legal provisions.

18.9. The appellant argues that without the permission of CoC as per Section 28(1) of the IBC, the RP lacked authority to divest or sell Corporate Debtor/Target Company's assets. No such permission was sought or granted. In fact, CoC had already approved the Resolution Plan on 28.10.2022, i.e., much before AGI Greenpac proposed modifications on 10.03.2023. Consequently, the CCI granted approval based on factually incorrect and misleading data, provided by AGI Greenpac.

18.10. It is then pointed out that AGI Greenpac's Resolution Plan

pending approval before NCLT, is conditional, violating the IBC framework. The CCI's approval on 15.03.2023 also acknowledged that even after divestment, it must be demonstrated that the same is aligned with its approval. The plan creates an unfeasible sequence, as the divestment depends on the Resolution Plan's implementation, which itself requires prior CCI approval, leading to unfeasible complications, which should have been avoided by the NCLAT.

19. Appearing for the CoC, Mr. Tushar Mehta, the learned Solicitor General, *inter alia,* made the following submissions:

19.1. The IBC was introduced as an experiment to facilitate debt-ridden companies, to be taken over as going concerns, by avoiding liquidation. The Statement of Objects & Reasons of the IBC emphasises upon the need for a time-bound resolution process aimed at maximizing asset value. The CoC plays a pivotal role in assessing the feasibility and viability of a Resolution Plan from a commercial perspective.

19.2. According to Mr. Mehta, adherence to the IBC's timelines is sacrosanct and must be followed. Further, it was argued that the timelines under the IBC and the Competition Act are incompatible and must be harmonised, with Section 31(4) and its proviso being interpreted appropriately.

19.3. The interpretation suggested by INSCO, treating the proviso as 'mandatory' rather than 'directory' would undermine the IBC's scheme. It is therefore argued that the proviso is directory, as upheld by various NCLAT judgments which have not been upset by the Supreme Court.

19.4. Mr. Mehta further contended that the Green Channel approval mechanism gave INSCO an unfair head start, disadvantaging established industry players. This, it is argued, goes against providing a level-playing field and undermining legislative intent while diminishing the competitive nature of the CIRP.

19.5. According to Mr. Mehta, after deliberating on feasibility, statutory approvals, and respective timelines, the CoC fully complied with the IBC, Competition Act, and relevant regulations, as per applicable jurisprudence.

19.6. It was further contended that the terms of CCI's approval did not modify AGI Greenpac's Resolution Plan, and thus, specific CoC approval was not necessary.

20. Mr. P. Chidambaram, learned senior counsel appearing for the Resolution Professional, argued that the RP did not contravene any provisions of law and adhered to legal position as was in force at the relevant time.

20.1. It was argued that the RP adhered to the law and followed NCLAT

judgments correctly treating the proviso to Section 31(4) of the IBC, as directory.

20.2. According to Mr. Chidambaram, RP's role is procedural, with no substantive involvement in Resolution Plans. Therefore, there is no scope for controversy regarding the RP's role.

21. For the Successful Resolution Applicant i.e., AGI Greenpac Ltd., Mr. Mukul Rohatgi, learned Senior Advocate, *inter alia*, made the following submissions:

21.1. The counsel argued that it is already settled that the proviso to Section 31(4) of the IBC is directory in nature. The NCLAT judgments holding such a view have not been interfered by the Supreme Court, and this should be understood as the correct view, which is not upset by this Court. He further emphasised that a purposive interpretation is necessary to align the proviso with the legislative intent.

21.2. Citing the amendment's explanatory Memorandum, Mr. Rohatgi contended that the term 'CoC' in the proviso was a drafting error, and the intended reference was to the 'Adjudicating Authority'. A literal interpretation, he argued, would defeat the IBC's purpose and should be treated as a drafting oversight.

21.3. According to Mr. Rohatgi, if the proviso is interpreted as mandatory, the timelines in IBC would be unworkable and the

objective of the IBC of ensuring that the stressed businesses survive as a going concern would be compromised. It was argued that the resolution applicants and stressed business cannot afford any delay and must remain bound by the timeline.

21.4. Since the legislature prescribed no consequences for non-compliance with the proviso, Mr. Rohatgi argues that the proviso should be deemed as directory.

21.5. Moreover, since there was no change in AGI Greenpac's Resolution Plan, it was argued that Plan is not conditional. In any case, these issues should not be entertained by the Supreme Court at this premature stage, as these are pending for consideration before the NCLT.

21.6. The *locus standi* for Appellants as the unsuccessful resolution applicant is questioned, as they lack vested rights in the CIRP. It is also argued that the workmen and operational creditors have no standing to challenge a Resolution Plan.

21.7. Highlighting the RP's lack of expertise in managing a glass furnace factory, Mr. Rohatgi emphasised upon the importance of concluding the CIRP swiftly to avoid jeopardising its survival.

22. Mr. Parag Tripathi, supplementing for AGI Greenpac, invoked the Principle of Scrivener's Error, highlighting an inadvertent drafting error in the proviso to Section 31(4) of the IBC that rendered

unclear the original legislative intent. It is therefore argued that courts can pierce through the alleged obvious error and discern the true purpose behind the enactment.

DISCUSSION & ANALYSIS

Objections on *Locus Standi*

23. At the outset, the preliminary objection regarding the *locus standi* of the Appellant(s) to prefer the present Appeal(s) must be dealt with.

24. Section 61 of the IBC provides the statutory framework for appeals against orders of the Adjudicating Authority i.e., the NCLT, stipulating that '*any person aggrieved*' by such an order may prefer an appeal to the Appellate Authority i.e., the NCLAT in this case. Further, Section 62 extends this right of appeal to the Supreme Court.

25. Similarly, Section 53B of the Competition Act provides that '*any enterprise or any person aggrieved*' within the statutory framework may file an appeal against any order of the CCI to the Appellate Tribunal i.e., the NCLAT. Section 53T further extends this right of appeal to the Supreme Court against any decision or order of the NCLAT.

26. Once the CIRP is initiated, the nature of proceedings are no longer *in personam* but rather become *in rem*. In light of the same, the

expression '*any person aggrieved*' in the context of the IBC has been held to be indicative of there being no rigid *locus* requirements to institute an appeal challenging an order of the NCLT before the NCLAT or an order of the NCLAT before this Court.[1] Similarly, in the context of the Competition Act, even those persons that bring to CCI information of practices that are contrary to the provisions of the Competition Act, could be said to be 'aggrieved'.[2] Therefore, the term '*any person aggrieved*' appearing in Section 62 of the IBC and Section 53T of the Competition Act must be understood widely and not in a restricted fashion.

27. In the present case, the Appellant as an unsuccessful resolution applicant whose Resolution Plan could have otherwise been approved by the CoC, satisfies the requirement of being aggrieved. This preliminary *locus standi* objection vis-à-vis the Appellant, therefore, does not merit acceptance.

Proviso to Section 31(4) IBC

28. In these matters, the principal issue is whether the approval of a proposed combination by the CCI must mandatorily precede the approval of the Resolution Plan, by the CoC, as stipulated under

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[1] GLAS Trust Company LLC v. BYJU Raveendran & Ors., 2024 SCC OnLine SC 3032.

[2] Samir Agrawal v. CCI & Ors., (2021) 3 SCC 136.

the proviso to Section 31 (4) of IBC.

29. In its impugned order dated 18.09.2023, the NCLAT concluded that while the approval of the CCI for the combination is mandatorily required in consonance with the proviso to Section 31 (4) of the IBC, the timing of such approval i.e., that it must be obtained prior to the approval of the Resolution Plan by the COC, should be construed as being 'directory' in nature, rather than 'mandatory'.

30. A few paragraphs from the impugned NCLAT order being relevant are extracted herein below:

> *"... ... 33. The question of obtaining approval from the CCI only arises when Resolution Plan submitted contains a combination and require approval from the CCI. After submission of Plan, the Resolution Applicant applies for approval of combination from the CCI. It is not in his hand that as to when CCI will grant the approval. The CCI has to act as per statutory provisions of the Competition Act and it has been given 210 days to take a decision. If, we hold that prior approval of the CCI is mandatory prior to the approval of Plan by the CoC, it will lead to incongruous result, the CIRP cannot be frozen or cannot be put at halt because an application is submitted before the CCI. Looking to the timeline provided in the Code and that of the Competition Act and to hold that prior approval of CCI is required prior to approval of Plan by the CoC, mandatorily will lead to adverse effect on the CIRP... ...*
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> *... ... 34. In the present case, we have noticed that RFRP provided that CCI's approval has to be obtained prior to approval of Plan by the CoC, which RFRP was in accordance with Section 31(4). Although the RP subsequently clarified that approval can be obtained even after the approval by the CoC, which was in accordance with the prevalent legal position as settled by this Tribunal in Arcelor Mittal and other cases. We thus are of the view that Section 31, sub-section (4) proviso has to be*

read to mean that though the approval by the CCI is 'mandatory', the approval by the CCI prior to approval of CoC is 'directory'... ..."

31. The NCLAT, as can be seen from the above, concluded that though CCI's approval is mandatory, obtaining 'prior approval', is directory. Such a conclusion was reached on the understanding that the Resolution Applicant does not have control over the timeline within which the CCI may render its approval or disapproval, towards the combination application. This may in turn, lead to a situation wherein the insolvency proceeding is unduly delayed because of a pending application seeking approval from the CCI. That might undermine the very objective of the Corporate Insolvency Resolution Process [hereinafter referred to as 'CIRP'] itself. The absence of any explicit statutory consequences for non-compliance with the proviso to Section 31(4) IBC was therefore interpreted by the NCLAT as an indication that the requirement for prior approval was meant to be only directory.

32. The proviso to Section 31(4) of the IBC was inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018. Post-amendment, the provision reads thus:

"*(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.*

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

33. A proviso in a given statute may be introduced to serve various purposes, like qualifying or excepting certain provisions from the main enactment or insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable or as an optional addenda to explain the real intendment of the statutory provision.[3] Ordinarily, however, the function of a proviso is to except something out of the enactment or to qualify something enacted therein.

34. The introduction of a proviso, specifically addressing those Resolution Plans with provisions for combination, and the use of the term 'prior' therein, makes it starkly clear that the intent of the legislature was to create an exception. This ensures that in cases containing combination proposals, the approval of the CCI i.e., the regulatory body designated to ensure fair competition in markets and preventing anti-competitive practices, should first be obtained before the same is approved by the CoC. No other provision of the IBC has been pointed out that might suggest otherwise or cause disharmony between the scheme and intent of the IBC or the said proviso to Section 31(4) of the IBC.

[3] Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591.

35. The above provision makes it abundantly clear that the proviso herein creates an exception for those Resolution Plans that contain provisions for combination. The language used therein appears to be clear, precise & straightforward. As such, to understand the legislative intent, the Rule of Plain Reading or literal interpretation should find favour rather than the rule of purposive interpretation as is suggested by the other side.

Undertaking Interpretation: Why Literal and not Purposive?

36. It has been strongly argued by Mr. Mukul Rohatgi, the learned counsel for AGI Greenpac, that the rule of purposive interpretation should be adopted in order to interpret the proviso to Section 31(4) of the IBC. He, in fact, suggests a departure from the principles of literal interpretation. However, the proposition of law is well-settled that when the language of the provision is clear and unambiguous, literal interpretation is the best way to understand the legislative intention behind enacting the particular provision.

37. On the need for literal interpretation of a statue, when the words are clear and unambiguous, Mr. Francis Bennion in his oft-quoted treatise *Bennion on Statutory Interpretation* stated:

> "*Where the enactment is grammatically ambiguous, the opposing constructions put forward are likely to be alternative meanings, each of which is grammatically possible. Where on the other hand, the enactment is grammatically capable of one meaning only, the opposing constructions are likely to contrast an*

emphasised version of the literal meaning with a strained construction. In the latter case, court will tend to prefer the literal meaning, wishing to reject the idea that there is any doubt."[4]

38. The principle of *casus omissus*, as articulated by this Court in *Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC)*[5], underscoring boundaries of judicial interpretation, cautions the courts against transgressing into the legislative domain. The courts should not arrogate the legislature's role by filling gaps in statutory text. Statutory enactments like the IBC demand strict adherence to legislative intent, guarding against procedural overreach that may upset the framework envisioned by the Parliament.

39. Likewise, the Supreme Court in multiple cases had underscored the rule that when the language of a statute is plain and unambiguous and reasonably susceptible to only one meaning, there cannot be a question of construction of the statute, as the provision would speak for itself.[6]

40. In an oft-quoted case on literal interpretation *Kanailal Sur v. Paramnidhi Sadhu Khan*, this Court stated as follows[7]:

"If the words used are capable of one construction only then it would not be open to the courts to adopt any other

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[4] Bennion on Statutory Interpretation, 5th Edn., Francis Bennion.

[5] (2022) 2 SCC 401.

[6] State of Uttar Pradesh v. Vijay Anand Maharaj, 1962 SCC OnLine SC 12 [Subbarao, J.]; Om Prakash Gupta v. Dig Vijendrapal Gupta, (1982) 2 SCC 61; Nelson Motis v. UOI, (1992) 4 SCC 711.

[7] 1957 SCC OnLine SC 8.

hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the act."

41. In fact, if the statute is plain and unambiguously-worded, the consequences of such construction no longer remain a matter for the court to decide on[8], even if they appear to be strange, surprising, unreasonable, unjust or oppressive.[9] Further, even hardship, inconvenience or penalty[10] being the consequence of compliance with such construction cannot be deemed sufficient to alter the meaning of the language employed by the legislature, if such meaning is clear on the face of the statute or the rules.[11]

42. Where the language is clear, plain and unambiguous, the courts are duty-bound to give effect to the meaning that can be inferred from a statute, irrespective of the consequences. Mere inconvenience being caused to a party, by virtue of the plain and literal interpretation accorded to a statute, cannot be reason enough to forego such interpretation.

43. Emphasising on construing the meaning from the plain language of Section 123(7) of the Representation of the People Act, 1951, as it

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[8] Tamil Nadu State Electricity Board v. Central Electricity Regulatory Commission, (2007) 7 SC 636.

[9] Mahalaxmi Mills Ltd., Bhaunagar v. CIT, Bombay, 1963 SCC OnLine SC 190; Nasiruddin v. State Transport Appellate Tribunal, (1975) 2 SCC 671; Precision Steel and Engineering Works v. Premdeva, (1982) 3 SCC 270.

[10] Tata Consultancy Services v. Andhra Pradesh, (2005) 1 SCC 308.

[11] CIT, Agri. v. Keshab Chandra Mandal, (1950) SCC 205.

then stood, Justice S. R. Das pertinently observed[12]:

> *"The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act."*

44. In other words, the so-called 'spirit of the law' is an indeterminate construct, whose nature renders it subjective and susceptible to varied interpretations depending on the personal predilections of those tasked with interpreting it. Therefore, it is almost unattainable as a definitive guide, especially in the face of or when put in opposition to the unambiguous, clear and plain language used in a particular provision, as is presently the case.

45. Therefore, it is almost necessary for the courts to interpret the provision in its natural sense, as it is through the words used in a provision that legislature expresses its intention. When the language is unambiguous, as in the present matter, the courts must respect its ordinary and natural meaning instead of wandering into the realm of speculation and unintended overreach invoking the so-called 'spirit of the law'.

Principle of Plain Meaning

46. To better understand what constitutes the 'Principle of Plain Meaning', we will benefit by referring to the seminal treatise of Justice G.P. Singh on *Principles of Statutory Interpretation*. The

[12] Rananjaya Singh v. Baijnath Singh, (1954) 2 SCC 314.

respected author has explained the concept with his usual clarity in the following terms[13]:

> *"It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in the context and construed. The rule, therefore, in reality means that after you have construed the words and have come to the conclusion that they can bear only one meaning, your duty is to give effect to that meaning... ...*
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> *... ... That seems to me a plain clear meaning of the statutory language in its context. Of course, in so concluding I have necessarily construed or interpreted the language. It would obviously be impossible to decide that language is 'plain' (more accurately that a particular meaning seems plain) without first construing it. This involves far more than picking out dictionary definitions of words or expressions used. Consideration of the context and setting is indispensable properly to ascertain a meaning. In saying that a verbal expression is plain or unambiguous, we mean little more than that we are convinced that virtually anyone competent to understand it and desiring fairly and impartially to ascertain its significance would attribute to the expression in its context a meaning such as the one we derive, rather than any other; and would consider any different meaning by comparison, strained, or far-fetched, or unusual or unlikely."*[14]

47. Similarly, a provision would not be considered ambiguous merely because it contains a word which in different contexts, is capable of a different meanings, but instead if it contains a word or phrase

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[13] Pg. 41, 1.6. Appraisal of the Principle of Plain Meaning, Chapter 1 – Basic Principles, Justice G.P. Singh's Principle of Statutory Interpretation (15th Edition), 2016.

[14] Pgs. 1013, 1014, Ried Macdonald and Fordham, Cases and other Materials on Legislation, 2nd Edn; Hutton v. Phillips, (1949) 45 Delh 156, 70A 2d 15.

which is capable of having more than one meaning in that particular context.

48. When the statute is clear and straightforward, the Supreme Court in *Bhavnagar University v. Palitana Sugar Mill Private Limited*[15] held as follows:

> *"25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactment must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified, unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable, or totally irreconcilable with the rest of the statute."*

49. Lord Atkinson in *Corp. of the City of Victoria v. Bishop of Vancouver Island*[16] observed:

> "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute, in which they occur, or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense."

50. That words in the statute are to be understood in their natural, ordinary and popular sense. This has been underscored by Justice Frankfurter, in the following opinion:

> "After all legislation when not expressed in technical terms is addressed to common run of men and is therefore to be understood according to sense of the thing, as the ordinary man has a right to rely on ordinary

[15] (2003) 2 SCC 111.

[16] 1921 SCC OnLine PC 75.

words addressed."[17]

51. The above pronouncements make it clear that when the words used are clear, plain and unambiguous, the courts are duty-bound to give effect to the meaning emerging out of such plain words. The intention of the legislature must be gathered from the language used and also, the words not used. It becomes imperative to understand those words in their natural and ordinary sense, and any interpretation requiring for its support addition or substitution or rejection of words as meaningless, must ordinarily be avoided.

52. Courts must always attempt to uphold a provision as it is and not invalidate it, merely because one of the possible interpretations could lead to such a result. When there is no ambiguity in the words used, the question of finding a disguised intention or purpose behind the use of a particular word (the word 'prior' in this case), would not ordinarily arise.

53. The legislative intent behind inserting the proviso to Section 31(4) of the IBC would suggest that prior approval of the CCI was specifically mandated and it should not be seen as a flexible provision to be ignored in certain exigencies. In fact, a contrary interpretation of the said proviso, i.e., that the prior approval is directory, would distort the objective for which the legislature inserted the proviso, thereby

[17] Wilma E. Addison v. Holly Hill Fruit Products, 322 US 607.

rendering the proviso totally inconsequential.

54. In the present interpretive exercise, one also needs to be mindful of the legal principle which says that where a statute requires one to do a certain thing in a certain manner, it must be done in that particular manner or not done at all. For this proposition, it would be relevant to extract the following from the judgment in *A. R. Antulay v. Ramdas Sriniwas Nayak*[18]:

> *"22…….. It is unnecessary to refer to the long line of decisions commencing from Taylor v. Taylor [(1876) 1 Ch D 426]; Nazir Ahmad v. King-Emperor [AIR 1936 PC 253 (2) : 63 IA 372 : (1936) 37 Cri LJ 897] and ending with Chettiam Veettil Ammadv. Taluk Land Board [(1980) 1 SCC 499 : AIR 1979 SC 1573 : (1979) 3 SCR 839], laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."*

55. The language of the proviso to Section 31(4) of the IBC appears to be clear with no ambiguity and in those situations, all words finding place in the provision must be given their due meaning.

56. The efforts must therefore be to construe any text, phrase and/or proviso in a reasonable manner without going beyond the limited range of permissibility within which the legislative meaning can be captured. The use of the word 'prior' in the proviso, must be given some meaning as by virtue of the same, the statute requires that the

[18] (1984) 2 SCC 500.

act of obtaining CoC approval for the Resolution Plan must be done in a particular manner i.e., the necessary CCI approval for Resolution Plans containing combination proposals must be obtained prior to such Plan, being granted the CoC's approval.

57. The learned Solicitor General appearing for the CoC, had suggested the interpretation by which the requirement of obtaining prior approval from the CCI should be construed as directory. But this would inevitably require the Court to interpret the said proviso to mean something different than what has been expressly mentioned in the proviso. The following decisions of this Court which support the present proposition are reproduced for ready reference:

58. In *Sri Venkataramana Devaru v. State of Mysore*, the Supreme Court held[19]*:*

> *"25...The language of the Article being plain and unambiguous, it is not open to us to read into it limitations which are not there, based on a priori reasoning as to the probable intention of the legislature. Such intention can be gathered only from the words actually used in the statute; and in a court of law, what is unexpressed has the same value as what is unintended..."*

59. In *Hardeep Singh v. State of Punjab*, this Court held the following[20]:

> *"43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word*

[19] 1954 SCC OnLine SC 25.

[20] (2014) 3 SCC 92.

playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate."

60. Significantly, the Supreme Court in *Visitor, Aligarh Muslim University v. K.S. Misra*[21] held:

> *"13…It is well-settled principle of interpretation of the statute that it is incumbent upon the court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute..."*

61. The intent of the legislature must therefore be gathered from the words it has used in the statute. Naturally, the Court should proceed with the assumption that no word has been used in vain or in an inapposite manner, by the legislature.[22] Courts, when confronted with clear statutory language, derive the meaning from the words

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[21] (2007) 8 SCC 593.

[22] Quebec Railway, Light, Heat & Power Co. v. Vandry, SCC OnLine PC 10; ESI Corpn. v. KEY DEE Cold Storage Pvt. Ltd., (2022) 17 SCC 379; UOI v. Hansoli Devi, (2010) 15 SCC 483.

used by the legislature and should avoid the assumption that the legislature by inserting the proviso, using certain words at certain places and/or not using particular words at all, committed a mistake.

62. It must be presumed that the legislature inserted every word in a provision for a purpose and that every part of the statute should have effect as well.[23] In that context, in situations wherein there is no ambiguity with respect to the provisions of a statute, the Court's interpretative exercise would be restricted. In other words, the Court is duty-bound to proceed on the footing that the legislature intended what it expressed in the statute (or proviso, in this case). Beyond that, the Court's exercise cannot be stretched to involve a re-writing, re-casting or re-framing of the legislation or statute.

63. In that light, while interpreting Section 2(2) of the Arbitration and Conciliation Act, 1996, a Constitution Bench of the Supreme Court observed that in case the legislature intended to expand the scope of Part-I of the Act to arbitrations seated in foreign countries, it would have added such words in the provision itself. Therefore, for the Court to add words that are not expressly provided by the legislature in the statute itself would tantamount to a 'drastic and unwarranted

[23] JK Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh, 1960 SCC OnLine SC 16; Dilawar Balu Kurane v. State of Maharashtra, (2002).2 SCC 135; Ramphal Kundu v. Kamal Sharma, (2004) 9 SCC 278.

rewriting or alteration of the language'.[24]

64. Rules of interpretation permit courts to read a certain word, term or phrase in the statute differently from its plain meaning if it leads to absurdity but the courts must always remain conscious of the fine dividing line, separating adjudication and legislation, which must not be crossed. In *Vemareddy Kumaraswamy Reddy v. State of A.P.*[25], the Court in the context held as follows:

> *"15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased... ...*
>
> *.. .. 16. Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself... ... ..."*

65. In the present case, the use of the word 'prior' at the appropriate place in the proviso besides being direct, clear and unambiguous also does not lead to any absurd consequences. The proviso to Section 31(4) of IBC mentions that the approval to the Resolution Plan from CCI shall be obtained 'prior' to its approval by the CoC.

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[24] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552.

[25] (2006) 2 SCC 670.

Therefore, to interpret the specific word to mean that such an approval can be obtained even 'after' and not necessarily 'prior' to the approval by the CoC would amount to reconstructing a statutory provision, which is not permissible.

Different Threshold for Combinations

66. To further fortify that the proviso has been interpreted as above in the correct manner, an analysis of the context in which and the intent with which the proviso to Section 31 (4) of the IBC was brought into effect, guides us further:

67. While literal interpretation must remain the judiciary's guiding light, insights gained from legislative debates, committee reports and/or historical contexts may be looked at with a degree of caution, lest they obscure the plain meaning of the text or elevate subjective predilections of the judge above the clear mandate of the law. Such an inquiry into legislative history, therefore needs to be carefully undertaken as a supplement to but not as substitute of the literal interpretation of the statutory language, mindful of the risks of wandering too far afield into the uncertain waters of committee reports, memorandums and legislative debates.

68. Let us now pay attention to the Report of the Insolvency Law Committee (dated 01.03.2018), which recommended that specific timelines be incorporated in the IBC, to seek approval from

government authorities as well as the CCI. The relevant extracts from the Report are as follows:

> *"16.1... ... However, the timeline within which such approvals are required to be obtained, once a resolution plan has been approved by the NCLT, has not been provided in the Code or the CIRP Regulations. The Committee deliberated... the Code should specify that the timelines will be specified in the relevant law, and if the timeline for approval under the relevant law is less than one year from the approval of the resolution plan, then a maximum of one year will be provided for obtaining the relevant approvals, and section 31 shall be amended to reflect this... ...*
>
> *16.3... ... Thus, as the CIRP period is sacrosanct, the Committee, keeping in mind the practicalities of the issue, deemed it fit to provide for a period for obtaining the necessary approvals as mentioned in paragraph 16.1 above, after the approval of the plan by the NCLT.*
>
> *16.4. However, the Committee was of the opinion that approval from CCI may be dealt through specific regulations for fast tracking the approval process in consultation with the CCI. The Committee was informed that pursuant to discussions with CCI, it has been agreed that CCI will have a period of 30 working days for approval of combinations arising out of the Code, from the date of filing of the combination notice to the CCI. Further, this timeline of 30 days may be extended by another 30 days, only in exceptional cases. In the event that no approval or rejection is provided by the CCI within the aforementioned timelines, the said combination would be deemed to have been approved. Details forms and relevant regulations in this regard may be provided by CCI in due course of time."*

69. As can be appreciated from above, a timeline was incorporated to plug a loophole and provide for a schedule to obtain the necessary approvals, which was hitherto not provided. At the same time, a distinction was drawn between necessary approvals required to be received from different statutory bodies and regulatory authorities

vis-à-vis the CCI's approval. In case of other statutory bodies, a timeline of one year subsequent to the CoC's approval of the Resolution Plan was deemed to be sufficient, whereas the timeline for procuring the CCI's approval was brought ahead in the sense that the same was required to be obtained prior to the approval of the Resolution Plan, by the COC.

70. The statute, as can be observed, provided a different threshold for the CCI's approval as compared to approvals to be received from other statutory and regulatory bodies. Such arrangement appears to be deliberate as the Competition Act contains both specific restrictions with respect to combinations that may lead to an Appreciable Adverse Effect on Competition (AAEC) in the relevant market as well as a detailed procedure of enquiry and scrutiny of such combinations, to prevent such AAEC. Based on the same, the CCI is empowered to either approve, reject or modify such a combination or to mould it in a manner that is in consonance with the scheme of the Competition Act.

Notes on Clauses, Memorandum & Scrivener's Error

71. Let us now consider another aspect which is brought forth by the learned counsel to indicate the legislative intent of the IBC. This is in reference to the Notes on Clauses to the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which might have some

significance for the present discussion. The Notes on Clauses read as follows:

> "*Clause 24 of the Bill seeks to amend section 31 of the Code to provide that the Adjudicating Authority shall, before passing an order for approval of resolution plan satisfy that the resolution plan has provisions for its effective implementation and that the resolution applicant shall obtain the necessary approvals required within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later and where it contains a provision for combination for approval of the Competition Commission of India shall be obtained prior to the approval of resolution plan by the committee of creditors.*"

72. The Memorandum explaining modifications made in the Bill introduced to replace the Insolvency and Bankruptcy (Amendment) Ordinance, 2018 supplements the aforementioned Notes on Clauses, stating:

> *"(d) in clause 24 of the Bill, in sub-section (4) of section 31 of the Code, a new proviso is inserted "provided that where the resolution plan contains a provision for combination as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors" so as to clarify that the approval for the combinations from Competition Commission of India has to be obtained prior to the approval of resolution plan by the Adjudicating Authority."*

73. Both the Notes on Clauses and the Memorandum clearly mention that the approval from the CCI for the combination must be obtained prior to, the approval of the Resolution Plan by the CoC.

However, the last line in the Memorandum states that the same is to clarify that the approval from CCI for the combination, shall be obtained prior to the approval of the Resolution Plan, by the Adjudicating Authority, instead of CoC, as mentioned in the preceding line and also the inserted proviso. A question might therefore arise – whether it was an inadvertent legislative error? As can be appreciated, the erstwhile Ordinance provided for a 'post-Adjudicating Authority' approval stage. The Memorandum clarified that a new step had been added at a 'pre-Adjudicating Authority' approval stage. It would therefore be logical to hold that obtaining prior approval of the CCI before the CoC approval, would seamlessly cover the 'pre-Adjudicating Authority' approval stage without any possible disruption.

74. The error as noticed above, appears to have been inadvertently made while drafting the Memorandum but this is not the case in the drafting of the statute. The particular line in the Memorandum could also be a Scrivener's Error, a judicial doctrine developed in the USA, as put forth by Mr. Parag Tripathi, learned senior counsel for AGI Greenpac. This doctrine was explained by legal scholars in the following terms[26]:

[26] Ryan Doerfler, The Scrivener's Error, Northwestern University Law Review, Vol. 110 (2016); Justice Antonion Scalia, Common Law Courts in Civil Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, A Matter of Interpretation: Federal Courts and the Law, 3 (Amy Gutmann, ed., 1997).

> *"In the literal sense, then, a "scrivener's error" is a mistake of transcription, which is to say a mismatch between original (e.g., spoken word, manuscript) and copy. Today, of course, Congress does not use actual scriveners. Indeed, the phrase "scrivener's error" came into popular usage only once reliance upon scriveners was uncommon. The phrase is thus a term of art, referring to a particular sort of legislative mistake. Specifically, and as explained more fully throughout Part I, a "scrivener's error" is a case in which the words of a legislative text diverge from what Congress meant to say. Such a case contrasts with one in which Congress simply should have said something else."*

75. Assuming that there is no such error in the Memorandum and therefore the Memorandum presents a conflicting view vis-à-vis the Notes on Clauses in explaining the legislative intent behind introducing the said proviso, the implication thereof can be understood from the following passage from the three Judge Bench opinion in a similar context. In *Shashikant Laxman Kale v. Union of India*, the Court opined[27] that the final Act would be the guiding factor:

> *"20. Strong reliance has been placed on behalf of the petitioners on the memorandum explaining the provisions in the Finance Bill, 1987, wherein the explanatory note relating to clause 4(a) of the Bill proposing insertion of clause (10-C) in Section 10 of the Income Tax Act, 1961 appears under the heading 'Welfare Measures'. It may be mentioned that this heading is only in the explanatory memorandum and not in the 'Notes on Clauses' appended to the 'Statement of Objects and Reasons' of the Bill. [See (1987) 165 ITR (Statutes) at pp. 119, 122 and 155] We would presently show that the petitioners cannot draw support from this heading in the explanatory memorandum. Moreover, an explanatory memorandum is*

[27] (1990) 4 SCC 366.

usually 'not an accurate guide of the final Act'. [See Francis Bennion's Statutory Interpretation, 1984 edn. at p. 529]."

76. Additionally, it is not necessary to refer to Memorandum explaining particular clauses of a Bill when the language of the provision is clear and unambiguous, as has been held in *ACG Associated Capsules v. Commissioner of Income Tax*[28]. In any case, a Memorandum explaining a particular proviso stands at a lower footing when compared with Notes on Clauses, explaining the entire amendment, especially in cases where the language in the statute is definite and straightforward. In fact, the Memorandum does not even feature in the Hindi version of the Bill whereas the Notes on Clauses elaborately explaining the intent behind introducing each amendment, features prominently in both the English and Hindi versions. This would also indicate that the Memorandum can never play the decisive role.

77. More importantly, such external aids of interpretation could have a limited role only when repugnancy within the statute fall for consideration. But that is not the situation here as the language of the statute is clear, specific and unambiguous.

78. The legislative intent in the proviso to Section 31(4) IBC, is in clear and unambiguous terms. The same specifically provides for prior

[28] (2012) 3 SCC 321.

approval of the CCI before the approval of the Resolution Plan, by the COC. This provision introduced with straightforward and clear words must be interpreted and understood as being mandatory in nature. Otherwise the object behind the enactment of the said proviso, would be defeated.

79. Bearing in mind the fact that the CCI is empowered to approve, reject and/or modify a proposed combination, a Resolution Plan approved by the CCI should only be placed before CoC. The 'commercial wisdom' accorded to the CoC being paramount, the legislature in our understanding, intentionally provided for a prior approval of the CCI with respect to Resolution Plans, containing combination proposals.

80. Additionally, the CCI has also been empowered under Section 31(3) of the Competition Act as well as Regulation 25(1)(A) of the Combination Regulations to direct modifications to the Resolution Plan or a combination proposal. Therefore, the approval from CCI must be obtained before the same is approved by the CoC. Otherwise, an illogical situation may arise since any modifications so directed by the CCI, would be kept out of the scrutiny of the CoC and the CoC would be forced to exercise its commercial wisdom without complete information.

81. It is for the above reasons that the legislature has devised a scheme

wherein the Resolution Plan with its proposed modifications must be placed before the COC to enable it to compare all possible plans of prospective Resolution Applicants. Only then can the CoC's commercial wisdom be exercised assiduously.

82. To decide whether a particular provision should be identified as mandatory in nature, we may benefit by referring to the following precedents:

83. In *Sharif-ud-Din v. Abdul Gani Lone*, the Supreme Court held[29] as follows:

> *"9… In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory… Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."*

84. The long-standing principle of the consequence of non-compliance being the determinative factor, was later reaffirmed in several judgments, such as *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*[30], *Mackinnon Mackenzie & Co. Ltd. v. Mackinnon Employees*

[29] (1980) 1 SCC 403.

[30] (2022) 10 SCC 1.

Union[31], as well as *Indore Development Authority v. Manoharlal.*[32]

85. Earlier, emphasising on the consequence theory to understand the binding nature of the statute, Justice K. Subba Rao in his majority opinion in *State of U.P.* v. *Babu Ram Upadhyaya*[33], held as follows:

> *"29. The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."*

86. When a Resolution Plan containing a provision for a combination that leads to an Appreciable Adverse Effect on Competition (AAEC) is placed before the CoC for approval before securing prior approval from the CCI, the Plan is incapable of being enforced or implemented. Specific consequences in law are provided under the IBC and the Competition Act for the same. As is clear, such a major omission cannot be cured at a later stage. Therefore,

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[31] (2015) 4 SCC 544.

[32] (2020) 8 SCC 129.

[33] 1960 SCC OnLine SC 5.

approval by CoC to such a deficient Resolution Plan can have no legal implications. In the present case, the CCI-unapproved Resolution Plan does not pass the muster. The same cannot be approved by this Court as it is in violation of Sections 30(2)(e), 30(3), 30(4) and 34(4)(a) of the IBC. It therefore does 'contravene provisions of the law for the time being in force'.

(Dis?)Harmony between Stipulated Timelines

87. On the aspect of a possible disharmony between the stipulated timeline to be followed under the IBC and the Competition Act, the NCLAT in the impugned order has held the proviso to Section 31(4) of the IBC, to be directory in nature since mandatory prior approval of the CoC, would lead to disruption in the CIRP timeline, as stipulated under the IBC.

88. However, it must be noted that the model timelines prescribed under any regulations, i.e., in the current case, Regulation 40A of CIRP Regulations, cannot by any stretch, supersede a statutory provision i.e., the proviso to Section 31(4) of the IBC. In fact, the subordinate legislation must be interpreted in a manner that conforms to the statute, and not the other way around, as was unacceptably rationalised by the NCLAT.

89. As far as the two timelines stipulated under the IBC and the Competition Act are concerned, the same do not usually cause any

disharmony or conflict. The only exception could be in the extremely rare circumstances discussed below, influenced by external factors. But such extreme and unlikely situations cannot and should not be allowed to influence our interpretative exercise on the functioning of the legislative framework which will fit in with most cases.

90. In that context, the timeline of 210 days as stipulated under the Competition Act would be attracted only in cases which involve an extremely high degree of AAEC, mostly indicative of a complicated super-monopolistic behemoth. In fact, it must be borne in mind that CCI itself in its Annual General Report for the year 2022–2023 stated that the average time required to dispose of combination applications, is usually 21 working days. There has been no recorded instance till date where, more than 120 days were taken by the CCI to approve a combination proposal. Additionally, of the 99 combination proposals approved by the CCI, an overwhelming 85 of those were approved within 30 days and the rest 14 approvals took less than 120 days *in toto*. Therefore, the extreme and rare examples projected by the counsel for AGI Greenpac and CoC need not be given undue importance, in the present interpretative exercise.

91. In the rare extreme cases involving a high degree of AAEC, public consultation and behavioural remedies are ordinarily required,

which might lead to an elongated timeline going beyond 120 days. However, only one such combination proposal has been received in the past few years.

92. In the context of arguments that have been made on the disharmony between the two timelines, reference must also be made to Section 6(2) of the Competition Act. The same is reproduced as follows:

> "*6(2). Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, [13] [shall] give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within[14] [thirty days] of—*
>
> 1. *(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;*
> 2. *(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.*
>
> *[15][(2A)No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section(2) or the Commission has passed orders under section 31, which- ever is earlier.]*"

93. The point at which the applicant is allowed to give notice to CCI of a combination, i.e., the trigger event, need not therefore be limited to when the Resolution Plan is submitted to the Resolution Professional. On the contrary, such notice can be given immediately after or within thirty (30) days of the execution of 'any agreement'

or 'other document', disclosing details of the proposed combination. Regulation 5(8) of the CCI (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011 defines 'other document' as including any document conveying an agreement or decision to acquire control over a target company. Therefore, the submission of an application before the CCI can be done at different stages and need not necessarily wait until the Resolution Plan is submitted.

94. The argument that the application to obtain approval from the CCI can only be submitted at the stage when the Resolution Plan is submitted i.e., T + 135 days, in the timeline would be erroneous and unacceptable. The application under the statutory scheme, can be submitted at various stages, including but not limited to, at the time of Expression of Interest i.e.., T + 60 days, or issuance of RFRP i.e., T + 105 days, or even when the list of provisional Resolution Applicants is published i.e., T + 85 days. Taking this into account, submitting the combination proposal before the CCI at either of these stages, would have still resulted in the culmination of the entire process, within the stipulated time limit of 330 days, under the IBC.

95. On the upper limit of 330 days within the CIRPtimeline, it has been pertinently this Court in *Committee of Creditors of Essar vs. Satish*

Kumar Gupta observed the following[34]:

> *"124. Given the fact that timely resolution of stressed assets is a key factor in the successful working of the Code, the only real argument against the amendment is that the time taken in legal proceedings cannot ever be put against the parties before NCLT and NCLAT based upon a Latin maxim which subserves the cause of justice, namely, actus curiae neminem gravabit.*
>
> *127... Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. ... while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the*

[34] (2020) 8 SCC 531.

delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days... ..."

96. The attempt must therefore be to conclude the entire process of insolvency, 'ordinarily' within 330 days but in rare circumstances, the same can be elongated, particularly when the delay cannot be ascribed to the applicants or parties involved but the tardy process of the Tribunal or the Adjudicating Authority.

97. However, if notice for the proposed combination under Section 6(2) of the Competition Act has been given within the stipulated time and no dilatory tactics have been employed, the parties should not be held responsible for any delay on the part of the CCI, in examining the combination. The CCI, as their counsel Mr. Balbir Singh points out, has been able to approve bulk of the proposed combinations, in a time-bound and reasonable manner, as can be gleaned from the Annual General Reports and material placed on record, by Mr. Singh.

98. In the present case, even though dilatory tactics are said to have been adopted in the submission of notice under the Combination Regulations, with Form II submitted on 03.11.2022, the combination was approved on 15.03.2023 i.e., within 132 days. The recent Competition (Amendment) Act, 2023 which reduced the timeline for approving combination proposal from 210 days to 150 days and requiring the CCI to give a *prima facie* opinion on the likelihood of a

combination causing an Appreciable Adverse Effect on Competition (AAEC) from 30 days to 15 days, is indicative of the more realistic and shorter timelines that the CCI ordinarily requires for its analysis and decision-making, pertaining to such combination proposals.

99. Flowing from the above, it is difficult to interpret the provisions disjunctively, as has been done by the NCLAT, in the impugned order dated 18.09.2023.

Distinguishing cases relied upon by the NCLAT

100. The NCLAT in its analysis placed heavy reliance on the decision of the three-judge bench of the NCLAT in *Arcelor Mittal India Pvt. Ltd. v. Abhijit Guhathakurta*[35]. However, this reliance is misplaced, as the factual and legal context of that case materially differs from the present matter.

101. For instance, the CIRP in *Arcelor* commenced prior to the introduction of the proviso to Section 31(4) of the IBC. The NCLT, in *Arcelor*, explicitly held that the proviso could not be applied retrospectively, given that it imposed an additional procedural obligation requiring resolution applicants to furnish CCI approval, prior to submitting a Resolution Plan. As such, the amendment was deemed inapplicable to the CIRP initiated before the enactment of the proviso. In contrast, the CIRP in the present case was initiated

[35] 2019 SCC OnLine NCLAT 920.

post-enactment of the proviso, rendering the procedural requirements therein, fully applicable.

102. In fact, if we look at the impugned NCLAT reasoning it can be noticed that the NCLT in *Arcelor* implicitly mentioned that the clear change in procedure i.e., obtaining the prior approval of the CCI, has to be implemented prospectively. However, this additional procedural obligation cannot be imposed retrospectively in that particular case.

103. Also in that case, the CCI's approval did not address issues relating to a potential Appreciable Adverse Effect on Competition (AAEC) in the relevant market. The approval so granted by the CCI did not impose any modifications to the Resolution Plan either. On the other hand, the present case involves substantive concerns regarding an Appreciable Adverse Effect on Competition (AAEC), which required CCI's careful consideration and proposed modifications if any, to ensure compliance with appropriate laws.

104. Importantly, the *Arcelor* judgment lacks detailed reasoning or analysis by which the NCLAT concluded that the proviso to Section 31(4) is only directory. Further, this judgement was also not challenged before this Court. Consequently, its precedential value in the present context is limited, and it cannot be relied upon to determine the issues arising in this appeal.

105. The reliance on the decision in *Makalu Trading Ltd. v. Rajiv Chakraborty*[36], is equally misplaced, as the judgment merely reiterates the findings in *Arcelor Mittal,* without any independent analysis or discussion on the merits of the relevant legal propositions. Pertinently, *Makalu* does not address the applicability of the proviso to Section 31(4) of the IBC, or engage with the legal or factual nuances, that may distinguish the cases.

106. Further, it does not also discuss the object behind the IBC or the introduction of the proviso. In fact, the CCI approval in *Makalu* does not pertain to a situation where a *prima facie* opinion regarding the existence of an AAEC was formed. The absence of such consideration underscores the limited relevance of the decision to the present matter where, significant issues pertaining to both the IBC and Competition law have been raised, requiring a thorough examination of the CCI's observations and the implications of its approval.

107. As such, the precedential value of *Makalu* is insufficient, to support the NCLAT findings in the present matter, although *Makalu*'s decision was challenged before this Court and was dismissed vide Order dated 12.10.2020, as not involving any substantial question of law. However, it is well-settled that the dismissal of an SLP *in limine* without giving any detailed reasons do not constitute any

[36] 2020 SCC OnLine NCLAT 643.

declaration of law or binding precedent, but simply implies that the case was not considered worthy of examination for a reason, other than on merits.[37]

108. Besides, *Vishal Vijay Kalantri v. Shailen Shah*[38] was also relied on by the NCLAT, which again is entirely misplaced as the factual and legal circumstances in that case differ fundamentally from the present matter. On the issue of the proviso to Section 31(4) of the IBC being directory in nature, *Vishal Vijay Kalantri* merely follows the earlier discussed and discarded ratio, in *Arcelor Mittal*.

109. The question of obtaining approval from the CCI did not arise in that case, as the acquisition in question, did not qualify as a 'combination' under the Competition Act, 2002. Consequently, the legal principles concerning the necessity of CCI approval and the implications of such approval, particularly in cases involving the possibility of an AAEC, were not addressed or analysed in that decision. This was challenged before a two-Judge Bench of this Court which found no reason to interfere and dismissed the Appeal at the threshold, vide Order dated 06.08.2021.

110. Therefore, the impugned NCLAT order incorrectly relied upon the aforementioned NCLAT decisions. Being distinguishable, those

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[37] Supreme Court Employees' Welfare Association v. Union of India, (1989) 4 SCC 187; State of Orissa v. Dhirendra Sundar Das, (2019) 6 SCC 270.

[38] 2020 SCC OnLine NCLAT 1013.

decisions could not have been unreservedly applied, to the present matters. Reliance on those decisions in different context, both on facts and on law, would lead to an erroneous interpretation on the applicability of the proviso to Section 31(4) of the IBC.

Relevance of CCI & its scrutiny

111. Even if the proviso to Section 31(4) of the IBC is kept aside, by virtue of the provisions incorporated under Sections 30(2)(e), 30(3) and 31(1) of the IBC, the Resolution Professional has the legal obligation to examine each Resolution Plan and determine whether it contravenes any provisions of law for the time being in force. In this context, the relevant extracts from the IBC are reproduced below:

> *S. 30 of the Code states:*
>
> *"30. Submission of resolution plan. — (1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under Section 29-A to the resolution professional prepared on the basis of the information memorandum.*
>
> *(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*
>
> *… (e) does not contravene any of the provisions of the law for the time being in force*
>
> *…*
>
> *(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).*
>
> *…*
>
> *(6) The resolution professional shall submit the resolution*

plan as approved by the committee of creditors to the Adjudicating Authority."

S. 31 of the Code states:

"31. Approval of resolution plan.—(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section

(2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

…"

112. The extracts of the Competition Act relevant for the present discussion is reproduced below for ready reference:

6. Regulation of combinations. —(1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of—

…

(b) execution of any agreement or other document for acquisition referred to in clause (a) and clause (d) of Section 5 or acquiring of control referred to in clause (b) of that section.

(2-A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under Section 31, whichever is earlier.

(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in Sections 29, 30 and 31.

…"

31. Orders of Commission on certain combinations. —(1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of Section 6:

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.

…

(11) If the commission does not, on the expiry of a period of two hundred and ten days from the date of notice given to the commission under sub-section (2) of Section 6, pass an order or issue direction in accordance with provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

…

(13) Where the Commission has ordered a combination to

be void, the acquisition or acquiring of control or merger or amalgamation referred to in Section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.…"

113. When the aforementioned provisions of the IBC and the Competition Act are juxtaposed together, it is clear that any combination that leads to an Appreciable Adverse Effect on Competition in the relevant market, is void. Any Resolution Plan containing provisions for a combination that results in an Appreciable Adverse Effect on Competition would therefore be not compliant with the provisions of the Competition Act. In that light, the Competition Act mandates that a notice of combination be given to the CCI and approval obtained at the earliest.

114. The provisions also make it incumbent upon the Resolution Professional to examine whether the Resolution Plan submitted by an applicant, complies with the 'provisions of the law for the time being in force'. Only those Resolution Plans which meet the requisite lawful criteria, can be placed before the CoC, by the Resolution Professional. Further, the Competition Act bestows upon the CCI the power to reject or modify a combination proposal.

115. In the above backdrop, prior approval of the CCI should advisedly be secured for the Resolution Plans which are to be scrutinised and approved by the CoC i.e., the body with expertise and

resources to appropriately analyse the possible effects of an Appreciable Adverse Effect on Competition (AAEC), in the relevant market due to a proposed combination as well as the viability of the concerned Resolution Plan. If prior approval of the CCI is not obtained, it may lead to an incongruous situation where the CoC approves a Resolution Plan which may be in violation of Section 6 of the Competition Act i.e., causing an AAEC in the relevant market or that subsequent to such approval by CoC, the CCI rejects the said combination, thereby rendering the entire exercise futile. In other words, the Resolution Professional should not place any Resolution Plan before the CoC, without the scrutiny of and prior approval by CCI.

116. In any case, it is well-settled that the Resolution Professional does not possess any adjudicatory powers under the IBC.[39] In fact, the role of the Resolution Professional, as a facilitator of the CIPR, is almost entirely administrative in nature. Therefore, the Resolution Professional, not being an adjudicating authority, could not have mandated that the requirement of obtaining prior approval of the CCI before placing the Resolution Plan before the NCLT, can be relaxed. Granting such relaxation on a whim, oddly enough through an e-mail in the present case, was in our opinion beyond

[39] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.

the scope of the Resolution Professional's powers.

117. In the current case, a *prima facie* opinion under Section 29(1) of the Competition Act was found to the effect that AGI's Resolution Plan, as approved by the CoC, was in contravention of Section 6 of the Competition Act. Only after the proposed divestment proposed by AGI Greenpac, did the CCI approve the proposed combination. Importantly, much before the proposed divestment and the approval to such combination was given by the CCI, the Resolution Plan was placed, voted upon and approved by the CoC. Therefore, it is apparent that AGI Greenpac's Resolution Plan as approved by the CoC was without the requisite approval of the CCI on that date. Therefore this would be in contravention of Section 6(1) of the Competition Act for the combination in question.

118. What is also of great relevance is that after the COC's approval, the Resolution Plan cannot be modified in any manner since the Adjudicating Authority can only approve the Resolution Plan, as has been approved by the CoC. This is made clear by Section 31(1) of the IBC.

Procedural Lapses under the Competition Act

119. Before delving into the substantive aspects of the Competition law, the relevant facts and procedural trajectory that lead to the present appeal needs to be referred. Upon AGI Greenpac's Form I

submission on 27.09.2022, the CCI found the information submitted to be insufficient and directed them to file a detailed Form II. On 15.03.2023, the CCI approved the proposed combination, predicated upon voluntary modifications offered by AGI Greenpac, including the divestment of an HNGIL plant located in Rishikesh, to mitigate the Appreciable Adverse Effect on Competition (AAEC).

120. Vide its Order dated 28.07.2023, the NCLAT upheld the CCI's conditional approval, holding that the voluntary remedies sufficiently mitigated competitive concerns and that the absence of notice to HNGIL did not vitiate the approval, especially given the RP's non-objections.

121. The interplay between the IBC and the Competition Act presents a delicate balance. While the IBC focused on expeditious revival of distressed assets, the Competition Act ensures that the resolution process does not distort market dynamics. The critical regulatory risk that emerges at this intersection is the issue of gun-jumping - a term, denoting premature or unauthorised consummation of a transaction, prior to obtaining mandatory approvals from the CCI.

122. The Competition Act operates on a suspensory regime, under which no transaction involving a combination can be completed, without prior approval from the CCI. Such mandate ensures that competitive equilibrium in the market is not disrupted during the

CIRP. In fact, Section 43A of the Act prescribes severe penalties for any attempt to consummate the transaction, prior to securing the CCI's approval.

123. Bearing in mind the above discussion, it appears that several procedural deficiencies have occurred in the approval process of the combination.

124. Section 29(1) of the Competition Act and Regulation 2(f) of the Competition Regulations, 2011 mandate the issuance of a Show Cause Notice [hereinafter referred to as 'SCN'] to the 'parties to the combination' if and when the CCI forms a *prima facie* opinion that a combination is likely to cause or has caused Appreciable Adverse Effect on Competition (AAEC), within the relevant market. The term 'parties to the combination' as explicitly defined under Regulation 2(f) includes both entities entering into the combination and the combined entity, if the combination has come into effect.

125. In the present case, it is evident that the CCI, while exercising its powers under Section 29(1), failed to issue the mandatory SCN to all relevant parties, most notably, the target company itself i.e., the HNGIL. The SCN dated 10.02.2023 was issued only to the acquirer company i.e., in the present case, AGI Greenpac, although the involvement of both parties is integral, to the assessment of potential AAEC, in the relevant market. This omission constitutes

a major procedural lapse, as the law clearly requires all parties to the combination to be notified of such finding by the CCI. The opportunity to respond must also be given to them.

126. The CCI was obligated to issue an appropriate SCN to both the acquirer and the target. The term 'to the parties to the combination' cannot be restricted to the proposed acquirer alone. The finding of the NCLAT on this aspect is therefore not to be faulted.

127. The statutory requirement under Section 29 and Regulation 2(f) could not be bypassed and for this omission. the CCI's order (dated 15.03.2023) was procedurally deficient, undermining the fairness and completeness of the investigative process. The importance of adhering to the procedural safeguards enshrined in the Act is to ensure that all parties to a combination, are given due notice and an opportunity to present their respective case. Sections 29 and 30 of the Competition Act, 2002 when read holistically, delineate a structured procedural roadmap that the CCI must traverse when it scrutinises combinations that may exert an Appreciable Adverse Effect on Competition (AAEC) in the relevant market.

128. Apart from mandating the issuance of a SCN to the concerned parties, upon the formation of a *prima facie* opinion that the combination in question warrants investigation, the statutory obligations in the form of Sections 29(2) to 29(6) outline the

consequential steps, aimed at gathering comprehensive data from not just the acquirer and the target company, but also from other stakeholders, potentially impacted by the combination. The legislative wisdom embedded within these provisions attempts to recognise the ripple effects of the existence of an Appreciable Adverse Effect on Competition in a market, which would transcend the immediate parties to the transaction, thereby necessitating a broader consultation and data collection process.

129. Further clarity on this procedural rigour is provided by Section 30, which explicitly directs that the *prima facie* opinion formed under Section 29(1) must guide subsequent steps under Section 29. The procedural design mandates an expansive fact-finding mission, including consultation with stakeholders and detailed scrutiny, to ensure that the combination either withstands the muster of competitive fairness or is modified to avert any deleterious market impact.

130. A compelling aspect of this statutory scheme is the deliberate use of the term 'investigation' in Section 29, contrasting sharply with 'inquiry' as employed in Section 26, which pertains to anti-competitive agreements and abuse of dominant market position. This Court in *CCI v. Steel Authority of India Ltd.*[40] drew a pivotal

[40] (2010) 10 SCC 744.

distinction between these terms, underscoring that 'investigation' is a far-reaching exercise of evidence-gathering and fact-finding, especially when compared to an 'inquiry'. Such an investigation, as per the mandate of Section 29(1A), is to be executed under the aegis of the Director-General, thereby reaffirming the seriousness of the scrutiny, envisaged in cases of combinations.

131. In the present matter, the procedural sanctity prescribed under the scheme has been regrettably disregarded, with the Commission failing to solicit inputs from public, affected stakeholders and those likely to be affected by such combination under Section 29(2). This omission not only contravenes the statutory intent but also diminishes the transparency and inclusivity that underpin the review mechanism for combinations. The legislative scheme unambiguously envisions an investigation that encompasses a wide array of stakeholders, as combinations inherently possess the potential to reshape market dynamics in ways that ripple across the competitive landscape.

132. The reasoning advanced by the CCI to avoid the issuance of SCN to HNGIL under Section 29(1) is unacceptable. Only because the Resolution Professional did not object to the same does not override the statutory requirements prescribed under the scheme of the Act, especially because the target company's participation is central to assessing the competitive impact of the combination.

133. While the term 'parties' may appear broad and/or encompassing all related entities associated with the combination, such an interpretation cannot dilute the inherent plurality attached to the word 'parties', as explicitly stated in the Competition Act and its Regulations. The use of the plural form signifies a clear legislative intent to address not just one entity but multiple parties directly involved in the combination process, including but not limited to the acquirer, the target, and, where applicable, the combined entity, if the combination has come into effect.

134. Plurality of entities ensures that all perspectives, interests, and potential implications are considered in assessing the combination's impact on competition. The exclusion of the target company from the scope of parties especially in cases of insolvency where the target retains critical relevance, would undermine the procedural safeguards, designed to achieve transparency and fairness. The term 'parties' must be understood to cover both entities participating in and directly affected by the combination, ensuring the integrity of competition assessment and compliance with statutory provisions under Sections 29(1) and 29(2). To argue otherwise would not only mutilate the term 'parties' but would also result in procedural lapses and incomplete analysis, defeating the very purpose of the regulatory oversight.

135. Those identified lapses demonstrate a departure from the

procedural rigour, mandated under the Competition Act. Such deviations, if permitted, would end up compromising on the transparency and fairness requirement in a regulatory process. The failure to adhere to the procedural requirements of Sections 29(2) to 29(6) read with Section 30 of the Competition Act, undermines the robustness of the investigative process, rendering the CCI order (dated 15.03.2023), susceptible to a *bona fide* challenge.

136. In light of the voluntary modification proposed by the acquirer i.e., AGI Greenpac, pursuant to Regulation 25(1A) of the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 [hereinafter referred to 'Combination Regulations'], the aforementioned Regulation 25(1A) unequivocally mandates that a voluntary modification submitted to the CCI, must bear the imprimatur of both parties to the combination, namely, the acquirer and the target. This statutory requirement is not just a procedural formality. It is in fact a substantive safeguard, designed to ensure that interests of all stakeholders are duly represented and protected. In the present matter, the proposed modification seeks the divestment of the Target's plant, a move that inherently attracts the provisions of the IBC. The active participation and explicit approval of the target company are indispensable pre-

requisites, to the submission of any voluntary modification and steps to the contrary, cannot be countenanced.

137. Furthermore, the legislative intent underpinning Regulation 25(1A) necessitates a holistic and inclusive approach to such modifications, particularly where the proposed measures, impinge upon the operational and structural integrity of the target company. The facts of this case underscore the criticality of this requirement, as the proposed divestment scheme is a vital component of the revival of the stressed target company under the resolution framework contemplated by the IBC.

138. As earlier noticed, the failure to issue a SCN under Section 29(1) to the Target Company/Corporate Debtor, constitutes a major procedural lapse with significant consequence. The statutory scheme of the Competition Act, as well as the synergistic framework of the IBC, demands that all parties to the combination are afforded a fair opportunity to participate in the decision-making process, particularly when the proposed measures bear a direct and material impact on their interests. The absence of such notice undermines the procedural sanctity of the modification process and renders the resultant approval susceptible to *bona fide* challenge.

139. The issuance of SCN to both the acquirer and the target under Section 29(1) of the Competition Act in our opinion, is a non-

negotiable procedural imperative. The interplay between the provisions of the Competition Act and the IBC necessitates a careful balancing of competing interests, underscoring the indispensability of procedural compliance. The lack of participation by the Target in the voluntary modification process, especially where the modification entails the divestment of their assets, vitiates the approval granted by the CCI and warrants remedial intervention by this Court.

Discrepancies in Data

140. Mr. Rajshekhar Rao, learned senior counsel, had highlighted material discrepancies in the operational capacity data furnished by AGI Greenpac and HNGIL, including but not limited to:

140.1. Bahadurgarh Plant: While the capacity reported to the CCI was 490 TPD, the Resolution Plan records it as 820 TPD.

140.2. Puducherry Plant: Different figures have been submitted, casting doubt on the authenticity and reliability of the data.

140.3. Aggregate Impact: Such discrepancies misrepresent the competitive dynamics and render the divestiture conditions inadequate to mitigate AAEC concerns.

141. Similar variances are observed across multiple plants. These discrepancies undermine the credibility of the data, relied upon for regulatory approvals, raising serious questions about the adequacy of the divestiture plans as well.

142. Any particular decision by a regulatory body is only as sound as the foundation of facts and the data, on which it is founded. The discrepancies noted above are glaring and distort the factual matrix of the case, undermining the basis on which competitive assessments and market dynamics, were evaluated. It is a cardinal principle of regulatory jurisprudence that decisions impacting market structures must be anchored in verifiable and transparent information. Here, the inconsistent capacity figures as pointed out by Mr. Rao significantly dilute the effectiveness of divestiture remedies, potentially exacerbating rather than mitigating the anti-competitive effects.

143. Transparent and accurate data disclosures are fundamental to the regulatory mechanism. The identified discrepancies compromise the very basis of the CCI's decision-making process. It is imperative to therefore underscore that discrepancies in operational capacity data would strike at the very root of the regulatory mechanism. While we do not intend to embark on a fact-finding expedition afresh, the *prima facie* inconsistencies in the submitted data ought to have been examined with greater care by the NCLAT. But this was not done. Consequently, the conditional approval should have been revoked, especially in light of the CCI's express mention in its order (dated 15.03.2023) that the order may be revoked if the information provided by the

acquirer is found to be incorrect at any particular time.

Practical Challenges with Conditional Approvals

144. Conditional approvals, by their very nature, necessitate rigorous and ongoing enforcement to ensure compliance with the prescribed conditions in both letter and spirit. For the AGI Greenpac-HNGIL combination, the absence of a robust and comprehensive monitoring mechanism reveals a significant lacuna within the regulatory framework. Such deficiencies pose considerable risk of non-compliance or deliberate circumvention, thereby defeating the entire purpose of imposing these conditions. The systemic inefficiencies apparent in this instance highlight the existing fragility of conditional approvals when not accompanied with robust enforcement mechanisms.

145. Furthermore, conditional approvals are fundamentally ill-equipped to mitigate the risks that manifest during the interim period, preceding the full implementation of remedial measures. The underlying assumption that post-approval remedies will rectify present market distortions, fails to account for the practical challenges and complexities associated with enforcing such remedies, retroactively. This approach creates an enforcement lag that can result in significant and potentially irreparable harm to the competitive landscape and the interests of the stakeholders. The temporal gap between the grant of approval and the implementation

of effective remedies fosters a regulatory vacuum, thereby exacerbating the likelihood of anti-competitive conduct, during this transitional phase. The failure to mitigate present risks undermine the efficacy of conditional approvals and their intended regulatory objectives.

146. The absence of mandatory oversight mechanisms, such as third-party audits or independent verifications, creates loopholes for the circumvention of regulatory conditions. For example:

146.1. A divestiture mandate may fail to achieve its intended purpose if the acquiring party lacks the operational capacity or genuine strategic intent to effectively compete in the market.

146.2. Structural remedies, such as the sale of plants or other assets, may lead to unanticipated or unintended market gaps, if compliance monitoring remains inadequate.

147. In essence, the conditional approval granted by the CCI is predicated on the presumption of future compliance. While the legislative intent behind CIRP is to create a process characterised with finality and decisiveness, conditional approval appears to be a perilous deviation from the stated objectives. As underscored in the CCI's conditional approval order, the order remains subject to revocation if the information furnished by the parties is later found to be inaccurate. This acknowledgment, however, exposes the system's vulnerability to abuse or misrepresentation, particularly

in the absence of a system, enforcing checks and balances. Further, such a conditional approval can foster uncertainty, prolong negotiations, and necessitate further modifications, thereby putting at peril the sanctity of the resolution framework.[41]

CONCLUSION

148. As India aspires to establish itself as a global manufacturing powerhouse and investment hub, it is imperative that it is able to provide a reliable, robust and competitive business environment for both domestic and international stakeholders. In essence, the introduction of the Green Channel route, which strives to create a level-playing field and enable new entrants to effectively compete with established players in the Indian market, is a significant step in that direction. However, to ensure that entities operate with utmost confidence in the sanctity and fairness of India's legal and regulatory system, the objectives of the IBC and the Competition Act must also necessarily be in harmony with one another.

149. Within that context, while the IBC's primary objective is the timely resolution of stressed assets with maximised value realisation for the stakeholders, the significant delay seen in the present case is both unfortunate and regrettable. Nevertheless, expeditious resolution cannot come at the cost of disregarding statutory

[41] Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd., (2022) 2 SCC 401.

provisions. Providing relief for stressed assets must necessarily align with the statutory framework, as adherence to legal principles is fundamental to a fair and just resolution process.

150. In the present case, for reasons discussed above, the statutory provision and legislative intent unequivocally affirm the mandatory nature of the proviso to Section 31(4) of the IBC. For a Resolution Plan containing a combination, the CCI's approval to the Resolution Plan, in our opinion, must be obtained before and consequently, the CoC's examination and approval should be only after the CCI's decision. This interpretation respects the original legislative intent, and deviation from the same would not only undermine the statute but would also erode the faith posed by the stakeholders in the integrity of our legal and regulatory framework.

151. Where the provisions allow for dilution or departure from the intended scheme of the IBC or the Competition Act, it is the responsibility of the legislature to rectify such inconsistencies through appropriate legislative measures and the judiciary should not normally venture into the legislative domain.

152. Further, the indispensability of procedural safeguards as an integral component of a just legal order must be given its due weight, especially as procedural requirements are not mere formalities to be circumvented for expediency but substantive protections designed to ensure fairness and transparency. In that

light, the procedural lapses with respect to objections to the proposed combination and the consequent divestiture modification proposed within the framework of the Competition Act, 2002, seriously vitiated the integrity of the process. It is therefore reiterated and reinforced that adherence to procedural propriety is non-negotiable and that the ends cannot justify the means.

153. By upholding the mandatory nature of the statutory provision and emphasising upon the critical importance of procedural safeguards, the principle of rule of law is upheld in alignment with global best practices which underscore fairness, predictability and transparency. Such an approach not only reinforces the integrity and credibility of the legal framework but also highlights India's commitment to fostering a regulatory environment, which is conducive to both business and innovation. Additionally, it also ensures the protection and enforcement of rights in an equitable manner, free from bias or favouritism.

154. Therefore, a balance between the need for expeditious relief and adherence to the statutory framework must necessarily be maintained, in order to ensure that the objectives of both, the IBC and the Competition Act are met in a manner that supports India's long-term economic aspirations.

155. The upshot of the above discussion are the following orders:

155.1. The AGI Greenpac's Resolution Plan is unsustainable as it failed to secure prior approval from the CCI, as mandated under the proviso to Section 31(4) of the IBC. Consequently, the approval granted by the CoC to the Resolution Plan dated 28.10.2022 without the requisite CCI approval, cannot be sustained and is hereby set aside and quashed.

155.2. Any action taken pursuant to the Resolution Plan shall stand nullified, and the rights of all stakeholders shall be restored as per status quo ante, prior to the approval of the Resolution Plan by the CoC on 28.10.2022.

155.3. Consequently, the CoC shall reconsider the Appellant's Resolution Plan and any other Resolution Plans which possessed the requisite CCI approval as on 28.10.2022 i.e., the date on which the CoC voted upon the submitted Resolution Plans.

156. Therefore, Civil Appeal No. 6071 of 2023 is allowed in the above terms. This decision rendered in the lead case shall, *mutatis mutandis*, apply to connected Civil Appeal Nos. 4954 of 2023, Civil Appeal No. 4924 of 2023, Civil Appeal No. 4937 of 2023, Civil Appeal No. 5018 of 2023, Civil Appeal No. 6847 of 2023, Civil Appeal No. 6055 of 2023, Civil Appeal No. 6123 of 2023, and Civil Appeal No. 6177 of 2023.

157. Consequently, in light of the above, Civil Appeal Nos. 5401 of 2023, Civil Appeal No. 7037 of 2023, Civil Appeal No. 7038 of

2023, Civil Appeal No. 6771 of 2023, and Civil Appeal No. 7428 of 2023 are dismissed.

158. All pending applications stand disposed of in the same light.

..... J.
[HRISHIKESH ROY]

..... J.
[SUDHANSHU DHULIA]

NEW DELHI
JANUARY 29, 2025

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6071 OF 2023

INDEPENDENT SUGAR CORPORATION LIMITED ... APPELLANT(S)

VERSUS

GIRISH SRIRAM JUNEJA & ANR. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 6055 OF 2023

WITH

CIVIL APPEAL NO. 6123 OF 2023

WITH

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S.V.N. BHATTI, J.

I have had the opportunity to read the well-crafted judgement circulated by my Learned Brother, Justice Hrishikesh Roy. In spite of my effort to subscribe to the view taken by my Learned Brother, for the subtle distinction I noticed in interpreting the proviso to section 31(4) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), I find it apt to express my position on the same through this opinion.

1. The captioned appeals arise from the common order Dt. 18.09.2023 of the National Company Law Appellate Tribunal, Principal Bench, New Delhi ("NCLAT") under section 62 of the IBC read with the Insolvency and Bankruptcy Amendment Act, 2018. Civil Appeal No.4924 of 2023 and connected appeals arise from the order Dt. 28.07.2023 of the NCLAT, and the controversy in these appeals arises under the Competition Act, 2002 ("Competition Act").

2. The two sets of appeals have been tagged and heard together. The appeals, for convenience, are disposed of by separate judgments having regard to the nature of issues of fact and law.

II. BACKGROUND

3. DBS Bank, as a financial creditor, moved an application under section 7 for Corporate Insolvency Resolution Process ("CIRP") before the National Company Law Tribunal, Kolkata Bench ("Adjudicating Authority") against Hindustan National Glass and Industries Limited ("HNGIL"), the corporate debtor. On 21.10.2021, the Adjudicating Authority admitted the application

filed under section 7 against HNGIL. Mr. Girish Sriram Juneja, respondent No.1, is the Resolution Professional ("RP").

4. Annexure B of the expression of interest ("EoI") lays down the eligibility criteria for the prospective resolution applicants to satisfy. The relevant criteria are reproduced below:

> *1. For Private/ Public Limited Company/ Limited Liability Partnership ("LLP") / Body Corporate/ any other PRAs (which is not a financial entity) ("Category I"):*
>
> *a. Minimum Tangible Net Worth ("TNW") shall be INR 250 Cr. or Consolidated Group Revenue of INR 1,000 Cr in any of 3 preceding Financial Years;*
>
> *b. TNW shall be in an individual capacity or at the Group Level as on 31st March 2021;*
>
> *c. TNW shall be computed as aggregate value of paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, and does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation; and*
>
> *d. Group may comprise of entities where each such entity is either controlling or controlled by or under common control with the PRA. Control means at*

least 26% ownership. The entities must have been part of the Group for at least 3 years.

2. <u>For financial entities including Investment Co./ Asset Management Co./ Alternative Investment Fund (AIF)/ Fund House/ Private Equity ("PE") Investor/ Non-Banking Financial Co. ("NBFC")/ or any other eligible entities ("Category II"):</u>

a. The PRAs shall, in the immediately preceding completed financial year, have the minimum On Book Asset under Management (AUM) of INR 1,000 cr. or Committed Funds of INR 1,000 Cr.;

b. On Book AUM is defined as "total funds deployed" or "total value of loan book / instruments"

5. The RP on 24.05.2022 issued the Request for Submission of Resolution Plans ("RFRP"). Clauses 2.6.3(c), 3.3 and 4.1.1(k) require compliance with the mandate of sections 5 and 6 of the Competition Act by the resolution applicants to whom the combination would be attracted.

6. On 26.09.2022, AGI Greenpac Limited ("AGI") submitted the draft resolution plan to the RP. The Appellant, Independent Sugar Corporation Limited ("INSCO") in Civil Appeal No. 6071 of 2023, is one of the resolution applicants. INSCO received green channel combination approval on 30.09.2022 from the Competition Commission of India ("CCI"). In the e-voting of the Committee of Creditors ("CoC"), Dt. 27.10.2022, the resolution plans of AGI

received 98% votes, and INSCO received 88% votes. The communication Dt. 28.10.2022 of the RP addressed to INSCO noted that AGI was declared as the successful resolution applicant.

7. On 27.09.2022, AGI applied to CCI in Form I for approval of the proposed CIRP combination of taking over HNGIL. The said approval was rejected by CCI on 22.10.2022. AGI, on 03.11.2022, applied to CCI in Form II for approval of the proposed combination of taking over HNGIL through CIRP.

A. PROCEEDINGS BEFORE THE ADJUDICATING AUTHORITY

8. On 05.11.2022, the RP moved the Adjudicating Authority for approval of the decision of the CoC Dt. 27.10.2022, viz., declaring AGI as the successful resolution applicant. On 14.11.2022, INSCO filed I.A. No.1497 of 2022 before the Adjudicating Authority for setting aside the resolution plan approved by the CoC in the e-voting Dt. 27.10.2022. The prayers in the applications filed by INSCO read as follows:

> *"a. Order dismissing Application filed by the Resolution Professional, where the Resolution Professional has sought approval of the RP;*
>
> *b. Order directing the Resolution Professional to withdraw communication declaring AGI as the successful Resolution Applicant;*
>
> *c. Order directing the Resolution Professional to place RP before CoC for fresh reconsideration;*
>
> *d. Stay of proceedings pertaining to RP of AGI."*

9. The gist of the objections of INSCO before NCLT is that the communication of CCI Dt. 15.03.2023 approving the combination of AGI with HNGIL cannot be taken on record. The communication Dt. 15.03.2023 is subject to compliance with the modification offered by AGI. The approval of CCI must be prior to the approval by the CoC. In other words, the approval of CCI for the proposed combination is mandatory and available when the CoC considers the resolution plan submitted by a resolution applicant. The *ex post facto* approval was granted when the consideration under section 31 of IBC was pending before the Adjudicating Authority. The proviso to section 31(4) of IBC is mandatory and not directory.

10. AGI contended that the requirement in the proviso to section 31(4) of the IBC is directory and not mandatory. The combined reading of section 31 of IBC with section 6(2) of the Competition Act would stipulate that the statutory compliance of combination must be available when a decision is taken on the proposal of the resolution applicant by the Adjudicating Authority. Thus, praying for the rejection of IA (IB) No.1497/KB/2022 filed by the RP.

11. On 15.03.2023, CCI approved the combination application of AGI with HNGIL with a few conditions. During the pendency of IA (IB), No.1497/KB/2022 filed by INSCO for rejecting the application filed for approval of the minutes of the meeting Dt. 27.10.2022, AGI and the RP filed I.A.Nos.628 and 701/KB/2023 to place on record the combination approval order Dt. 15.03.2023 of CCI. The objection of INSCO proceeds that the proviso to section

31(4) mandates the resolution applicant to have prior approval of CCI on the combination proposed through the resolution plan.

12. The adjudicating authority vide order Dt. 28.04.2023 dismissed IA (IB) No.1497/KB/2022 filed by INSCO. By the order of even date, I.A. Nos. 628 and 701/KB/2023 were allowed to the extent of placing on record the CCI's communication Dt. 15.03.2023.

B. PROCEEDINGS BEFORE NCLAT

13. The order Dt. 28.04.2023 was challenged before the NCLAT by the following parties, and details are stated thus:

Sl. No.	**Company Appeal No.**	**Name of the appellant**
1.	Company Appeal No.807/2023	Soneko Marketing Private Limited
2.	Company Appeal No.607/2023	UP Glass Manufacturers Syndicate
3.	Company Appeal No.724/2023	HNG Karmachari Union and Another

14. INSCO assails the order of the Adjudicating Authority Dt. 28.04.2023 that the reliance placed on *Arcelor Mittal India Pvt. Limited vs. Abhijit Guhathakurta, Resolution Professional of EPC Constructions India Limited &*

Ors.[1] is erroneous, and according to the ratio in *Bank of Maharashtra vs. Videocon Industries Ltd.*,[2] the approval of CCI prior to CoC considering the resolution plan is mandatory. The words "shall" and "prior to the approval of such resolution plan by the committee of creditors" in the proviso to section 31(4) of the IBC require that the approval of combination is available while the CoC considers the resolution plans attracting combination set out in section 5 of the Competition Act.

15. AGI and RP argued that the word 'shall' be read as 'may'. The proviso is directory and not mandatory. The statutory implication of section 6 of the Competition Act is attracted upon the approval of one or the other resolution plan by the Adjudicating Authority. Thus, on the effective date for the implementation of the CIRP, if the Resolution Plan has the approval of a combination under the Competition Act, then the resolution plan is fully compliant.

16. The NCLAT, by the impugned common order, dismissed the appeals.

16.1. The impugned order in paragraph 19 notices the scope of controversy considered and decided by NCLAT as follows:

> *"During the course of hearing of the appeal(s), it was made clear to the parties that the only issue which is to be decided in these appeal (s) are about the interpretation of proviso of Section 31(4), i.e., as to whether the requirement of approval of the CCI*

[1] (2019) SCC OnLine NCLAT 920.
[2] (2022) SCC OnLine NCLAT 6.

prior to approval by the CoC is mandatory. The other aspects of the approval of the resolution plan is since pending adjudication of the Adjudicatory Authority, we need not express any opinion on other submissions raised by the parties".

17. The above excerpt defines the scope of controversy in the subject appeals. The learned counsel appearing for the parties, in great detail, made submissions on several aspects which are intrinsically pending consideration before the Adjudicating Authority. The approach of NCLAT to the issues on hand is adopted and the legality of NCLAT and the Adjudicating Authority's orders is examined.

III. PROCEEDINGS IN THIS COURT

18. The civil appeals at the instance of the appellants in the impugned order are as follows:

Civil Appeal Nos.	**Name of the party**
C.A. 6071 OF 2023	INDEPENDENT SUGAR CORPORATION LIMITED v. GIRISH SRIRAM JUNEJA & ORS
C.A. 6055 OF 2023	U.P GLASS MANUFACTURERS SYNDICATE v. GIRISH SRIRAM JUNEJA & ORS

C.A. 6123 OF 2023	H.N.G KARAMCHARI UNION & ANR. v. GIRISH SRIRAM JUNEJA & ORS
C.A. 6177 OF 2023	SONEKO MARKETING PVT. LTD v. GIRISH SRIRAM JUNEJA & ORS
C.A. 6847 OF 2023	HNG INDUSTRIES THOZHILALAR NALA SANGAM v. GIRISH SRIRAM JUNEJA & ORS

19. Dr. Abhishek Manu Singhvi, Shri Mahesh Jethmalani, Shri Rajshekhar Rao and Shri Dhruv Mehta, learned Senior Counsel, have appeared for the appellants.

20. Shri P. Chidambaram, learned Senior Counsel, appeared for the Resolution Professional in the Civil Appeals.

21. Shri Tushar Mehta, learned Solicitor General appeared for the Committee of Creditors.

22. Shri Mukul Rohatgi and Shri Paras Tripathi, learned Senior Counsel have appeared for AGI Greenpac Ltd.

A. ARGUMENTS ON BEHALF OF THE APPELLANT

23. Arguments on behalf of the appellants are summarised as follows:

23.1. The RP and the resolution applicant are bound by the mandate of section 30(2)(e) of the IBC, stipulating that the resolution plan does not contravene any provision of law for the time being in force.

23.2. The RP in the RFRP Dt. 24.05.2022, through Clauses 2.6.3(c), 3.3 and 4.1.1(k), requires the resolution applicant to have prior approval of CCI for the proposed combination before the approval of the resolution plan by the CoC.

23.3. The approval of CCI for the combination is available when the CoC considers the competitive CIRP of all the eligible applicants.

23.4. AGI applied on 27.09.2022 for approval of combination under the Competition Act, in Form I. CCI rejected Form I vide order Dt. 30.09.2022. In contrast, the draft resolution plan of INSCO was accompanied by CCI's approval Dt. 22.10.2022. In other words, well before considering the resolution plan of INSCO by the CoC.

23.5. On 27.10.2022, the CoC, with a majority of 98% voting, approved the resolution plan of AGI.

23.6. Thereafter, on 03.11.2022, AGI applied for approval of combination in Form II before the CCI. On 15.03.2023, the combination of AGI with HNGIL was approved. Therefore, the submission of the resolution Dt. 27.10.2022 of the CoC approving AGI's resolution plan to the Adjudicating Authority does not confirm to the statutory requirement under section 30(2)(e) read with proviso to sub-section (4) of section 31.

23.7. The NCLAT committed illegality by accepting the requirement under proviso to sub-section (4) of section 31 as directory.

23.8. The interpretation adopted by the impugned order is illegal and against the well-established canon of literal interpretation of a clear and unambiguous provision.

23.9. CCI's conditional combination approval of AGI on 15.03.2023 implies that unless the condition is complied with, there is no combination approval by CCI in favour of AGI.

23.10. The condition to hive off the Rishikesh plant is not commensurate with the resolution plan of taking over HNGIL as a going concern.

23.11. The statutory timelines under section 12 of the IBC and Regulation 40A of the CIRP Regulations, 2016 are not deviated by insisting upon prior CCI approval.

23.12. The rule of purposive interpretation would be completely inapplicable for interpreting proviso to sub-section (4) of section 31. The reliance on the memorandum explaining the modifications to the Bankruptcy Code Amendment Ordinance, 2018, is misconceived.

23.13. The proviso is used as an exception to sub-section (4) of section 31 of IBC. Being an exception, particularly in the absence of ambiguity, the golden rule of interpretation is the only tool for construing the meaning of the said proviso and not purposive interpretation for ascertaining whether the approval of CCI is mandatory while CoC considers the resolution plan.

23.14. The Court, while interpreting, shall not legislate or change the law which clearly reflects the will of the Parliament. The reliance on

Arcelor Mittal (supra) is erroneous and illegal, even if these decisions are confirmed by this Court in the Civil Appeal(s).

B. ARGUMENTS ON BEHALF OF THE RESPONDENTS

24. The Respondents' arguments are summarised as follows:

24.1. The Bankruptcy Law Reforms Committee ("BLRC") was constituted to study the deficiencies in the then-prevailing laws relating to or dealing with insolvency and bankruptcy of individuals and corporate entities. The Parliament, guided by the BLRC report, enacted the IBC. The statutory scheme of IBC provides for comprehensive remedies, i.e., recovery of debt through maximization of asset value through CIRP, and in a chronic case where redemption of debt through CIRP does not make business sense for the stakeholders, then liquidation is triggered. The fulcrum of IBC is the preservation of the company in distress as a going concern and ensuring the discharge of debt(s) of a stressed company.

24.2. Therefore, the interpretation of the proviso to sub-section (4) of section 31 is adopted by looking at the statement of objects and reasons of the IBC and the statutory scheme laid out from section 4 through section 32A of the IBC.

24.3. The exclusive literal interpretation of the proviso to sub-section (4) of section 31 and holding that it is mandatory would preclude or prevent the participation of eligible resolution applicants. This would consequently provide a quick start to a resolution applicant having green

channel combination approval from CCI. Further, the object of maximising the value of stressed assets with the participation of a resolution applicant with green channel approval against a resolution applicant requiring a combination approval would diminish the competitive spirit of the CIRP and the value maximization of stressed assets. The submission of draft resolution plan by all the eligible applicants, dehors combination approval, would reflect on the potential asset realization. Competition in resolution plans, voting by CoC, and appreciation of feasibility and viability are all commercial facets interwoven with one another.

24.4. The non-compliance with section 5 read with section 6 of the Competition Act, if insisted at the stage of CoC voting on the eligible proposals of resolution applicants, then the otherwise "feasible" or "viable" test of consideration of the commercial wisdom of CoC is expanded on the proposal being compliant with the laws in force. The CoC would be deprived of a proposal from a resolution applicant which may be more feasible, viable and otherwise eligible if threshold compliance of combination approval is insisted while CoC is considering the resolution plans.

24.5. The CoC, by the statutory scheme, regulations and precedents, is conferred the discretion to decide only on the commercial viability or feasibility of the resolution plans submitted by the competing and eligible

resolution applicants and have the approval of the Adjudicating Authority.

24.6. A careful study of sub-sections (1) and (2) of section 31, read with the amended provision and proviso to sub-section (4), would demonstrate that the actual stage for statutory compliance under the Competition Act is material and relevant only when a decision approving a resolution plan is pending before the Adjudicating Authority.

24.7. The checklist for consideration by the Adjudicating Authority is that the resolution plan, approved by the CoC under sub-section (4) of section 30, satisfies the following requirements –

- Sub-section (2) of section 30:
  - Requires approval of the resolution plan.
  - Holds that the effect of approval is binding on the corporate debtor, etc.

- The proviso to sub-section (1) of section 31:
  - Mandates Adjudicating Authority to ensure provisions for effective implementation before passing an order of approval.

- Sub-section (2) of section 31:
  - Adjudicating Authority may reject the resolution plan if it does not confirm to the requirements of sub-section (1) of section 31.

- The expression “does not confirm” determines the requirements of section 30(2) of the IBC.

- Sub-section (4) of section 31:

- Ensures the corporate debtor operates as a going concern.
- Provides a one-year window to obtain licenses, consents and other permissions to continue operations.

- Operation of sub-section (4) of section 31:

- Order of approval ensures the continuity of the business plan as a going concern after the change of management with the valid licenses, permissions, consents, etc., standing in the name of the corporate debtor.

- Statutory fiction of the one-year period:

- Ensures change of management does not hinder the transition as a going concern.

- Sections 5 and 6 of the Competition Act:

- If a resolution plan without combination approval is accepted, it may defeat the prescriptions of the Competition Act. The activity becomes void only if the transition is allowed to take effect without combination approval.

24.8. The resolution applicant must have the approval of CCI under sections 5 and 6 of the Competition Act to continue to run the corporate debtor as a going concern from the moment an order of approval is made under sub-section (2) of section 31 of the Act. To wit, if a resolution plan attracting sections 5 and 6 of the Competition Act is allowed to take over the affairs and business of the corporate debtor as a going concern without CCI approval, then it would be void. Therefore, the right timing for combination approval is under section 31 but not under section 30(2) of IBC.

24.9. The proviso to sub-section (4) of section 31 is a condition precedent to sit in the chair of the corporate debtor and continue the business as a going concern, and this is an absolute requirement at the stage of consideration by the Adjudicating Authority. A resolution plan to take over the management of a corporate debtor needs two approvals, viz., one under section 30(4) and another under section 31(1) of the IBC. The approval for combination under the Competition Act is directory and not mandatory, while the offers on RFRP are pending before the COC.

24.10. The principal issues on facts are pending before the Adjudicating Authority, and the scope of these appeals has been expanded.

24.11. The view of NCLAT on the proviso to sub-section (4) of section 31 as directory is approved by this Court in the following cases:

Name	**NCLAT Proceedings**	**Supreme Court Proceedings**
Vishal Vijay Kalantri v. Shailen Shah	2020 SCC OnLine NCLAT 1013	2021 SCC OnLine SC 3243
Makalu Trading Limited and Ors. V. Rajiv Chakraborty and Ors.	(2020) SCC OnLine NCLAT 643	Civil Appeal No. 3338 of 2020, order Dt. 12 October 2020.

24.12. The dismissal of Civil Appeals by this Court has approved the view of the NCLAT that while combination approval is mandatory, the requirement of combination approval at the CoC stage is directory. In the realm of commerce and trade, consistency on the binding precedents is paramount, and the challenge to settled positions is unsustainable. The Civil Appeals are filed under section 62 of the IBC, and the approval of the view of the NCLAT by this Court has a different dimension in law.

24.13. The interpretation of the requirement in the proviso to sub-section (4) of section 31 as directory ensures the smooth initiation of CIRP on the one hand and, on the other, obtaining approval for the proposed combination from CCI before a decision is taken under sub-sections (1) and (2) of section 31 by the adjudicating authority.

24.14. The statutory compliance status and the effect of giving approval under section 31(1) and (2) of the IBC is in the exclusive domain of the Adjudicating Authority under section 31(1) and (2) of the IBC. The language of sub-section (2) of section 31 is unambiguous. The examination of requirements of sub-section (2) of section 30 is at the stage of examination under section 31(1) of the IBC by the Adjudicating Authority. The Adjudicating Authority either approves the resolution plan approved by the CoC or rejects the plan ground(s) set out in section 31 of the IBC. The consequences for non-compliance of a requirement, including combination approval, are applied at this stage. The proviso to section 31(4) must be read in the same sense and tense that corresponds to section 31(1) and (2) of the IBC.

24.15. An interested resolution applicant to whom the requirement of approval in Form II of CCI is attracted ought not to be disqualified from consideration by the CoC in spite of such an applicant satisfying the eligibility criteria stipulated by the CoC. On the one hand, the scheme in the proviso to subsection (4) of section 31 clearly delineates a condition precedent to an adjudication order under section 31(2) of the IBC and, on the other hand, the main body of section 31(4) provides for obtaining *ex post facto* permissions within one year under different enactments.

24.16. The RP, CoC and the resolution applicant are bound by the timelines stipulated under the IBC. The timely performance of a duty or function by CCI is not in the hands of a resolution applicant who applied for approval of a combination before CCI. The consideration by the CCI depends on products, nature of the industry, area and dominance in the market. The CCI, as a regulatory authority, ensures fair competition even after a combination is brought into existence. For the said purpose, the inquiry under section 20 of the Competition Act is complied with by CCI.

24.17. The respective statutory authorities can operate parallelly and harmoniously without stressing or straining the respective timelines.

After hearing the learned counsel for the parties and perusing the record, the question of law taken up for consideration is – whether the proviso to sub-section (4) of section 31 is mandatory or directory at the stage of consideration of the resolution plan by the CoC?

IV. POLICY UNDERLYING THE IBC

25. The BLRC report notes and acknowledges that the failure of a few business plans is integral to the process of the market economy. When business failure occurs, the best outcome for society is to have a rapid re-negotiation between the financiers to finance a going concern using new arrangements of capital and restructured management. The re-negotiating

process is known as the "Corporate Insolvency Resolution Process". The primary object of this effort, briefly stated, is the value maximization of the corporate debtor. The CIRP keeps the corporate debtor as a going concern and runs on the theory that the value of the business is worth more than the realisation of the piecemeal distribution of assets. However, if this objective cannot be achieved, the best outcome for society is the rapid liquidation of a failing corporate debtor. When such statutory arrangements are put into place, the market process of creative construction, on the one hand, and creative destruction, on the other hand, will work smoothly with greater competitive vigour.

26. BLRC lays emphasis on a strong and mature market economy. This involves well-drafted modern laws that replace the laws of the preceding 100 years and high-performance institutions which enforce these new laws. The Committee has the end word to provide one critical building block of this process with a modern Insolvency and Bankruptcy Code and the statutory design associates institutional infrastructure, which reduces delays and transaction costs. The BLRC, through the IBC, compartmentalized the functions and duties of RP, CoC and the Adjudicating Authority.

27. The report recommended assessing the viability of a corporate debtor and noted that the economic purview presented an advantage by calling for the assessment of the viability of an enterprise or a project. An enterprise that has fastened financial failure is considered as a viable enterprise and there is possible financial re-arrangement that can earn the creditors a higher economic

value in contrast to shutting down such an enterprise. On the contrary, if the cost of financial re-arrangement required to keep the enterprise going is higher than the non-performance value of future expected cash flows, then the enterprise is considered unviable or bankrupt and is better shut down as soon as possible.

28. After taking note of the emerging Indian economy, the best practices of resolution and liquidation in other economies and the model code of UNCITRAL, the report has recommended the following guiding principles to the Parliament for a new Code. Broadly, the objects sought to be achieved by the IBC are (i) provision of certainty in the market to promote efficiency and growth, (ii) maximization of value of assets, (iii) striking a balance between liquidation and reorganisation, (iv) ensuring equitable treatment of similarly situated creditors, (v) provision of timely, efficient and impartial resolution of insolvency, (vi) preservation of the insolvency estate to allow equitable distribution to creditors, (vii) ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information, (viii) recognition of existing creditor rights and establishment of clear rules for ranking priority of claims, and (ix) establishment of a framework for cross-border insolvency.

29. The IBC, thus, seeks to replace the existing framework on insolvency and bankruptcy, which is enumerated below:

29.1. Companies Act, 2013 – chapter on collective insolvency resolution by way of restructuring, rehabilitation, or reorganisation of entities registered under the Act. Adjudication is by the NCLT.

29.2. Companies Act, 1956 – deals with winding up of companies. There are no separate provisions for restructuring except through Mergers & Acquisitions and voluntary compromise. Adjudication is under the jurisdiction of the High Court.

29.3. SICA, 1985 – deals with restructuring of distressed 'industrial' firms. Under this Act, the Board of Industrial and Financial Reconstruction assesses the viability of the industrial company and refers an unviable company to the High Court for liquidation. SICA 1985 stands repealed.

V. SCHEME OF INSOLVENCY AND BANKRUPTCY CODE, 2016

30. The statement of objects and reasons of the IBC set out the following aims:

30.1. To ensure that the framework prior to IBC for insolvency and bankruptcy, which was inadequate and ineffective, leading to undue delays in resolution, is done away with.

30.2. To effectuate an effective legal framework for timely resolution of insolvency and bankruptcy, which would support the development of credit markets and encourage entrepreneurship. The Code also aims to improve the Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

30.3. To consolidate laws regarding insolvency and bankruptcy in India to ensure the insolvency resolution of corporate persons in a time-bound manner for maximization of the value of the assets of such persons,

promote entrepreneurship and the availability of credit, and balance the interests of all the stakeholders.

30.4. The Code also aims to separate commercial aspects of insolvency and bankruptcy proceedings from judicial aspects.

31. Part II of the Code deals with insolvency resolution and liquidation for corporate persons. Chapter II deals with CIRP, and in the event of the effort of Chapter II failing, Chapter III provides for the liquidation process of corporate debtors. The other chapters in the IBC are not adverted to since the issues under consideration do not attract the provisions of those chapters.

32. To sum up, the unfurling of events in Chapter I of Part II of the IBC is that sections 7 to 10 provide for the initiation of CIRP by the (i) financial creditor(s), (ii) operational creditor(s) or (iii) corporate applicant. On the application being admitted by the Adjudicating Authority, section 13 of the IBC provides for the declaration of moratorium and public announcement, and section 14 deals with moratorium prohibiting the steps for recovery, etc., against the corporate debtor.

33. With the completion of a public announcement of CIRP, section 16 of the IBC provides for the appointment of an interim resolution professional and management of affairs of the corporate debtor by the interim resolution professional subject to further orders. The RP is appointed during the first CoC meeting under section 22 of the IBC. Following the appointment, the RP issues an RFRP from the eligible participants in the ongoing CIRP. The thrust in the exercise from the date on which an application is entertained is that time is of

the essence for the completion of each one of the targeted results by the applicant, the Adjudicating Authority, RP and CoC. The timelines for completion of CIRP are prescribed and governed by section 12 of the IBC, read with the model timelines under regulation 40A of the CIRP Regulations 2016. The learned counsel appearing on both sides have advanced detailed arguments on the sanctity of timelines under IBC and the Competition Act to support their respective arguments on the combination approval as directory or mandatory when the CoC is considering the resolution plans.

34. The law on timelines is settled by this Court in *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v. Satish Kumar Gupta and others*,[3] wherein it was held that the outer limit for the completion of CIRP was 330 days, which may be extended by the adjudicating authority in exceptional cases where the delay in litigation could not be attributed to the parties.

35. The objective of the IBC at the first instance is to ensure that the business activity of the corporate debtor as a going concern is preserved even after the appointment of a resolution professional. By an order under section 31(2) of the IBC, the corporate debtor is made over to the successful resolution applicant as approved by the Adjudicating Authority. The IBC envisages the preservation of the rights of financial creditors, operational creditors, and employees, as well as the supply of goods or services by the corporate debtor into the market.

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[3] (2020) 8 SCC 531.

VI. ANALYSIS

36. The brief narrative of the working of the Code takes us to the point posed for consideration in these appeals. The appellants commend the literal rule of interpretation to the proviso and have laid much emphasis on the expressions viz., "shall", "prior to", and "committee of creditors". This argument applies the golden rule of interpretation in establishing that the proviso is mandatory and must be complied with before the stage of sub-section (4) of section 30, i.e., consideration of the resolution plan by CoC at the time of voting. The extended argument is that a combination approved post the decision taken under section 30(4) of the IBC cannot be relied upon and taking on file the approval of combination Dt. 15.03.2023 of CCI, as proposed by AGI, is an illegal exercise of jurisdiction.

37. The argument of literal construction, at first blush, appears to be simple and available to the object sought to be achieved. The RP also acted contrary to the law by bringing on record the approval of a combination of CCI proposed by AGI.

38. It is axiomatic that while applying the rule of literal construction, the words of a statute are first understood in their natural, ordinary or popular sense, and phrases and sentences are constructed according to their grammatical meaning unless such construction leads to absurdity or unless there is something in the context or in the object of the statute to suggest the contrary rule of interpretation.

39. In *Madhav Rao Scindia vs. Union of India*,[4] it has been held that the simpler and more common the word or expression, the more meanings and shades of meaning it has. As already noted, apparently clear and simple language in its comprehensive analysis is so ambiguous at times that it presents difficulty in understanding its meaning, requirement, and purport.

40. In *Commissioner of Income Tax, Orissa vs. NC Budhraja and Co.*,[5] it is held that a statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context, and legislative history. (emphasis supplied)

41. In *Corp of the City of Victoria vs. Bishop of Vancouver Island*,[6] the celebrated judgment, Lord Atkinson stated: "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. The literal interpretation leads to hardship, inconsistency or obstruct the accomplishment of the object of the statute steps in. In other words, the doctrine of purposive interpretation is taken recourse to for the purpose of giving full effect to the statutory provisions and the Courts must state what meaning the statute should bear rather than rendering the statute in nullity. A statute must be construed in such a manner as to make it workable.

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[4] AIR (1971) SC 530 at Page 577.
[5] AIR (1993) SC 2529 at Page 2540.
[6] (1921) AC 2 384.

42. In a few cases, the Courts have declined to be bound by the letter when the letter frustrates the patent purposes of the statute. Ld. Justice J.C. Shah in *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar,*[7] noted that "it is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature". The limitation of the purposive role of construction is that the interpretation shall not result in legislation by the Court. Hardship, inconvenience, injustice, absurdity and anomalous results are avoided while construing the statute they need be.

43. Lord Shaw in *Shannon Realities Ltd. v. St. Michel (Ville De)*,[8] notes that "[w]here words of a statute are clear, they must, of course, be followed but in their Lordships' opinion, where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system".

(emphasis supplied)

44. T. L. Venkatarama Aiyyar, J in *Tirath Singh vs. Bachittar Singh*,[9] stated that "where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the

[7] AIR (1963) SC 1207.
[8] (1924) AC 185.
[9] AIR (1955) SC 830.

enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence". The literal and purposive rules of interpretation, as well as their scope, obligation, and limitations, are prefaced for further discussion. The right consideration of issues on hand is achieved by not referring to the precedents on literal or purposive interpretation. *It is axiomatic that the precedents on interpretation are specific to the statute, language and case.* The Court, in a given case before it, goes by the first principles of the respective tools of interpretation.

44.1. The literal interpretation is not an inviolable rule. The decisions referred to *supra,* while underlying the principle involved in literal interpretation, had laid down that the literal interpretation, if it leads to hardship, inconsistency, defeats the working of the statute, and acts counterproductive to the purpose and object sought to be achieved by the statute. A statute must be construed in such a manner as to make it workable.

45. Literal interpretation is not the only tool to begin with while constructing a statute. The often-cited judgements on literal interpretation set out when purposive interpretation is considered and preferred over literal interpretation. In the instant appeal, both interpretations have been commended for consideration.

46. The swing is whether the literal or purposive rule of interpretation is applicable for deciding whether approval of CCI at the stage of section 30(4) of

IBC is mandatory or directory. To arrive at which one of the interpretations is applicable, the summary of the idea, roadmap, implementation, and conclusion of the IBC, as well as the extent needed, is considered. Literal interpretation satisfies the application of exact meaning to the words used in the proviso, but whether such application is consistent with other provisions in section 31 is to be determined. If literal interpretation leads to inconsistency with the text and tense used in section 31, then the Court attempts to resolve it to make the section consistent in text and tense.

47. According to sub-section (26) of section 5, a resolution plan is a plan proposed by the resolution applicant for the insolvency resolution of the corporate debtor as a going concern in accordance with Part II. section 25(2)(h) sets out the duties of an RP and reads thus:

> *(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*
>
> *(emphasis supplied)*

48. Section 30[10] enables a resolution applicant to submit a resolution plan.

[10] 30 (1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under Section 29-A] to the resolution professional prepared on the basis of the information memorandum.
(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(*a*) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

[(*b*) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(*i*) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53; or

(*ii*) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(*i*) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(*ii*) where an appeal has been preferred under Section 61 or Section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(*iii*) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(*c*) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(*d*) the implementation and supervision of the resolution plan;

(*e*) does not contravene any of the provisions of the law for the time being in force;

(*f*) conforms to such other requirements as may be specified by the Board.

[*Explanation*.—For the purposes of clause (*e*), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

[(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:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under Section 29-A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (*c*) of Section 29-A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (*c*) of Section 29-A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of Section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.]

49. For immediate reference, section 30(2)(c) and (4) are excerpted as under:

> *"Section 30(2)(c) – provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;*
>
> *Sub-section (4) of Section 30 – 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:"*

50. With the approval of the CoC under section 30(4) of the IBC, section 31[11] is triggered; thus, taking the matter for approval or rejection, as the circumstances may be, to the Adjudicating Authority.

[Provided also that the eligibility criteria in Section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

[11] 31. Approval of resolution plan.—(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve

51. The Parliament, realising the need for a few amendments to IBC for the efficacious working of the Code, enacted Act Nos. 26 of 2018 and 26 of 2019. The ILRC report notes in paragraph 16.2 that the committee deliberated on a mechanism for obtaining approvals from the concerned regulators post the approval of the resolution plan but prior to the Adjudicating Authority's approval. Amendment Act 26 of 2018 explains, through clause 24 of the notes on clauses, that where there is a provision for combination, CCI approval shall be obtained prior to the approval of the resolution plan by the CoC. On the contrary, the memorandum to the 2018 Ordinance that led to Act 26 of 2018 notes that CCI approval shall be sought prior to the stage at which the resolution plan is considered by the adjudicating authority.

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the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan:

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(*a*) the moratorium order passed by the Adjudicating Authority under Section 14 shall cease to have effect; and

(*b*) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in Section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

52. It is appropriate to refer to the amendments incorporated by Act 26 of 2018 by which sub-section (4) and the proviso were incorporated. The IBC was enacted with the intention of improving the ease of doing business in India. In line with this thinking, one of the legislative measures is the amendment to the proviso to sub-section (4) of section 31 of the IBC.

53. Learned counsel appearing for the parties have made a few submissions on the scope and applicability of external aids, such as the memorandum and explanatory note appended to the amending Act. For continuity, the memorandum and the notes on clauses are excerpted hereunder:

> ***Notes on clauses in Amending Act 26 of 2018***
>
> *"Clause 24 of the Bill seeks to amend section 31 of the Code to provide that the Adjudicating Authority shall, before passing an order for approval of resolution plan satisfy that the resolution plan has provisions for its effective implementation and that the resolution applicant shall obtain the necessary approvals required within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later and where it contains a provisions for combination the approval of the Competition Commission of India shall be obtained prior to the approval of resolution plan by the committee of creditors."*

Memorandum explaining the modifications contained in the Bill to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018

(d) in clause 24 of the Bill, in sub-section (4) of section 31 of the Code, a new proviso is inserted "Provided that where the resolution plan contains a provision for combination as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors" so as to clarify that the approval for the combinations from Competition Commission of India has to be obtained prior to the approval of resolution plan by the Adjudicating Authority.

(emphasis supplied)

54. Reference to these external aids for interpreting the proviso under consideration would arise only after completing the exercise of literal or purposive interpretation.

55. In *Essar Steel India Limited (supra)*, this Court considered the scope and ambit of section 30(2) and (4) on the one hand and also the jurisdiction of the

Adjudicating Authority/NCLAT under sections 30(4), 31 and 60(5) of the IBC on the other hand. The relevant paragraphs read thus:

> *"it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on*

merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

56. This Court has held that CIRP under the IBC is based on a flexible model where market participants (as resolution applicants) can propose solutions for the revival of the corporate debtor. To put it succinctly, the ratio of *Essar Steel (supra)* can be understood as follows:

56.1. Since it is the commercial wisdom of the CoC that is to decide on whether or not to rehabilitate the corporate debtor by means of acceptance of a particular resolution plan, the provisions of the Code and the Regulations outline in detail the importance of setting-up of such Committee and leaving decisions to be made by the requisite majority of the members of the aforesaid Committee in its discretion. Thus, section 21(2) of the IBC mandates that the CoC shall comprise of financial creditors of the corporate debtor.

56.2. The CoC consists of financial creditors who are in the business of money lending, and the commercial angle of CIRP is within the domain of the CoC. Thus, when the CoC exercises its commercial wisdom, the adjudicating authority cannot interfere on merits with the commercial decisions taken by the CoC.

56.3. This Court also held that there is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and the feasibility of the proposed resolution plan. They act on the basis of a thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their

collective decision before the adjudicating authority and is made non-justiciable.

56.4. While the ultimate business decision lies with the CoC, such a decision should indicate adequate consideration of the objectives of the IBC. Accordingly, the adjudicating authority should ensure that the decision of the CoC takes into account the following factors: (i) the corporate debtor should continue as a going concern during the resolution process, (ii) the value of assets of the corporate debtor should be maximised, and (iii) interests of all stakeholders are balanced.

56.5. In the event that the adjudicating authority, on a review of the facts of the case, concludes that the aforesaid factors have not been considered, it may send the resolution plan back to the CoC but not alter the resolution plan of its own accord.

56.6. The jurisdiction bestowed upon NCLAT is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in section 61(3) of the IBC, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (the Adjudicating Authority/NCLAT) have been endowed with clearly demarcated jurisdiction as specified in the IBC and are not to act as a court of equity or exercise plenary powers.

57. The admitted circumstances are that –

57.1. On 27.09.2022, AGI in Form I applied for approval of the combination of the subject resolution plan.

57.2. On 22.10.2022, the application in Form I was rejected by CCI.

57.3. On 27.10.2022, through e-voting, the CoC approved AGI's resolution plan for HNGIL.

57.4. On 03.11.2022, AGI applied to CCI in Form II for approval of the combination.

57.5. On 15.03.2023, CCI approved the combination with a few conditions.

58. The above narrative is relied on to argue that the proviso to sub-section (4) of section 31 is violated by the RP and CoC. The above literal construction ignores the circumstances that surround Act 26 of 2018 and Act 26 of 2019, which introduced a few amendments to both sections 30 and 31 of the IBC.

58.1. The amendment of a provision of law is appreciated by a comparison between the pre-amendment and post-amendment law. The amendment to an existing law is necessitated to supplement the gaps noted in achieving the purpose or object of the existing enactment. The Parliament, after realizing the existence of a few bottlenecks in the smooth working of the Act in achieving the object, makes amendments in the nature of additions, deletions, exceptions, provisos, etc.

58.2. IBC has undergone a few major changes to improve the working of the Code. The Parliament, in its wisdom, has not only incorporated the amendments but also the place at which the amendments are to be positioned.

59. In the said background, the Parliament has not incorporated the proviso to sub-section (4) of section 31 in the text of section 30 of the IBC. Section 30(2) of the IBC, read with Regulation 39(4) of CIRP Regulations, 2016, has provided for what is to be reported to the CoC by RP through Form H.

60. It is axiomatic to not interpret a section by referring to or relying on the Regulations made by the Insolvency and Bankruptcy Board of India ("IBBI"). The plain requirement for the RP is to state whether the resolution plan contravenes any of the provisions of the law for the time being in force.

61. The Parliament, guided by the real-time working of an enactment based on a report received or otherwise, had undertaken to amend IBC. The amended and unamended provisions are excerpted as follows:

Section	**Unamended**	**Amended**
25(h)	**25(2)**(*h*) invite prospective lenders, investors, and any other persons to put forward resolution plans	(*h*) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;
30(1)	**30.** (*1*) A resolution applicant may submit a resolution plan to the	(1) A resolution applicant may submit a resolution plan [along with an

	resolution professional prepared on the basis of the information memorandum.	affidavit stating that he is eligible under Section 29-A] to the resolution professional prepared on the basis of the information memorandum.
30(2)(e) explanation	(*2*) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan— (*e*) does not contravene any of the provisions of the law for the time being in force	(*e*) does not contravene any of the provisions of the law for the time being in force; [*Explanation*.—For the purposes of clause (*e*), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]
30(4)	(*4*) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors.	(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: Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under Section 29-A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it: Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (*c*) of Section 29-A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days,

		to make payment of overdue amounts in accordance with the proviso to clause (*c*) of Section 29-A: Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of Section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.] [Provided also that the eligibility criteria in Section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]
31(1)	(*1*) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of	(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section

	creditors under sub-section (*4*) of section 30 meets the requirements as referred to in sub-section (*2*) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.	30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan: [Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]
Proviso to 31(4)	-	(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-

		section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later: Provided that where the resolution plan contains a provision for combination, as referred to in Section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.

62. Section 30(1) provides for the submission of a resolution plan by the resolution applicants. Section 30(2) obligates the RP to examine each resolution plan received by the RP to confirm that the resolution plan does not contravene

any of the provisions of law for the time being in force. The relevant portion of Form H is reproduced hereunder:

Form H

Section of Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(23)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		

Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?		

63. Section 30(2)(e) of the IBC requires that the resolution plan does not contravene any provisions of the law for the time being in force. Further, the explanation to section 30(2)(e) is that the approval of shareholders for the implementation of actions is available. With a report received in Form H from

the RP, the issue moves into the hands of the CoC under section 30(4). Section 30(4) of the IBC has the following facets:

63.1. The CoC approves a resolution plan by a vote of not less than sixty-six per cent of the voting share of the financial creditors.

63.2. The CoC ascertains the feasibility and viability of a resolution plan and also the manner of distribution of priorities.

63.2.1. The manner of distribution may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53.

63.2.2. The manner of distribution includes the priority and value of the security interest of the secured creditors.

63.2.3. Such other requirements as may be specified by IBBI.

64. It is noteworthy that sub-section (4) of section 30 of the IBC conspicuously does not refer to the checklist prescribed in sub-section (2) of section 30 of the IBC. By law and precedent, the CoC, while exercising its commercial wisdom, is required to assess the feasibility, viability and prioritisation of interests. In its commercial wisdom, nothing prevents the CoC from appreciating the fallout of non-compliance with combination approval by one of the resolution applicants. This circumstance may influence the voting pattern of the CoC. However, it cannot result in the rejection of a non-compliant resolution plan.

65. The duties and functions of the Adjudicating Authority under section 31 of IBC are as follows.

65.1. Section 31(1) provides for approval of a resolution plan by the Adjudicating Authority and is summarised thus:

65.1.1. If the Adjudicating Authority is satisfied that the resolution plan as approved by the CoC under section (4) of section 30 meets the requirements referred to in sub-section (2) of section 30;

65.1.2. Adjudicating Authority then shall, by order, approve the resolution plan;

65.1.3. The approved plan is binding on (a) the corporate debtor, (b) employees of the corporate debtor, (c) members, (d) creditors, (e) Central and State Governments or local authorities to whom statutory dues are owned, and (f) Guarantors and other stakeholders involved in the resolution plan.

65.2. The proviso inserted by Act 26 of 2018 to section 31(1) of the IBC obligates that the Adjudicating Authority shall, before passing an order of approval of a resolution plan under sub-section (1), satisfy that the resolution plan has provisions for effective implementation.

65.3. The proviso stipulates a threshold consideration on provisions, i.e., steps and means for effective implementation of the resolution plan.

65.4. Sub-section (2) of section 31 obligates a different function or duty, i.e., to reject a resolution plan which does not confirm to the requirements referred to in sub-section (1) of section 31. Sub-section (2) of section 31 notes that if the Adjudicating Authority is not satisfied with the resolution plan, which does not confirm to the requirements referred to

in sub-section (1), the Adjudicating Authority may reject the resolution plan. The occasion to reject a resolution plan arises under section 31(2) of the IBC. In contrast, there is no occasion for the CoC to reject an eligible resolution plan.

66. One of the facets of literal interpretation is the grammatical usage of sentences in the appropriate syntax. Grammatical usage is one of the means, and it is by law established, not the exclusive means, by which the sense of the statute is conveyed. The words employed by the parliament are the instruments by which the parliament expects or hopes to give effect to a policy or framework.

66.1. In *Gurudevdatta VKSSS Maryadit v. State of Maharashtra*,[12] this Court, while dealing with section 27(3) of the Maharashtra Co-operative Societies Act, 1960, held that words must be given their due meaning in their grammatical sense:

> *26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie*

[12] (2001) 4 SCC 534.

be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the lawgiver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

(emphasis supplied)

66.2. Further, this Court, in *Harbhajan Singh v. Press Council of India*,[13] dealt with the interpretation of sub-section (7) of section 6[14] of the Press Council Act, 1978, and employed grammatical tenses to present tenses used in the statute:

"8. The provision is cast in the present tense. A retiring member is ineligible for renomination. "Not more than one term" qualifies "renomination". The

[13] (2002) 3 SCC 722.

[14] **Section 6(7)***: A retiring member shall be eligible for renomination for not more than one term.*

words "retiring", used in the present tense, and "renomination" speak aloud of the intention of the legislature. If the word "retiring" was capable of being read as "retired" (sometime in the past) then there would have been no occasion to use "renomination" in the construction of the sentence. If the intention of law-framers would have been not to permit a person to be a member of the Council for more than two terms in his lifetime then a different, better and stronger framing of the provision was expected. It could have been said: "no member shall be eligible for nomination for more than two terms", or it could have been said:"a retired member shall not be eligible for nomination for more than two terms".

16. *We are clearly of the opinion that sub-section (7) of Section 6 of the Press Council Act must be assigned its ordinary, grammatical and natural meaning as the language is plain and simple. There is no evidence available, either intrinsic or external, to read the word "retiring" as "retired". Nor can the word "renomination" be read as nomination for an independent term detached from the previous term of membership or otherwise than in succession.*

(emphasis supplied)

67. The rules of grammar are to be applied unless those rules contradict the legislative intent or purpose. This statement is more so if it refers to legislative intent or purpose manifested in the only manner in which a legislature can authoritatively do so in the text of the enactment. Though not to find out violability in the text of the enactment, but to keep the content consistent throughout the enactment – the court gathers the meaning of all the expressions used in the same section. In this manner, the courts have applied grammatical construction to provisions of law.

68. In sub-section (2) of section 31, the words "does not confirm to the requirements of sub-section (1) of section 31" grammatically interpreted throw light on the stage of satisfactory compliance of all the requirements of sub-section (2) of section 30. The Parliament, in its wisdom, would have employed the expression "did not" in place of "does not" if the requirement is that the resolution plan is fully compliant at a stage before consideration of the resolution plans by the CoC. As part of the interpretative process, the Court ought not to lose sight of expressions which are in the present tense, such as "meets", "does not", and "satisfies" in section 31 of the IBC. The word "confirm" literally means "to verify" for both positive recordings of requirements of sub-section (1) of section 31 and also negative recordings of omissions or illegality in the resolution plans voted by the CoC. There is no ambiguity that when sub-section (1) of section 31 is referred to in both the eventualities stated above, it includes clause (e) of section 30(2) of the IBC. The above literal construction, as has been canvassed by the appellants, must be applied to the entire scheme

of sections 30 and 31 and not merely in isolation to the proviso to sub-section (4) of section 31 of the IBC. Sub-sections (1) and (2) of section 31 obligate the Adjudicating Authority in its jurisdiction to decide these aspects and consider whether approval should be granted or rejected.

69. The consequences of approval are also set out in sub-section (1) of section 31, including transferring the business of the corporate debtor to a successful resolution applicant. Sub-section (4) grants a window of one year to the successful resolution applicant for obtaining permissions, licenses or permits under applicable laws. These are *ex post facto* operational permissions/consents/licences needed to run the business as a going concern by the successful resolution applicant and to avoid civil or penal consequences. Sub-section (4) provides for a legal fiction to continue to operate with the existing permissions/licences/consents in favour of the corporate debtor from a host of authorities by the successful resolution applicant.

70. Whereas the meaning, definition and implication of combination attracting sections 5 and 6 of the Competition Act are distinct. By keeping in perspective the language of sections 5 and 6 of the Competition Act, the combination should have the approval of CCI on the day on which the resolution applicant receives approval under section 31(1) of IBC. In the alternative, the absence of combination approval would result in the combination being void. The successful resolution applicant cannot be allowed to take over the management awaiting orders of CCI, and the successful resolution applicant cannot undertake business operations. The memorandum

and notes on clauses appended to the ordinance and amendment recognised the need for statutory protection and the need for due compliance with statutory requirements of approval of combination under the Competition Act by the successful resolution applicant. There is an inconsistency and ambiguity in the stage of having CCI approval. In such cases, the text of the amended and unamended sections should guide the interpretation.

71. Section 30(4) does not obligate the CoC to examine whether the resolution plan contravenes the requirements of section 30(2)(e) of the IBC. The comprehensive proposals submitted by the RP and the resolution of the CoC will disclose feasibility and viability. The proposal of the successful resolution applicant being legally compliant in a CIRP attracting CCI's approval for combination is examined by the Adjudicating Authority.

72. *Essar Steel (supra)* has laid down as a clear principle or ratio that the CoC is primarily concerned with feasibility, viability and the manner of distribution proposed, etc., amongst the creditors and may keep in mind section 53(1) of the Code. The insistence upon approval of CCI before CIRP reaches section 30(4) would limit the number of eligible resolution applicants, and the core objects of CIRP, intended to benefit the stakeholders through maximization of recovery, is defeated. Noted from the sense of commercial prudence, unless the resolution plan is acceptable to the CoC, a question arises as to the prudence for a business entity to move the CCI for approval. Through the Amendment Act, the proviso to subsection (4) has been inserted within section 31. If the timing of having approval of the combination is at the stage

where the CoC is considering the resolution plans, then the insertion would have been in section 30, but not as is reflected in the amended section 31 of the IBC. Stepping up the requirement to a stage not envisaged by the parliament, particularly not resulting in a consequence for not having the approval of CCI, would be akin to writing too much into the sentence. In this context, if the requirement of approval of combination at the stage of CoC is held as mandatory, then through a literal interpretation of the proviso to section 31(4), the Court would be catapulting the proviso to a place not expressed by the parliament. Precisely reiterated, such interpretation, apart from causing difficulties in CIRP defeats the very object of maximization of recovery.

73. In contradistinction, section 31(4) specifically refers to due compliance with the requirements of sub-section (1) of section 31, which then refers to the requirements in sub-section (2) of section 30 with regard to approval of the resolution plan. The statutory compliance by the resolution applicant is divided into two stages viz., firstly, sub-section (4) provides a window time of one year to obtain necessary approval under any law by the resolution applicant; and secondly, having the combination approval before sub-section (2) of section 31 of IBC. This said compliance status enables the Adjudicating Authority to accept or reject a resolution plan which does not confirm to the requirements referred to in sub-section (1) of section 31. The final consideration of the resolution plans before the Adjudicating Authority arises in the manner laid down by this Court in *Essar Steel (supra)*. The absence or presence of

combination approval while a decision is taken under sub-section (4) of section 30 is not very relevant from the perspective of feasibility or viability. The Adjudicating Authority, if it is satisfied that the resolution plan has provisions for effective implementation, then one facet of verification is over. After which, it is verified whether to reject the resolution plan for not confirming to the requirements referred to in sub-section (1) of section 31. To wit, it is noted as an example that a resolution applicant gets into the management of the corporate debtor by an order under section 31(1) of the IBC, and has combination approval for the resolution plan on that day, then the consequence of section 6 of the Competition Act, namely the combination being void, is not attracted. The purpose and object of the IBC and the subsequent amendments are to provide theoretical and practical resolution to the financial difficulties of a stressed corporate debtor for the benefit of the stakeholders of the corporate debtor. The statutory scheme is not intended to give undue advantage or hardship to the resolution applicants.

74. Yet another reason taken note is that as per the statutory scheme, the resolution plan receives two kinds of approvals, one by the CoC under sub-section (4) of section 30 primarily on feasibility and viability and another from the Adjudicating Authority that the resolution plan has provisions for its effective implementation and that the resolution plan confirms to sub-section (2) of section 30, including clause (e). The proviso to sub-section (4) of section 31 needs to be carefully examined. It may be noted that the proviso to sub-

section (4) of section 31 refers only to a resolution plan containing a provision for combination.

75. The question as to whether a requirement under the statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other.[15]

76. The use of the word 'shall' raises a presumption that the particular provision is imperative. However, the prima facie inference about the provision being imperative may be rebutted by other considerations, such as – the object, scope of the enactment, and the consequences flowing from such construction. The interpretation of the word 'shall' as directory has been a purposive effort of the court to sustain the object of the statute and, at the same time, ensure compliance with the requirements. This Court has interpreted 'shall' as directory to preserve the legislative effort and intent of the statute.

76.1. In *Sainik Motors v. State of Rajasthan,*[16] *State of UP v. Babu Ram Upadhya*,[17] and *State of MP v. Azad Bharat Finance Co.*,[18] this Court has held that the word 'shall' does not always imply that a provision is

[15] Earl T. Crawford, The Construction of Statutes (Thomas Law Book Company, 1940), p. 516.
[16] AIR (1961) SC 1480
[17] AIR (1961) SC 751
[18] AIR (1967) SC 276

mandatory. If the legislative intent or the context requires the statute to be not mandatory, then the word 'shall' is to be contextually interpreted.

76.2. This Court has also held that the ultimate rule in construing auxiliary verbs like 'may' or 'shall' is to discover the legislative intent without giving it a controlling or determinative effect. The subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, and the actual words employed have to be considered in determining the nature of the obligation cast by the statute while employing 'shall' or 'may'.[19]

77. In determining whether the word 'shall' is mandatory or directory, the court examines *noscitur a sociis*[20], the operation, functions, duties, and consequences for non-performance. The rule of literal interpretation with its exceptions is noted, and the grammatical interpretation of sections 30 and 31 of IBC sets the stages of consideration of twin approvals – one by the CoC, and the other by the Adjudicating Authority – while approval or rejection is granted to the resolution plan. The combination approval as an enclosure to an applicable resolution plan at the stage of section 30(4) of the IBC is a form or procedure that does not have consequences. At the same time, the combination approval to an applicable resolution plan at the stage of consideration of the Adjudicating Authority under section 31(1) and (2) of the IBC becomes substantial. This is because, a non-compliant resolution plan can be rejected

[19] Bachahan Devi v. Nagar Nigam, Gorakhpur (2008) 12 SCC 372
[20] The meaning of words should be identified by reference to other words in the context of which they appear.

only by the Adjudicating Authority, whereas the CoC is principally concerned with the feasibility and viability.

78. When adopting a consequentialist approach, it becomes clear that the insistence upon a combination approval at the stage of Section 30(4) does not place the stakeholders at an advantageous position. Further, presenting the combination approval at the stage of consideration by the Adjudicating Authority under section 31(1) and (2) does not diminish the value of the stressed assets because of robust competition among eligible resolution applicants. Further, the opportunity cost that arises from treating the stage at which combination approval is required as mandatory may disturb the smooth working of the intricate and competitive insolvency resolution system that the IBC envisages. Thus, the consequences of compliance and non-compliance with all the legal requirements of the resolution plan arise only before the Adjudicating Authority. Consequently, to keep section 31 uniform in all perspectives, it is concluded that in the place of literal interpretation, purposive interpretation is apt; therefore, the word 'shall' in the proviso to section 31(4) of the IBC is interpreted and held as directory.

79. From the above discussion, it is held that the proviso to sub-section (4) of section 31 is directory and would be compliant with IBC and the Competition Act. Hence, the combination approval of CCI at the stage of consideration of the resolution plan by the Adjudicating Authority under section 31(1) would be proper and legal. Such interpretation keeps the operations of the successful resolution applicant as a going concern, without deviating from the rigour of

the Competition Act, and simultaneously, a one-year window is granted to obtain licenses, permissions, consents and other regulatory approvals envisaged by a host of laws. Therefore, the proviso is interpreted purposively and held that the approval of a combination of CCI at the stage of consideration by CoC is directory and not mandatory. By operation of section 31(2) of the IBC, to avoid rejection of a fully compliant and voted resolution plan, the Adjudicating Authority confirms that the approval of the combination is available before implementing the resolution plan. At best, the use of the words "prior to" is a temporal expression whose mandatory or directory nature is to be determined from the context surrounding section 31.

80. IBC and the Competition Act have timelines for the discharge of a duty and function. In this light, it is impermissible to interpret the provisions in one enactment by keeping in perspective the starting point of a timeline and the termination of a timeline in the other enactment. The enactments are allowed to work parallelly and without pressure for performance from the other in line with the duties and obligations cast through the enactments.

81. It is argued that the NCLAT in *ArcelorMittal (supra)*, *Vishal Vijay Kalantari (supra)* and *Makalu Trading Limited (supra)* held that the requirement under proviso to sub-section (4) of section 31 is directory at the stage of CoC approval. The view of that NCLAT was confirmed by this Court in *Vishal Vijay Kalantari (supra)* and *Makalu Trading Limited (supra)* while referring to the NCLAT judgement in *ArcelorMittal (supra)*. The argument of the appellant is that the confirmation of a view taken by the NCLAT, as above, is either distinguishable

or alternatively cannot be treated as a binding precedent for deciding the controversy in these appeals. In reply, it is argued that the NCLAT has considered the crux of the issue in these matters and the Civil Appeal(s) that stood dismissed has the effect of a binding precedent on the question of whether the proviso to sub-section (4) of section 31 of the IBC is mandatory or directory. The absence of a reasoned dismissal order is no reason to re-open an otherwise established position of law. To appreciate the consideration by NCLAT and confirmation by this Court, the narrative is presented as follows:

Case No.	**Case**	**Reasoning of NCLAT**	**Order of the SC**
1.	ArcelorMittal **NCLAT** – *2019 SCC OnLine NCLAT 920*	NCLAT held that proviso to sub-section (4) of section 31 of the IBC, which relates to obtaining the approval from CCI under the Competition Act, 2002 prior to the approval of such 'Resolution Plan' by the CoC, is directory and not mandatory. It is always open to the CoC, which looks into the viability, feasibility and commercial aspects of a 'Resolution Plan' to approve the 'Resolution Plan' subject to such approval by CCI, which may be obtained prior to approval of the plan	No appeal to this Court.

		by the Adjudicating Authority under section 31 of the IBC.	
2.	Vishal Vijay Kalantari **NCLAT** – *2020 SCC OnLine NCLAT 1013* **Supreme Court** – *2021 SCC OnLine SC 3243*	A plain reading of the provision makes it clear the Resolution Applicant is to obtain necessary approval within one year from the date of approval of the Resolution Plan by the adjudicating authority. It is manifestly clear that a Resolution Plan containing provision for combination has been treated as a class apart requiring approval of the Competition Commission of India even prior to such Resolution Plan being approved by the Committee of Creditors. However, treating such requirement as mandatory is fraught with serious consequences. Thus, relying on *ArcelorMittal (Supra),* the NCLAT held section 31(4) to be directory.	This Court found no reason to interfere with the NCLAT judgement. (Division Bench Decision)
3.	Makalu Trading Limited	The adjudicating authority was conscious of the CCI approval, thus,	This Court did not interfere with the NCLAT judgement

	NCLAT – *(2020) SCC OnLine NCLAT 643* **Supreme Court** – *Civil Appeal No. 3338 of 2020, order Dt. 12 October 2020*	ignoring the fact that CCI approval has been obtained post CoC approval of the Resolution Plan is in line with the view taken in *ArcelorMittal (Supra).*	since no substantial question of law is involved. (Three-judge bench decision)

82. The tabular statement takes note of the conclusions stated by the NCLAT. The argument against the view taken by this Court in *Vishal Vijay Kalantari (supra)* and *Makalu Trading Limited (supra)* is rejected.

82.1. In matters of trade, industry, and commerce, continuity and consistency in precedents are the foundations on which prudent business decisions are made. The consistent view in case law enables the market players to arrange affairs in compliance with the law and the precedents. In the working of the IBC, it does not appear that the only certainty is that nothing is certain. The resolution applicant is not to be subjected to intolerable uncertainty or not knowing what comes next. While doubt is not a pleasant condition, the adjudicatory process should not multiply it. The object of IBC is to provide the institutional framework for theoretical resolution without considering liquidation as the first option. The buoyant economy needs absorption mechanisms to prevent collateral and cascading impact on the investors, depositors and financial creditors. Therefore, the idea of the IBC is to let the financial markets work.

83. The view taken by the NCLAT on the question of whether the requirement of proviso to sub-section (4) of section 31 of IBC is mandatory or directory is correct. Thus, the appeals fail.

84. On 05.11.2022, the RP moved for approval under section 30(6) of the IBC for the resolution of the CoC Dt. 27.10.2022. INSCO, on 14.11.2022, filed application No. 1497/2022 to reject AGI's resolution plan for want of CCI approval. Further consideration by the Adjudicating Authority is paused because of an interlocutory application, an appeal to the NCLAT, and the subsequent proceedings in this Court. The resolution plans were submitted with the contemporaneous perspective of the physical state of affairs of men, machinery and matters of the corporate debtor. The delay loses the very sheen in the effort to revive the stressed assets of a corporate debtor. The law provides for availing legal remedies. It may not be understood as laying down that the interlocutory applications are not maintainable before the Adjudicating Authority and NCLAT. Parties are well within their competence to move an application, including further statutory remedies under IBC in accordance with law. The outcome must be met with consequences and costs for the unsuccessful parties. The consequences of delay must also be borne in mind. In *State Bank of India & Ors. vs. The Consortium of Murari Jalan and Florian Fritsch & Anr.*,[21] this Court held CIRP cannot be endlessly postponed, including under the garb of litigation. This Court further held that the completion of CIRP is imperative to avoid value erosion. The failure of the resolution process will

[21] Civil Appeal No. 5023-5024 of 2024.

finally result in the sale of scrap of the assets of the corporate debtor, and again, a scenario experienced under previous regimes is reflected. It is axiomatic, more particularly in commercial matters, that costs and consequences of adjudication follow the event. In corporate and commercial matters, as a corollary, the cost must follow the result. Hence, costs are awarded while dismissing the appeals and are to be credited to the account of the RP.

84.1. INSCO's C.A. 6071/2023 – dismissed with a cost of Rs.25,00,000 (Indian Rupees twenty-five lakh only).

84.2. UPGMS's C.A 6055/2023 – dismissed with a cost of Rs.10,00,000/- (Indian Rupees ten lakh only).

84.3. HNG's Karamchari Union C.A 6123/2023 – dismissed with a cost of INR 10,00,000/- (Indian Rupees ten lakh only).

84.4. Soneko Marketing's C.A. 6177/2023 – dismissed with a cost of INR 10,00,000/- (Indian Rupees ten lakh only).

84.5. HNG Industries' C.A. 6847/2023 – dismissed with a cost of INR 50,000/- (Indian Rupees fifty thousand only).

85. It is appropriate to direct the Adjudicating Authority to dispose of the Application filed by the Resolution Professional within 6 weeks from today.

.....J.
[S.V.N BHATTI]

NEW DELHI;
JANUARY 29, 2025.

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4924 OF 2023

INDEPENDENT SUGAR CORPORATION LIMITED ... APPELLANT(S)

VERSUS

COMPETITION COMMISSION OF INDIA AND OTHERS ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4954 OF 2023

WITH

CIVIL APPEAL NO. 4937 OF 2023

WITH

CIVIL APPEAL NO. 5018 OF 2023

WITH

CIVIL APPEAL NO. 5401 OF 2023

WITH

CIVIL APPEAL NO. 6771 OF 2023

WITH

CIVIL APPEAL NO. 7428 OF 2023

WITH

CIVIL APPEAL NO. 7038 OF 2023

WITH

CIVIL APPEAL NO. 7037 OF 2023

J U D G E M E N T

S.V.N. BHATTI, J.

1. The civil appeals assail the order Dt. 28.07.2023 of the National Company Law Appellate Tribunal, Principal Bench, New Delhi ("NCLAT"). The appeals arise under the Competition Act, 2002 ("Competition Act").

I. BACKGROUND

2. On 21.10.2021, the National Company Law Tribunal, Kolkata Bench ("NCLT") admitted CP (IB) 369/2020, an application filed by DBS Bank under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") against Hindustan National Glass and Industries Limited ("HNGIL"). HNGIL is the corporate debtor engaged in manufacturing and supplying glass containers. HNGIL admittedly has a substantial market presence in the relevant market in India.

3. AGI Greenpac Limited ("AGI") and Indian Sugar Corporation Limited ("INSCO") were prospective resolution applicants in the corporate insolvency resolution process ("CIRP") ordered by the NCLT in Case No. CP (IB) 369/2020. The resolution professional ("RP") issued the request for resolution plan ("RFRP") Dt. 24.05.2022. The RFRP stipulates in Clauses 2.6.3(c), 3.3 and 4.1.1(k) that the approval of the combination by the Competition Commission of India ("CCI") is available before the Committee of Creditors ("CoC") considers the resolution plan. Considering the financials and market share of HNGIL, the rigour of combination as defined in section 5 of the Competition Act is attracted

to the proposal of AGI since it has a substantial presence in the relevant market in India. Sections 5 and 6 of the Competition Act set out the combination and regulation of combinations. To wit, it is noted that the resolution applicants to the RFRP Dt. 24.05.2022 who are in the manufacture and supply of glass containers similar to the activities of HNGIL are informed to have the approval of the combination of the proposed resolution plan before the CoC considers the feasibility and viability of the resolution plan.

4. If the proposal of the resolution applicant contributes to horizontal or vertical relationships, then the requirements of sections 5 and 6 of the Competition Act are attracted, and due compliance is necessitated.

5. INSCO is a multinational company headquartered in Bermuda. It is engaged in consulting for agriculture, financial management, and business consultancy. AGI is engaged in manufacturing and supplying glass containers and has a substantial market share in the relevant market in India. The actual percentage of market participation of any of the parties is not noted as part of the narrative on the background circumstances. The parties to the appeal are in agreement that having the combination approval from CCI for the proposed resolution plan is attracted to both AGI and INSCO. The distinction in compliance format is that AGI must follow the Form II process for obtaining the approval of CCI for the proposed resolution plan; on the contrary, INSCO, not being a player in the relevant market in India, is subjected to the simple and straight forward procedure, also known as green channel, contained in Form I.

6. On 18.08.2022, INSCO sought clarification from the RP on the combination approvals and the RP, by reply e-mail Dt. 25.08.2022, informed INSCO that CCI's approval could be obtained after the approval of the resolution plan by CoC but prior to the filing of the resolution plan before the Adjudicating Authority.

7. INSCO and AGI fall within the purport of Clauses 2.6.3(c), 3.3 and 4.1.1(k) of the RFRP. On 27.09.2022, AGI filed Form I with CCI under regulation 5(2) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations 2011 ("Combination Regulations 2011") intimating the proposed combination of AGI and HNGIL as part of CIRP. On 30.09.2022, INSCO, a foreign player, applied in Form I for combination approval under the green channel for the proposed combination in the CIRP of HNGIL and received deemed approval vide notice C-2022/09/974. The UP Glass Manufacturers Syndicate ("UPGMS"), Appellant in Civil Appeal No.4054/2023, filed objections before the CCI to the Form I application made by AGI on 27.09.2022. On 13.10.2022, CCI directed AGI to file a notice in Form II in terms of Regulation 5(5) of the Combination Regulations 2011. On 27.10.2022, the CoC approved AGI's resolution plan by 98% vote through e-voting.

8. On 03.11.2022, AGI filed notice in Form II before the CCI for the approval of a combination of the successful resolution plan. On 17.11.2022, CCI sought additional information/documents from AGI. AGI, through the reply Dt.

08.12.2022, responded to the queries raised by the CCI. On 19.12.2022, AGI filed the additional submissions/material before the CCI.

9. CCI, upon forming a *prima facie* opinion that the proposed combination of AGI with HNGIL is likely to cause appreciable adverse effect on competition ("AAEC") in the relevant market in India, decided to issue a show cause notice to AGI. On 10.02.2023, CCI issued a show cause notice under section 29(1) of the Competition Act to AGI to show cause as to why an investigation in respect of the proposed transaction should not be carried out. On 10.03.2023, AGI replied to the show cause notice Dt. 10.02.2023 and voluntarily offered to hive off or divest the Rishikesh Plant upon approval of the resolution plan by the Adjudicating Authority under the IBC. This was followed by further clarifications of AGI on 14.03.2023. CCI, on 15.03.2023, approved, under section 31(1) of the Competition Act, the modified combination of AGI.

10. The combination was approved vide order Dt. 15.03.2023 and was challenged before the NCLAT by a few aggrieved parties. NCLAT, through the order Dt. 28.07.2023, impugned in the civil appeals, dismissed the appeals and confirmed the combination approved by CCI. Hence, the civil appeals.

II. THE GIST OF CCI ORDER DT. 15.03.2023

11. AGI and HNGIL are engaged in the manufacture and supply of glass containers. The activities of HNGIL and AGI involve both horizontal and vertical relationships. The CCI delineated the relevant product market as container glass packaging and noted the operation and existence of both wholesale and

retail segments by AGI and HNGIL. The CCI appreciated the combined market share of HNGIL and AGI in the delineated relevant market as – (i) Alco-Beverage (40-50%) and (ii) F&B (80-85%). The combined effect of AGI and HNGIL is noted as significant players in the Alco Beverage and F&B Sector. The combination is likely to have significantly increased the level of concentration in the relevant market for container glass. Further, the countervailing power of the buyers is limited in the market, and imports seem to be marginal in the relevant market of the proposed combination. Moreover, the "failing firm" defence that a delay in acquisition would adversely affect the viability of the target was rejected, and a holistic approach to the assessment of the proposed transaction was applied, which involved accepting and balancing structural changes in the combination details. It is contextual to note the following clauses in the modification plan Dt. 10.03.2023 and 14.03.2023. The important features of the modification to the suggested combination are stated thus:

11.1. Clause 4 – 10 years stoppage on any direct or indirect influence over the whole or part of the Rishikesh Plant.

11.2. Clause 8 – AGI shall operate at an arm's length basis from the Rishikesh Plant.

11.3. Clause 14 – From the effective date until the transfer of the Rishikesh Plant, the Plant is to be kept separate from AGI.

11.4. Clause 29 – As per regulation 27 of the Combination Regulations 2011, there shall be an independent agency to monitor the divestment business.

12. AGI presented that hiving off the Rishikesh Plant – the least loss-making and the plant that had recorded a growth of 24% in 2021-22 – would efface the risk of AAEC, as noted by CCI. The products manufactured in Rishikesh Plant have a substantial presence in the relevant market segments. For the reasons recorded in the order Dt. 15.03.2023, the voluntary modification of AGI was accepted. It is noted that the power of buyers to countervail is limited. The financial situation of HNGIL with the proposed modification will not result in AAEC. The CCI approved the proposed combination of AGI and HNGIL subject to compliance with regulation 25(1)(a) of Combination Regulations, 2011. The approval further noted that the failure to comply with the modification would deem the violator liable for proceeding under the Competition Act. The order of approval of CCI Dt. 15.03.2023 was assailed before the NCLAT.

13. The details of the appellants are stated thus:

Sl. No.	**NCLAT Case No.**	**Civil Appeal No.**	**Appellant**
1.	(AT) No. 07 of 2023	Civil Appeal No. 4954/2023	UPGMS
2.	(AT) No. 08 of 2023	Civil Appeal No. 4924/2023	INSCO
3.	(AT) No. 09 of 2023	Civil Appeal No. 4937/2023	M/s Geeta and Company
4.	(AT) No. 10 of 2023	Civil Appeal No. 5018/2023	HNG Workers Union

14. In Civil Appeal No. 5401 of 2023, AGI objected to the filing of appeals before NCLAT by the above appellants as they are not aggrieved persons, and the appeals, at their instance, are not maintainable.

15. To sum up the case before NCLAT, the objections are that the CCI failed to comply with the requirement of section 29(1) of the Competition Act because the CCI has not issued show cause notice to both the parties to combination, i.e., the acquirer and the target entity. Approval of the combination is vitiated and illegal inasmuch as CCI, on forming *a prima facie* opinion about AAEC through the combination proposed, issued a show cause notice under section 29(1) of the Competition Act to AGI.

16. CCI should have taken the investigation as mandated by section 29(1) of the Competition Act by calling for the opinion of the Director General and directing AGI to cause public notice of the proposed combination. The non-compliance with section 29(2) renders the combination approval Dt. 15.03.2023 illegal and unsustainable. The *prima facie* opinion formed by the CCI under section 29(1) of the Competition Act steps up consideration to the stage of investigation. The combination approval under section 31 could be granted only after complying with section 29(2) of the Competition Act. Regulation 25(1) (a) of Combination Regulations 2011 has been misinterpreted or misapplied. The NCLAT in the above set of contentions framed the following points for consideration:

Sl. No.	**Points**	**Conclusion**
1.	Whether the Appellant(s) have locus to challenge the order of the Competition Commission of India dated 15.03.2023 within the	The NCLAT noted that the appellants have locus to file the appeal. The NCLAT looked at the judgement of *Samir Agarwal v. CCI*[1] in coming to a

[1] (2021) 3 SCC 136

	meaning of Section 53B of the Competition Act, 2002?	conclusion. The judgement notes that "person aggrieved" has to be read widely.
2.	Whether Section 29, sub-section (1) contemplates that a Show Cause Notice to be issued to the parties to combination, i.e., both acquirer and the target entity or word 'parties' occurring in Section 29(1) has to be read singularly?	Section 29(1) of the Competition Act contemplates that show cause notice has to be issued to the parties in combination. Thus, the notice has to be issued to the target and the acquirer. In the present case, show cause notice was merely issued to the acquirer – AGI.
3.	Whether non-issuance of Show Cause Notice to HNGIL vitiates the order of approval granted by the Commission under Section 31, sub-section (1)?	The mere non-issuance of notice does not vitiate the CCI proceedings. The reasoning adopted by the NCLAT was that the RP has no objection and placed the Resolution Plan before the Adjudicating Authority.
4.	Whether after formation of prima-facie opinion that combination is likely to cause an appreciable adverse effect on competition by the CCI under Section 29, sub-section (1), there was no occasion to form again a prima facie opinion under Section 29(2) after receipt of response to the Show Cause Notice and the CCI was required to complete the further process under Section 29(2) including direction to the parties to the combination to publish details of combination?	The CCI noted that there was no occasion to form an opinion under Section 29(2) of the Competition Act under the circumstances of the case.
5.	Whether the process as contemplated under Section 29, subsection (2) having not been	The process as contemplated under Section 29 of the Act was complied with since the

	completed by the CCI before passing the order dated 15.03.2023, the order passed by the CCI is against the procedure prescribed under Section 29 and deserved to be set aside?	opinion was given under Section 29(1) of the Act, and had not reached the stage of Section 29(2) of the Act.
6.	Whether in spite of Respondent No.2 along with response to Show Cause Notice having offered modification to address the *prima facie* concern expressed in the said Show Cause Notice as per Regulation 25 (1) (a) of 2011 Regulations, the CCI was obliged to direct the parties to publish details of the combination?	The CCI, after issuing show cause notice AGI suggested modification, thereafter CCI approved the combination. Sections 30 and 29 have to be read harmoniously, and it cannot mean that even if, prima facie opinion at the second stage is not formed by the CCI, the CCI should publish details of combination.
7.	Whether the modifications suggested by Respondent No.2 in its reply to Show Cause Notice, adequately addressed the AAEC as expressed in the Show Cause Notice under Section 29, sub-section (1)?	Decisions by expert body should not be interfered with, when it has been given after following the procedure under the Act and the Regulations.
8.	Whether the Commission in the impugned order has examined the relevant aspects as contained in Section 20, sub-section (4) of the Act or the impugned order suffers from non-application of mind?	There is application of mind, and the requirements under Section 20(4) of the Competition Act have been followed.
9.	Whether order of the Commission dated 15.3.2023 can be said to have been passed in violation of principles of natural just since the objections filed by Appellant the U.P. Glass Manufacturers Syndicate even after the order dated	Natural justice principles are followed when there are civil consequences. There is no entitlement given to other persons other than those given notice to participate in the proceedings. The filing of objections happens under

	22.02.2024 were not duly considered?	Section 29(2), and since the stage had not arisen, UPGMS cannot claim violation of natural justice.

17. CCI filed four appeals against the findings recorded by the NCLAT on the legal obligation to issue notice to both parties to the combination and not just the acquirer under section 29(1) of the Competition Act. Hence, the batch of civil appeals against the order Dt. 28.07.2023.

Sl. No.	**Civil Appeal No.**	**Respondent**
1.	Civil Appeal 6771/2023	UPGMS
2.	Civil Appeal 7428/2023	INSCO
3.	Civil Appeal 7038/2023	M/s Geeta and Company
4.	Civil Appeal 7037/2023	HNG Workers Union

III. ARGUMENTS OF COUNSEL

18. We have heard learned Senior Counsel Shri Rajshekhar Rao, Dr. Abhishek Manu Singhvi, Shri Dushyant Dave and Shri Balbir Singh for the appellants.

19. The arguments are summed up as follows:

19.1. HNGIL is a brownfield business enterprise with a good market presence in the manufacture and supply of glass containers. AGI has a substantial market presence and has a market share of more than 70% of the identified products. AGI, through the proposed resolution process, if

approved by the Adjudicating Authority, would take over HNGIL as a going concern.

19.2. The business of AGI, with the coming into force the implementation of the resolution plan, would have substantial AAEC on the relevant product market in India. The Competition Act prohibits combination, leading to the monopolistic presence of a business entity and dominance over the market, the product, the price, etc., in the relevant product market.

19.3. The RP, therefore, incorporated clauses in the RFRP on the necessity of approval of combination from CCI under the Competition Act before the resolution plan is considered by the CoC.

19.4. The admitted position of the shortlisted resolution applicants is that the proposed takeover of the business entity (HNGIL) would attract a combination, and thus, the approval of the combination is required under the Competition Act. In this factual matrix, the CCI, as a regulatory statutory body, conforms to all the prescriptions of law under sections 20, 29, and 31 of the Competition Act and regulation 19 of Combination Regulations 2011. The CCI examined the details of the acquirer and the target in a perfunctory manner.

19.5. The assessment of AAEC by CCI ignored the manufacturing capacity of AGI or HNGIL in the relevant product market. The data relied on by CCI is not accurate, and the AAEC is arrived on the TPD of relevant products but not on the installed capacity of the respective units or consented

capacity of AGI or HNGIL under various enactments. Looking from such a perspective, the hiving off the Rishikesh Plant through a voluntary modification of the combination plan is illegal and assuming without admitting the Rishikesh Plant could be hived off as part of the modification, the resultant diminishing effect on AAEC within the relevant product market would be negligible.

19.6. In other words, the *prima facie* opinion formed by CCI under section 29(1) remains intact warranting investigation. CCI, by accepting the modification and issuing conditional approval, failed to discharge the regulatory obligation under the Competition Act, particularly section 20.

19.7. Section 29 of the Competition Act prescribes the procedures not only for issuing show cause notice for investigation but also mandates issuing directions for investigation into the proposed combination. Approval of the combination vide order Dt. 15.03.2023, without investigating the proposal under section 29(2) of the Competition Act is illegal and contrary to the mandate of section 29.

19.8. The non-publishing of the details of the proposed combination under section 29(2) denied the opportunity to the affected public to file written objections as required under section 29(3) of the Competition Act. Therefore, the conditional approval of combination under section 31 of the Competition Act is vitiated.

19.9. Shri Balbir Singh, appearing for CCI, argued against the findings recorded on the need to issue notice to parties, i.e., the acquirer and the

target. He also argued to sustain the orders of CCI and NCLAT in so far as the approval of the combination is concerned.

20. Shri Mukul Rohatgi, the learned Senior Counsel appearing for AGI, principally made his submissions to sustain the orders of CCI and NCLAT, particularly by relying on the relevant portions of the respective orders. He argued on the *locus standi* of appellants to challenge the order Dt. 15.03.2023 of CCI. The arguments are summed up as follows:

20.1. The CCI performs regulatory and enforcement obligations fastened by the Competition Act. Combination as per the Act takes in its fold instances of acquisitions, mergers and amalgamations

20.2. The three different assimilated business ventures that come within the meaning of combination, and the *inter se* difference would be the extent of integration in substance. The expression 'parties to combination' used in section 29 is used in its general sense. Regulation 9 of the Combination Regulation 2011 stipulates the obligation to file notice.

20.3. CCI, on receipt of notice in Form I, called upon AGI to file a notice in Form II as the requirements attached to green channel clearance envisaged through Form I were not available to AGI. On 03.11.2022, AGI filed a notice in Form II before the CCI.

20.4. The CCI is an expert body, and the case study of a proposed combination or investigation into any breach of the provisions is examined or investigated depending upon the intricacies recorded by the CCI. In the case on hand, the examination of data by CCI conforms to the

requirements of section 20 of the Competition Act. Therefore, there was no occasion to investigate the proposed combination.

20.5. The CCI issued a show cause notice Dt. 10.02.2023 to AGI to show cause why an investigation shall not be ordered. AGI filed a response Dt. 10.03.2023 and also a modification plan Dt. 14.03.2023 for consideration by CCI. CCI, after being satisfied with the reply and the modification suggested by AGI. Consequently, the combination was approved by CCI under section 31 of the Competition Act. The argument of alleged violation of section 29(2) of the Act is misconceived.

20.6. Section 29(1) of the Competition Act is compartmentalized into two stages – to begin with, CCI forms prima facie opinion, issues show cause notice and grants thirty days' time to respond to show cause why an investigation should not be conducted. Section 29(1A) provides for receipt of the response of the parties to the combination and the CCI may call for a report from the Director General, and such report shall be submitted by the Director General within such time as the CCI may direct. The steps envisaged in section 29(1A) are triggered only if the response is not satisfactory. Section 29(1A) uses the word 'may call for a report from the DG, and the DG shall submit the report within the time granted. Therefore, if the response of the parties is satisfactory, then the other stages do not arise. Explained further, if the CCI is satisfied with the response or modification of the combination already suggested, then the CCI is not under an obligation to order notice to the Director General

or order parties to advertise the details of the proposed combination. The information and its veracity, as part of the regulatory mechanisms, is one of trust, and the information is relied upon to conform to the timelines stipulated by the Competition Act. The examination of a combination proposal and approval is not tantamount to deciding a *lis*. CCI undertakes an inquisitorial regulatory process.

20.7. The findings recorded by NCLAT are sustainable, and the concurrent findings of the competent authority are tenable and no valid or legal ground is made out to entertain the appeal.

20.8. CCI is an expert body and has the advice and assistance of experts from different domains of trade, commerce and industry. The combination approval has been granted upon the inquisitorial enquiry, and the insistence upon investigation under section 29(2) of the Competition Act is wholly misconceived.

21. Even though contentions have been stated in a broad spectrum, the scope for consideration of the appeals can be limited to the mandate of section 29 of the Competition Act. Whether the show cause notice is to be issued to the acquirer and also the target company in a case falling under IBC read with Competition Act; and if answered in the affirmative, whether the rival contenders can raise a ground of non-service of show cause notice to the target company; and lastly, whether the approval of combination by CCI based on expert advice warrants interference?

IV. DISCUSSION

22. Before proceeding with the discussion, it is important to note that the Judgement does not take into account or consider the Amendments that have been made to the Competition Act which were not notified during the applicable period.

23. Section 29 of the Competition Act[2] is taken up for consideration. Section 29(1) prescribes the investigation of the proposed combination by taking up the steps in the following sequence.

23.1. The commission is of the prima facie opinion that the combination is likely to cause or has caused AAEC within the relevant market in India.

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[2] 29*(1)Where the Commission is of the [prima facie] opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond [within fifteen days] of the receipt of the notice, as to why investigation in respect of such combination should not be conducted. [(1-A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.] [(1B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1).]*
(2)*The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, [within seven days] from the date of receipt of the response of the parties to the combination or the receipt of the report from Director General called under sub-section (1-A), whichever is later, direct the parties to the said combination to publish details of the combination [within seven days] of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.*
(3)*The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission [within ten days] from the date on which the details of the combination were published under sub-section (2).*
(4)*The Commission may, [within seven days] from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.*
(5)*The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) [within ten days] from the expiry of the period specified in sub-section (4). (6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.*

23.2. The commission shall issue a notice to show cause to the parties to the combination, calling upon them to respond within thirty days of receipt of the notice.

23.3. Show cause notice is issued expecting a reply on why an investigation in respect of such a combination should not be conducted.

23.4. A show cause notice in legal parlance means the opportunity given to the addressee to say what his case is, on the prima facie opinion formed for further steps under section 29 are warranted or not. As part of the inquisitorial exercise, the CCI verifies and applies the threshold of precautionary principle to understand whether AAEC in the proposed combination would arise or not. If section 29 is worded such that in all the cases where prima facie opinion is formed, the corollary of forming such opinion leads to calling for the DG's report, directing parties to publish details, then the expression as contained in section 29 would have been different. Section 29(1) of the Competition Act, as worded by the parliament, provides for formation of prima facie opinion, issuance of show cause notice and receiving a reply from the party. The intermediary step of show cause notice and reply provides an opportunity to satisfactorily explain the doubts entertained by CCI while forming the prima facie opinion on AAEC. In other words, the argument that the issuance of show cause notice is preceded by prima facie opinion and other steps of section 29 are followed such course would go contrary to the plain language of section 29(1) of the Competition Act.

24. Reverting to the circumstances of the case, AGI, in its response to the show cause notice Dt. 10.02.2023, replied and suggested modification to the combination vide communication Dt. 10.03.2023 and 14.03.2023. The case of both AGI and CCI is that CCI's regulatory jurisdiction for deciding on the approval of a combination was satisfied with the reply/modification suggested, resulting in the combination approval Dt. 15.03.2023. The argument of the appellants is that once a show cause notice is issued under section 29(1), CCI should have called for a report from the Director General. This argument is untenable and rejected accordingly. Therefore, passing an order of approval to the proposed combination without further steps of investigation on the proposed combination of section 29 of the Competition Act is legal.

25. The admitted case of all parties is that the CCI accepted a reply and modified proposal on 10.03.2023, determining no further investigation was necessary. The core legal dispute centers on section 29(1) of the Competition Act and its procedure, specifically the phrase "is likely to cause or has caused appreciable adverse effect on competition within the relevant market in India". The CCI initially issued a show cause notice, a preliminary investigative step requiring parties to justify why an in-depth examination of the proposed combination should not be conducted. The jurisdictional nuance lies in the Commission's requirement to form a prima facie opinion before compelling a response, which involves carefully assessing whether the proposed combination might substantially impact competitive dynamics.

26. The procedural violation pointed out is that on the receipt of the response from AGI, the report of the Director General is not called for and no investigation is ordered by CCI. As part of statutory regulation, if it were to be the object and intention of the Parliament to call for a report from the Director General in every case where the *prima facie* opinion is formed, then the further steps, namely, issuing show cause notice and receiving response would not have been contemplated.

27. The show cause notice under section 29(1) is intended to get a response or clarification from the acquirer on the combination which is likely to cause or has caused AAEC within the relevant market in India. The *prima facie* opinion is required in law to set in motion the show cause notice. The CCI has jurisdiction upon being satisfied with the response as per the scheme of the section to not proceed further. The argument of the appellants would result in the show cause notice being treated as a decision to investigate the Form II application filed for approval of a combination. Under sub-section (2) of section 29, the Commission is of the *prima facie* opinion that the combination has or is likely to have AAEC. The distinction on the prima facie opinion being formed under sections 29(1) and 29(2) is emphasised thus:

Section 29(1) of the Competition Act	**Section 29(2) of the Competition Act**
Where the Commission is of the [prima facie] opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice	*The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, [within seven days] from the date of receipt of the response of the parties*

to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted. [(1-A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.] [(1B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1).]	*to the combination or the receipt of the report from Director General called under sub-section (1-A), whichever is later, direct the parties to the said combination to publish details of the combination [within seven days] of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.*

28. It may be noted that to form a *prima facie* opinion under sub-section (2) of section 29 of the Competition Act, the CCI in sequence has:

28.1. The details furnished in Form II.

28.2. *Prima facie* opinion formed by the CCI resulting in the issuance of show cause notice.

28.3. Reply of parties.

28.4. Further, if the CCI is not satisfied with the reply, the CCI may call for a report from the Director General.

29. The *prima facie* opinion formed under section 29(2) is that the CCI leaves little discretion than to order parties to the said combination to publish details of the combination and undertake further investigation.

30. On the contrary, the CCI, with the response to a show cause notice given by the parties under section 29(1) of the Competition Act, does not deem it necessary to call for a report of the Director General, and the same cannot be held as violative of procedure for investigation under section 29 of the Competition Act.

31. The word "may" used in section 29(1A) gives discretion to CCI to avoid investigation, calling for a report from the Director General, order publishing of details, etc. The literal construction of section 29(1) of the Competition Act does not mean that calling for a report is mandatory, even when the CCI is satisfied with a reply/modification suggested by the parties. The CCI, at the stage of section 29(1), having issued a show cause notice, is entitled to objectively consider the reply given by the parties and, if not satisfied, then take the enquiry into the stage of investigation under section 29(1) to (3) of the Competition Act. The findings of NCLAT are taken note of and do not warrant interference.

32. On whether notice to parties to the combination is required or if sufficient notice is given to the acquirer/AGI, NCLAT referred to Regulation 2(f) of Combination Regulations, 2011. CCI, assailing the said finding, contends that the statutory obligation to issue notice to CCI arises under section 6(2) on the acquirer in the case of acquisition and all parties to the combination. Section 6(2) read with regulation 9(1) and (2) of the Combination Regulations 2011, stipulates the obligation to file notice on the parties to the combination. The statutory Forms I and II of Schedule II throw light on the obligation to file notice

under section 6(2). According to CCI, notice to the acquirer in a combination case arising through CIRP is sufficient. Consequently, When the CCI forms its *prima facie* opinion under section 29(1) read with regulation 19(1) of Combination Regulations 2011, the CCI is required to issue notice only to the acquirer. Moreover, the CCI contends that issuing notice to the corporate debtor in the resolution process is not provided for under the Act and the Regulations. CCI refers to and relies on sections 43(a), 44 and 45 of the Competition Act to provide apposite context for its decision to issue notice only to the acquirer and not to the target company.

33. After perusing the findings recorded by the NCLAT, we are of the view that in cases such as the present, the CCI must issue notice to the acquirer and also the target, i.e., the corporate debtor subjected to the resolution process represented by an RP. Irrespective of different statutory schemes in the sections relied on by CCI, it can be said that the words "it shall issue notice to the parties to show cause" cannot be restricted only to the proposed acquirer. If the plural expression on a case-to-case basis is understood as singular, then it would restrict the meaning of the language. Hence, the findings recorded by the NCLAT are affirmed. It is a matter of record that the RP, taking note of the approval of the combination proposed by AGI, filed an application before the Adjudicating Authority on 08.04.2024 for taking on file the approval of the combination and in the pending issues under section 31 of IBC. Whether the non-issuance of notice to the RP is a ground available to the appellants to challenge the approval of the combination is yet another question which is not

considered and decided by the NCLAT. In the circumstances of the case, the findings recorded on this behalf, particularly, at the instance of the appellants herein.

34. In *Union of India v. Cipla Ltd*,[3] this Court, at paragraph 104 of the judgement, held on the judicial treatment of opinions rendered by expert bodies:

> *"The burden for demonstrating the application of completely erroneous principles is heavy as it is and it is heavier still if the antecedent material is prepared by experts. The onus of discharging the heavy burden must necessarily fall on the challenger, and Cipla has not been able to sustain the challenge. There can be and are differences of opinion but we cannot and will not reconsider the opinion of experts, particularly in matters of economic affairs or other economy-related issues unless there is extremely strong reason to do so."*

35. Further, in *Brahm Dutt v. Union of India*,[4] this Court held that:

> *"[W]hile considering the constitutional validity of Section 8 of the Act observed that the*

[3] (2017) 5 SCC 262.
[4] (2005) 2 SCC 431.

Commission is an expert body which had been created in consonance with international practice. The Court observed that it might be appropriate if two bodies are created for performing two kinds of functions, one advisory and regulatory, and the other adjudicatory. Though the Tribunal has been constituted by the Competition (Amendment) Act, 2007, the Commission continues to perform both the functions stated by this Court in that case. Cumulative effect of the above reasoning is that the Commission would be a necessary and/or a proper party in the proceedings before the Tribunal."

36. The appellants argue that CCI's consideration of AGI's data is inaccurate or lopsided. CCI consists of experts and specialists in different branches of trade, commerce and technology. The consideration by the experts, as rightly noted by NCLAT, must be given due weightage. In an appeal under section 53T of the Competition Act, the data details need not be reconsidered, and findings need not be recorded on whether the proposed combination has AAEC in the relevant market in India. The counsel appearing for the objectors tried to point out the TPD taken note of by CCI and the capacity of HNGIL and AGI. AAEC, as determined by the CCI, considers the product outflow from the acquirer and

the target. These factors determined the market share and AAEC in the relevant market in India. Established, installed or consented capacities are permissions held by a business entity. From the permission granted for higher capacity, AAEC is not appreciated until the capacity is used to the maximum by the enterprise. There is no ground to re-examine the issues in fact. The consideration and conclusion recorded by CCI, as confirmed by NCLAT, are affirmed; consequently, the appeals are dismissed.

.....J.
[S.V.N BHATTI]

NEW DELHI;
JANUARY 29, 2025.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6071 OF 2023

INDEPENDENT SUGAR CORPORATION LTD. APPELLANT(S)

VERSUS

GIRISH SRIRAM JUNEJA & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4954 OF 2023

CIVIL APPEAL NO. 4924 OF 2023

CIVIL APPEAL NO. 4937 OF 2023

CIVIL APPEAL NO. 5018 OF 2023

CIVIL APPEAL NO. 5401 OF 2023

CIVIL APPEAL NO. 6847 OF 2023

CIVIL APPEAL NO. 6055 OF 2023

CIVIL APPEAL NO. 6123 OF 2023

CIVIL APPEAL NO. 6177 OF 2023

CIVIL APPEAL NO. 7037 OF 2023

CIVIL APPEAL NO. 7038 OF 2023

CIVIL APPEAL NO. 6771 OF 2023

CIVIL APPEAL NO. 7428 OF 2023

O R D E R

Hrishikesh Roy, J.

In these matters, the three of us could not reach a common conclusion. Brother Justice Sudhanshu Dhulia has concurred with

the opinion that has been penned by me, while Brother Justice S.V.N. Bhatti has decided to write a separate opinion canvassing an alternate view, reaching a different conclusion. However, such differences must be understood as useful steps towards the evolution of jurisprudence in the field of Insolvency and Bankruptcy Code, 2016 and the Competition Act, 2002. In that context, I am reminded of the quote from Shakespeare's "The Taming of the Shrew" the theme of which we do not necessarily endorse. But there the playwright perhaps accidentally, touched the world of our adversarial litigation. He wrote - "*And do as adversaries do in law, strive mightily. But eat and drink as friends*".

.....J
[HRISHIKESH ROY]

.....J
[SUDHANSHU DHULIA]

.....J
[S.V.N. BHATTI]

NEW DELHI;
JANUARY 29, 2025