NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1038 of 2024
&
I.A. No. 2352 of 2026

(Arising out of the Impugned Order dated 23.04.2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi, Court-III in in IA (PLAN) No. 5 of 2024 in CP (IB) No. 1185/(ND)/2019)

IN THE MATTER OF:

Vinay Gupta
(Suspended Director of Satellite Cables Pvt. Ltd.)
R/o 58, Birch Court, Nirvana Country
Sector 50, Gurugram Haryana **...Appellant**

Versus

1. **M/s Oswal Minerals Limited**
Corporate office at:
1034, 2nd Floor, Dr. Raj Kumar Road, 4th Block,
Rajajinagar Bangalore, Karnataka – 560010 **...Respondent No.1**

2. M/s Satellite Cables Pvt. Ltd.
Through its Resolution Professional,
Abhimanyu Mittal 29FF,
The White House, Sector 57,
Gurugram, Haryana – 122003
(A Company incorporated under Companies Act, 1956) **...Respondent No.2**

Present:

For Appellant : Dr. Pankaj Garg, Mr. Yaksh Garg, Ms. Yashna Ahuja and Ms. Muskaan Chawla, Advocates.

For Respondent : Mr. APS Madaan, Mr. K.D. Sharma, Mr. Vibhu Aggarwal, Mr. Aalok Jagga, Mr. Nipun Gautam, Mr. Sahil Lohan, Advocates for SRA.

Mr. Saurabh Jain, Mr. Prayag Jain, Advocates for RP.

Ms. Surbhi Mehta, Advocate for R-3.

With
Company Appeal (AT) (Insolvency) No. 1032 of 2024

IN THE MATTER OF:

Niharika Goel
Suspended Director of M/s Satellite Cables Pvt. Ltd.
Flat No. 1202, Monarch Towers, Mapsko Royale Ville, Sector 82, PO, Sikanderpur,
Dist. – Gurgaon Haryana 122004 **...Appellant**

Versus

1. **Mr. Suraj Garg**
Successful Resolution Applicant of
M/s Satellite Cables Pvt. Ltd. C-619,
Saraswati Vihar, Pitampura,
New Delhi – 110034 **...Respondent No.1**

2. **Abhimanyu Mittal**
Resolution Professional of
M/s Satellite Cables Pvt. Ltd. **...Respondent No.2**

3. **Bank of Baroda**
Stressed Asset Management Branch,
4th Floor, Rajendra Bhawan, Rajendra Place,
New Delhi – 110008 **...Respondent No.3**

4. **Mr. Anuj Goyal**
A-4/4 Paschim Vihar New Delhi – 110063 **...Respondent No.4**

5. **Institute of Chartered Accountants of India ICAI**
Bhawan, Post Box No. 7100, IP Marg,
New Delhi – 110002 **...Respondent No.5**

Present:

For Appellant : Mr. Sanchit Garg, Mr. Oorja Goel, Advocates.

For Respondent : Mr. APS Madaan, Mr. K.D. Sharma, Mr. Vibhu Aggarwal, Mr. Aalok Jagga, Mr. Nipun Gautam and Mr. Sahil Lohan, Advocates for SRA.

Mr. Saurabh Jain and Mr. Prayag Jain, Advocates for RP.

Ms. Nattasha Garg and Ms. Liza Arora, Advocates for R-4.

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

[Per: Arun Baroka, Member (Technical)]

Introduction

These are two Section 61 Appeals — Company Appeal (AT) (Insolvency) No. 1032 of 2024 (by Niharika Goel, suspended director of Corporate Debtor) and Company Appeal (AT) (Insolvency) No. 1038 of 2024 (by Vinay Gupta, suspended director of Corporate Debtor) — both challenge the same Impugned Order dated 23 April 2024 passed by the NCLT, New Delhi, Court-III in IA (PLAN) No. 5 of 2024 in CP (IB) No. 1185/(ND)/2019, approving the Resolution Plan of M/s Suraj Garg (Successful Resolution Applicant) in respect of M/s Satellite Cables Private Limited (Corporate Debtor).

Submissions of the Appellant in CA (AT) (Ins.) No. 1038 of 2024

2. The Appellant – Vinay Gupta-Suspended Director of Corporate Debtor contends that the Adjudicating Authority approved the resolution plan of the Successful Resolution Applicant in respect to the Corporate Debtor without giving the Appellant herein an opportunity to peruse the said resolution plan and file objections/ contentions to the resolution plan.

3. Appellant brings to our notice that the Respondent No. 1 filed an Application under Section 9 of the Code against the Corporate Debtor, M/s Satellite Cables Private Limited. The said application was admitted by the NCLT by order dated 03-01-2023. Thereafter during the CIRP proceedings the resolution plan was submitted by the resolution applicant by M/s Suraj Garg, which was approved by the CoC in its 11th meeting dated 06.12.2023 by 100% voting share.

4. The Resolution Professional under Section 30(6) read with Section 31 of the Code read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 filed an IA bearing I.A. no. 05/2024 in CP(IB)- 1185 (ND)/ 2019 for approval of the Resolution Plan in respect of the Corporate.

5. However, the Appellant, although being a suspended director whose rights and interests are directly affected by the CIRP proceedings, was neither served an advance copy of the IA no. 05/2024 nor of the Resolution Plan contained therein.

6. And on 16.04.2024, the Counsel for the Appellant herein appeared through VC when the IA was listed before the NCLT and apprised the Hon'ble Tribunal that he had not been supplied with a copy of IA No. 05/2024 or the Resolution Plan and further requested this Hon'ble Tribunal for being supplied a copy of the Application bearing IA No. 05/2024 along with the Resolution Plan so as to enable the Appellant herein to peruse it and accordingly file his objections. The said was even mentioned in the chatbox. However, the Hon'ble Tribunal denied the request and without giving the opportunity to the Appellant to peruse the said IA No. 05/2024 or the Resolution Plan and file its objections or extend arguments, the Hon'ble NCLT went on to hear the matter and reserve its order. Appellant contends that it has caused violation of principles of natural justice by denying the Appellant being an interested party the opportunity of being heard in a matter which affects his rights and interests. The appellant prays to set aside the Impugned Order dated 23.04.2024.

Submissions of the Appellant in CA (AT) Ins.) No.1032 of 2024

7. The Appellant – Niharika Goel, Suspended Director of Corporate Debtor contends that the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor was initiated vide order dated 03.01.2023 of the Ld. Adjudicating Authority. The Respondent No. 2 was appointed resolution professional of the Corporate Debtor. Respondent No. 2 commenced the Corporate Insolvency Resolution Process by inviting claims. Thereafter, Respondent No. 2 issued FORM G, and received Expression of Interest from Respondent No. 4 along with two parties i.e., Respondent No. 1 (practicing chartered accountant) and M/s Sunrise Industries. Respondent No. 2 being very well aware of the fact that Respondent No. 1 is a practicing-chartered accountant being barred under Clause (11) of Part I of First Schedule to the Chartered Accountant Act, 1949 being not permitted to engage in any business or occupation other than the profession of Chartered Accountancy has declared Respondent No. 1~~(SRA)~~ as eligible and allowed him to submit a resolution plan.

8. Thereafter, Corporate Debtor along with MICA Industries Ltd. (*Corporate Guarantor to the Corporate Debtor*) vide letter dated 08.06.2023 had proposed a onetime settlement to Respondent No. 3 (i.e., sole financial creditor) and on 19.07.2023 the onetime settlement proposal was accepted and repayment schedule was proposed by Respondent No. 3 which was duly accepted by the Corporate Debtor as well as MICA Industries Ltd. Respondent No. 3/Financial Creditor had also accepted an amount of ₹ 2,50,00,000/-. The active consideration of onetime settlement was in express knowledge of

Respondent No. 2 and Respondent No. 3 but the same was not informed during any meeting of Committee of Creditors or during entire CIRP.

9. Despite the onetime proposal being accepted by Respondent No. 3, the process of approval of resolution plan did not halt. To the surprise of Appellant, the Respondent No. 2 conducted the 10th meeting of CoC dated 21.11.2023 wherein the prospective resolution applicants were invited to participate in the discussion about salient features of their resolution plan which has been submitted. The Appellant was not allowed to participate in the 10th CoC meeting by Respondent No. 2 and 3. Accordingly, during the hybrid challenge among all the prospective resolution applicant to submit the resolution plan, the Objective of Insolvency and Bankruptcy Code, 2016 which is to achieve valuation maximization of assets value of Corporate Debtor was ignored and the CoC settled for the lower bid.

10. Thereafter, the 11th meeting of CoC took place on 06.12.2023, in which agenda for approval of resolution plan was placed. The voting of the CoC concluded on 22.12.2023 and resolution plan submitted by Respondent No.1 i.e., CA Suraj Garg was approved by the committee of creditors in accordance with the provisions of Section 30 (4) of IBC with a majority of 100% Mr. Vinay Gupta, suspended director of Corporate Debtor in the 11th meeting of CoC tried to apprise the Respondent No. 2/RP about the <u>onetime settlement offer being under progress</u> with the Respondent No. 3/Financial Creditor, and they have already paid the part payment. Surprisingly, the Respondent No. 2 was oblivious of any such settlement.

11. Additional Commissioner, CGST Alwar Commissionerate *passed an order vide order-in-original dated 20.12.2023 against the* Corporate Debtor confirming various statutory tax demands which do not form part of the resolution plan approved by the CoC and thereafter by the Ld. Adjudicating Authority in the Impugned Order dated 23.04.2024. This is in teeth of the judgment of Hon'ble Supreme Court in **State Tax Officer (1) v. Rainbow Papers Ltd., [2022 SCC OnLine SC 1162]** wherein it has been held that a resolution plan is bound to be rejected if it ignores the statutory dues of the government.

12. Respondent No. 2/RP vide email dated 23.12.2023 issued letter of intent to Respondent No. 1 and requested him to submit payments as per resolution plan documents. Thereafter, Respondent No. 2/RP on 27.12.2023 filed IA No. 5 of 2024 before the Ld. Adjudicating Authority for approval of resolution plan of Respondent No. 1.

13. The Respondent No. 1 being a practicing-chartered accountant as per Chartered Accountants Act, 1949 has filed the resolution plan and the same was approved by the Ld. Adjudicating Authority without considering the fact that a chartered accountant cannot engage in business or occupation besides their own profession. If a practicing-chartered accountant indulges in any other business it is considered to be professional misconduct under Clause 11 of Part 1 of the First Schedule of the Chartered Accountants Act, 1949. In the present case the Respondent No. 1 has submitted a resolution plan on 02.06.2023 to Respondent No. 2 wherein it is specifically mentioned that the Corporate Debtor shall be managed under the leadership of resolution

applicant i.e., Respondent No. 1. As per Section 30(2)(e) of IBC, the Respondent No. 1 is ineligible to submit a resolution plan under IBC being in violation of the provisions of Chartered Accountants Act, 1949.

14. The Hon'ble High Court of Delhi in [7]**Council of Institute of Chartered Accountants of India v. Subodh Gupta & Anr. [(2017) 202 Comp Cas 115]** has held that a chartered accountant cannot actively carry on business through companies, trusts, and firms.

15. Moreover, the suspended directors of M/s Satellite Cables Pvt. Ltd., vide letter dated 08.06.2023 had submitted a comprehensive one-time settlement proposal of the M/s Satellite Cables Pvt. Ltd. and MICA Industries Ltd. The *said proposal was duly accepted by the Respondent No. 3 vide letter dated* 19.07.2023 whereby Respondent No. 3 imposed certain conditions upon the Corporate Debtor as well as MICA Industries Ltd. As per the conditions put forth by Respondent No. 3 with regard to the repayment schedule, MICA Industries Ltd were to deposit an amount of ₹ 2.50 crores in no lien account of Respondent No. 3 for the Corporate Debtor under onetime settlement proposal. In fulfillment of these conditions, the suspended directors had submitted an amount of ₹ 2.50 crores in no lien account of Respondent No. 3 on 16.10.2023. Even after complying with the conditions of onetime settlement proposal the Respondent No. 3 failed to inform in the CoC meetings that a onetime proposal has been reached and also that a sum of ₹ 2.50 crores have been deposited by the corporate guarantor i.e., MICA Industries Ltd. Ideally the Respondent No. 3 should have informed the Respondent No. 2 in

the CoC meetings that they have received payment in terms of the onetime settlement proposal and the CIRP of M/s Satellite Cables Pvt. Ltd. should have been halted.

16. Pursuant to the onetime settlement proposal the CIRP against MICA Industries Ltd was withdrawn. To the utter shock and dismay of the Appellant on 30.12.2023, Respondent No. 3 issued a letter to the Corporate Debtor stating that as the Corporate Debtor has refused to accept the terms and conditions of the sanction letter dated 19.07.2023 the terms of the sanction letter dated 19.07.2023 are being withdrawn as the same are now frustrated. It is submitted that a comprehensive onetime settlement proposal of Corporate Debtor along with MICA Industries Ltd. was submitted in order to arrive at an amicable solution and to withdraw CIRP against both the companies but instead Respondent No. 3 did not inform the CoC of the onetime settlement proposal and instead passed the resolution plan. Further, the onetime settlement proposal of MICA Industries Ltd. was accepted by Respondent No. 3 and MICA Industries was saved from the clutches of insolvency process.

17. Respondent No. 2 and Respondent No. 3 with a mala-fide intent had accepted the resolution plan of Respondent No. 1 which was of lower bid of ₹5,85,00,000/- than the bid of the Respondent No. 4. i.e., ₹ 6,00,00,000/-. During the 10th meeting of CoC the bidding of Respondent No. 1 closed at ₹5,85,00,000/- and the bid amount of Respondent No. 4 *was ₹ 5,73,00,000/. Subsequently, Respondent No. 4 vide email had* informed Respondent No. 2 of

their intention to increase their offer of ₹ 5,73,00,000/- to ₹ 6,00,00,000/- and by doing so became the highest value bidder. Due to the reason best known to Respondent No. 2, instead of accepting the higher bid of Respondent No. 4, went on to admit the Respondent No. 1 as the highest bidder. Thereafter, the Respondent No. 2 did not even inform the CoC about the enhanced bid of Respondent No. 4 and the resolution plan submitted by Respondent No. 1 was approved.

18. Further, the resolution plan of Respondent No. 1 does not propose any payment towards the government dues. Despite the Order-In-Original dated 20.12.2023 passed by Additional Commissioner, CGST Alwar Commissionerate, confirming the tax liability of ₹ 17,47,70,663/-, the resolution plan of Respondent No. 1 specifically mentions nil payment towards the government dues. Therefore, the Ld. Adjudicating Authority has erred in not rejecting the resolution plan of Respondent No. 1.

19. The manner in which the Respondent No. 2 has conducted the CIRP of Corporate Debtor has been a matter of concern. The Respondent No. 2 has failed to conduct the CIRP in a transparent manner. Also, the Respondent No. 2 failed to recognize that under the Chartered Accountant Act, 1949, a practicing-chartered accountant is barred to carry on any business let alone bid for the resolution plan of Corporate Debtor. The Respondent No. 1 also failed to maximize the assets of Corporate Debtor by accepting the bid of Respondent No. 1 which is lower to that of Respondent No. 4 which is against the objects of IBC. Hence, the present Appeal.

<u>Submissions of the Respondent No.2/RP</u>

20. Respondent No. 2/Resolution Professional brings to our notice that pursuant to the Form G, the Applicant received Expression of Interest from three parties and were found eligible and emerged as Prospective Resolution Applicants:

S. No.	Name of Person/Entity who submitted expression of Interest	Eligibility / Not Eligible
1.	Suraj Garg	Eligible
2.	Anuj Goyal	Eligible
3.	Sunrise Industries	Eligible

21. During the ongoing proceedings, the R-2/RP has faced various challenges arising from the Suspended Board of Directors of the Corporate Debtor. The Appellant were reluctant in handing over the book of account of the Corporate Debtor to the applicant. Consequently, in light of this uncooperative stance, an application under Section 19(2) was also filed by the Respondent No.2.

22. In accordance with the provisions of Sub-regulation (10) of Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Applicant issued Provisional List of Prospective Resolution Applicants to the CoC members and to all prospective Resolution Applicants vide email dated 26.04.2023.

23. Further, the Applicant issued information memorandum, evaluation matrix and a request for resolution plans to all Prospective Resolution Applicants vide email dated 01.05.2023. That thereafter, the Applicant issued

the Final list of Prospective Resolution Applicants who are eligible to file the Resolution Plan in the CIRP of present Corporate Debtor vide email dated 01.05.2023 to all the Prospective Resolution Applicants.

24. Further, the Resolution Plan was received from the following Prospective Resolution Applicants along with Bid Bond amount of Rs. 25,00,0000 (Rupees Twenty-Five Lacs) which are as follow:

a. Suraj Garg
b. Anuj Goyal
c. Sunrise Industries

25. R-2/RP vide email dated 13.06.2023, 30.06.2023, 11.07.2023, 18.07.2023, 12.09.2023 and 22.09.2023 informed the Prospective Resolution applicants about the observations and remarks on the resolution plan submitted to the CoC members. Thereafter, on the basis of the observations and remarks the Prospective Resolution Applicants were given the opportunity to submit their cured Resolution Plan.

26. Pursuant to the Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations 2016, the R-2/RP appointed two registered valuers in each class of asset to determine the fair value and the liquidation value of the Corporate Debtor in accordance with the provisions of Regulations 35 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations 2016 performing the valuation of all the classes of assets of the Corporate Debtor.

27. R-2/RP appointed an independent legal consultant namely India C&L Law Offices, Advocates for conducting the due diligence under Section 29A of Insolvency and Bankruptcy Code, 2016 of all the Prospective Resolution Applicants.

28. It is pertinent to note that the pursuant to publication of Invitation of Expression of Interest (Form G), the Resolution Professional on 02.06.2023, received three (3) Resolution Plans from the Prospective Resolution Applicants. Subsequently, the 5th meeting of CoC was convened on 06.06.2023, wherein the received Resolution Plans were opened in the presence of the Members of CoC and respective Resolution Applicants. The Respondent has conducted requisite due diligence and the Resolution Plans was put before the members of CoC for negotiation and consideration in the upcoming CoC meetings.

29. In the 10th meeting of Committee of Creditors which was held on 21.11.2023, the Prospective Resolution Applicants were invited to participate in the CoC meeting in terms of section 30(5) of the Code to discuss and address with the members of the committee of creditors and explain the salient features of their Resolution Plan and apprised that the observation made by the CoC members will be incorporated in the Resolution Plan. Accordingly, during the said meeting the CoC conducted a Hybrid Challenge among all the Prospective Resolution Applicant.

30. Thereafter in the 11th Meeting of Committee of Creditors held on 06.12.2023, agenda for approval of Resolution Plan was placed and on a

detailed discussion regarding the Resolution Plans submitted by the Prospective Resolution Applicant, the CoC decided that plan should be considered and put for voting through ballot paper. In this regard, the voting line window was opened on 08.12.2023 at 05.00 PM IST and concluded on 22.12.2023 and as per the result of e-voting, the Resolution Plan submitted by M/s Suraj Garg (hereinafter referred to as "Successful Resolution Applicant") was approved by the committee of creditors in accordance with the provisions of Section 30 (4) of Code with a majority of 100%.

31. Pursuant to Section 30(1) of the Code, the Successful Resolution Applicant has submitted affidavit confirming his eligibility to submit resolution plan under Section 29A of the Code. The contents of the said affidavit are in order.

32. Subsequent to the approval of Resolution Plan by the Committee of Creditors, the R-2/RP issued the Letter of Intent (LoI) vide email dated 23.12.2023 to the Successful Resolution Applicant and requested him to submit the performance bank guarantee of ₹ 54,74,500/- as obligated in request for resolution plan documents.

33. The Appellant has never cooperated in the CIRP process, even though an application under Section 19(2) of the Insolvency and Bankruptcy Code was filed against the Appellant. It is relevant to mention at this stage that the since the Appellant herein did not appear before the Hon'ble Adjudicating Authority in the said application w/s 19(2), the Ld. Adjudicating Authority directed the Respondent to serve a public notice, pursuant to which the Ld.

Adjudicating Authority vide its order dated 25.10.2023, proceeded ex parte against the Appellant. Subsequently at the time of filing hearing of the said application one counsel appeared for one of the ex-director's and the Hon'ble Adjudicating Authority directed the ex-directors to provide necessary information to the RP. It is pertinent to mention at this stage that the Appellant herein has till date not complied with the said order passed by the Ld. Adjudicating Authority in application u/s 19(2). Now, following the successful revival of the Corporate Debtor, the Appellant has suddenly come forward with a baseless appeal, attempting to undermine the entire process.

34. The Code has categorically laid down the provisions in Section 29A, which include a list of individuals who are barred from submitting a resolution plan during the Corporate Insolvency Resolution Process (CIRP). It is further submitted that there is no explicit provision that categorically bars Chartered Accountants (CAs) from submitting a resolution plan under the Code.

35. It is important to note that the Resolution Professional has conducted his duties diligently and in accordance with the law. Despite this, the Appellant is attempting to misrepresent the facts with the sole intention of jeopardizing the entire process for their ulterior motives. Therefore, it is wrong on the part of the Appellant to submit that the Respondent has not violated the principle of the Code by settling for the lower bid.

36. It is further submitted that Respondent No. 2 has placed on record the revised resolution plan of Respondent No. 4 to the CoC. However, it is respectfully submitted that the final decision of approving the resolution plan

rests with the CoC, in their commercial wisdom. It is pertinent to mention that the objective of the Code is not merely to approve the plan offering the highest amount. Other than the consideration amount, the CoC has to take into amount various other factors and accordingly to decide the best plan for all stakeholders.

37. The Resolution Professional's duty is to submit the 'Resolution Plan', before the 'Committee of Creditors' if the same is in compliance with the provision of the Code, who may or may not approve it. It is further submitted that the Hon'ble Supreme Court in **K. Sashidhar V. Indian Overseas Bank and others (Civil Appeal No.10673 of 2018)** wherein at paragraph 44 it is mentioned as under: -

> "..........The resolution professional is not required to express his opinion on matters within the domain of the Financial Creditor(s) to approve or reject the Resolution Plan under Section 30(4) of the I&B Code."

38. It is further submitted that the CIRP period is a time-bound process, the whole process is required to be completed within the stipulated period which is fact well known to all the parties concerned herein, despite this, if the Appellant wishes to enter into a One Time Settlement with the Financial Creditor, the same must be done in compliance with the law. A mere approach by the Appellant to the Financial Creditors/CoC with a One Time Settlement offer is not sufficient to stop the CIRP process. Furthermore, it seems evident that the offer made by the Appellant never materialized with the members of the CoC. It is further submitted that once the CIRP is initiated, it will continue until a withdrawal application under Section 12A, with the approval of the

requisite members of the CoC, is allowed by the Learned Adjudicating Authority. Until such approval is granted, the Resolution Professional is required to perform his duties. Section 12 A read as:

> **Section 12A.** Withdrawal of application admitted under section 7, 9 or 10.- The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.

39. The present Appeal is a gross abuse of the legal process by the Appellant, intended to create unnecessary hindrance and delay in the insolvency proceedings of the Corporate Debtor. In view of the aforesaid facts and circumstances, it is most respectfully prayed that this application be dismissed with exemplary costs.

40. The Successful Resolution Applicant has made the entire payment in terms of the plan duly approved by the Ld. Adjudicating Authority, Assets/factory has been handed over to SRA, application for appointment of directors has been placed before the ROC and same is in process of approval from the department. The Monitoring Committee is at the stage of dissolution.

41. Accordingly, after the approval of the Resolution Plan by the CoC, the Respondent No. 2 filed an IA No. 05/2024 before the Ld. Adjudicating Authority for the approval of the Resolution Plan, it is pertinent to mention that under the Insolvency and Bankruptcy Code (IBC) and its regulations, there is no explicit requirement for the Resolution Professional to serve a copy of the Resolution Plan Application to the suspended board of Directors.

42. The Appellant has no legitimate interest in the proceeding as neither the Appellant is a Creditor nor a Claimant or a participant and therefore Respondent No. 2, has rightfully not served any advance copy to the Appellant herein. Consequently, it is clear that the Appellant, being an erstwhile Director of the Corporate Debtor, has no locus standi to seek a copy of the Resolution Plan Application from Respondent No. 2.

43. The Appellant has not raised any allegations or averments that could suggest any non-compliance or misconduct on the part of the Respondent. The Appellant has also failed to raise any objections pertaining to the Resolution Plan. There have been no specific claims or evidence presented by the Appellant to indicate that the Respondent has failed to adhere to any legal or procedural requirements. Therefore, keeping this present appeal pending would serve no purpose or objective.

44. Ld. Adjudicating Authority has rightfully rejected the oral submission of the Appellant's counsel. The Ld. Adjudicating Authority provided the Appellant's counsel with the opportunity to submit their objections, which they failed to do. Accordingly, the Ld. Adjudicating Authority duly acknowledged that Respondent No. 2 was not required to supply any advance copy of the application to the Appellant. Therefore, a mere non-supply of a copy of the Resolution Plan application was not sufficient grounds to delay the CIRP process.

45. It is respectfully submitted that the Appellant has misled this Hon'ble Court by making false and unfounded allegations against the Respondent

specifically claiming that the Respondent has deliberately withheld or failed to provide necessary information and documents during the CIRP process. In fact, the Respondent had sent multiple emails asking the Appellant to submit undertaking for confidentiality as required in terms of the process, so that the Respondent may provide a copy of the Proposed Resolution Plans. The Appellant never submitted the required undertaking for confidentiality.

46. It is further submitted that the Suspended Board of Directors was duly informed of the ongoing processes and all minutes of the CoC meetings were also shared with them as per the regulations. There has been no concealment of information from any of the Suspended Directors.

Submissions of the Respondent No.3/ICAI

47. The Institute of Chartered Accountants of India (Institute/'ICAI') is a statutory body constituted under the Chartered Accountants Act, 1949, entrusted with the regulation and development of profession of Chartered Accountancy in India ranging from education, practical training, examination, licensing, continued professional education, peer review, financial report reviews and includes prescribing and formulating standards of professional and ethical conduct, disciplinary oversight, and issuance of guidelines governing permissible and prohibited conduct for its members, all of which are obliged to ensure that members and firms comply with the exacting professional standards to preserve and protect the interest of all stakeholders.

48. The statutory framework regulating the profession of Chartered Accountants provides that a Chartered Accountant in practice shall engage in providing services relating to the profession of accountancy.

49. Clause (11) of the Part I of First Schedule of the Chartered Accountants Act, 1949 (hereinafter referred to as the 'CA Act') read with Regulation 190A of the Chartered Accountants Regulations, 1988, provides that a Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy except with the permission granted in accordance with a resolution of the Council. In terms of the regulations, such permissions are granted either (i) generally where no specific permission is required on individual cases or (ii) specific permissions where prior approval of the Council is required on a case-by-case basis.

50. The Council at its 362nd meeting held on 6th -8th February, 2017, has permitted members in practice to act as Insolvency Professionals in terms of the provisions of the Insolvency and Bankruptcy Code, 2016. Pursuant thereto, an amendment was made in the 12th edition of the Code of Ethics in 2020 under "Management Consultancy and Other Services" permitted by the Council u/s 2(2)(iv) of the Chartered Accountants Act, 1949, to include "Acting as Insolvency Professional in terms of Insolvency and Bankruptcy Code, 2016.

51. At the same time, the Proviso to Clause (11) of Part-I of the First Schedule of the Chartered Accountants Act, 1949, provides that the restriction contained in clause (11) shall not disentitle a chartered accountant from being a director of a Company, (not being a managing director or a whole-time director), unless he or any of his partners is interested in such company as an auditor. For the purposes of the Proviso to clause (11), the Council of the Institute has considered related issues and has taken decisions detailing

the nature of the directorship and association of a practicing Chartered Accountant in a company, which are detailed in the Code of Ethics framed by the Institute.

52. However, there is no express provision in the Code of Ethics or any precedent on the issue in question i.e. whether a Chartered Accountant in practice can submit a Resolution Plan.

53. From the view point of applicable provisions contained in the Code of Ethics, it is to be noted that a member in practice is permitted to become a Director Simplicitor (i.e. not a Whole-Time Director or a Managing Director) in a company. The expression 'Director Simplicitor' means an ordinary/simple Director who is not a Managing Director or Whole-Time Director and is required to attend the Board Meetings of the company and not paid any remuneration except for attending such meetings. A member can accept the office of Managing Director or whole time Director only after obtaining specific and prior approval of the Council. A member in practice is also permitted to hold a substantial interest in such a company, whether individually or jointly with relatives. The Code of Ethics does not make a distinction for a company undergoing insolvency resolution proceedings under the IBC.

54. In view of the same, the matter was considered by the Insolvency and Valuation Standards Board and the Ethical Standards Board of ICAI. Based on their views, it is submitted that there is no bar for a practicing Chartered Accountant to be a Resolution Applicant provided he shall not act as a whole-time Director.

55. It is submitted that a practicing Chartered Accountant can submit a Resolution Plan and become a Resolution Applicant under the provisions of the Insolvency and Bankruptcy Code, 2016, provided he shall not act as a whole-time Director.

Appraisal

56. Heard both sides and also perused the material on record. We are dealing with the two appeals and we find that the grounds of the challenge are interrelated in the two Appeals and therefore they are being taken up together. The two appeals are listed as below:

Vinay Gupta- Appellant in CA(AT) (Ins.) No. 1038/2024	Suspended Director of Corporate Debtor	Case is confined to breach of natural justice at plan-approval hearing.
Niharika Goel Appellant in CA(AT) (Ins.) No. 1032/2024	Suspended Director of Corporate Debtor	Case advances multiple substantive challenges to the plan and the CIRP conduct.

57. From the rival submissions, the following questions arise for our consideration:

- Whether the approval of the Resolution Plan is liable to be set aside on the ground that the suspended director was not supplied a copy of the Resolution Plan before the plan-approval hearing?

- Whether M/s Suraj Garg was ineligible to submit the Resolution Plan merely because he was a practising Chartered Accountant?

- Whether the alleged OTS rendered continuation of the CIRP and approval of the Resolution Plan impermissible?

- Whether the CoC acted illegally by approving the Resolution Plan of M/s Suraj Garg despite the alleged higher offer from another applicant?

- Whether the alleged non-provision for Government dues makes the Resolution Plan contrary to Section 30(2)[2] of the Code?

- Whether there is any material irregularity in the CIRP or in the exercise of powers by the Resolution Professional which would justify interference under Section 61 of the Code?

58. During his final arguments the resolution professional raises the locus of the Appellant in challenging the resolution plan and claims that the suspended director has no locus to the resolution plan and relies on the judgment of this Appellate Tribunal in **Praful Satra vs Vaishali Patrikar and Ors. (CA (AT) (Ins.) No.1627/2024)**. We do not find such an argument to be of any assistance to the resolution professional. We observe that Section 24(3)(b) IBC treats suspended directors as members of the CoC (without vote) — a member of the CoC is presumptively an aggrieved person. The resolution plan binds the erstwhile management under Section 31 — a party bound by an order is aggrieved by it. The Honourable Supreme Court in [1]**Vijay Kumar**

[1] **Vijay Kumar Jain v. Standard Chartered Bank (2019) 20 SCC 455**

The SC held that members of the erstwhile Board of Directors of the CD, although non-voting participants, are entitled as a matter of natural justice and under section 24(3)(b) to be given copies of resolution plans placed before the CoC and to participate meaningfully in CoC meetings.

Jain v. Standard Chartered Bank (2019) 20 SCC 455 recognises the standing of a suspended director in plan-approval matters.

59. Before considering the individual grounds, it is necessary to keep in view the jurisdiction available to the Adjudicating Authority and this Appellate Tribunal in matters concerning approval of a Resolution Plan. Section 30(4)[2]

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[2] **SECTION 30. SUBMISSION OF RESOLUTION PLAN.**
(1) A resolution applicant may submit a resolution plan [1][along with an affidavit stating that he is eligible under section 29A] 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 [2][payment] of other debts of the corporate debtor; 4

[3][(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 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 purpose 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) confirms 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, [7][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 29A 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 29A, 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 29A:

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 subsection]:

[8][Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 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.

of the Code entrusts the decision regarding approval of a Resolution Plan to the CoC, subject to the requirements prescribed by the Code.

60. The Honourable Supreme Court in **K. Sashidhar v. Indian Overseas Bank & Ors., (2019) 12 SCC 150** has held that the commercial wisdom of the CoC in approving or rejecting a Resolution Plan is not open to judicial review, except within the limited parameters prescribed by the Code. The Court also recognised that the Adjudicating Authority's examination is principally confined to the requirements of Section 30(2) of the Code.

61. The same principle has subsequently been reiterated by the Honourable Supreme Court in **Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd., (2021) 10 SCC 623**[3]. The Honourable Supreme Court has emphasised that the jurisdiction of the Adjudicating Authority and the Appellate Tribunal is circumscribed by the Code and that neither forum can substitute its own view for the commercial wisdom of the CoC.

62. Section 61(3)[4] of the Code also specifies the grounds on which an approved Resolution Plan may be challenged before this Tribunal.

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

[3] **Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd, (2021) 10 SCC 623.**
The Supreme Court has emphasized that the jurisdiction of the Adjudicating Authority and the Appellate Tribunal is circumscribed by the Code and that neither forum can substitute its own view for the commercial wisdom of the CoC.

[4] **SECTION 61. APPEALS AND APPELLATE AUTHORITY.**
(1) XXX
(2) XXX

63. Therefore, the question before us is not whether another plan could have produced a better financial result or whether we would ourselves have preferred another applicant. Rather the question before us is whether the approval of the Resolution Plan suffers from any illegality, material irregularity or non-compliance with the Code so as to fall within the statutory parameters of Section 61 of the Code. Keeping this principle in view, we proceed to examine the individual grounds raised by the Appellants. Since the grounds raised by both the appellants are similar, therefore they are being taken up herein together.

Issue of violation of natural justice

64. The first issue concerns the contention of Vinay Gupta that he was not supplied a copy of the Resolution Plan before the hearing of I.A. No. 5 of 2024. The issue before us is:

> whether the approval of the Resolution Plan is liable to be set aside on the ground that the suspended director was not supplied a copy of the Resolution Plan before the plan-approval hearing?

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(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:--

> (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
>
> (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution process;
>
> (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
>
> (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
>
> (v) the resolution plan does not comply with any other criteria specified by the Board.

65. The issue is whether the failure of the Adjudicating Authority to supply the suspended director of the Corporate Debtor with a copy of the RP's plan-approval application (IA(PLAN)-5/2024) and the Resolution Plan annexed thereto, and its refusal to grant an opportunity to peruse those documents and file objections before approving the plan on 23.04.2024, vitiates the Impugned Order for breach of the principles of natural justice.

66. We note that there can be no dispute that a suspended director is not completely excluded from the CIRP. Section 24(3)(b)[5] requires that notice of meetings of the CoC to be given to the members of the suspended Board of Directors.

67. We further note that the Hon'ble Supreme Court in **Vijay Kumar Jain v. Standard Chartered Bank & Ors., (2019) 20 SCC 455**[6] recognised the

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[5] **SECTION 24 - MEETING OF COMMITTEE OF CREDITORS**

(1) XXX

(2) XXX

(3) The resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of [1][committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

(4) XXX

(5) XXX

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

[6] **Vijay Kumar Jain v. Standard Chartered Bank & Ors., (2019) 20 SCC 455**

right of the suspended Board to meaningfully participate in the meetings of the CoC and held that relevant documents, including the Resolution Plans, have to be made available for that purpose. However, the said principle does not mean that a suspended director acquires a right to veto the Resolution Plan or that every procedural grievance, without proof of prejudice, must result in setting aside an otherwise completed CIRP.

68. In the present case, the material placed before us shows that the suspended directors were aware of the CIRP proceedings and were supplied the minutes of the CoC meetings. The Resolution Professional has also stated that the suspended directors were repeatedly asked to furnish the necessary confidentiality undertaking before the Resolution Plans could be shared with them. However, the Appellant did not furnish such undertaking.

69. The Appellant has also not demonstrated before us what specific objection to the Resolution Plan he intended to raise which was prevented from being raised because of non-supply of the plan.

70. More importantly, the Resolution Plan had already been considered and approved by the CoC with 100% voting share after a detailed process involving discussion, negotiation and challenge amongst the prospective resolution applicants.

Although non-voting participants, members of the erstwhile Board are entitled, as a matter of natural justice and under Section 24(3)(b), to be given copies of resolution plans placed before the CoC and to participate meaningfully in CoC meetings; the NCLAT's contrary order was set aside.

71. The grievance is therefore essentially directed against the procedure adopted at the stage of approval by the Adjudicating Authority.

72. In our view, in the facts of the present case, the alleged procedural irregularity has not resulted in any demonstrated prejudice to the Appellant. A challenge under Section 61 cannot succeed merely by establishing a procedural objection. The Appellant must show that the alleged irregularity has materially affected the approval of the Resolution Plan or has resulted in violation of a substantive requirement of the Code. We are therefore unable to accept the contention that the Impugned Order is liable to be set aside solely on this ground.

Eligibility of the Successful Resolution Applicant

73. The next issue raised by the Appellant is that M/s Suraj Garg, being a practising Chartered Accountant, could not have submitted the Resolution Plan. The issue to be decided is:

> Whether M/s Suraj Garg was ineligible to submit the Resolution Plan merely because he was a practising Chartered Accountant?

74. The Appellant has placed its reliance on the judgment of the Hon'ble Delhi High Court in **Council of Institute of Chartered Accountants of India (supra)**[7] wherein it was held that a practising Chartered Accountant cannot

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[7] **Council of Institute of Chartered Accountants of India v. Subodh Gupta & Anr (2017) 202 Comp Cas 115** Para 18. "In the instant case the admitted position is that the respondent is registered with the Council to practice as a Chartered Accountant. He cannot be a director of a company without the permission of the Council. The appellant is the promoter of various companies of which he is a director as per the evidence on record. Being a Chartered Accountant the respondent cannot actively carry on business through companies, trusts and firms. There is evidence that the respondent is doing so."

actively carry on business through companies, trusts and firms. Appellant claims that the said principle directly bears upon the eligibility and proposed role of Respondent No. 1 under the Resolution Plan and the judgment of Board of Discipline constituted under Section 21A of the Chartered Accountants Act, 1949[8] of ICAI, itself shows that the sole Resolution Applicant being entrusted with the role of Resolution Applicant is ineligible. Particularly, Clauses 4.2, 6.3.1, 6.3.2, 6.3.3, 6.3.4 of the Resolution Plan delineates his exclusive role as Resolution Applicant.

75. We note that Section 29A of the Code specifies the persons who are ineligible to submit a Resolution Plan. A practising Chartered Accountant is not, merely by virtue of being a practising Chartered Accountant, included in the disqualifications enumerated in Section 29A.

76. The Appellant seeks to invoke Section 30(2)(e), which requires that a Resolution Plan must not contravene any provision of law for the time being in force. The claim of the Appellant is based primarily upon [9]Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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[8] In the matter of **C.A. Vinay Dattatray Balse versus C.A. Yogender N. Thakkar**, in file number PR-208 14-BD242-14-BOD229-16, dated 10th Feb 2018

[9] **Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949**
A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he, engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (not being a Managing Director or a whole-time director) unless he or any of his partners is interested in such company as an auditor.

77. We have carefully considered this submission as well as the response of the ICAI. The ICAI, which is the statutory regulatory body governing the profession, has specifically stated that there is no bar on a practising Chartered Accountant becoming a Resolution Applicant, provided he does not act as a whole-time director. The Appellant has not established that the Successful Resolution Applicant had become a whole-time director in violation of the applicable professional regulations. The mere fact that the Resolution Plan contemplated management of the Corporate Debtor under the leadership of the Successful Resolution Applicant cannot, by itself, establish that the Successful Resolution Applicant had assumed an office which is prohibited under the Chartered Accountants Act. It is also brought to our notice that a new board has been inducted and this has been recorded in the official filing of the directors in form number DIR 12, which has been filed before the Ministry of Corporate Affairs. We were taken through the filing document, which clearly brings out that Mr. Suraj Garg, the Successful Resolution Applicant is a non-executive director in the newly constituted Board of the corporate data i.e. M/s Satellite Cables Private Limited – the Corporate Debtor now successfully resolved, as per the E-filing dated 23.01.2026 as per the filing in the MCA.

78. Thus, we find that in the present case, no specific provision has been shown to us which prohibits a practising Chartered Accountant from submitting a Resolution Plan.

79. The allegation therefore remains unsupported by any statutory disqualification. We accordingly hold that the objection based upon the status

of the Successful Resolution Applicant as a practising Chartered Accountant does not constitute a ground for rejection of the Resolution Plan.

<u>Issue of One Time Settlement</u>

80. We note that the Appellant has placed considerable reliance on the OTS proposal allegedly made to the financial creditor. It is submitted that the OTS was accepted and an amount of ₹2.50 crore was deposited. Even assuming that the OTS proposal was made and the amount was deposited, the same does not by itself terminate the CIRP. The issue to be decided by us is :

> Whether the alleged OTS rendered continuation of the CIRP and approval of the Resolution Plan impermissible?

81. We note that once a petition under Section 9 has been admitted and CIRP has commenced, the process is required to continue in accordance with the Code. In such a situation if a settlement has to happen then withdrawal will have to be done as per Section 12A of the Code. Section 12A provides a specific statutory mechanism for withdrawal of an application admitted under Sections 7, 9 or 10. Such withdrawal requires approval of not less than 90% of the voting share of the CoC and an application in the manner prescribed. We find no material before us showing that the CIRP was withdrawn under Section 12A. A settlement proposal between the parties, therefore, cannot by itself nullify the CIRP or prevent the CoC from considering Resolution Plans. The Resolution Professional was correct in pointing out that the mere existence of an OTS proposal did not authorise him to discontinue the CIRP in the absence of an order under Section 12A.

82. We also take note of the submission that the OTS did not ultimately materialise in the manner contended by the Appellant and that the financial creditor subsequently withdrew the terms of the proposal. In these circumstances, the alleged OTS cannot invalidate the subsequent approval of the Resolution Plan.

Issue of alleged acceptance of a lower bid

83. The Appellant next contends that another resolution applicant had offered a higher amount and that the CoC acted illegally by approving the Resolution Plan of M/s Suraj Garg. The issue to be decided is:

> Whether the CoC acted illegally by approving the Resolution Plan of M/s Suraj Garg despite the alleged higher offer from another applicant?

84. Specifically speaking we need to see whether the RP's and the CoC's failure to consider an unsuccessful resolution applicant's revised offer (from ₹5.73 cr to ₹6.00 cr) communicated by email dated 28.11.2023 — that is, after the H-1 declaration in the 10th CoC meeting on 21.11.2023 but before the 11th CoC meeting on 06.12.2023 at which plans were placed for voting — vitiates the plan-approval on the ground of failure to maximize value of the Corporate Debtor 's assets (preamble and Section 30(4) IBC). We observe that the Hybrid Challenge process at the 10th CoC meeting (21.11.2023) closed the bid. We also observe that post-closure revisions, if entertained, would destabilize the Insolvency Resolution Process and can lead to manipulation. Thus, the RP correctly declined to reopen the process. We also observe that the RA who claims to have made the higher offer (Anuj Goyal) is R-4 in this appeal and

has not himself challenged the plan approval. His silence weakens the Appellant's standing to press this point.

85. Thus, we find that more than one Resolution Plan was considered. The prospective resolution applicants were given opportunities to revise and cure their Resolution Plans. The Resolution Professional also informed the applicants about observations and remarks on their plans and provided opportunities to submit revised plans. The 10th meeting of the CoC included a hybrid challenge amongst the prospective resolution applicants. Thereafter, in the 11th meeting, the Resolution Plans were discussed and the plan of M/s Suraj Garg was ultimately approved with 100% voting share.

86. The Appellant's case is essentially that the CoC ought to have selected the applicant offering the highest monetary consideration. We are unable to accept such a proposition. The Code does not require the CoC to mechanically approve the Resolution Plan which offers the highest numerical amount. Financial consideration is undoubtedly an important factor. However, the CoC is entitled to consider the totality of the circumstances, including feasibility, viability, implementation capability, conditions attached to the plan and the interests of the various stakeholders.

87. In the present case, the CoC approved the Resolution Plan with 100% voting share.

88. We observe that the Hon'ble Supreme Court in **K. Sashidhar**[10] has clearly held that the commercial wisdom of the CoC in approving a Resolution

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[10] **K. Sashidhar v. Indian Overseas Bank & Ors. CA No. 10673 of 2018**

Plan is not subject to substitution by the Adjudicating Authority or the Appellate Tribunal. The same principle was reiterated in **Pratap Technocrats (supra)**, where the Hon'ble Supreme Court held that the Adjudicating Authority and Appellate Authorities cannot enter into the commercial wisdom underlying the CoC's decision.

89. We observe that the commercial wisdom of the CoC in accepting the SRA's plan (100 % vote) is not justiciable — Essar Steel[11]; K. Sashidhar (supra). Thus, neither NCLT nor NCLAT can substitute its assessment for that of the CoC.

90. We further find that no material before us to establish that the CoC's decision was actuated by fraud, discrimination or any consideration prohibited by the Code. Thus, this ground is also rejected.

Issue of Government dues and the Rainbow Papers judgment

91. The Appellant has also relied upon the order dated 20 December 2023 passed by the Additional Commissioner, CGST, Alwar Commissionerate, confirming a demand of approximately ₹17.47 crore. The issue before us is:

The SC held that the commercial wisdom of the CoC, reflected in its exercise of the requisite voting share to approve or reject a resolution plan, is non-justiciable and cannot be interfered with by the NCLT or NCLAT sitting in appeal over that business decision.

[11] **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. CA Nos. 8766-8767 of 2019**
Reaffirming and elaborating K. Sashidhar, the Court held that the CoC's commercial wisdom in approving a resolution plan is paramount and not subject to substantive judicial review by NCLT/NCLAT, whose jurisdiction is confined to the limited grounds specified in Sections 30(2) and 61(3).

Whether the alleged non-provision for Government dues makes the Resolution Plan contrary to Section 30(2)2 of the Code?

92. It is contended by the Appellant that since the Resolution Plan did not provide for payment of these dues, the plan was contrary to law. Appellant claims that the plan is bound to be rejected if it ignores statutory dues and the CoC cannot secure its own dues at the cost of statutory dues owed to a Government. The Appellant has relied upon **Rainbow Papers (supra)**. Appellant submits that the Adjudicating Authority was required to consider the statutory dues while examining compliance of the Resolution Plan with the mandatory provisions of the IBC and as such a Resolution Plan cannot disregard statutory Government dues. And the failure to consider a statutory liability of Rs. 17.47 crores, while approving a Resolution Plan providing nil payment towards such dues, constitutes a material infirmity in the approval process and warrants interference with the Impugned Order.

93. We have considered the submission. We note that the OIO is dated 20.12.2023, two days before voting conclusion and the CGST demand did not crystallize until then, and the RP's obligation under s. 30(2)(b)(ii) is to examine plans against admitted / known dues and it was not obligated to admit the claim.

94. Moreover, the decision in **Rainbow Papers** cannot be read in isolation from the subsequent authoritative pronouncement of the Hon'ble Supreme Court in [12]**Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset**

[12] **Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657**

Reconstruction Co. Ltd., (2021) 9 SCC 657, which explained the binding effect of an approved Resolution Plan upon Government authorities and statutory creditors. The Hon'ble Supreme Court in **Ghanashyam Mishra (supra)** held that once a Resolution Plan is approved under Section 31, the claims provided in the plan stand crystallised and the approved plan becomes binding upon the Corporate Debtor, creditors, including Government authorities, and other stakeholders. Once a plan is approved, all statutory dues not included in it stand extinguished ("clean slate" doctrine). Claims which are not part of the approved Resolution Plan are dealt with in accordance with the statutory scheme. Therefore, the mere existence of a Government demand does not mean that the Resolution Plan must necessarily provide for payment of the entire demand. The question under Section 30(2) is whether the Resolution Plan satisfies the statutory requirements of the Code. Moreover, the Honourable Supreme Court has itself clarified on November 2023 judgment on review petitions in Rainbow Papers — that Rainbow Papers turned on its own facts (in particular the GVAT Act creating a first-charge deemed statutory charge) and it does not lay down a general rule that all statutory dues must be paid at par with secured creditors [[13]**Sanjay Kumar Agarwal v. State Tax Officer, (2024) 2 SCC 362].**

Once a Resolution Plan is approved under Section 31, the claims provided in the plan stand crystallised and the approved plan becomes binding upon the Corporate Debtor, creditors, including Government authorities, and other stakeholders. Claims which are not part of the approved Resolution Plan are dealt with in accordance with the statutory scheme. Therefore, the mere existence of a Government demand does not mean that the Resolution Plan must necessarily provide for payment of the entire demand.

[13] Sanjay Kumar Agarwal v. State Tax Officer, (2024) 2 SCC 362

95. Further, the Appellant, who is a suspended director and not the statutory creditor concerned, cannot seek to invalidate the Resolution Plan merely on the basis of the alleged Government dues, particularly when the competent Government authority itself has not challenged the approval of the Resolution Plan on this ground. The statutory scheme of the Code is to provide a resolution of the Corporate Debtor and to bind stakeholders by the approved Resolution Plan. In view of the above legal position, the reliance placed by the Appellant on Rainbow Papers does not establish that the entire Resolution Plan is liable to be rejected. The ground is therefore rejected.

96. Thus, we note that the **Rainbow Papers (supra)**. — apparently supports Appellant on the face; but must be read with Sanjay **Kumar Agarwal (supra)** — wherein the review was dismissed but explanatory observations narrowed Rainbow Papers substantially.

97. Furthermore, in **Ghanashyam Mishra (supra)** —it has been clarified by Honorable Supreme Court that post-approval all claims not in plan are extinguished; Section 31 binds the government. This supported the case strongly for SRA. In [14]**Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman**

Rainbow Papers is confined to statutes creating first-charge/deemed-charge in favour of tax authority; no general rule of parity for statutory dues.

[14] **Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., (2023) 10 SCC 60**

The Supreme Court held that 'government dues' — dues payable to the Treasury such as taxes, tariffs, etc. falling within Article 265 — are covered by Section 53(1)(f) and rank below secured and unsecured creditors. The Rainbow Papers judgment did not notice the waterfall mechanism under Section 53, and the provision was neither adverted to nor extracted therein. The Rainbow Papers judgment has not taken note of IBC provisions treating secured creditors' dues at a higher footing than government dues. Dues payable to statutory

Ispat (P) Ltd., (2023) 10 SCC 60 the Hon'ble Supreme Court had held that statutory dues rank as per s.53 waterfall, not as secured creditors, absent express first-charge language.

98. Post-Sanjay Kumar Agarwal jurisprudence was to confine Rainbow Papers to statutes creating first-charge/deemed-charge in favour of the tax authority (e.g., GVAT s.48).

99. We further note that even though the Hon'ble Supreme Court in **State Tax Officer (supra)** interpreted the definition of 'secured creditor' to hold that a charge created by statutory law could be considered a 'security interest', treating government authorities as secured creditors, but the recent **amendment in the IBC Code, notified on 26th May 2026**, in an Explanation to Section 3(31) has restored the original legislative intent. This explanation clarifies that security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties. It shall not include a security interest created merely by operation of any law. This overrules the Rainbow Papers position and ensures statutory dues cannot claim secured creditor status. Being an explanation this has retrospective effect as a clarificatory amendment. Thus, the Amendment Explanation expressly excludes security interests created merely by operation of law. Thus, the Government dues cannot claim priority over secured creditors.

corporations with distinct juristic entity, which do not constitute government dues payable into the Consolidated Fund, stand on a different footing.

Conduct of the Resolution Professional

100. The last question before us is whether there is any material irregularity in the CIRP or in the exercise of powers by the Resolution Professional which would justify interference under Section 61 of the Code?

101. Appellant claims that Shri Vivek Raheja, IP, has been suspended for his conduct by IBBI and the RP was a Director in the firm in which Vivek Raheja was also a Director. The nexus between the two was so thick and the RP failed to disclose the same to either the COC or the Suspended Board i.e. the Appellant. The Directors of Osrik Resolution Private Limited were de-facto Resolution professionals and were present in all COC meetings. Shri Vivek Raheja has attended all the COC meetings with the RP without any authorization and has diluted the purity of COC meetings. Thus, the Appellant has alleged that the Resolution Professional failed to conduct the CIRP in a transparent manner and failed to maximize the value of the assets.

102. It is brought to our notice by the resolution professional that the alleged suspension of a director of Osrik Resolutions Pvt. Ltd. is (i) unrelated to the RP personally, and (ii) not particularized — no order, no date.

103. Furthermore, we have considered the material placed before us. The record shows that:

- Form-G was issued;
- three prospective resolution applicants were identified as eligible;
- the Information Memorandum and Evaluation Matrix were circulated;
- Resolution Plans were received;
- due diligence was undertaken;
- registered valuers were appointed;

- the applicants were given opportunities to revise and cure their plans;
- a hybrid challenge was conducted;
- the plans were considered by the CoC; and
- the final Resolution Plan was approved with 100% voting share.

104. The Resolution Professional also placed the revised plan of another applicant before the CoC. The statutory role of the Resolution Professional is not to take the place of the CoC. As observed by the Hon'ble Supreme Court in **K. Sashidhar (Supra)**, the Resolution Professional is not required to express his own opinion on matters falling within the domain of the financial creditors in relation to approval or rejection of a Resolution Plan. The Appellant has not established any material irregularity of the kind contemplated by Section 61(3) of the Code.

105. Thus, we find that the cumulative conduct of the RP — as pleaded (failure to place the OTS on record before the CoC, failure to place Anuj Goyal's revised bid, alleged collusion, and the asserted fact that a director of Osrik Resolutions Pvt. Ltd. (the IPE with which the RP is associated) has been suspended by the IBBI Disciplinary Committee) — do not constitute material irregularity in the conduct of the CIRP within the meaning of Section 61(3)(ii) IBC. Thus, the allegations therefore do not justify interference with the Impugned Order.

<u>Non-cooperation of the suspended directors</u>

106. There is another aspect which cannot be completely ignored by us. The Resolution Professional has placed on record that the suspended directors did not cooperate with the CIRP and that an application under Section 19(2) of

the Code had to be filed for obtaining the necessary books and information. The Adjudicating Authority had proceeded against the concerned Appellant ex parte at one stage and subsequently directed the erstwhile directors to provide the requisite information. According to the Resolution Professional, the directions were not complied with. We observe that a person who has himself failed to cooperate with the CIRP cannot, at a later stage, seek to invalidate the entire process on general allegations of lack of transparency unless a specific and material violation of the Code is established. We further observe that the CIRP is a time-bound statutory process. The conduct of all stakeholders must be viewed in the context of the legislative objective of completing the process within the prescribed time and avoiding unnecessary delay.

Whether the Resolution Plan satisfies the statutory requirements

107. The present Resolution Plan was considered by the CoC and approved by 100% voting share. The Resolution Professional thereafter filed the application under Sections 30(6)[2] and 31[15] for approval. Adjudicating

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[15] **SECTION 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, [1][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.

[2][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.

Authority is required to examine whether the Resolution Plan satisfies the requirements of Section 30(2)[2] and the applicable Regulations and the jurisdiction of the Adjudicating Authority under Section 31[15] is not an appellate review of the commercial decision of the CoC.

108. The material before us does not demonstrate that the Resolution Plan violates any mandatory provision of Section 30(2)[2]. Nor has the Appellant demonstrated any material irregularity in the exercise of powers by the Resolution Professional which would attract Section 61(3)[4] of the Code.

109. We note that the grounds raised by the Appellants essentially invite this Appellate Tribunal to re-examine:

- the commercial choice of the CoC;
- the relative value of competing Resolution Plans;
- the effect of an unsuccessful settlement proposal (OTS);

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(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 before the approval of such resolution plan by the committee of creditors

- the eligibility of the Successful Resolution Applicant on a professional-regulatory issue not established as a statutory disqualification; and
- the treatment of Government dues.

110. These matters, on the facts of the present case, do not furnish a valid ground for setting aside the approved Resolution Plan.

111. It is also brought to our notice by the resolution professional (in his Reply dated 31.07.2024 in Company Appeal (AT) (Ins.) No. 1032/2024, paragraph 31) that "the Successful Resolution Applicant has made the entire payment in terms of the plan... Assets/factory has been handed over to SRA, application for appointment of directors has been placed before the ROC and same is in process of approval from the department. The Monitoring Committee is at the stage of dissolution soon".

112. We note that Honourable Supreme Court has repeatedly deprecated interference with implemented resolution plans — [16]**Ebix Singapore v. CoC of Educomp Solutions (2022) 2 SCC 401**; [17]**Kalpraj Dharamshi (2021) 10 SCC 401**.

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[16] **Ebix Singapore (P) Ltd. v. CoC of Educomp Solutions Ltd., (2022) 2 SCC 401**
IBC is a self-contained code; specialised time-bound process; disapproval of post-approval unravelling.

[17] **Kalpraj Dharamshi (2021) 10 SCC 401**
Bidding process is within CoC domain; challenges require concrete showing of arbitrariness.

113. Therefore, in the facts and the circumstances of the case, basis above analyses, we are not inclined to interfere with the implemented resolution plan.

Conclusion

114. We have considered the submissions of both Appellants, the Resolution Professional and the Institute of Chartered Accountants of India. The allegations raised by the Appellants do not establish any violation of the mandatory provisions of the Code. The CIRP was conducted through the prescribed stages. Prospective Resolution Applicants were invited, their plans were considered, opportunities for revision were provided, due diligence was conducted and the CoC ultimately approved the Resolution Plan of M/s Suraj Garg with 100% voting share. The purported OTS did not result in withdrawal of the CIRP under Section 12A. The existence of another offer, even assuming that it was financially higher, does not permit this Tribunal to substitute its commercial judgment for that of the CoC. The objection concerning the status of the Successful Resolution Applicant as a practising Chartered Accountant is not supported by any statutory disqualification under Section 29A, and the ICAI has specifically stated that a practising Chartered Accountant can act as a Resolution Applicant, subject to the applicable restriction regarding acting as a whole-time director. The objection regarding Government dues also does not establish that the Resolution Plan is liable to be rejected, particularly in view of the law laid down by the Supreme Court in **Ghanashyam Mishra (supra)**. As regards the grievance of Vinay Gupta concerning non-supply of the Resolution Plan, although a suspended director is entitled to meaningful

participation in the CIRP in accordance with the Code, the Appellant has failed to demonstrate any specific prejudice which has materially affected the approval of the Resolution Plan. In the facts of the present case, this ground also does not justify setting aside the completed CIRP and the Resolution Plan approved by the CoC.

115. The Insolvency and Bankruptcy Code does not contemplate that a completed resolution process should be reopened merely because a suspended director disagrees with the commercial decision of the CoC. The objective of the Code is resolution of insolvency in a time-bound manner and maximisation of value, while preserving the statutory role assigned to the CoC. We, therefore, find no ground to interfere with the Impugned Order.

116. Furthermore, we find that the Appellants have been abusing the process of law and placing hindrance in the implementation of the insolvency resolution of the corporate debtor by instituting such frivolous appeals and wasting precious time of this appellate tribunal and an appropriate cost should be imposed on both the appellants separately. In fact, the Appellants has never cooperated in the CIRP process, even order on application under Section 19(2) of the Insolvency and Bankruptcy Code are issued against the Appellants.

Order

117. Accordingly, both the Appeals, namely:

- **Company Appeal (AT) (Insolvency) No. 1032 of 2024**, filed by Niharika Goel; and

- **Company Appeal (AT) (Insolvency) No. 1038 of 2024**, filed by Vinay Gupta,

are **dismissed**. The **Impugned Order dated 23 April 2024** passed by the National Company Law Tribunal, New Delhi Bench-III in **I.A. (PLAN) No. 5 of 2024 in CP (IB) No. 1185/(ND)/2019**, approving the Resolution Plan submitted by **M/s Suraj Garg** in respect of **M/s Satellite Cables Private Limited**, is affirmed. Both the Appellants are imposed a cost of ₹1 lakh each for wasting the precious time of this appellate tribunal on unjustified grounds. All pending Applications, if any, stand disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
August 21, 2026.

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