

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi -110 001

5th June, 2022

Subject: Judgment¹ dated 3rd June, 2022 of the Hon'ble Supreme Court of India in the matter of Vallal RCK Vs. M/s Siva Industries and Holdings Limited and Ors. [Civil Appeal Nos. 1811-1812 of 2022]

The Hon'ble Supreme Court in its judgment dated 3rd June, 2022 while considering as to whether the Adjudicating Authority (AA) / Appellate Authority can sit in an appeal over the commercial wisdom of the Committee of Creditors (CoC), made following important observations:

Sl. No.	Issue / Theme	Observation / Ruling	Para / Page No.
1.	Objective of section 12A	(a) Section 12A was brought on the basis of the Insolvency Law Committee's Report. Though by the Amendment Act No. 26 of 2018, the voting share of 75% of CoC for approval of the resolution plan was brought down to 66%, section 12A of the Insolvency and Bankruptcy Code, 2016 (Code) which was brought by the same amendment, requires the voting share of 90% of CoC for approval of withdrawal of corporate insolvency resolution process (CIRP). (b) The provisions under section 12A of the Code have been made more stringent as compared to Section 30(4) of the Code. Whereas under section 30(4) of the Code, the voting share of CoC for approving the resolution plan is 66%, the requirement under section 12A of the Code for withdrawal of CIRP is 90%.	12/8 23/18
2.	Whether AA/Appellate Authority can sit in appeal over commercial wisdom of CoC?	(a) When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC.	24/18

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		<p>(b) This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts.</p> <p>(c) The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules.</p>	<p>21/16-17</p> <p>24/18</p>
3.	Conclusion	The appeals were allowed and the application filed for withdrawal of CIRP, was allowed.	28/21