IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-1

ITEM NO. 305-312

I.A.620(AHM)2023, I.A.942(AHM)2023, I.A.987(AHM)2023, I.A.993(AHM)2023, I.A.1097(AHM)2023, I.A.1098(AHM)2023, I.A.1298(AHM)2023, I.A.1354(AHM) 2023 in C.P.(IB) No. 203(AHM)2020

Orders under section 60(5), 33(1), 12 of IBC Rule 11 of NCLT Rules,2016 Regulation 17 r.w. Regulation 13 of IBBI Regulation.

IN THE MATTER OF :

I.A.620(AHM)2023
Mukesh Verma RP of IMP Powers Ltd. **….Applicant**

I.A.942(AHM)2023
Mukesh Verma RP of IMP Powers Ltd. **….Applicant**

I.A.987(AHM)2023
Mukesh Verma RP of IMP Powers Ltd. **….Applicant**

I.A.993(AHM)2023
Ramniwas Ramdayal Dhoot **….Applicant**
Vs.
Mukesh Verma RP of IMP Powers Ltd. & Anr. …**Respondents**

I.A.1097(AHM)2023
Mukesh Verma RP of IMP Powers Ltd. **….Applicant**

I.A.1098(AHM)2023
Mukesh Verma RP of IMP Powers Ltd. **….Applicant**

I.A.1298(AHM)2023
Girdharilal Parmeshwarlal Joshi **…Applicant**
Vs.
Mukesh Verma & Anr. **…Respondents**

I.A.1354(AHM) 2023
Apar Industries Ltd. Through its
Authorised Person Virendra Singh Barangali **…Applicant**
Vs.

Mukesh Verma IRP of IMP Powers Ltd. & Ors. ….**Respondents**

Order delivered on: 19.12.2023

Coram:
Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD

IA/987(AHM)2023, IA/993(AHM)2023, IA/1354(AHM)2023, IA/620(AHM)2023, IA/942(AHM)2023, IA/1097(AHM)2023, IA/1098(AHM)2023 and IA/1298(AHM)2023 in CP(IB) 203 of 2020

In the matter of M/s. IMP Powers Ltd.

1. IA/987(AHM)2023

(An application under Section 33(1) & 60(5) IBC r.w. Rule 11 of NCLT Rules, 2016)

Mr. Mukesh Verma
(Resolution Professional of
M/s. IMP Power Limited)
Having address at:
AVM Resolution Professional LLP,
Nucleus House, Saki Vihar Road,
Andheri East, Mumbai – 400072.

……. Applicant/
Resolution Professional

2. IA/993(AHM)2023

(An application under Section 60(5) of IBC, 2016 r.w. Rule 11 of NCLT Rules, 2016)

Mr. Ramniwas Ramdayal Dhoot
Having address at:
86-A, Shriniketan Building,
Netaji Subhash Road,
Marine Drive, Kalbadevi,
Mumbai - 400002.

……. Applicant

V/s.

1. Mr. Mukesh Verma

Resolution Professional of IMP Powers Limited
Having address at:
B 1506, Sunteck City,
Avenue 2, Goregaon West,
Mumbai, Maharashtra – 400072.

2. **The Committee of Creditors of IMP Powers Limited**
Having its address at:
State Bank of India,
Raheja Chambers, B-Wing,
Ground Floor, Free Press Journal Marg,
Nariman Point -400021.

..... Respondents

3. **IA/1354(AHM)2023**
(An application filed under Rule 11 of the NCLT Rules, 2016)

Apar Industries Ltd.
Through its Authorised Person,
Mr. Virendra Singh Barangali,
Having its address at:
Apar House, Corporate Park,
V N Purva Marg, Chembur,
Mumbai – 400071.

..... Applicant

V/s.

1. **Mr. Mukesh Verma**
(Insolvency Resolution Professional)
Having its address at:
B/1506, Suntech City, Avenue 2,
Goregaon West,
Mumbai – 400104.

2. **The Committee of Creditors**
Lead by State Bank of India
SARG (Stressed Assets Resolution Group)
Mr. Rasmi Ranjan Patil – AGM
Registered office: 21st Floor,
Maker Tower (E), Cuffe Parade,

Mumbai – 400005.

..... Respondents

4. IA/620(AHM)2023

(An application filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the NCLT Rule, 2016)

Mr. Mukesh Verma
Resolution Professional of IMP Powers Limited
Having its address at:
B 1506, Avenue 2,
Sunteck City, ODC , Goregaon West,
Mumbai, Maharashtra – 400104.

..... Resolution Professional/ Applicant

5. IA/942(AHM)2023

(An application filed under Section 12 and 60(5) of IBC, 2016 r.w. Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

Mr. Mukesh Verma
Resolution Professional of IMP Powers Limited
Having its address at:
AVM Resolution Professionals LLP,
Nucleus House, Saki Vihar Road,
Andheri East, Mumbai-400072.

..... Resolution Professional/ Applicant

6. IA/1097(AHM)2023

(An application filed under Section 60(5) of IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016)

Mr. Mukesh Verma
Resolution Professional of IMP Powers Limited
Having address at:
B 1506, Avenue 2,
Sunteck City, ODC , Goregaon West,

Mumbai, Maharashtra – 400104.

..... Resolution Professional/ Applicant

7. IA/1098(AHM)2023

(An application filed under Regulation 17 r.w. Regulation 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r.w. Rule 11 of the NCLT Rules, 2016)

Mr. Mukesh Verma
Resolution Professional of IMP Powers Limited
Having address at:
B 1506, Avenue 2,
Sunteck City, ODC , Goregaon West,
Mumbai, Maharashtra – 400104.

..... Resolution Professional/ Applicant

8. IA/1298(AHM)2023

(An application under Rule 11 of the NCLT Rules, 2016)

Girdharilal Parmeshwarlal Joshi
A-2502, Ekta Meadows,
Near Magathane Bus Depot,
Siddharth Nagar,
Mumbai – 400066.
On behalf of the employees and workmen of:
M/s. IMP Powers Ltd.
Having its office at:
Film Centre, 2nd Floor, Unit No.21A
68, Tradeo Road, Mumbai – 400034.

..... Applicant

V/s.

1. **Mr. Mukesh Verma**
   Resolution Professional of IMP Powers Ltd.
   Having its address at:
   B/1506, Suntech City, Avenue 2,
   Goregaon West,
   Mumbai – 400104.

2. **The Committee of Creditors of IMP Powers Ltd.**
Having its address at:
State Bank of India,
Raheja Chambers, B-Wing,
Ground Floor, Free Press Journal Marg,
Nariman Point -400021.

..... Respondents

In the matter of

CP(IB) 203 of 2020
(An application filed under Section 9 of the IBC, 2016)

M/s. FM India Supply Chain Private Limited
Previously Spear Logistics Pvt Ltd.
7th Floor, A.G. Technology Park, Server Space,
Off. ITI Road, Aundh, Pune-411 007

..... Original Petitioner

V/s.

M/s. IMP Power Limited,
CIN: L31300DN1961PLC000232
Survey No. 263/2/2, Sayli Village,
Umer Kuin Road
Dadra & Nagar Haveli (U.T),
Silvasa – 396230.

..... Corporate Debtor

Order Pronounced on 19.12.2023

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For Applicant : Mr. Rashesh Sanjanwala, Sr. Adv. a/w. Mr. Atul Sharma, Adv.
: Mr. Navin Pahwa, Sr. Adv. a/w. Mr. Rahul Desai, Adv. a/w. Mr. Ashutosh Jain, Adv.
: Ms. Niyati Merchant, Adv. i/b MDP &

	Partners
	: Mr. Shravan Chandrshekhar, Adv.
For Respondent	: Mr. Abdullah Qureshi, Adv. i/b Mr. Shrijit Pillai, Adv. (for R-2, CoC)
For the CoC	: Mr. Abdullah Qureshi, Adv.
For the RP	: Mr. Mukesh Verma
	: Mr. Niten Mehta, Adv. a/w. Mr. Aditya Raval, Adv.

COMMON ORDER
[Per: Bench]

A. I.A. No. 987 of 2023

1. I.A. No.987 of 2023 is an application filed by the Resolution Professional of IMP Power Limited, seeking following reliefs:

   "1. This Hon'ble Tribunal may graciously pass necessary orders, as it may deem appropriate, considering the fact that the two compliant resolution plans were not approved by the CoC and extended CIRP period of 487 days has expired."

   The application was affirmed on 22.08.2023 and was physically received only on 05.09.2023 and Court fee was paid on 24.08.2023,

2. By order dated 29.03.2022 in CP(IB) No.203/AHM/2020, CIRP commenced in the matter and Applicant has been appointed as an Interim Resolution Professional ("IRP"). The IRP made the public announcement on 02.04.2022. Copy of public announcement is annexed as Exhibit "B".

3. Pursuant to the filing of claims, the CoC was formed comprising following lenders:

Sr. No.	Name of Lenders	% voting rights
1	State Bank of India	36.43
2	Bank of India	15.90
3	Indian Bank	11.07
4	Karnataka Bank	09.41
5	IDBI Bank	09.28
6	STCI	07.74
7	Axis Bank	04.88
8	Canbank Factors	04.83
9	Adisun Investments	00.23
10	Ambit Finvest	00.16
11	ICICI Bank	00.04

4. It is submitted that the first CoC meeting was held on 28.04.2022 wherein, the CoC unanimously appointed the IRP as a Resolution Professional ("RP").

5. Thereafter, transaction auditor, valuers and statutory auditor were appointed by the RP in consultation with the CoC. Form G was published on 10.06.2022 in four newspapers viz. (i) Free Press Journal (English, Mumbai edition), (ii) Navshakti (Marathi edition) (iii) Silvassa Mirror (English, Silvassa edition) and (iv) Janadesh (Gujarati, Silvassa edition).

6. In response to Form-G, 12 EOIs were received till the last date of submission i.e., 02.07.2022. The RP issued final list of eligible prospective Resolution Applicants ("PRA"s) on 17.07.2022. Out of twelve, total nine PRAs complied with the conditions of EOI and thereafter a CoC meeting was convened on 08.07.2022. The final list of PRAs is as follows:

Sr. No.	Name of the Prospective Resolution Applicant
1	Mehga Engineering and Infrastructure Limited
2	Jindal Power Limited
3	Hemani Chemiorganic Private Limited
4	Royal Infra Constru. Limited and Ashika Commercial Private Limited in Consortium
5	Mr. Ramnivas Ramdayal Dhoot
6	RKG Fund II, a scheme of RKG Trust
7	Kundan Care Products Limited
8	Mr. Pramod Sharma
9	Shine Agrotechnology Private Limited

7. Mr. Ram Niwas Dhoot who is the promotor of the Corporate Debtor, was considered eligible to submit the Resolution Plan as the Corporate Debtor being MSME.

8. The evaluation matrix and RFRP documents were approved by the CoC. The CoC on request of some PRAs, granted extension of time for submission of the Resolution Plans by two weeks, i.e., up to 31.08.2022 and thereafter for a further period of 12 days i.e. till 12.09.2022.

9. It is stated that the RP received four resolution plans within the extended time-line.

10. On 23.09.2022, the CoC, through a circular resolution authorised the RP to seek extension of CIRP period by 90 days. Accordingly, this Tribunal, vide its order dated 09.10.2022 in I.A. No.839 of 2022 ordered for extension of CIRP period by 90 days from 26.09.2022.

11. Four resolution plans were ultimately received by the RP. The CoC, thereafter, entered into negotiations with all four Resolution Applicants namely:

(1) Mr. Ramnivas Dhoot

(2) M/s. RKG Fund II

(3) M/s. Shine Agrotechnology Pvt Ltd. and

(4) M/s. Kundan Care Products Ltd.

12. The CoC, in its 8th meeting held on 21.12.2022 asked the RP to defer the agenda items for voting on the plans and instead asked RP to submit an application to Adjudicating Authority and to seek extension of CIRP by 60 days. Further, opportunity was given to all the Resolution Applicants to submit their revised and final financial offers. Thereafter RP filed I.A. No.102 of 2023 seeking extension/exclusion of 60 days which was allowed on 06.02.2023 and the RP was directed to complete the entire process within 45 days, i.e. up to 23.03.2023.

13. 10th meeting of CoC was held on 21.03.2023, wherein, CoC sought further extension of 45 days to the CIRP period which was granted by this Tribunal vide order dated 17.04.2023 in I.A. No.394 of 2023. Thereafter, the CoC directed the RP to open the voting window for a period of 22 days to enable the CoC Members to cast its votes.

14. However, 21 days after opening the voting window, banks held a joint lender meeting on 12.04.2023 and asked the RP

to abandon the voting process as one of the Resolution Applicant had submitted a proposal for certain structural changes in the Resolution Plan. Since the demand was made by majority of the CoC members, the applicant abandoned the voting process mid-way. None of the CoC member has casted its vote till 12.04.2023 which was last date to vote.

15. 12th meeting of CoC was held on 25.05.2023 wherein, the CoC directed the applicant to put to vote two resolution plans as detailed below:

S. No.	Name of Resolution Applicant	First Negotiated Resolution Plan Value (Rs.Crore)	Second Negotiated Resolution Plan Value (Rs.Crore)
1	Mr. R. N. Dhoot	110.39	107.11
2	M/s. Shine Agrotechnology Pvt. Ltd.	47.14	47.14

16. The resolution Plan amount offered by Mr. R. N. Dhoot provides for Rs. 8.0 Crores towards release of personal guarantee by the assenting creditors, Rs 26.75 crore towards indemnification of identified BGS from the date of COC approval (as identified BGs of Rs 5.28 Crore had expired), and Rs 0.50 crore towards conversion of debt into equity, recovery from receivables was pass-through to the Secured Financial Creditors ("SFCs"). The cash component of the Plan remained at Rs 72.36 Crore. Resolution

Applicant was to bear the total CIRP cost and if it exceeds Rs 6.50 Crore, the Plan amount would go up accordingly.

17. There was no change in the Resolution Plan or terms by M/s. Shine Agrotechnology Pvt. Ltd.

18. Finally, the CoC directed the RP to put the plans to vote and the voting window was kept open till 15.06.2023. On request of the CoC, voting window was extended and voting ultimately closed on 27.07.2023. The voting result on the Resolution Plan are as under:

Name	%Assent	% Dissent	% Abstain
Mr. R. N. Dhoot	9.51	90.29	0.20
M/s. Shine Agrotechnology Pvt. Ltd.	0.00	99.80	0.20

Thus, none of the Resolution Plans were approved by CoC.

19. During the voting period, one of the PRA Mr. Ram Niwas Dhoot sent a communication through email to all the CoC members and RP dated 24.07.2023 stating as under:
    (i) To reduce implementation period of Resolution plan from one year to six months by expediting payment to financial creditors.
    (ii) To exclude his request made in resolution plan for the release of personal guarantee(s) of promoters by

assenting creditors for which Rs 8 crore was proposed separately in the resolution plan.

20. The applicant convened the 13th meeting of CoC on 10.07.2023, wherein, the CoC requested the applicant to file an application to the Adjudicating Authority praying for further extension/ exclusion of 60 days from the CIRP period. This application is pending on the file of Adjudicating Authority and is being discussed in this order separately.

21. The Applicant convened the 13th meeting of CoC on 28.07.2023 to consider voting results on Resolution Plan and to discuss the way forward. The CoC was adjourned at the request of the participants asking RP to circulate brief note in terms of Regulation 39(3)(b) of the CIRP Regulations. Certain clarifications were asked.

22. 14th CoC meeting, thereafter was adjourned and the same was held on 31.07.2023. The limited point and the consideration was whether to consider the email dated 24.07.2023 received from Mr. Ram Niwas Dhoot. The CoC members voted in physical mode with 85.3 % majority and **rejected the request made on 24.07.2023 by the said Mr. Ram Niwas Dhoot to consider revised plan**.

23. The result of the 14th CoC meeting were announced on the same day. The Applicant asked the CoC to consider every available option i.e., fresh publication of Form G before

considering liquidation of the Corporate Debtor. However, the CoC members declined to consider fresh publication of Form G, as extended period of 487 days was coming to an end on 31.07.2023 (the day of meeting itself).

"....Since, resolution was dissented by members having more than 80% vote share and none of members demanded E-voting, it was decided that there was no necessity to put the resolution for E-voting.

Accordingly, chairman declared that resolution regarding approval of resolution plan of Mr. Dhoot, put for re-voting, has failed to gather requisite majority and therefore, rejected.

Thereafter, chairman requested members to consider other options i.e. either to publish Form G again or to opt for the liquidation for the Corporate Debtor.
Chairman suggested CoC to consider publication of fresh Form G, as considering going concern status of corporate debtor, Liquidation should be last option. SBI, BOI and Indian Bank were of the option that since CIRP has already taken 485 days, they would prefer liquidation only....".

24. It is stated by the applicant that in the CoC meeting held on 25.05.2023, the Applicant has proposed specific resolution for liquidation of the Corporate Debtor as item no.C-1-d, as an alternate resolution for the approval of the Resolution plan. However, said resolution was not put to vote upon instructions of the CoC.

25. The applicant again requested the CoC to approve specific resolution recommending liquidation of the Corporate Debtor. The CoC members however, asked the applicant to not to take resolution stating the provisions of the I.B. Code.

26. That the following resolution were approved in CoC meeting held on 31.07.2023 pertaining to Regulation 39B (Liquidation Cost) and Regulation 39C (As a Going Concern) Regulation 39D (Liquidator Fees), of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Regulation 2A of Liquidation Process Regulations, 2016.

(a) *Regulation 39B RESOLVED that pursuant to Regulation 39B of the Insolvency & Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016 read with Regulation 2A of Liquidation Process Regulation, 2016 the consent of members of COC be and is hereby accorded to approve the Liquidation Cost as presented to the meeting and the estimated Liquidation Cost amounting to Rs. 14,40,000/- be and is hereby accorded in the event when Liquidation order is passed by Hon'ble Adjudicating Authority under Section 33 (1) of the Code.*

The said agenda item was voted and approved in **14th CoC meeting** held on 31/7/2023 by **94.74%** votes in favour.

(b) *Regulation 39C RESOLVED THAT consent of the members of Committee of Creditors be and is hereby accorded to Liquidate IMP power limited) as going concern after identifying and grouping the*

assets and liabilities to be sold ***as going concern*** *in consultation with stakeholders'* ***consultation committee****.*

The said agenda was approved by **82.77% by CoC** in 12th CoC Meeting the voting results are attached with 12th Meeting of CoC at **Exhibit G**.

(c) *Regulation 39D RESOLVED FURTHER THAT consent of the members of COC be and is hereby accorded for payment of fee to the liquidator at the same rate as being paid to the RP for the period cover under clause (a) and clause (b) of Regulation 39D of CIRP Regulation 2016.*

The said agenda is approved by **75.87% voting** by COC in 12th COC meeting the voting results are attached with 12th Minutes of meeting of COC.

(d) *Regulation 39BA RESOLVED FURTHER THAT consent of the members of COC be and is hereby accorded recommending that first possibility of compromise and arrangement be explored before any step is taken to liquidate IMP Powers Limited.*

The said agenda item was approved by 73.35% voting in 12th COC meeting.

27. Form-H was duly filled in to the extent applicable for an application under section 33(1) and signed by the Resolution Professional is placed along with additional affidavit filed on 23.11.2023.

28. Thus, Applicant submits that two resolution plans were put to vote, but none of the resolution plans found favour with

the COC and therefore, applicant is unable to submit any resolution plan for the approval of Adjudicating Authority. Extended CIRP period ended on 31-07-2023, if the application for extension of CIRP period is approved, which is pending approval of the Honourable Adjudicating Authority. In case the same is not approved the allowed CIRP period ended on 01-06-2023.

29. I.A. No.987 was heard along with I.A. No.993 of 2023 on 06.10.2023. This Tribunal sought views of the CoC on I.A. No.987 of 2023 and a copy of the I.A. No.987 of 2023 was asked to be served to the CoC members.

30. The case was taken-up for hearing on 06.11.2023. Following directions were given:

> *"The matter was taken up in the first round and was passed over with directions to the lead., Member of the CoC – State Bank of India and Indian Bank of India to make their respective presence in the liquidation application.*
>
> *Post - in the second round State Bank of India holding voting share of 36% and Bank of India holding voting share of 16% (approximately) appeared. State Bank of India was represented by Mr. Rashmi Ranjan Pati, AGM, State Bank of India, Corporate Centre and Mr. Gaurav Kumar, Manager. Bank of India was represented through Mr. Subramanium, DGM, SARAM Branch, Mumbai. Both the bankers during the hearing stated that the plan submitted by the ex-management is not commercially viable and they have requested this Tribunal to pass the liquidation order.*
>
> *Counsel appearing for the applicant - RP seeks time to place on record the proof of information for the 17th CoC to the Suspended*

Management. It was further stated by the RP that 18 CoC Meeting was held, the minutes of the 18 CoC have not been brought on record further, the Form H requires revision. The RP seeks and is granted 7 days' time to bring all the three on record.
Relist all the IAs for hearing on 24.11.2023."

31. An additional affidavit was filed by the Applicant/RP in I.A. No.987 under Diary No. D-4616 on 23.11.2023. Along with documents RP filed a revised Form-H.

32. Order dated 24.11.2023 records that proof of information given to the suspended management for the 17th meeting was not filed. Counsel for the RP was directed to file the same within two days. Another additional affidavit was filed in compliance of the said order dated 24.11.2023 under Diary No. D-4618 dated 28.11.2023 attaching therewith the revised Form-H, proof of both the information of 17th CoC meeting, minutes of 15th, 16th, 17th and 18th meetings along with voting results. On perusal of the documents attached in the additional affidavit filed on 28.11.2023, more particularly, annexure 'A' at page no.4 indicates that the RP has duly sent notice of the 17th meeting on 19.10.2023 through an email to the suspended board of directors.

33. From the minutes of the CoC meeting of the 15th CoC meeting, it is clear to us that one Mr. Aditya Dhoot representing the suspended Board was present in the CoC meeting.

34. 16th CoC meeting was scheduled on 13.10.2023 and notice was given to the suspended board. One Mr. Aditya Dhoot and Mr. Ramdas Trimbak Rajguroo were virtually present representing the suspended board.

35. The 17th meeting was to be held on 20.10.202 through virtual mode. From the minutes of the meeting, it is seen that no member of the suspended board was present in the meeting. It is seen that the minutes of the 17th meeting were sent by the liquidator through an email dated 22.10.2023 to all the CoC members and suspended directors as evident from the mail copy of which is appended at page 73. However, the Suspended Board chose not to attend the CoC meeting despite due notice.

36. As such it is clear to us that the suspended board was always present for which they have received due notice of the CoC meeting.

37. In all, 18 CoC meeting were held in the matter. Results of the voting on the various resolutions taken up by the CoC in the 17th CoC meeting are placed on page no. 84-86 of the additional affidavit placed before us and filed on 28.11.2023. A clear conclusion of the various resolutions is on page no.86 which is reproduced below:

a. "*COC has supported liquidation of the CD with members having 85.45% voting share supporting the resolution, members with 9.28%*

dissenting to the resolution and members with 5.26% vote not casting their vote.

b. *CoC has authorized SBI to sign all documents and make filings before AA where COC was a party by 94.73% votes supporting the resolution and 5.26% not casting their votes."*

B. <u>I.A. No.993 of 2023</u>

38. I.A. No. 993 of 2023 is filed by one Mr. Ramniwas Ramdayal Dhoot, member of suspended Board, seeking following reliefs:

"A. This Hon'ble Tribunal be pleased to direct the CoC to make endeavour to resolve the Corporate Debtor and consider Resolution Plan of the Applicant as per the IBC and CIRP Regulations in order to avoid liquidation as it would be prejudicial to the interest of all the stakeholders including livelihood of around 400 employees and destroy the value of the Corporate Debtor.

B. This Hon'ble Tribunal be pleased to direct CoC to provide one-time holistic solution i.e., release of personal guarantee by assenting financial creditors of the Applicant and other promoters if Resolution Plan is accepted by CoC.

C. That this Hon'ble Tribunal be pleased to defer any proposal/ resolution and/or application for liquidation till the adjudication of this Application.

D. For such other and further orders and reliefs as this Hon'ble Tribunal may deem fit or proper in the facts and circumstances of the present case."

39. On perusal of the application, it is seen that for the applicant one authorised signatory has signed and there is

no name appearing on the application of the various signatories. The affidavit authorising the application is on page no.24 to 26 which states that the applicant is authorised signatory and is not disclosing what is capacity of applicant in the present matter. Be-that-as-it-may, it appears that the applicant is one of the persons related to the Corporate Debtor and was one of the Resolution Applicant in capacity of Suspended Board.

40. The main contentions of the applicant herein are that the company is a going concern and was established years ago, it is employing various numbers of employees, contributing to the nation's development by way of payment of taxes and has achieved sales of Rs.3344 crore in the last 10 years (pre-Covid period).

41. The applicant has submitted an Expression of Interest on 30.06.2022 ("EOI") to the R.P.

42. The Corporate Debtor is an MSME. The Resolution Plan was submitted by the Applicant on **10.09.2022** for an amount of Rs.62 Crore to be paid over the period of three months **(First Plan).**

43. It is stated that a revised Resolution Plan was submitted on 31.01.2023 which was found to be feasible and viable in the 10th CoC meeting (**1st Revision to Plan**). It is stated that pursuant to the decision of the 12th CoC meeting held on 25.05.2023 the applicant submitted and addendum to its

revised resolution plan further improving on its commercial and proposing Rs.107.11 Crore with implementation period of one year, for consideration of the CoC (**2nd Revision to Plan**). Thereafter, on 13.07.2023, the applicant in its indeavour to ensure that the Corporate Debtor is revived, further proposed to repayment of resolution amount in 180 days as against the proposed one year. A letter dated 13.07.2023 is annexed as exhibit 'G' (3rd Revision to Plan).

44. It is stated that the voting on the resolution plan of 2 PRAs conclude on 27.07.2023 rejecting the Resolution Plan submitted by the applicant. The Applicant is aggrieved since the Corporate Debtor is an MSME, going concern, employing more than 400 employees/workers on the decision of the CoC to liquidate the Corporate Debtor.

45. It is stated that the key principle enshrined under the Insolvency and Bankruptcy Code, 2016 is for maximisation of the value of the Corporate Debtor. IBC, 2016 was enacted to enable the resolution of the Corporate Debtor in a time bound manner. Time and again, the applicant has revised the plan-amount and the payment terms.

46. Learned Sr. Counsel Mr. Navin Pahwa appeared during the hearing held on 01.12.2023 and has relied upon the following judgment, in support of the present application and has placed written submission before us.

(a) *A reliance is placed on decision of Hon'ble Court NCLAT in the matter of Rajputana Properties Limited V/s. Ultratech Cement Limited, 20108, SCC Online, NCLAT, 1059.*

The CoC has not considered the mandate of IBC as contained in its preamble and as pronounced by the aforesaid judgments. The CoC has also not given any reasons much less than the nature of reasons required by the aforementioned judgments.

(b) *(2019) 2 SCC 1, ArcelorMittal India Private Limited V/s. Satish Kumar Gupta & Ors.*

(c) *2020 (8) SCC 521 (para 73 & 80), The Period of 330 days is not mandatory. It would be in the interest of all stakeholders that the Corporate Debtor is put back on its feet instead of being sent into liquidation. (Pg.15 of I.A.).*

(d) *(2019) 4 SCC17 (Para 28), Swiss Ribbon (P) Ltd. V/s. Union of India.*

(e) *(2020) 15 SCC 1 (Para 21), Babulal Wardarji Gurjar V/s. Veer Gurjar Aluminium Industries Ltd.*

(f) *Civil Appeal No.1792 of 2021 (DoD: 15.09.2021), K. N. Rajkumar V/s. Nagarajan.*

(g) *Company Appeal (AT) 224 of 2021,S. Rajendran, RP of Vasan Healthcare Pvt. Ltd. V/s. ASG Hospital Private Limited.*

(h) *Company Appeal (AT)(Ins) No.1377 of 2019, State Bank of India V/s. Subodh Kumar Agrawal.*

(i) *The Hon'ble NCLAT in Company Appeal (AT) No.203 of 2019, Saravana Global Holdings Limited has considered the scheme of IBC vis-à-vis MSME with reference to various Supreme Court judgments. This judgment was referred to and relied in C. Raja John, Company Appeal (AT) 270 of 2021 by Chennai Bench of*

NCLAT. The Hon'ble Supreme Court in Civil Appeal No. 2552 of 2022 was pleased to set aside Para 32 and 34 of the said judgment. The judgment of Saravana therefore substantially holds the field and the observations in the said judgment would also warrant appropriate consideration for the revival of the CD.

In the circumstances this Hon'ble Adjudicating Authority may be pleased to issue notice on both the applications and consider the same after hearing all concerned including the Applicant. The applicant has already accepted to pay the CIRP cost on actual basis without any cap. The CD is a going concern. There will be no prejudice if all stakeholders including the Applicant are heard and then an appropriate decision is taken which according to the applicant may be keeping in view various judicial pronouncements read with the intent of IBC.

47. Reply was filed by the Respondent No.2 which is the Committee of Creditors. Affidavit in reply is affirmed by one Mr. Kundan Kumar Akela, Assistant General Manager of the State Bank India, stating that the CoC has authorised him in the 17th CoC meeting held on 20.10.2023 to file **(opposing I.A. No.987 of 2023)** reply.

48. It is contention of the Respondent No.2 that the CoC in its wisdom has rejected the two plans vide e-voting which concluded on 27.07.2023. It is stated by the R2 that in the 14th CoC meeting held on 27.08.2023, the email dated 27.07.2023 was rejected by the CoC by 85% of total voting share.

49. It is stated that total 487 days were consumed from the CIRP commencement date till final voting on the Resolution Plans and almost 8 months (i.e. from Nov.22 to July.23) were invested in negotiating the Resolution Plan with the Applicant. Despite prolonged negotiations, the Applicant in the present I.A. and the Respondent No.2 could not agree on the terms of the Resolution Plan and accordingly, the CoC in their commercial wisdom rejected the Applicant's Resolution Plan. It is therefore pleaded that the contentions of the Applicant that provisions of the code and Regulations 39(3)(b) of the CIRP Regulations were violated is completely baseless.

50. Under Para 17 of their reply, the Respondent No.2 has categorically stated that they have complied core objectives of the Code in TOTO. Respondent No.2 thereafter relies upon the judgment of "SVA Family Welfare Trust & Anr. V/s. Ujaas Energy Ltd. & Ors. (SVA Family) decided by Hon'ble NCLAT on 28.01.2023 and states that the facts are completely different in the present matter. Since in the present case, the CoC with 85.43% majority of creditors have dissented the extinguishment of personal guarantee within the plan submitted by the Applicant in the I.A.

51. In the Para 19 of the reply, the Respondent No.2 has given certain reasons and factors which are summarised.

(a) The Liquidation value is higher than the plan value.

(b) Substantial and detrimental haircut of 82.79% was to be suffered by the Secured Financial Creditor if plan of the applicant was approved.

(c) Resolution Plan has identified BGs worth Rs. 26.75 Crores which are offered to be indemnified by the Applicant within 180 days of approval of plan by this Tribunal. No counter bank guarantee is provided by the Applicant in support of the said indemnity. Since the Applicant has not provided a security for his performance under the said indemnity, there is likelihood that this Resolution Plan will fail if the Applicant fails to honor his obligation. Moreover, BGs worth Rs. 7.86 Crores provided by the Financial Creditors to third parties for the Corporate Debtor have not been indemnified at all by the applicant in the Resolution Plan.

(d) The realisable value of the non-Core assets as per the valuation report dated 15.02.2022 obtained by the Lenders, was much higher than the sale proceeds of the said non-core assets as to be obtained under the Applicant's Plan. Hence, selling these assets outside the Plan would fetch better value.

(e) Unfair distribution of PG amount to dissenting Financial Creditors.

(f) R2 thereafter relied upon following decisions.

(i) Ebix Singapore Pvt. Ltd. V/s. CoC of Educomp Solutions Limited and Anr. Civil Appeal No.3224 of 2020.

(ii) Hon'ble NCLAT in the case of Arun Mittal & Anr V/s. Narmada Cereals Pvt. Ltd. & Ors., Comp. App. (AT) (Ins.) No. 161 of 2022.

(iii) Hon'ble NCLAT in the case of Amit Bharana (Erstwhile Director of Apex Buildings) V/s. Gian Chand Narang, Resolution Professional, Company Appeal (AT) (Insolvency) No.274 of 2020 also concludes that CoC decision for liquidation of the Corporate Debtor is **non-justiciable** and Adjudicating Authority had no power to reverse the commercial decision.

(iv) Therefore, the CoC's commercial decision in the present matter should attain finality.

C. <u>I.A. No.1354 of 2023</u>

52. I. A. No. 1354 of 2023 is an Interlocutory Application, filed by the Applicant on 23.11.2023 seeking following reliefs:

1. "*To allow the present application and intervention by the Applicant in the captioned company petition.*
2. *That this Hon'ble Tribunal be pleased to direct the CoC for reconsideration of resolution plan.*
3. *Pending this Interlocutory Application this Hon'ble Tribunal not decide the IA preferred by respondent no.1 herein thereby seeking order for liquidation of corporate debtor.*
4. *Any other relief as this Hon'ble Adjudicating Authority Considers deem fit."*

53. The applicants are amongst the Operational Creditors in terms of their claims of the above-named corporate debtor. One of the applicants herein is M/s. Apar Industries Ltd.

54. Under Paragraph-1, the details of the other co-applicants are provided.

55. It is stated that it has come to the knowledge of the Operational Creditor that the Committee of Creditors has expressed its intent to take the Corporate Debtor through liquidation. To protect the interest of the Operational Creditors and to resist/object the liquidation, the present application has been filed.

56. It is stated that an amended plan of the Resolution Applicant was not considered upon voting by the CoC. The applicant thereafter, details with minutes of the 14th CoC meeting states that the Corporate Debtor is an MSME unit. However, the ultimate decision was taken by the CoC to for the Corporate Debtor into liquidation which is being opposed.

57. The Applicant has thereafter stated following case laws:

(i) Kridhan Infrastructure Private Limited V/s. Venkatesan Sankarnary dated 01.03.2021.

(ii) Mr. Rakesh Kumar Agarwal & Ors. V/s. Devendra P. Jain, NCLAT, Principal Bench, New Delhi dated 01.06.2021.

(iii) Swiss Ribbons V/s. Union of India dated 05.01.2019.

(iv) *State Bank of India V/s. Mr. Subodh Kumar Agrawal Resolution Professional of Ushdev International Ltd. & Ors, NCLAT dated 08.04.2021.*

(v) *S. Rajendran, RP of Vasan Health Care Private Limited V/s. ASG Hospital Private Limited, NCLAT, Chennai dated 25.11.2021.*

(vi) *Govind Prasad Todi V/s. Satya Narayan Duddeti & Ors. Dated 14.02.2023.*

(vii) *Edelweiss Asset Reconstruction Co. Limited V/s. Octaga Green Power and Sugar Company Limited, NCLT, Mumbai dated 26.08.2022.*

58. Learned Senior Counsel Mr. Rashesh Sanjanwala appeared in the matter on 24.11.2023 and stated that the Operational Creditors will suffer an irreparable loss. He further stated that in catena of judgments supports that one more chance should be given to the resolution applicant to submit the resolution plan for the Corporate Debtor.

59. Mr. Sanjanwala placed reliance that the CoC has not voted on the resolution plan or the liquidation of the Corporate Debtor. During the hearing, it was explained to the Learned Sr. Counsel that after the 16th CoC two more meetings of CoC have been held on different dates where, the CoC has clearly resolved for liquidation of the Corporate Debtor. The minutes of which are available in the I.A. No. 987 of 2023 seeking liquidation of the Corporate Debtor. Further to that, this Tribunal placed on the screen order of this Tribunal dated 06.11.2023 which records views of nearly 52% of the CoC members who were present during the hearing and who

un-equivocally demanded the liquidation of the Corporate Debtor.

D. <u>I.A. No.620 of 2023</u>

60. The present I.A. was filed on 27.04.2023, whereas affidavits were affirmed on 10.03.2023. There is a delay of more than 1.5 months in submitting the application in physical form. Apparently, the application has been filed to take the second progress report on record.

61. The Progress Report is taken on record. This I.A. stands disposed off.

E. <u>I.A. No. 942 of 2023</u>

62. The present I.A. is affirmed on 12.07.2023. The physical copy on record was submitted in the registry of this Bench on 16.08.2023.

63. Apparently, there is a delay of one month in submission of physical copies of the application.

64. The Application has been filed seeking following prayers:

"In view of the above, it is humbly prayed that the Honourable Tribunal may graciously be pleased to allow the present application and pass an order-

A. To condone the delay in filing the present exclusion/extension application because of some complex issues in the plans submitted by the two RAs.

B. *To grant exclusion of CIRP period by 53 days from the entire CIRP process and a extension of grace period for filing the IA for approval of the COC decision leading to the ending of CIRP period on 31.07.2023.*

OR

C. *To grant extension of CIRP period for further 60 days from the end of the current extended period of CIRP which ended on 01.06.2023 for the COC to complete the voting of plans and to complete the CIRP process in the extended time of 60 days.*

D. *To pass any other necessary orders as deemed fit by the Hon'ble NCLT in the interest of justice."*

65. Post filing the present application, the RP has filed an application liquidation application I.A. No.987 of 2023 seeking liquidation of the Corporate Debtor. Since, the detailed order is passed in such I.A., in our view, the present application becomes infructuous and is accordingly disposed off.

66. It is not out of place to note here that extended period of CIRP expired on 01.06.2023. CoC authorised extension for 60 days which was to end on 31.07.2023. Application was received on 16.08.2023 after the end of the period for which extension was sought. As such the same has become in-fructuous.

F. <u>I.A. No. 1097 of 2023</u>

67. I.A. No. 1097 of 2023 is an application filed by the Applicant/Resolution Professional of M/s. IMP Powers Limited.

68. The present application was affirmed on 01.07.2023 and was physically received at the Registry of this Bench on 18.09.2023. Apparently, there is a delay of more than one and half months in submission of physical copy of the present application.

69. Following prayers have been made in the application:

"(i) Take on record the Fourth (4th) Progress Report in respect of CIRP of IMP Powers Limited along with the minutes thereof.

(ii) Pass any further order(s)/direction(s) as may deem fit to this Hon'ble Tribunal."

70. Thus, the fourth (4th) progress report filed by the Resolution Professional for the CIRP of the Corporate Debtor. The Progress Report is taken on record and I.A. is accordingly disposed off.

G. I.A No.1098 of 2023

71. The application has been affirmed on 09.05.2023, seeking following prayers:

"(i) Take on record the list of creditors as on 1st May, 2023.

(ii) take on record the report in respect of re-constitution of Committee of Creditor in CIRP of IMP Power Limited.

(iii) pass any further order(s)/direction(s) as may deem fit to this Hon'ble Tribunal."

72. I.A. No. 1098 of 2023 was received in the registry of this Bench on 18.09.2023.

73. Since this is a progress report, the same is taken on record. Accordingly, the application is hereby disposed off.

74. It is observed from the above conduct that the RP was in the habit of e-filing the application and the hard copies of the application were submitted very late and as such, these applications were delayed and listed belatedly due to lack on the part of the RP/Advocate of RP. Such conduct is deplored by this Tribunal.

H. <u>I.A. No. 1298 of 2023</u>

75. Present I.A. is filed by one Mr. Girdharilal Parmeshwarlal Joshi, who is an employee of the Corporate Debtor, authorised by the workman/employees of the Corporate Debtor. The application has been filed seeking the following prayers:

"1) Allow the present application and intervention by the Applicant in the captioned company petition;

2) Exercise the discretion available to this Adjudicating Authority to reject the application filed by respondent no.1 U/s 33(1) of the code;

3) *In the alternative to above its prayed to this Hon'ble Adjudication Authority to remand back to the respondents for fresh consideration of the resolution plan/ permit revised resolution plan to be submitted by the suspended management/ promoter of the corporate debtor.*

4) *Any other relief as this Hon'ble Adjudicating Authority Considers deem fit."*

76. It is the contention of the applicant that the employees / workmen have given their utmost to keep the business of the Corporate Debtor afloat and that there are currently 173 members workmen on the roll of the Corporate Debtor whose livelihood is depending upon the Corporate Debtor.

77. The sum and substance of the present application is that the employees are opposing the liquidation of the Corporate Debtor end are seeking an opportunity to remit the plan back to the CoC for reconsideration. They further stated that irreparable loss will occur if the Corporate Debtor is ordered for liquidation and that the object of the I.B. Code is resolution.

78. We have heard the various counsels for the Applicants and Respondents in the matter and have perused the records as placed before us.

79. The various dates and events in the CIRP process are captured below :-

Sr.	Particulars	Description

No.		
1	Name of the CD	M/s IMP Powers Ltd
2	Date of initiation of CIRP	29.03.2022 (Order uploaded on 31.03.2022)
3	Appointment of IRP	29.03.2022
4	Date of Publication of Public Announcement (Annexure-B)	02.04.2022
5	Date of constitution of CoC	21.04.2022
6	**1st CoC meeting of CoC**	28.04.2023
7	Appointment of RP	07.05.2022
8	Appointment of registered valuers	17.05.2022
9	**2nd meeting of CoC** Resolution of Eligibility criteria for PRAs,	02.06.2022 Page-98 r.w. 108
10	Date of Issue of Invitation for EoI in Form-G is attached as Annexure-D Last date for submission of EoI Last date for submission of Resolution Plans Till 02.07.2022, 12 EoI were received	10.06.2022 Page-99 02.07.2022 (page-54) 17.08.2022 (page-55)
11	Estimated date for submission of plan before AA	12.09.2022 (page-55)
12	Date of final list of Eligible RAAs	17.07.2022
13	**3rd CoC meeting**	29.06.2022 (page-111-125)
14	**4th CoC meeting** Evaluation matrix and RFRP were approved by CoC.	08.07.20223 (page-126-144)
15	**5th CoC meeting**	17.08.2022 (page-146-164)
16	On the request of PRAs, time submission of plan was extended till	12.09.2022 (page-164)
17	**6th CoC meeting**	15.09.2022

		(page-165-179)
18	Date of Expiry of 180 days of CIRP	25.09.2022
19	IA 839 of 2022 was filed for extension of 90 days and it was allowed by AA on	19.10.2022
20	Four plans were received within the extended time.	a. Mr. Ramniwas Dhoot, b. M/s RKG Fund II c. M/s Shine Agrotechnology Pvt. Ltd. d. M/s Kundan Care Products Ltd.
21	**7th CoC meeting**	24.11.2022 (page-180-188)
22	**8th meeting of CoC.** The CoC decided to give further time to PRAs to submit revised plan	21.12.2022 (page-189-201)
23	IA 102 of 2023 was ordered and CIRP extended upto.	23.03.2023
24	**9th CoC meeting**	06.01.2023 (page-202-209)
25	**10th meeting of CoC.** CoC further resolved to seek extension of further 45 days. COC directs RP to put compliant plans to vote, voting lines kept open for 22 days.	21.03.2023 (page-210-236)
26	Accordingly, IA 394 of 2023 was filed and Extension of 45 days was allowed upto	
27	After 21 days of 10th COC meeting, Bank held a joint lenders' meeting on 12.04.2023 and asked the RP to abandon voting process as one of the RA had submitted a proposal for some structural changes agreeing to PG out of plan Till, 12.04.2023, none of the CoC had casted its vote.	12.4.2023

28	**11th CoC meeting**	20.04.2023 (page-237-247)
29	**12th CoC meeting** Resolution Plan received from **Shine Agrotechnology Pvt. Ltd. was rejected as it got 0% vote in favour. (page 261**). CoC recommended the RP/Liquidator to first explore the CD as a going concern	25.05.2023 (page-248-265) Page 261 Page 263
30	**13th CoC meeting** Passed resolution for extension/exclusion of CIRP period by 60 days	10.07.2023 (page-266-276) Page 272 r.w. 276
31	**14th CoC meeting** Revised Resolution Plan submitted by Mr. R N Doot could not get favour of CoC as it was dissented by CoC members. 14th CoC meeting was adjourned 31.08.2023 In adjourned 14th CoC meeting IDBI requested to CoC to consider mail dated 24.07.2023 (page-294) received from R N Doot before re-voting of plan pursuant to 39(3B). Other CoC members did not agree to consider the revised plan. The RP asked CoC to consider the option of another Form-G before resolution for the liquidation, however, the CoC denied as extended CIRP period of 487 days was coming to an end on 31.07.2023 itself.	28.07.2023 (page-277-293) Page 287 Page-284 Resolution Plan was rejected in final voting on 31.07.2023.

32	**Timelines in Completing CIRP**		
	Events	**Date**	**Days**
	CIRP commencement date (orders uploaded on NCLT portal on 31.03.2022)	23.09.2023	0
	Public Announcement	02.04.2022	2
	Publication Form-G	10.06.2022	71
	Final List of PRAs	17.07.2022	108
	Receipt of Resolution Plans	12.09.2022	165
	Plans put to vote (first time)	23.03.2023	357
	Suspension of e-voting	12.04.2023	377
	Plan to put for vote second time	27.05.2023	422
	Close of voting window	27.07.2023	483
	Final Rejection of Plan	31.07.2023	487
33	**Total Period**	**487**	
34	Date of filing of liquidation with AA	Application U/s 33(1) was e-filed on 24.08.2023 and was physically filed on 05.09.2023	
35	IA 987 of 2023 was physically filed on 05.09.2023 seeking liquidation of the CD. During the hearing on 06.11.2023, it was submitted that plan submitted by ex-management is not commercially viable and requested to pass the liquidation order. It was brought to the notice of this Tribunal after rejection of plan certain meetings were held. Accordingly, this Tribunal directed the RP to place on record the said meetings along with revised Form-H.	05.09.2023 06.11.2023	
36	Accordingly, affidavit under Inward No. D4616 was filed.	23.11.2023	
37	**15th CoC meeting** CIRP cost was ratified	20.09.2023 (page-10-19 of aff. Dtd. 23.11.2023)	

38	**16th CoC meeting** SBI was allowed to file reply on behalf of CoC before this Tribunal in IA 987 of 2023	13.10.2023 (page-20-27 of affidavit)
39	**17th CoC meeting** In the passed the resolution with 85.45% to liquidate the CD.	20.10.2023 (28-39 of affidavit) Page 37-38 of additional affidavit dated 23.11.2023
40	**18th CoC meeting** RP informed that Mr. RN Dhoot again proposed further improvement in the plan inter alia provide payment of the plan amount upfront instead of one year, withdrawal of clause regarding release of PG from the plan and he also willing to negotiate further improvements. But it was not considered in the said meeting as it was objected by some major lenders stating that it is not an agenda item.	03.11.2023 (page-40-49 of affidavit)
41	**Fair Value**	Rs.92.01 Crore
42	**Liquidation Value**	Rs.72.20 Crore
43	**Numbers of Meetings of CoC held**	Eighteen
44	**Form H Annexure-B**	Page 5-9 of add. Aff.

80. For Reference Section 33(1) of IB Code 2016 is reproduced as under and reads as under: -

Section 33: Initiation of liquidation.

"33. (1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be,

does not receive a resolution plan under sub-section (6) of section 30; or
(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall-(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
(ii) issue a public announcement stating that the corporate debtor is in liquidation; and
(iii) require such order to be sent to the authority with which the corporate debtor is registered."

81. The Regulation 39(1A) of the IBBI (Resolution Process for Corporate Person) Regulations, 2016 states that:-

"*The resolution professional may, if envisaged in the request for resolution plan- (a) allow modification of the resolution plan received under sub-regulation (1)* ***but not more than once****; or (b) use a challenge mechanism to enable resolution applicants to improve their plans…*"

82. Regulation 39(4) of the IBBI (Resolution Process for Corporate Person) is as under:-

The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in 84[Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.]"

83. It is nobodies' case before us that the CIRP period of the Corporate Debtor is remaining. In fact, upto 31.7.2023 (final rejection of plan by COC) the CIRP period of the corporate debtor has run for **487 days.**

84. As on the date of the various extension applications being IA 942 of 2023, COC had no resolution plan pending before them and had already rejected the plans given by the

various PRA's. We also find that the RP has belatedly filed the applications seeking extension of the CIRP period and at times when the extended period of CIRP sought was already over and as such in our view the RP was lax in pursuing the extension applications.

85. In fact, we clearly find that RP was lax in the matter of even filing the progress reports. Only 4 such reports were filed during the entire period of 487 days, one of which certainly was filed at the time when he was the IRP. Even the liquidation application was filed after 41 days from the date of rejection of the plan by COC. In our view such application should have been filed not later than 7 days from the decision of the COC. These issues are for IBBI to examine and we direct the Registry of this Tribunal to forward a copy of this order to IBBI for information and necessary action, if any.

86. Ld. Counsel for the applicant in IA 993 of 2023 submitted a catena of Judgments supporting another chance to be given to the Resolution Applicant and tried to make a case for remitting the matter back to the COC for consideration.

87. From the records placed before us and as recorded herein above, Applicant in IA 993 of 2023 has revised his resolution plan 3 times and again once the voting was over. Regulation 39(1A) of the IBBI (Resolution Process for Corporate Person) Regulations, 2016 permit revision in the

Resolution plan only once. We observe that the Applicant has revised the plan 3 times which too is a violation of the Regulation. We do see a breach of the said Regulation by the RP who permitted such a plan to be placed before the COC and thereafter canvassing the COC to vote on the same or otherwise to reset the process to Form G, our observations are based on minutes of the 14th COC meeting. IBBI and IPA are requested to note the same and sensitize the RP's to refrain from taking any side during the CIRP process since they are Court appointed independent professionals who are not supposed to take any side during the process.

88. Exercising extreme caution, this Tribunal asked the COC members holding 52% of the voting rights of COC to appear through Video Conferencing hearing on 06/11/2023 and recorded their statement which is reproduced in para 30 of this order. Majority of the COC members wanted liquidation of the Corporate Debtor.

89. It is admitted fact that CIRP has run in the matter for a period of 487 days upto 31.07.2023 and that no CIRP period was left un-utilized before filing of IA 987 of 2023 by the RP.

90. COC in its 14th meeting rejected the two resolution plans which were placed for voting with overwhelming majority.

91. COC in its 17th meeting with majority of 85.45% resolved to liquidate the Corporate Debtor.

92. COC acting through SBI has filed reply to IA 993 of 2023, the submissions of COC are recorded herein above. COC seeks liquidation of the Corporate Debtor and has assigned enough and more reasons for rejection of the plan in its reply.

93. To put it succinctly, here is a case where no resolution plan is pending for consideration, no CIRP period is left un-utilized, CoC resolved to liquidate the corporate debtor, in reply to IA 993 COC has given reasons for rejection of plan, confirms its decision to liquidate the corporate debtor; and majority of CoC in a hearing before the Tribunal seeks liquidation of the Corporate Debtor.

94. At this juncture we deem it appropriate to reproduce some judgments of Hon'ble Supreme Court which touch the issues raised before us.

95. In Judgment of the Hon'ble Supreme Court of India, in Arun Kumar Jagatramka v. Jindal Steel and Power Limited & Anr., (vide Civil Appeal No. 9664 of 2019 with Writ Petition (C) No. 269 of 2020 and Civil Appeal No. 2719 of 2020 dated 15.03.2021), reported in SCC (2021) 7 SCC 474, at Spl. Pg.: 533, wherein, at Paragraph 95, it is observed as under:

> 95. "*At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of NCLAT*

in Y Shivram Prasad [Y. Shivram Prasad v. S. Dhanapal, 2019 SCC OnLine NCLAT 172]. Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC."

(emphasis supplied)

96. Ld. Counsel for the Applicant in IA 993 of 2023 raised another issue that COC has non assigned any reason for rejection of plan even when the same was above the liquidation value. At this stage we are guided by the judgment of Hon'ble Supreme Court in the matter of Civil Appeal No.10673 of 2018 in the matter of K. Shashidhar VS Indian Overseas Bank & Ors. We reproduce excerpts of para 61 and 62 of the said judgment below :-

*"61. Assuming that this provision was applicable to the cases on hand, nonrecording of reasons for approving or rejecting the resolution plan by the concerned financial creditor during the voting in the meeting of CoC, would not render the final collective decision of CoC nullity per se. Concededly, if the objection to the resolution plan is on account of infraction of ground(s) specified in Sections 30(2) and 61(3), that must be specifically and expressly raised at the relevant time. For, the approval of the resolution plan by the CoC can be challenged on those grounds. However, if the opposition to the proposed **resolution plan is***

purely a commercial or business decision, the same, being nonjusticiable, is not open to challenge before the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT). *If so, nonrecording of any reason for taking such commercial decision will be of no avail.*
In the present case, admittedly, the dissenting financial creditors have rejected the resolution plan in exercise of business/commercial decision and not because of noncompliance of the grounds specified in Section 30(2) or Section 61(3), as such. Resultantly, the amended regulation pressed into service, will be of no avail.

62 "In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. ***In the meeting of CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, nonrecording of reasons would not per se vitiate the collective decision of the financial creditors.*** *The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."*

(emphasis supplied)

97. In Judgment of the Hon'ble Supreme Court of India Civil Appeal Nos.2943-2944 of 2020 in the matter of Kalparaj Dharamshi and Anr. V/s Kotak Investment Advisors Ltd. in para 158 said as under :-

"We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of 'commercial wisdom', NCLAT was not correct in law in

interfering with the commercial decision taken by CoC by a thumping majority of 84.36%."

98. Ld. Counsel for the Applicant in IA 993 making reference to the MSME status of Corporate Debtor referred to Company Appeal (AT) No.203 of 2019, Saravana Global Holdings Limited and R. Raghavendran Vs. C. Raja John & Ors. Civil Appeal No. 2552/2022 judgment of Hon'ble Supreme Court. We observe that the suspended management was given a chance to present its plan in the present matter availing concession as admissible under section 240-A of the IBC, 2016 which was duly rejected by the COC. Para 13 and 14 of judgment of Hon'ble Supreme Court are reproduced below :-

> ***"13.*** *This is to clarify the legal principles so that there is no confusion in future in appreciating the context of the observations made in Bafna's Case.*
>
> ***14.*** *We are, thus, clearly of the view that the appellant cannot be faulted for calling for other proposals in which the proposal given by respondent No.1 was also to be examined, put them to voting before the CoCs and declare the results."*

99. As such we hold that there is no divine right available to the suspended board under IBC, 2016, for a Corporate Debtor who is MSME undergoing CIRP, and there, is no duty cast upon the COC to consider and approve that very plan submitted by the suspended board. The suspended board

may submit a plan availing benefit of Section 240A and it is for COC to call other plan and consider all the plans and chose the best plan in its commercial wisdom or to reject all of them.

100. As regards objections to liquidation of the corporate debtor filed under IA 1298 of 2023 and IA 1354 of 2023, we hold that they do not have a locus to file the present application. Moreover, COC in its commercial wisdom has already approved liquidation of the corporate debtor and such decision of the COC cannot be interfered at this stage. Accordingly these IA's being IA 1298 of 2023 and IA 1354 of 2023 are hereby dismissed.

101. As regards IA 942 of 2023 and any other IA seeking extension of the CIRP period filed by the RP, we hold that they have become in fructus since RP later on has filed application seeking liquidation of the Corporate Debtor being IA 987 of 2023 and hence these applications are hereby dismissed as in fructus.

102. Thus, in view of the catena of judgments cited above, we hold that there is no CIRP period remaining for the Corporate Debtor, COC has already approved resolution seeking liquidation of the Corporate Debtor with overwhelming majority and in our view the decision of COC is not justiciable, we are forced to order liquidation of the Corporate Debtor. Accordingly, we hereby order Liquidation of the Corporate Debtor IMP Power Ltd.

103. As a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33 (2) of IBC, 2016. As COC has not approved the name of Liquidator in 14th COC meeting, we hereby appoint ***Ravindra Kumar Goyal, Resolution Professional (IBBI/IPA-001/IP-P-02019/2020-2021/13098)***, from the panel of RP's as suggested by IBBI for the period 01/07/2023 to 31/12/2023, as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions:-

i. The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

ii. The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

iii. The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

iv. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

v. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

vi. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

vii. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

viii. The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

ix. The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

x. As COC has passed resolution under Regulations 39 (B), (C) and BA, Liquidator is directed to take effective steps in this regards.

104. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor. Registry of this Tribunal is also directed to forward a copy of this order to IBBI for information and necessary action, if any.

105. With the above directions we dispose off the IA's being IA/987(AHM)2023, IA/993(AHM)2023, IA/1354(AHM)2023, IA/620(AHM)2023, IA/942(AHM)2023, IA/1097(AHM)2023, IA/1098(AHM)2023 and IA/1298(AHM)2023 in CP(IB) 203 of 2020.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)