

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 04 & 05 of 2024 & I.A. No. 26 of 2024

(Arising out of the Order dated 18.12.2023 passed by the National Company Law Tribunal, Division Bench, Court No.-II, Kolkata in IV N.P (IBC) No. 37 /KB/2023 and IVN.P (IBC) No. 34/KB/2023 in C.P. (IB) No. 204/KB/2021)

IN THE MATTER OF:

Hari Vitthal Mission,
3, Middle Road,
Hastings, Kolkata 700022

...Appellant

Versus

1. Ravi Sethia,

[IBBI/IPA-001/IP-P01305/2018- 2019/12052]
Resolution Professional of Suasth Healthcare
Foundation, having its office at 8th Floor, Tower-C,
Building No. 10, DLF Cyber City,
Phase-II, Gurgaon-102002

...Respondent No. 1

**2. J.C. Flowers Asset Reconstruction Private
Limited**

[CIN:U74999MH2015PTC264081],
Committee of Creditors of Suasth Health Care
Foundation, having its registered address at 12th
Floor, Crompton Greaves House, Dr. Annie
Besant Road, Worli, Mumbai City, Mumbai,
Maharashtra, India, 400030.

...Respondent No. 2

Email: teamjcfarc@jcfarc.com

3. Axis Bank Limited

[CIN:L65110GJ1993PLC020769],
Committee of Creditors of Suasth Health Care
Foundation, having its registered address AT
Trishul, 3rd Floor, Opposite Samartheshwar
Temple, Law Garden, Ellisbridge, Ahmedabad
Gujarat-380006, India.

...Respondent No. 3

Email: shareholders@axisbank.com

4. Consortium of Nishkala Healthcare Private Limited & Ujin Pharma Chem,
Having its registered address at Flat No. 101,
Kesariya Dham, 187, A Vallabh Baugh Lane Nr.
UTI Bank, Ghatkoper (E), Mumbai- 400077

And

Ujin Pharma Chem is a partnership firm having
registered/ principal office at A-307,
Jolly Gymkhana, Kirol Road, Ghatkopar-West,
Mumbai, Maharashtra, India-400086.

...Respondent No. 4

Present

For Appellants: Mr. Rishav Banerjee and Mr. Bhavya Sethi,
Advocates.

For Respondents: Mr. Raunak Dhillon, Ms. Isha Malik, Ms. Niharika
Shukla & Ms. Udisha Mishra, for R-2.

Mr. Sunil Fernandes, Sr. Advocate along with Ms.
Diksha Dadu, Mr. Rishabh Parikh, Ms. Niyati Kohli,
for R-4.

J U D G E M E N T

(14.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeals bearing Company Appeal (AT) (Ins) No. 04 & 05 of 2024 have been filed by the Appellant i.e. Hari Vitthal Mission who is Financial Creditor of Suasth Healthcare Foundation (hereafter referred to as "**Corporate Debtor**") under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**Code**'), challenging the Impugned Order dated 18.12.2023 passed by the National Company Law Tribunal, Kolkata Bench ("**Adjudicating Authority**")

in IV N.P (IBC) No. 37 /KB/2023 and IV N.P (IBC) No. 34/KB/2023 IN C.P. (IB) No. 204/KB/2021 ("said Application") in C.P. (IB) No. 204/ KB/ 2021.

2. Ravi Sethia, who is Resolution Professional of Suasth Healthcare Foundation, is the Respondent No.1 herein.

J.C. Flowers Asset Reconstruction Private Limited, who is a member of the Committee of Creditors ('CoC') of Suasth Health Care Foundation, is the Respondent No.2 herein.

Axis Bank Limited, who is also another member of the CoC of Suasth Health Care Foundation, is the Respondent No.3 herein.

Consortium of Nishkala Healthcare Private Limited & Ujin Pharma Chem, who is the Successful Resolution Applicant is the Respondent No.4 herein.

3. The Appellant submitted that the Corporate Insolvency Resolution Process ("**CIRP**") was initiated on 31.08.2021 against the Corporate Debtor, pursuant to an application filed by the Corporate Debtor himself under Section 10 of the Code. The Appellant submitted that he was duly admitted as a Financial Creditor of the Corporate Debtor, having filed a claim of Rs. 62,16,33,563/- with the Interim Resolution Professional (IRP) and his claim was partially accepted as evidenced by the official List of Financial Creditors and the email communication dated 21.03.2022 issued by Respondent No. 1, which informed the Appellant of the admission of its claim.

4. The Appellant submitted that he initially participated in the meetings of the CoC of the Corporate Debtor, however, the Appellant was later declared as a

related party of the Corporate Debtor by Respondent No. 1, resulting in the Appellant's exclusion from further decision making in CoC meetings. The Appellant filed an application I.A.No.390 of 2022 before the Adjudicating Authority, challenging the alleged illegal declaration of the Appellant as a related party however the said I.A. was dismissed by the Adjudicating Authority by an order dated 23.09.2022. The Appellant preferred an appeal before this Appellate Tribunal vide Company Appeal (AT) (Insolvency) No. 1206 of 2022, which was also dismissed by this Appellate Tribunal vide its order dated 05.11.2024.

5. The Appellant further submitted that, had he been permitted to be in decision making process in the CoC, he would have been entitled to exercise his voting rights in proportion to his admitted claim, as mandated under the Code especially since NIL payment was proposed to the Appellant under the resolution plan.

6. The Appellant submitted that a Resolution Plan in respect of the Corporate Debtor was jointly submitted by Nishkala Healthcare Private Limited and Ujin Pharma Chem which was considered and approved by the CoC in its 15th meeting with the requisite voting which was placed for the approval of the Adjudicating Authority by filing an application numbered IA No. 1381 of 2022 which was approved by the Adjudicating Authority vide its order dated 28.08.2023.

7. It is the case of the Appellant that the Appellant, being an unsecured financial creditor, has been allocated NIL payment, which is contrary to Section 30(2) of the Code that require payment to such creditors to be at least equivalent

to the amount they would receive in liquidation. Aggrieved by the approval of unlawful resolution plan, which provides NIL payment to the Appellant, the Appellant filed a supplementary affidavit to IA No. 1563 of 2022, challenging the validity of the plan and seeking appropriate reliefs and the Adjudicating Authority allowed the Application filed by the Appellant, being IA (IB) No. 1563/KB/2022, by its judgment dated 28.08.2023 holding that the Respondent No. 1 had admittedly treated the Appellant as an Unsecured Financial Creditor, and in accordance with the distribution mechanism under Section 53 of the Code, the financial debt owed to unsecured creditors ranks at the fourth position in the order of priority. While recognizing that the commercial wisdom of the Committee of Creditors is paramount, the Adjudicating Authority observed in paragraph 33 of its judgment that a balance must be struck among all stakeholders. Consequently, the Adjudicating Authority directed that the Resolution Plan be remitted back to the CoC for reconsideration of the distribution, specifically to ensure that the interests of all stakeholders are balanced as mandated under Section 30(2) - Explanation I, and to explore provision for payment to the Appellant from the available proceeds.

8. The Appellant submitted that, in light of the order dated 28.08.2023, the Resolution Plan previously approved by the CoC was remanded to the Coc for reconsideration. The Appellant stated that an application bearing I.A. No. 1551 of 2023 had been filed by the Resolution Professional seeking to place I.A. No. 1381 of 2022 for approval of the resolution plan on the ground that the directions

by the Adjudicating Authority contained in the order dated 28.08.2023 had purportedly been complied with. The Appellant submitted that a bare perusal of the Minutes of the Meeting of the CoC held on 07.09.2023 clearly demonstrates that both the CoC and the Resolution Professional have acted in complete violation and utter disregard of the judgment dated 28.08.2023 passed by the Adjudicating Authority, as despite specific directions in the said order the CoC and the Resolution Professional have once again resolved that no payment will be made to the Appellant under the Resolution Plan.

9. The Appellant submitted that the Resolution Plan which was finally approved by the Adjudicating Authority vide its order dated 18.12.2023 is contrary to Section 53 of the Code, in view of the judgement of the Hon'ble Supreme Court of India in *M/s. Vistra ITCL (India) Ltd. and Ors. vs Mr. Dinkar Venkatasubramaniam & Anr.* (Civil Appeal No. 3606 of 2020), when it was held that the interests of Financial Creditors who did not vote in favor of the Resolution Plan must be protected as per Section 53 of the Code, recognizes this right. It is the case of the Appellant that in the present case, Operational Creditors are being paid under the Resolution Plan while the Appellant, an Unsecured Financial Creditor, is being paid 'NIL,' which is a clear violation of Section 53 of the Code, as the Appellant ranks above Operational Creditors in the waterfall mechanism. Therefore, the Resolution Plan is in contravention of Section 53 and Section 30(2) of the Code, and deserves to be rejected.

10. The Appellant submitted that the 330-day statutory period for the CIRP proceedings in respect of the Corporate Debtor has long expired. The Appellant submits that the Resolution Professional and the CoC, acting in collusion with the Resolution Applicant, have deliberately not submitted the balanced Resolution Plan taking care of interest of all stakeholder including the Appellant and therefore warrants rejection of the Resolution Plan and dismissal of I.A. No. 1381 of 2022, with directions for publication of fresh Form G inviting new resolution plans. The Appellant further submits that the Resolution Professional appears to be unduly favoring the successful Resolution Applicant, indicating a fraudulent nexus between them.

11. The Appellant submitted that, as held by the Hon'ble Supreme Court in *Rajagopalan Vs. Dr. Periasamy Palani Gounder & Anr.* [Civil Appeal Nos. 1682-1683 of 2022], the purported exercise of commercial wisdom by the CoC cannot override or violate the applicable law.

12. The Appellant submitted that, during the course of the hearing, it was revealed that the liquidation amount is insufficient to provide any payment to the Appellant, leading to the 'NIL' allocation in the Resolution Plan. However, the Appellant contends that the actions of Respondent No. 4 in making payments to the operational creditors, while denying any payment to the Appellant as an unsecured financial creditor, is a clear violation of the provisions of the Code, as it unlawfully prioritizes operational creditors over unsecured financial creditors.

13. The Appellant submitted that the Adjudicating Authority, by its order dated 18.12.2023, approved the Resolution Plan submitted by Respondent No. 4, subject to the discretion that a certain amount be allocated to the Appellant, Hari Vitthal Mission (**HVM**), as an unsecured financial creditor. The Adjudicating Authority directed the CoC or the Interim Monitoring Committee (IMC) to adopt a pragmatic and holistic approach in determining the amount payable to the Appellant. The Appellant submits that the Adjudicating Authority erred in approving the Resolution Plan without specifying or quantifying the exact amount to be paid to the Appellant. In light of the above, the Appellant has been compelled to file the present appeal against the impugned order dated 18.12.2023 passed in IVN.P (IBC) No. 37/KB/2023 and IVN.P (IBC) No. 34/KB/2023 in CP (IB) No. 204 of 2021, whereby the Resolution Plan in respect of the Corporate Debtor was approved.

14. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow his appeals.

15. Per contra, the Respondent No.1 denied all averments made by the Appellant as misleading and baseless.

16. The Respondent No. 1 submitted that the claim submitted by the Appellant through its claim form dated 15.09.2021 was duly accepted by the IRP, resulting in the Appellant, as an unsecured financial creditor, being included in the CoC of the Corporate Debtor, however the Respondent No. 1 was obligated

to undertake all requisite activities including the verification of creditors' claims and the determination of the related party status of all creditors.

17. The Respondent No. 1 submitted that following thorough due diligence concerning the related party status of financial creditors, the Resolution Professional issued a letter dated 11.01.2022 classifying the Appellant as a related party to the Corporate Debtor, and this classification was upheld by the Adjudicating Authority vide its order dated 23.09.2022, and by this Appellate Tribunal on 05.11.2024.

18. The Respondent No. 1 contended that the resolution plan dated 15.05.2022, as amended and restated on 03.09.2022 ("Resolution Plan"), presented by the consortium of Nishkala Healthcare Private Limited and Ujjin Pharma Chem/ Respondent No. 4, was approved unanimously by the CoC with 100% voting share during its 15th meeting held on 21.09.2022, following a comprehensive evaluation of Respondent No. 4's financial proposal and thorough deliberations on the feasibility and viability of the Resolution Plan.

19. The Respondent No. 1 submitted that, pursuant to the approval of the Resolution Plan by the CoC, the Resolution Professional filed an IA No. 1381 of 2022, under Section 30(6) r/w Section 31 of the Code, ("Approval Application"), which the Adjudicating Authority, vide its order dated 28.08.2023, remitted back to the CoC for review of the distribution mechanism to ensure a balanced consideration of all stakeholders' interests as mandated by the Code, while granting liberty to the CoC to evaluate any additional proposals and directing that

the Approval Application be resubmitted for consideration alongside any revised distribution, if applicable.

20. The Respondent No. 1 submitted that, in compliance with the directions of the Adjudicating Authority vide its order dated 28.08.2023, the Resolution Professional convened the 18th CoC meeting on 07.09.2023, during which the CoC, after thorough discussions and careful consideration of relevant legal precedents and applicable statutory provisions, exercised its commercial wisdom to determine that no amendments, revisions, or modifications were necessary to the distribution mechanism of the Resolution Plan as previously approved, and further noted that, accordingly, the Resolution Professional filed an IA No. 1551 of 2023, to elucidate the CoC's stance and resubmit the Approval Application for consideration in line with the Adjudicating Authority's directions. The Respondent No. 1 submitted that the Adjudicating Authority, after evaluating the Resolution Plan and considering all objections raised, including those by the Appellant herein, vide its order dated 18.12.2023 ("Approval Order"), approved the Resolution Plan submitted by Respondent No. 4, having satisfied itself that the plan complied with the provisions of the Code and the applicable regulations.

21. The Respondent No. 1 submitted that the Appellant's contention that a related unsecured financial creditor cannot be allocated NIL under the Resolution Plan is misconceived, as the Appellant, as the classification was upheld by the Adjudicating Authority vide its order dated 23.09.2022, and Appellate Tribunal on 05.11.2024 which remains neither overturned nor stayed, and therefore it is

within the prerogative of Respondent No. 4 to propose payments to all stakeholders, including financial creditors, subject to the CoC's approval or rejection in exercise of its commercial wisdom.

22. The Respondent No. 1 contended that the CoC, in the 15th CoC meeting, unanimously approved the Resolution Plan submitted by Respondent No. 4 with a 100% majority, and therefore, the commercial wisdom of the CoC is non-justiciable. The Respondent No. 1 submitted that the Adjudicating Authority's scope of judicial review under Section 30(2) of the Code, is confined to ensuring that the Resolution Plan does not violate any statutory provisions and complies with requirements specified by the Board.

23. The Respondent No. 1 further submitted that it is a well-established principle of law, as affirmed by the Hon'ble Supreme Court in *K. Sashidhar v. Indian Overseas Bank* [CA No. 10673 of 2018], that the commercial wisdom of the CoC is non-justiciable, and the scope of judicial review by the Adjudicating Authority in approving or rejecting a resolution plan is confined to verifying compliance with Section 30(2) of the Code, without authority to assess the commercial decisions of the CoC or the justness of a plan's rejection by dissenting creditors, a position consistently upheld by courts in India, and further noted that, as the Resolution Plan and its distribution methodology are fully compliant with applicable legal provisions, the Appellant's challenge is wholly without merit and warrants dismissal.

24. The Respondent No. 1 submitted that, as held by the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.* [CA No. 8766-67 of 2019] that the CoC possesses full discretion to classify creditors into distinct sub-categories, such as financial or operational, secured or unsecured, and to allocate payments to secured creditors based on the value of their security, as affirmed in the judgment which grants the CoC complete freedom in such classifications without impeding the CIRP. The Respondent No. 1 emphatically pleaded that, in compliance with this legal framework, the Respondent no. 4 (**SRA**) has lawfully categorized financial creditors into three sub-classes: secured financial creditors with a first-ranking pari passu charge, secured financial creditors with a residual charge, and unsecured financial creditors.

25. The Respondent No. 1 submitted that the contention raised by the Appellant regarding the minimum amounts payable to the Appellant under Section 30(2) of the Code, is misconceived, as the obligation to provide minimum payment under Section 30(2) of the Code is limited exclusively to operational creditors and dissenting financial creditors, thereby excluding the Appellant from such entitlement. The Respondent No. 1 further submitted that the Appellant, being neither an operational creditor nor a dissenting financial creditor, does not fall within the ambit of Section 30(2) of the Code, which mandates minimum payments solely for operational creditors and dissenting financial creditors. The Respondent No.1 explained that the Appellant, as an unsecured financial creditor

was not entitled to any minimum payment under the law, thereby there is no obligation for the Respondent No. 4 to allocate a minimum amount to the Appellant under the Resolution Plan.

26. The Respondent No. 1 submitted that, given the liquidation value of the Corporate Debtor is insufficient to fully satisfy the claims of secured financial creditors, the Appellant, as an unsecured financial creditor, would receive no distribution under Section 53(1) of the Code, in a liquidation scenario, and the Appellant would not be entitled to any payments under the provisions of the Code or the CIRP Regulations.

27. The Respondent No. 1 submitted that the Appellant's contention alleging undue preference to operational creditors over unsecured financial creditors under the Resolution Plan, despite the latter's higher priority in the waterfall mechanism under Section 53(1) of the Code, is misconceived, as Section 53 applies solely in liquidation scenarios or for determining minimum payments to operational creditors and dissenting financial creditors under Section 30(2), and cannot be extended to payments under a resolution plan during the CIRP, a position affirmed by the Hon'ble Supreme Court of India in *Committee of Creditors of Essar Steel India Limited (Supra)* which clarifies that Section 53(1) serves only to establish a minimum payment threshold, while the commercial wisdom of the CoC governs the distribution to various classes and sub-classes of creditors, rendering the Appellant's allegation baseless and warranting its dismissal.

28. The Respondent No. 1 further submitted that the Hon'ble Supreme Court of India in *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.* [(2021) 7 SCC 401] ("*Rajagopalan Case*") has unequivocally held that, provided a resolution plan complies with the provisions of the Code, and the CIRP Regulations, the proposition of differential payments to various classes of creditors, including related parties, falls squarely within the commercial wisdom of the CoC, and no infirmity can be attributed to the resolution plan solely for not making provisions for related parties, thereby rendering any challenge on such grounds untenable.

29. The Respondent No. 1 submitted that the Adjudicating Authority, vide its order dated 18.12.2023 ("*Impugned Order*"), approved the Resolution Plan submitted by the Respondent No. 4 while directing the CoC to adopt a pragmatic and holistic approach in exercising its commercial wisdom to allocate a reasonable amount to the Appellant, and further noted that, without prejudice to the rights of the parties to seek recourse before appropriate authorities, the CoC, in compliance with the directions of the Adjudicating Authority under the Approval Order, has agreed to allocate Rs. 10 Lakhs to the Appellant from the total proceeds disbursed by Respondent No. 4 under the Resolution Plan.

30. The Respondent No. 1 submitted that the Resolution Plan was duly approved by the CoC and the Approval Application was filed before the Adjudicating Authority within the stipulated timeline for completion of the CIRP as prescribed under the Code, and further noted that the Appellant's allegation of

collusion and favouritism by Respondent No. 1 towards Respondent No. 4 is entirely baseless, as the Appellant has failed to provide any evidence to substantiate claims of fraud or misconduct.

31. Concluding his pleadings, the Respondent No.1 requested this Appellate Tribunal to dismiss the appeals.

32. The Respondent No. 2, representing the CoC of Corporate Debtor, comprises J.C. Flowers Asset Reconstruction Pvt. Ltd. ("Respondent No. 2") along with Axis Bank Ltd. ("Respondent No. 3") are collectively called the "CoC", hereinafter.

33. The CoC submitted that the present appeal by the Appellant has been rendered infructuous, as subsequent to the Impugned Order dated 18.12.2023, the CoC allocated Rs. 10 lakhs to the Appellant, thereby nullifying the Appellant's principal grievance that it was allocated NIL payment under the Resolution Plan, and further pointed out that the Appellant's contentions—namely, that the nil allocation (a) violates settled legal principles prohibiting nil payments to creditors, (b) is discriminatory due to the Appellant's classification as a related party, (c) contravenes Section 53 of the Code, by prioritizing operational creditors over unsecured financial creditors, and (d) disregards the Adjudicating Authority's order dated 28.08.2023 directing the CoC to provide for payment to the Appellant—are unsustainable in light of the CoC's subsequent allocation.

34. The CoC submitted that the Adjudicating Authority, having considered the Appellant's objections regarding the allocation of NIL payment under the

Resolution Plan, directed the CoC through the Order dated 18.12.2023 to adopt a pragmatic and holistic approach in allocating a reasonable amount to the Appellant in accordance with its commercial wisdom, a directive which the CoC duly complied with by resolving to allocate Rs. 10 lakhs to the Appellant during its meeting on 26.12.2023, without prejudice to the legal position that such payment is not mandated, and further stated that this compliance fully addresses the Appellant's concerns, rendering its grievance regarding NIL allocation unsustainable.

35. The CoC contended that the Resolution Plan's allocation of NIL payment to the Appellant does not contravene the Code, as there is no provision prohibiting NIL payments to any creditor, including unsecured financial creditors, and further stated that the distribution of amounts under the Resolution Plan falls within the non-justiciable commercial wisdom of the CoC, rendering such allocations permissible provided the plan complies with the Code's provisions, as is the case here, thereby affirming the validity of the CoC's decision.

36. The CoC submitted that, with respect to an unsecured financial creditor like the Appellant, the sole protection under the Code, is provided by Section 30(2)(b), which mandates that a resolution plan must ensure payment to a dissenting financial creditor of an amount not less than what would be payable under Section 53 in a liquidation scenario, and further noted that, as a logical consequence, where the amount payable to such a creditor under Section 53 would be nil, as in

the present case, the allocation of NIL payment to the Appellant in the Resolution Plan fully complies with Section 30(2)(b) and does not violate the Code.

37. The CoC submitted that a consistent line of judicial precedents, including the decision of this Appellate Tribunal in *S. Chandriah v. Sunil Kumar Agarwal, RP of Digjam Ltd.* [CA(AT)(Ins.) 22 of 2022], interpreting the Hon'ble Supreme Court's ruling in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* [(2020) 8 SCC 531], has affirmed that a resolution plan may allocate NIL payment to creditors, including 'other creditors,' without contravening the Code, provided such allocation aligns with the Code's provisions, and further noted that the CoCs commercial wisdom in making such determinations remains paramount and unimpeachable.

38. The CoC also submitted that this Appellate Tribunal, in *Yogeshwar Garg & Ors. v. Mandeep Gujral & Anr.* [CA(AT)(Ins.) No. 1481 of 2023], has unequivocally held that a resolution plan does not contravene the Code, merely by allocating NIL amounts to operational creditors, and further noted that the CoC, in exercise of its commercial wisdom, is entitled to allocate NIL payments, a decision which neither the Adjudicating Authority nor this Appellate Tribunal may interfere with, thereby affirming the propriety of such allocations under the Code.

39. The CoC submitted that this Appellate Tribunal, in its judgment dated 18.01.2023 in *Dharmindra Constructions Pvt. Ltd. & Anr. v. Rajendra Kumar Jain, Resolution Professional of Kudos Chemie Ltd. & Ors.* [CA(AT) 1477 of

2022], held that where the liquidation value of the Corporate Debtor is NIL, a resolution plan's allocation of NIL payment to an operational creditor does not contravene Section 30(2)(b) of Code, and further noted that such an allocation is permissible and compliant with the statutory framework of the Code.

40. The CoC submitted that the reference to Section 53 of the Code, is limited only to establish a minimum payment threshold for dissenting financial creditors and operational creditors under a resolution plan, without prescribing the specific amount or priority of such payments, as clarified by the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* [(2020) 8 SCC 531]. The CoC pointed out that the determination of the amount payable to any creditor, including the Appellant, lies exclusively within the commercial wisdom of the CoC, rendering the allocation under the Resolution Plan unassailable on this ground.

41. The CoC submitted that the Hon'ble Supreme Court in *India Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd.* [(2021) 19 SCC 672], while interpreting its earlier judgment in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* [(2020) 8 SCC 531], unequivocally held that the determination of the quantum of payments to be allocated to different classes of creditors under a resolution plan falls exclusively within the commercial wisdom of the CoC, and such decisions are not subject to judicial interference, thereby reinforcing the CoC's authority in the present case.

42. The CoC submitted that the CoC fully complied with the Adjudicating Authority order dated 28.08.2023 by deliberating and deciding on the pay-out to the Appellant during the 18th CoC meeting held on 07.09.2023, and further pointed out that the Appellant's allegation that the CoC did not act over the said order is entirely baseless and unjustified, as the CoC's actions were in strict adherence to the Adjudicating Authority's directive.

43. The CoC submitted that the Appellant has persistently sought to impede the successful resolution of the Corporate Debtor by filing frivolous applications before the Adjudicating Authority and this Appellate Tribunal, as a deliberate tactic to delay the proceedings, and the present appeal represents yet another attempt by the Appellant to delay the Corporate Debtor's resolution process.

44. Concluding the arguments, the CoC urged this Appellate Tribunal to dismiss the appeal with cost.

45. The Respondent No. 4 submitted that he is the Successful Resolution Applicant whose Resolution Plan was duly considered approved by the CoC during its 15th meeting held on 21.09.2022 unanimously, with 100% voting share and subsequently, the Resolution Plan received the formal approval of the Adjudicating Authority by order dated 18.12.2023, passed in IA No. 1381/KB/2022 in CP (IB) No. 204/KB/2021.

46. The Respondent No.4 submitted that, pursuant to the Impugned Order and the Approval Order, an Implementation and Monitoring Committee ("IMC") was duly constituted, with its first meeting convened on 28.12.2023. During this

meeting, the representatives of the Financial Creditors informed the IMC that, in accordance with the Approval Order, the erstwhile CoC had resolved to allocate Rs. 10 Lakhs to the Appellant. The relevant excerpts of the IMC read as under:

"Thereafter, the representative of Financial Creditor informed the IMC that a meeting was held of the erstwhile CoC on December 26, 2023 whereby it was decided that pursuant to the directions of the Hon'ble NCLT, an amount of INR 10 lakhs can be allocated to HVM as per directions of the Hon'ble NCLT. Such allocation shall be without prejudice to the rights and remedies available to any of the CoC member including but not limited to challenging the Hon'ble NCLT order in an appropriate forum. It was informed that the implementation of the Resolution Plan could continue. Representative of the RA had no objection to the same. The IMC members accordingly took note of the Approval Order and the decision of the erstwhile CoC accordingly."

47. The Respondent No. 4 submitted that this decision conclusively addresses the Appellant's claims, rendering the Appeal devoid of merits. The CoC's Commercial Wisdom in distributing funds, ratified by the Adjudicating Authority, binds all stakeholders under Section 31 of the Code, leaving no grounds for further adjudication.

48. The Respondent No. 4 submitted that the discretion to determine the manner of distribution of payments under the Code is vested exclusively in the

CoC, which is empowered to exercise its commercial wisdom in this regard. The Respondent No. 4 stated that the Adjudicating Authority has expressly recognized in the Impugned Order that the Adjudicating Authority lacks jurisdiction to decide the allocation of plan value among creditors, as such matters fall squarely within the domain of the CoC's commercial judgment. Accordingly, the distribution of plan value to different classes or sub-classes of creditors is to be determined by the CoC in accordance with the provisions of the Code, and not by the Adjudicating Authority.

49. The Respondent No.4 submitted that the issue of differential payments to various classes and sub-classes of creditors is no longer *res integra*. A consistent line of judicial precedents has affirmed that the CoC, exercising its commercial wisdom, has unfettered authority to determine the distribution of payments among different classes and sub-classes of creditors in accordance with the provisions of the Code. Neither the Adjudicating Authority nor the Appellate Tribunal possesses any residual equity jurisdiction to interfere with the merits of such business decisions taken by the requisite majority of the CoC.

50. The Respondent No. 4 submitted that through its resolution plan, proposed a comprehensive solution, including the manner of distribution to operational creditors and unsecured financial creditors. The CoC, exercising its commercial wisdom and after assessing the feasibility and viability of the plan, approved the resolution plan with 100% votes on two occasions, following which the Adjudicating Authority granted its approval on 18.12.2023. The allegations made

by the Appellants regarding collusion between the Resolution Professional and Respondent No. 4 are wholly unfounded and devoid of merit. The resolution plan was duly deliberated and approved independently by the CoC with unanimous consent, and neither Respondent No. 4 nor the Resolution Professional had any role in the CoC's decision-making process.

51. The Respondent No. 4 submitted that, in view of the conscientious compliance by the erstwhile CoC with the judicial directions, the allocation of funds to the Appellant fully addresses and resolves the primary grievance raised in the present Appeal. This allocation, made strictly in accordance with the directions of the Adjudicating Authority, leaves no outstanding issue for adjudication. The Respondent No.4 requested this Appellate Tribunal to dismiss the appeals.

Findings

52. We have already noted the facts of the case while recording the pleadings above and shall not repeat the same. Suffice to note that the application was filed under section 10 of the Code in respect of Corporate Debtor for initiating CIRP which was allowed by the Adjudicating Authority vide its order dated 31.08.2021. The Appellant was admitted initially as that the Financial Creditor with claim of Rs. 62,16,33,563. However, subsequently the Resolution Professional declared the Appellant as related party. It is the case of the Appellant that his claim should have been considered and provided for in the Resolution Plan approved by the

Adjudicating Authority and could not have been discarded or given NIL value in the approved Resolution Plan. The Appellant has pleaded that despite he being treated as related party, he gets overriding preferential treatment over the Operational Creditors in terms of Section 53 of the Code.

53. It is also the case of the Appellant that the Impugned Order mentions about the violation of Section 30(2) of the Code, however the Adjudicating Authority approved the Resolution Plan which ought to have been rejected since this is violation of Section 30(2) of the Code. The Appellant also alleged that NIL allocation to the Appellant in the Resolution Plan by the CoC is not the commercial wisdom and such non allocation can be looked into by the Adjudicating Authority on this Appellate Tribunal and judicial interference can be made.

54. Following issues are required to be determined in order to dispose these appeals:-

(I) Whether, the related party can be differentiated in treatment vis-à-vis other Creditor in the approved Resolution Plan by the CoC.

(II) Whether, NIL allocation to the Appellant by the CoC in the approved Resolution Plan, even though the appellant was initially considered as unsecured Financial Creditor, can be treated as a legal and in accordance with Code.

(III) Whether, such non allocation of amount violates waterfall mechanism as stipulated under Section 53 of the Code.

(IV) Whether, the Adjudicating Authority could have approved the Resolution Plan even though the Adjudicating Authority noted regarding violation of the Code evident in the Resolution Plan.

55. Since, all these issues are inter-dependent, inter-connected and inter-related, we shall deal these issues in conjoint and combined manner in the following discussions.

56. We note that the role of the CoC has been defined under Section 21 of the Code which in fact, is supposed to be in charge during CIRP process and continues the role during the approval of the Resolution Plan by the Adjudicating Authority unless taken over the Corporate Debtor by the SRA. In fact, even during implementation of the Plan by the SRA, the hat of the CoC changes and take shape of the monitoring committee. The role of the CoC is very important in bringing up the Corporate Debtor on his feet by finding suitable resolution of the Corporate Debtor. The CoC is supposed to exercise its commercial wisdom judiciously keeping in the object of the Code and the provisions of the Code. The CoC assess viability and the feasibility of the Resolution Plan and take decision on the Resolution of all prevailing liabilities, both of Financial Creditor and Operational Creditor as well as other liabilities as per Resolution Plan under consideration of CoC. There is no doubt that the approval, rejection or modification of Resolution Plan submitted by Prospective Resolution Applicant is the commercial decision of the CoC taken as business decision.

57. We note that the Code stipulates that the Resolution Plan can be approved by the CoC only if 66% or more of the votes of the voting shares of Financial Creditor approves the same else the Resolution Plan stand rejected. We note that in the present case, Resolution Plan was approved by this requisite majority and was rather approved unanimously by CoC with 100% voting rights.

58. We note that in catena of judgment passed by the Hon'ble Supreme Court of India as well as this Appellate Tribunal, it has been held, loud and clear, without any ambiguity whatsoever, that commercial wisdom of the CoC is paramount and cannot be interfere by the Adjudicating Authority or by this Appellate Tribunal. Following are some of such cases :-

- a. **K. Shashidhar vs. Indian Overseas Bank & Ors.** (2019) 12 SCC 150
- b. **Embassy Property Developments (P) Ltd. v. State of Karnataka,** (2020) 13 SCC 308
- c. **Greater Noida v. Prabhjit Singh Soni,** (2024) 6 SCC 767
- d. **E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd.,** (2022) 3 SCC 161
- e. **Tata Consultancy Services Limited v. Vishal Ghisulal Jain,** 2020 SCC OnLine SC 1254
- f. **Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC),** (2022) 2 SCC 401 : 2021 SCC OnLine SC 707
- g. **Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Limited,** 2021 SCC OnLine SC 661
- h. **Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.,** (2021) 10 SCC 401

i. Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021)

7 SCC 209; 2021 SCC OnLine SC 194

j. Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531

k. Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467

l. Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475.

59. Above judgments leave no doubt about complete faith in commercial wisdom of CoC and little scope of any judicial intervention. From all these judgments, we note that the role of the Adjudicating Authority is to ensure that the Resolution Plan complies with the requirements of the Code especially under Section 30(2) of the Code.

60. We observe that the CoC is also required to act fairly and in the transparent manner and without any arbitrariness at any stage on their part. However, the CoC has no role in deciding the interse position of the creditors w.r.t. distribution out of the Resolution Plan.

61. It is very important to understand that the Resolution Plan cannot be approved by the Adjudicating Authority under Section 30 (2) (b) r/w Section 31 of the Code unless a minimum payment is made to the Operational Creditor, dissenting Financial Creditors, which cannot be less than as per Section 53 i.e., related to liquidation value. We need to understand that this, however, cannot be construed that the claims of the Financial Creditors and the Operational Creditor are to be satisfied in pro-rata or in the same manner as provided in the Resolution

Plan under Section 31 of the Code. This Appellate Tribunal in earlier case of ***Central Bank of India Vs Resolution Professional Of the Sirpur Paper Mills Ltd. & Ors.*** in Company Appeal (AT) (Insolvency) No. 526 of 2018 has clarified that as long as two or more Financial Creditor's or two or more financial and operational Creditors are not similarly situated then there is no discrimination between them under a Resolution Plan. This makes it clear that the amount provided in the Resolution Plan to Operational Creditor or dissenting Financial Creditors cannot be less than liquidation value as per Section 53 of the Code.

62. We will again refer to the case of ***Essar Steel India (Supra)***, where the Supreme Court of India noted the importance of the majority decision of the Committee of Creditors as stated in S. 31(1) of the Code to further observe that:

"Thus, what is left to the majority decision of the Committee of Creditors is the "feasibility and viability of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent modification as

to distribution of funds, payment being provided type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.

(Emphasis Supplied)

63. There is no scope for the Adjudicating Authority or this Appellate Authority to proceed on any equitable assumptions and presumptions to assess the resolution plan on the basis of quantitative analysis. Similarly, Code and Regulations do not visualise any other road map which is left to the collective commercial wisdom of the CoC. We understand that the power of judicial review in Section 31 of the Code is not akin to the power of a supervision jurisdiction to deal with the merits of the decision of any lower judicial authority. The jurisdiction to decide as to what ought to be the terms of the resolution plan is vested on the CoC alone, who has to take such a decision in its commercial wisdom, while keeping in view the applicable provisions and the specified parameters.

64. At this state, we would like to take into account the claim filed by the various creditors and admitted claims in the present case. We note that the

following table clarify the position of such claims which is taken from the Impugned Order 18.12.2023 and the same reads as under :-

Collations of Claims

15. The Ld. Senior Counsel for the RP submits that the amounts claimed and verified/admitted are summarised below: ✓

(Amount in Rs. Crore)

SN	Category of Creditor	Claimed Filed	Claimed Admitted	Contingent Claims Admitted
1.	Secured Financial Creditors	567.93	567.93	-
2.	Unsecure Financial Creditors	63.19	60.37	-
3.	Operational Creditors (Other than Workmen, Employees and Government and Statutory Authorities)	22.65	14.16	2.70
4.	Operational Creditors (being Workmen, Employees)	1.54	1.54	
5.	Operational Creditors (being Government and Statutory Authorities)	0.24	0.24	
	TOTAL	655.53	644.23	2.70

65. From above, we note that the amount of total claim filed is Rs. 655.53 Crores and the amount of admitted claims is Rs. 644.23 Cores and Rs. 2.70 has also been admitted as contingent claims.

66. We note from the approved Resolution Plan vide Impugned Order dated 18.12.2023 that the Resolution Plan was approved for Rs. 180 Crores. The breakup of the same, which indicate the amount being paid to various categories of creditors, reads as under :-

Particulars	Total Amount	Timelines for Payment	Priority
CIRP Cost	Up to Rs. 10 Crore.	Within 45 working days of the NCLT Approval date	Priority to all other stakeholders/creditors
Operational Creditors being Employees and Workmen	Rs. 0.73 Core.	Within 45 working days of the NCLT Approval date	Prior to the Financial Creditor.

Operational Creditors other than Employees and Workmen	Rs. 0.27 Core.	Within 45 working days of the NCLT Approval date	Prior to the Financial Creditor.
Unsecured Financial Creditor	NIL		
Secured Creditors being Term Loan Lenders and having first charge on the fixed and current assets of the Corporate Debtor..	Rs. 157 Crore	Within 45 working days of the NCLT Approval date	
Other Secured Financial Creditors, i.e., Secured Financial Creditors having residual charge and/or having charge which has not been perfected.	Rs. 12 Core	Within 45 working days of the NCLT Approval date	
Other Creditors	NIL		
Shareholders	NIL		
Total	Rs. 180 Core		

67. From above, we note that the secured financial creditors having first charge on the fixed and current assets of the Corporate have been allocated Rs. 157 Crores, other Secured Financial Creditors having residual charge have been allocated Rs. 12 Crores. The Operational Creditor, other than employees and workmen, are being paid Rs.27 lakhs whereas other operational creditors being employees and workmen are being paid Rs.73 lakhs.

68. We note from the submissions made during hearing before us, that the Respondent No. 4 (SRA) has not discriminated among creditors within the same sub-class or similarly situated creditors, but rather provides differential payments to each sub-class based on the nature and extent of security held by such creditors. We also note that the Resolution Plan allocated payments from the total resolution proceeds to secured financial creditors, constituting a distinct class, while unsecured financial creditors, forming a separate class who all have been allocated NIL amounts under the plan.

69. We note that, in the present appeal, the Appellant is an unsecured financial creditor and therefore is entitled to the payment which should not be less than what he would have received as per Section 53 of the Code in a liquidation scenario. We further note that, as the amount offered under the Resolution Plan is less than the liquidation value and insufficient to satisfy even the claims of secured financial creditors, who rank higher than unsecured financial creditors, like the Appellant herein, under Section 53 of the Code, the Appellant's

entitlement as an unsecured financial creditor would be NIL in such present scenario. Thus, we hold that the allocation of NIL payment to the Appellant under the Resolution Plan approved by the Adjudicating Authority in Impugned Order does not violate Section 53 of the Code.

70. We need to appreciate that the Resolution Plan does not discriminate against the Appellant due to its classification as a related party, but rather allocates treatment based on its status as an unsecured financial creditor, with such distribution being determined by the CoC in its commercial wisdom and in compliance with the Code. In this connection, it has been brought to our notice that all unsecured financial creditors have been given Nil allocation in the Resolution Plan, which have also noted from the table of allocation of funds in the approved Resolution Plan as quoted also in earlier discussion. Thus, the allegations of the Appellant are legally not tenable. We also observe that as affirmed by the Hon'ble Supreme Court in India in several cases including ***MK Rajagopal v. Dr. Periyasamy Palani Gounder & Anr.*** [(2024) 1 SCC 42], that the Code permits differential treatment between related and unrelated parties. Thus, again based on such judicial pronouncements also, the Appellants contentions cannot be accepted.

71. We note in the present case, the liquidation value payable to the unsecured Financial Creditors and the Appellant as well as Operational Creditors was NIL, hence no payment became payable in the Resolution Plan as per the Code. However, the Resolution Plan has provided Rs.73 lakhs to employees and

workmen and Rs 27 lakhs to other Operational Creditors. This has been done using commercial wisdom, presumably to make Resolution Plan viable and implementable making such minimal allocation which can't be faulted upon. We further case, we note that CoC based on the Adjudicating Authority's order dated 18.12.2023 has since then allocated Rs. 10 lakhs to the Appellant being unsecured Financial Creditors and the same has been distributed to the Appellant in July, 2024 itself and therefore the Appellant's grievances on this account also cease to remain in force.

72. The Appellant has also alleged that the Adjudicating Authority in the Impugned Order has observed that the plan violates Section 30 (2) of the code, still the Adjudicating Authority approved the Resolution Plan which is illegal and need to be set aside.

73. We take into account the relevant paras 72 and 73 of the Impugned Order, which reads as under:-

“72. It is a settled legal position that distribution of plan value including categorizing different classes of creditors and subclass of creditors based on security, the value of debt etc. should be left to the commercial wisdom of CoC and as long as the plan is not in violation of Section 30(2) the I&B Coe Code and the regulations made thereunder, the Adjudicating Authority will have to approve.

73. While we do see the violation of the said section of the code, we are conscious of the legal position that the Adjudicating Authority cannot direct the allocation of a

particular amount to such creditor as the applicant. Therefore, we leave it upon the Committee of Creditors to take a pragmatic and holistic view to allocate a reasonable amount as per its “commercial wisdom”, against the claim of the applicant.”

74. We need to understand the context of such observations and impact on Resolution Plan. This was a observation made by the Adjudicating Authority while approving the Resolution Plan subject to the direction that a certain amount be allocated to the Appellant, Hari Vitthal Mission (HVM), as an unsecured financial creditor. The Adjudicating Authority directed the CoC and the Interim Monitoring Committee (IMC) to adopt a pragmatic and holistic approach in determining the amount payable to the Appellant. This cannot ne treated as non - compliant plan which can be hit by Section 30(2) of the Code as correctly held by the Adjudicating Authority.

75. We note that the Adjudication Authority is within its jurisdiction in approving a resolution plan which is in conformity with Code but there is no equity-based jurisdiction with the Adjudicating Authority, under the provisions of the Code. The function of the Adjudicating Authority under Section 31 of the Code is to determine whether the resolution plan "as approved by the committee of creditors" under Section 30(4) of the Code "meets the requirements" under Section 30(2) of the Code. If the Adjudicating Authority is satisfied that the resolution plan, as approved, meets requirements under Section 30(2) of the Code, the Adjudicating Authority is required to approve the resolution plan, binding on

the corporate debtor and all stakeholders. We note that the jurisdiction of this Appellate Authority under Section 61 (3) of the Code, while considering an appeal against an order approving a resolution plan under Section 31, is similarly structured on specific grounds. Thus, neither the Adjudicating Authority nor this Appellate Tribunal can enter into the commercial wisdom underlying the approval granted by the CoC to the Resolution Plan on the basis of doctrine of Equity.

76. Based on above detailed observations, we do not find any error in the Impugned Order. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

**[Mr. Indavar Pandey]
Member (Technical)**

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