

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT-III



I.A No. 4320/2025

In

CP No. 513 /2022

Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

Orissa Metaliks Private Limited

1, Garstin Place, Orbit House,
Third Floor, Room No. 3B,
West Bengal - 700001

... Applicant

Vs

1. Mr. Avil Jerome Menezes

Resolution Professional of Future Enterprises Limited

106, 1st Floor, Kanakia Atrium 2; Cross Road A, Behind Courtyard Marriott, Chakala, Andheri East, Mumbai – 400093

2. Committee of Creditors of Future Enterprises Limited

Through the Resolution Professional

106, 1st Floor, Kanakia Atrium 2; Cross Road A, Behind Courtyard Marriott, Chakala, Andheri East, Mumbai – 400093

3. Uniworth Finlease Limited

512-513, Manish Chamber, Opp Hotel Karan Palace, Sonawala Lane, Goregaon (East), Mumbai - 400063

... Respondents

In the matter of

Foresight Innovations Private Limited

DDA, SFS Flat No. 39C, Pocket B, Mayur Vihar, Phase 3, New Delhi – 110096

... *Operational Creditor*

Vs

Future Enterprises Limited

Knowledge House, Shyam Nagar,
Jogeshwari – Vikroli Link Road, Jogeshwari
(East), Mumbai – 400060

CIN: L52399MH1987PLC044954

... *Corporate Debtor*

[Under Section 9 of the Insolvency and
Bankruptcy Code, 2016]

Order pronounced on: 08.04.2026

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For the Applicant

: Adv. Vikram Nankani a/w Adv.
Shounak Mitra, Adv. Vishnu Shriram,
Adv. Adria Parekh and Adv. Govinda
Asawa

For Respondents 1 & 2

: Adv. Pulkit Sharma, Adv. Anup
Prakash, Adv. Shriraj Khambete, Adv.
Rounak Doshi, Adv. Naman Jain

For Respondent 3

: None Appeared

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. The Interlocutory Application (IA) bearing no. 4320/2025 has been filed by Orissa Metaliks Private Limited (referred to as '**OMPL**') under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) assailing the decision of Committee of Creditors (**'CoC'**) for conducting second negotiation process by e-challenge mechanism. The present application is

the second round of litigation pertaining to resolution plans for Cluster 3 Assets of the Corporate Debtor.


Factual Matrix:

2. To appreciate the controversy involved in this case, factual matrix to be noticed is set in below:

2.1 Upon an application filed by Foresight Innovations Private Limited under section 9 of the Code, Corporate Insolvency Resolution Process (**CIRP**) of Future Enterprises Limited (**Corporate Debtor**) commenced vide order dated 27.02.2023.

2.2 The Committee of Creditors was constituted on 22.05.2023 which consisted of following members:

Sr. No.	CoC Member	% of voting right
1.	Axis Bank Limited	4.32%
2.	Axis Trustee Services Limited	10.92%
3.	Bank of Baroda	6.64%
4.	Bank of India	8.58%
5.	Bank of Maharashtra	0.12%
6.	Canara Bank	2.69%
7.	CanBank Factors Ltd.	0.07%
8.	Centbank Financial Services Ltd	28.13%
9.	Central Bank of India	16.63%
10.	DBS Bank India Ltd	0.55%
11.	Dhanlakshmi Bank	0.31 %
12.	HDFC Bank Limited	1.07%
13.	IDBI Bank Limited	4.34%
14.	Indian Bank	4.16%
15.	Indian Overseas Bank	1.10%
16.	Punjab National Bank	1.48%
17.	SBI Global Factors Ltd	0.03%
18.	South Indian Bank Ltd.	1.06%



19.	State Bank of India	1.28%
20.	UCO Bank	2.41%
21.	Union Bank of India	12.60%
22.	Vistra ITCL (India) Limited	1.42%
23.	Fixed Deposit Holders	0.10%

2.3 In the 3rd CoC Meeting, the CoC resolved to appoint Mr. Avil Menezes as the Resolution Professional (**RP**) who was so appointed by this Tribunal vide order dated 22.06.2023.

2.4 The CoC decided to run a parallel process for inviting expression of interests for submitting resolution plans for the assets of the corporate debtor as well as for sale of unencumbered assets of the Corporate Debtor under Regulation 29 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**). For this purpose, the assets of the Corporate Debtor were divided into following three clusters:

A. CLUSTER 1

- i. 0.51 % Equity stake of Future Enterprises Limited in Future Generali India Insurance Company Limited.
- ii. 25.18% Equity stake of Future Enterprises Limited in Equity Shares of Future Generali India Life Insurance Company Limited.
- iii. 49.81% Equity stake of Future Enterprises Limited in Sprint Advisory Services Private Limited, a special purpose vehicle previously holding 44.88% of the issued and paid-up share capital of Future Generali India Life Insurance Company Limited.
- iv. 49.82% Equity stake of Future Enterprises Limited in Shendra Advisory Services Private Limited, a special purpose

vehicle holding 48.99 % of the issued and paid-up share capital of Future Generali India Insurance Company Limited.

B. CLUSTER 2

- i. 39% Equity stake of Future Enterprises Limited in Apollo Design Apparel Parks Limited.
- ii. 39% Equity stake of Future Enterprises Limited in Goldmohur Design and Apparel Park Limited.

C. CLUSTER 3

- i. Corporate Debtor (residual entity - without Cluster 1 and Cluster 2).

2.5 In response to the invitation for Expression of Interest (**EoI**) published by way of Form-G on 26.12.2023, the RP received EoIs from Prospective Resolution Applicants (**PRAs**) and the list of PRAs was accordingly prepared. Two PRAs submitted their resolution plans for Cluster 3 Assets with following values:

- (i) Orissa Metaliks Private Limited (**OMPL**) for Rs. 30 crores;
- (ii) M/s Uniworth Finlease Limited (**Uniworth**) for Rs. 15.10 crores.

First Round of Litigation

2.6 The First round of litigation arose with filing of I.A./2956/2024 by Uniworth on 05.06.2024 seeking direction to CoC to consider its revised resolution plan. In the meantime, OMPL also filed IA/3550/2024 on 01.07.2024 seeking intervention in IA/2956/2024.

2.7 Subsequently, at the 23rd and 24th CoC meetings held on 15.07.2024 and 20 - 21 June 2024 respectively, the CoC resolved to consider Uniworth's revised resolution plan.



2.8 Both the applications being I.A./2956/2024 and IA/3550/2024 were heard together and disposed of by a common order dated 07.01.2025. While Ld. Member (Technical) had rendered a finding that once the voting on the resolution plan had commenced, CoC was interdicted from further negotiations and therefore, could not consider the revised resolution plan of Uniworth, on the other hand, Ld. Member (Judicial) was of the view that as per the terms of RFRP, CoC is still entitled to negotiate with PRAs and consider their revised plans after giving equal opportunities to them.

2.9 As there was difference of opinion between the Members of the Bench, a Third Member Bench was constituted under section 419(5) of the Companies Act, 2013 on 16.06.2025. The Ld. Special Single Bench disposed of the IAs concurring with the judgment of Member (Judicial) and passed the following order:

“33. In view of the specific facts and circumstances of the case, keeping in view the provisions of the IBC and Regulations made thereunder including case laws as discussed in preceding paragraphs, I am of the view that decision of the CoC taken in 23rd and 24th meeting to permit Uniworth and also to OMPL to submit revised and compliant resolution plan for value maximization of the assets of the Corporate Debtor is not a material irregularity in conducting CIRP process, subject to following conditions:

(a) OMPL should be given reasonable and effective opportunity (not merely an empty formality) for submitting revised Resolution Plan. Recourse to challenge mechanism as per Regulation 39 (1A) (b) may be adopted to give equal opportunity to both, as also mentioned in para 9 of the CoC affidavit.

(b) In view of the fact that Uniworth had earlier submitted non-compliant Plan, CoC is supposed to consider, examine and evaluate revised Resolution Plan of Uniworth (if submitted), carefully to find out whether Plan is compliant one and it is implementable.”



2.10 Pursuant to the above order dated 16.06.2025, 33rd CoC meeting was convened on 18.06.2025 for discussing about the e-challenge process for Cluster 3 Assets of the Corporate Debtor. Thereafter, at the 34th CoC meeting held on 10.07.2025, decision was taken to conduct challenge mechanism either on 18.07.2025 or 19.07.2025.

2.11 Meanwhile, aggrieved with the order dated 16.06.2025 of this Tribunal, OMPL preferred Company Appeal (AT) (Ins) No. 1022 of 2025. The Hon'ble National Company Law Appellate Tribunal (**'the Appellate Tribunal'/'NCLAT'**) reserved the order on 16.07.2025 with the following directions:

"Heard counsel for the appellant as well as learned counsel appearing on behalf of the Respondent No. 3 and RP.

'Order is reserved'.

Parties are at liberty to submit their short notes of submissions of not more than three pages within three days.

In the meantime, the process may go on, however, the result of the process shall not be given effect."

2.12 Pursuant thereto, the e-challenge mechanism was conducted on 18.07.2025 with a base bid of Rs. 85 crores. Both the OMPL as well as Uniworth participated.

2.13 On 25.07.2025, the Hon'ble NCLAT dismissed the Appeal with the following observations:

"23. The provisions of RFRP thus clearly empowers the CoC to take a decision not to continue with any resolution plan submission process and has right to engage in negotiation discussion with any or all the RAs.

24. We thus are of the view that NCLT has rightly come to answer the questions in the facts of the present case, CoC's decision to permit R-3 to submit a revised plan is in accordance with law. We thus do not find any infirmity in the order of the adjudicating authority dated 16.06.2025, answers given by the adjudicating authority to the questions framed need no interference.



25. *Before we close, we need to refer to memo filed on behalf of the CoC dated 23.07.2025 (after mentioning), where in paragraph 3 of the memo, following has been stated:*

“3. Accordingly, the E-Challenge Mechanism for Cluster 3 Assets of the Corporate Debtor was conducted on 18.07.2025 at 12:00 P.M, with a base bid of INR 85 crores, wherein:

(i) Both prospective resolution applicants, i.e., Uniworth/ Respondent No.3 and OMPL / the Appellant, participated.

(ii) Uniworth's last bid is for INR 146 crores, payable within a period of sixty (60) days.

(iii) On the other hand, OMPL proposed a bid of INR 148 crores, payable within a period of sixty (60) days.”


26. *In paragraph 3 of the above memo, it has been brought on the record that both appellant and R-3 participated in E-Challenge Mechanism conducted on 18.07.2025 where appellant's last bid was Rs.148 crore and R-3 last bid was Rs.146 crore.*

27. *The above vindicate the decision of the CoC taken to permit R-3 and the appellant to submit revised resolution plan.”*

2.14 Subsequently, OMPL and Uniworth submitted their respective revised resolution plans on 29.07.2025. The RP addressed email dated 05.08.2025 stating that the revised resolution plan submitted by OMPL had substantial amendments and requested OMPL to modify the same restricting the revision in the resolution plan only with respect to the bid amount. Accordingly, OMPL submitted its revised resolution plan on 23.08.2025.

2.15 On 29.08.2025, the RP convened the 38th CoC Meeting wherein the CoC decided to conduct a second round of e-challenge process on 10.09.2025 which was communicated by RP vide email dated 02.09.2025.

Second Round of Litigation

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- 2.16 Aggrieved by the decision of the CoC, OMPL filed IA 5413/2025 before Hon'ble NCLAT in the Company Appeal (AT) (Ins) No. 1022 of 2025 seeking clarification that the order dated 16.06.2025 of the Adjudicating Authority and order dated 25.07.2025 of the Hon'ble NCLAT did not envisage the conduct of any second or subsequent challenge mechanism.
- 2.17 Notwithstanding the filing of the IA/5413/2025, OMPL sent email dated 06.09.2025 to the RP thereby consenting to participate in the second e-challenge process, without prejudice to its rights and contentions.
- 2.18 The Hon'ble NCLAT disposed of the IA/5413/2025 vide order dated 08.09.2025 granting liberty to OMPL to approach the Adjudicating Authority with following observations:

“4. This application has been filed in this Tribunal on 04.09.2025 where the second negotiation process dated 02.09.2025 has sought to be questioned. The appeal having already been decided on 25.07.2025 and the subject matter of the application being a subsequent event that is issuance of second negotiation process of 02.09.2025, we are of the view that the prayers made in the application cannot be entertained in the appeal which has already been decided. Ld. Counsel for the appellant submitted that under the process issued on 02.09.2025 now the 10.09.2025 is date fixed for participate in challenge process where appellant has already been declared as the highest bidder held on 18.07.2025. In event the application is not entertained by this Tribunal in the appeal which has been decided, an opportunity be given to the appellant to challenge the second negotiation process before the Adjudicating Authority. As observed above, the second negotiation process have been issued on 02.09.2025 that cannot be made subject matter of consideration in appeal. It is open for the appellant to approach the Adjudicating Authority by filing appropriate application questioning the challenge process 02.09.2025. Appellant is permitted to file an application within three days from today which application may be considered by the Adjudicating Authority on 16.09.2025 on which date we permit both the parties to appear before Adjudicating Authority.



5. *Further steps in continuation of the notice dated 02.09.2025 shall be taken in accordance of the order of Adjudicating Authority to be passed in the application.*


6. *We make it clear that we have not expressed any opinion on the merits of the application and on the merits of second negotiation process dated 02.09.2025.”*

2.19 In this backdrop, OMPL has filed the present application seeking following prayers:

- a) *Pass an order setting aside the decision taken by Respondent No. 2 in their 38th CoC meeting held on 29 August 2025 for conducting the second negotiation process resolution for Cluster 3 Assets;*
- b) *Pass an order, setting aside the e-challenge mechanism sought to be conducted by Respondent Nos. 1 and 2 in terms of the Electronic Financial Proposal Challenge Process Document dated 2 September 2025;*
- c) *Pass an order directing Respondent No.s 1 and 2 to consider the revised resolution plan submitted by the Applicant and Respondent No. 3 pursuant to the e-challenge mechanism concluded on 18 July 2025 in terms of the Electronic Financial Proposal Challenge Process Document dated 14 July 2025 for approval and voting under Section 30(4) of the IBC;*
- d) *Pending the hearing and final disposal of the present application, stay the e-challenge process ought to be conducted by Respondent Nos. 1 and 2 in terms of the Electronic Financial Proposal Challenge Process Document dated 2 September 2025;*
- e) *Such other and further order as deemed fit by this Tribunal in the facts and circumstances of this case and in the interest of justice.*

3. **Submission of the Applicant**

3.1 It was submitted that with the completion of the first e-challenge process on 18.07.2025, all the directions and objectives contemplated in the orders of the Adjudicating Authority and the Hon'ble NCLAT have been fully given effect to and there remains no legal basis or necessity for conducting any further round of challenge mechanism. Thus, the



CoC should proceed to vote upon the resolution plans already available with it.

- 3.2 It was further submitted that the Single Bench order dated 16.06.2025 and the order of Hon'ble NCLAT dated 25.07.2025 pertained only to the decision of the CoC at the 23rd and 24th CoC Meetings and cannot be construed as a blanket approval to conduct any number of challenge mechanisms. In fact, both the orders recognized that adherence to timelines is as much an objective of the Code as value maximization. Therefore, the decision of CoC is in disregard to the settled position of law on conducting resolution process in a time-bound manner.
- 3.3 It was further submitted that the clauses of RFRP cannot override or be accorded greater sanctity than the provisions of the Code and the Regulations thereunder. Any attempt to initiate another round of challenge mechanism or to reopen the earlier concluded process on the strength of the clauses of the RFRP would undermine the finality and sanctity of the competitive process already conducted under judicial directions.
- 3.4 It was contended that the CoC has given no justification for its decision of re-running the process except that the bids were unsatisfactory. If this is the case and if value maximization is the intention behind the re-run, then the process ought to be opened to all interested parties and not just restricted to OMPL and Uniworth. Further, even the object of value maximization does not confer the CoC the power to repeatedly re-run the process, particularly when the first e-challenge mechanism has already secured an enhanced bid value.
- 3.5 It was further submitted that the CoC owes a fiduciary duty to the entire stakeholders of the Corporate Debtor whose rights and interests are affected by the outcome of the resolution process. The continuation of successive rounds of challenge process under the guise of value maximization erodes certainty and finality in the process and would

delay the distribution process thereby defeating the very object of the Code.

- 3.6 Lastly it was submitted that though as per settled law that the CoC in its wisdom may choose Uniworth's plan, however, OMPL's main grievance is that the CoC should not prolong the CIRP in contravention of timelines and the process should come to a lawful conclusion without any further deviation or dilution through additional and unwarranted challenge process.

Submissions of the Respondents

4. The Applicant had arrayed in the Memo of Parties, the RP as **Respondent 1**, the CoC of the Corporate Debtor as **Respondent 2** and Uniworth as **Respondent 3**. The RP has filed his reply and the Central Bank of India, being authorized by the CoC, has filed the reply on behalf of the CoC. No reply has been filed by Respondent 3.

Reply of RP

- 4.1 The RP has filed its reply with following submissions:
- i. The commercial wisdom of the CoC cannot be interfered with unless there is any non-compliance of the Code and/or Regulations. In the present case, clause 2.8.4 of the RFRP enables the CoC to conduct multiple rounds of challenge mechanisms to determine the successful resolution applicant and the decision of CoC, to conduct the second e-challenge process, is in compliance with the provisions of the RFRP, Code and the CIRP Regulations.
 - ii. Neither the Single Bench order dated 16.06.2025 nor the Hon'ble NCLAT order dated 25.07.2025 passed any direction restricting the ability of the CoC to make further discussions or negotiations with the Resolution Applicants. In fact, the Hon'ble NCLAT in its order specifically noted that the RFRP enabled the CoC "*not to continue with any resolution plan submission process and has right to engage in negotiation discussion with any or all the RAs*".




- iii. Even after conclusion of a challenge mechanism, the CoC retains its right to hold further negotiations and subsequent challenge mechanisms for value maximization of the assets of the Corporate Debtor. Reliance is placed on the judgment of ***Vistra ITCL (India) Ltd. vs. Torrent Investments Private Limited & Ors. [2023 SCC OnLine NCLAT 110]***.
- iv. The Applicant/OMPL consented to the terms and conditions of the First Process Document which also enables the CoC to conduct further process, including e-auction process/open challenge process/ swiss challenge process etc.
- v. In the first e-challenge process, OMPL was declared the highest bidder and therefore, its participation in the second challenge process is not mandatory if it chooses to keep Rs. 148 crores as its final bid. However, the Applicant cannot prevent the CoC from conducting the second challenge process.

Reply of CoC

4.2 Reply was filed on behalf of CoC with following submissions:

- i. The object of resolution in a time-bound manner envisaged in the Code does not imply that the CoC/ RP shall take perfunctory efforts by strictly adhering to the timelines at the cost of value maximization. The decision of the CoC for conducting the 2nd challenge process is to maximize the value of the assets of the Corporate Debtor while complying with the provisions of the Code, Regulations, the RFRP and the Process Note. It is further submitted that it is only after a resolution plan is approved by the CoC that a restriction is imposed on the CoC to further negotiate with the PRAs.
- ii. Clauses 1.2.7, 1.3.5, 1.13.3, 1.13.5(f) and 2.8.5(d) of the RFRP and clauses 6, 8 and 9 of the First Process Note provide full discretion to the CoC to approve any resolution plan or to initiate further challenge




mechanism and to negotiate better terms with the PRAs by any method or process. Additionally, the RFRP gives the CoC an absolute right to annul the entire process at any stage of CIRP. Thus, having consented to the terms of the RFRP and Process Note, OMPL cannot now object to the conduct of the second challenge process.

- iii. The Special Bench order dated 16.06.2025 merely suggested adopting a challenge mechanism which does not imply that the CoC is restricted to a single round of challenge mechanism. The Hon'ble NCLAT in its order 25.07.2025 also did not preclude the CoC from utilizing its powers under the RFRP for value maximization and best price discovery.
- iv. The decisions concerning the process, negotiations, voting on resolution plans etc. are prerogative of the CoC as they fall under its commercial wisdom which has very limited judicial interference.
- v. OMPL, being a resolution applicant, has no *locus standi* to dictate the terms, timeline and manner of the CIRP has to be conducted. A resolution applicant whose status is limited to having just expressed its interest in submitting a resolution plan and whose plan is merely under consideration of the CoC, does not suffer any prejudice if the CoC decides to conduct another challenge process. Further, the terms of the First Process Note states that participation of a resolution applicant shall not be construed as acceptance or admission of the resolution plan. Thus, having participated in the 1st Challenge Process, OMPL cannot now mount to challenge the second challenge process.

Rejoinder by the Applicant

5. The Applicant has filed Rejoinder dated 09.10.2025 with following submissions:
 - i. The RP and CoC have already held multiple negotiations and had discussions with the PRAs and there was no indication that the CoC was not satisfied. The process was concluded, however, after over 45



days, the CoC has decided to conduct a second round of challenge process which is an afterthought designed to accommodate Uniworth and therefore, the same is arbitrary and contrary to the principle of time bound CIRP process.

- ii. The sanctity and finality of the first e-challenge process cannot be disregarded and belated reopening of a concluded process would be prejudicial to OMPL and if permitted would set such a precedence thereby eroding confidence in the CIRP itself.
- iii. OMPL has participated in four rounds of re-bidding to aid and assist the CoC in achieving value maximization where multiple rounds of re-bidding have taken place across a period of over 18 months which is itself more than the outer timeline for conducting a CIRP in terms of section 12 of the Code. Further, in each round of bidding, OMPL has emerged as the highest bidder. Now the CoC has once again decided to go for another round of bidding which does not subscribe to the fundamental ethos of the Code.
- iv. The Applicant does not dispute the wide powers of the CoC under the RFRP, the Process Note, the Code as well as the Regulations, however, this discretion must be exercised by the CoC keeping in mind the time bound nature of the CIRP otherwise it would lead to unlimited negotiations which would render the process arbitrary and uncertain. It is further submitted that the discretion of the CoC to negotiate though wide, is not unbridled and cannot be exercised in a manner that undermines the timelines and finality of the process. Such conduct of CoC to re-run the challenge process is misuse of RFRP which also mandates that the CIRP process must be carried out in a transparent and timebound process.
- v. The Ld. Single Bench permitted for challenge mechanism vide order dated 16.06.2025 was given after considering the request of Uniworth to submit a revised offer. However, the decision of CoC to go for a second round of negotiation is without any basis or judicial order but


purely on so-called “*scope for improvement*” which is not an exercise of commercial wisdom but an arbitrary opening of a completed process.

- vi. As regards the locus of the Applicant, it is submitted that the Applicant has consistently abided by the sanctity of the process and adhered to all timelines. The original plan of the Applicant was submitted in May 2024 on which voting had commenced on 22.05.2024 but was interrupted to accommodate Uniworth.

DISCUSSION & FINDING

6. Heard Ld. Counsel for the parties at length and perused the record. Having considered the submissions of the parties, the factual aspects are undisputed.
7. The first round of litigation had culminated into passing of order by this Tribunal (majority opinion) dated 16.06.2025 permitting the CoC to consider the revised plans from both the Resolution Applicants. It was specifically mentioned that “*Recourse to challenge mechanism as per Regulation 39 (1A) (b) may be adopted to give equal opportunity to both, as also mentioned in para 9 of the CoC affidavit.*”. This order of the Adjudicating Authority was upheld by the Hon’ble Appellate Tribunal in Company Appeal (AT) (Ins) No. 1022 of 2025 vide order dated 25.07.2025.
8. The e-challenge mechanism was conducted on 18.07.2025 with a base bid of Rs. 85 crore and both the Resolution Applicants participated. The result of the e-challenge mechanism was communicated to the Hon’ble Appellate Tribunal by way of a Memo dated 23.07.2025 which recorded that OMPL’s bid was Rs. 148 crore and Uniworth’s bid was Rs. 146 crore.
9. Thereafter, the Resolution Applicants submitted their respective resolution plans. At this stage, the CoC, in its 38th meeting held on 29.08.2025, decided to conduct second e-challenge process on the ground that first e- challenge was sub-optimal and not satisfactory. This decision

of CoC is the bone of contention as the present application filed by OMPL seeks to set-aside CoC's decision for second e-challenge process.

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10. Mr. Vikram Nankani, Ld. Senior Counsel appearing for the Applicant, has laid emphasis on the Special Bench Order dated 16.06.2025 and the order dated 25.07.2025 of the Hon'ble Appellate Tribunal to contend that the said orders merely permitted e-challenge mechanism as per Regulation 39(1A) of CIRP Regulations and did not confer power upon the CoC to conduct multiple challenge processes. After referring to Regulation 39(1A), it was submitted that the decision of CoC for second round of challenge mechanism is in violation of Regulation 39(1A).
 11. Ld. Senior Counsel for the Applicant further argued that there is no justification for the second challenge mechanism as the only reason given by CoC is that the first challenge mechanism was sub-optimal and unsatisfactory. According to him, when the first challenge mechanism has already achieved enhanced bid value then there is no legal basis or necessity to go for second challenge mechanism. This is prolonging the insolvency resolution process which is against the objective of the Code for timebound completion of insolvency resolution process.
 12. Countering the submissions of the Applicant, Ld. counsel for Respondents submitted that as per the RFRP and the Process Note, the CoC is entitled to negotiate better terms with the PRAs at any stage and can adopt any process for this purpose including multiple rounds of negotiation process.
 13. From the submissions of the Ld. counsel for the parties, the questions that arise for consideration are:
 - I. *Whether the CoC's decision to conduct a second round of challenge mechanism process is in violation of Regulation 39(1A) of CIRP Regulations?*

- II. *Whether, in the facts and circumstances of the present case, the CoC's decision to conduct a second round of challenge mechanism process is arbitrary and against the objective of the Code?*

Issue I: Whether the CoC's decision to conduct a second round of challenge mechanism process is in violation of Regulation 39(1A) of CIRP Regulations?

14. To appreciate the submissions of the Applicant, we may refer to Regulation 39(1A) of CIRP Regulations, which is reproduced below for ease of reference.

39. Approval of resolution plan.

(1A) 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.


15. Ld. Senior Counsel for the Applicant emphasised on the expression “*not more than once*” in clause (a) of Regulation 39(1A) and argued that the intent of the Code read with Regulations, is very clear that the modification of the resolution plan can be permitted by the RP only once so that insolvency resolution process be completed in timebound manner. Similarly, when RP takes a recourse to clause (b) to use challenge mechanism, the same also cannot be held more than once. He argued that the one of the objectives of the Code is to conclude insolvency resolution of corporate persons in a time bound manner. Even if no time line is mentioned in clause (b) of the said Regulation, ‘reasonable timeline’ should be read into it to reflect the intent of the Regulation to permit value discovery or improvement of plans, within a time-bound framework. He argued that if such reasonable expectation of timeline is not read into clause (b) of Regulation 39(1A), then the very objective of ‘timebound



resolution' under the Code would be defeated and this would permit *carte blanche* to the CoC to conduct multiple or endless rounds of challenge process or plan modifications.

16. We are unable to subscribe to the submissions of the Ld. Sr. Counsel for the Applicant, for the following reasons:

- a) The words “*not more than once*” are used only in clause (a) of the Regulation 39(1A) which permits the Resolution Professional, if envisaged in RFRP, to modify the resolution plan only once. But there are no such expression as “*not more than once*” in clause (b) of Regulation 39(1A), which pertains to use of a challenge mechanism to resolutions applicants to improve their plans. Going by the plain words used in the Regulations, it is beyond this Tribunal’s jurisdiction to add words into a Regulation which have been omitted in the Regulation.
- b) The Applicant has emphasised on ‘timebound’ objective of the Code and seeks to insert reasonable timeline for completion of the insolvency resolution process. When we look at the Objectives of the Code, insolvency resolution of corporate persons in a timebound manner for maximization of value of assets of such person is one of the objectives. It clearly uses both ‘timebound manner’ and ‘maximization of value of assets’. Both the objectives when seen juxtaposition to each other, then even the object of timebound manner is for the purpose of avoiding further erosion of the value of the assets of corporate debtor and to achieve value maximization of the assets. Therefore, we are of considered view that wherever time line is provided in the Regulation, it has to be honoured but where timeline is not provided, the same cannot be supplemented by this Tribunal to supplant the other objective of value maximization.
- c) In ***Vistra ITCL (India) Ltd. vs. Torrent Investments Private Limited & Ors. [2023 SCC OnLine NCLAT 110]***, the Hon’ble Appellate Tribunal had occasion to refer to Regulation 39(1A), clauses (a) and (b) as the Ld. Adjudicating Authority had held that second challenge



mechanism runs foul to Regulation 39(1A). The decision of Ld. Adjudicating Authority was not approved by the Hon'ble Appellate Authority in following terms:

“60. *In view of the foregoing discussions, we, thus conclude that **even after completion of Challenge Mechanism under Regulation 39(1A) (b), the CoC retain its jurisdiction to negotiate with one or other Resolution Applicants, or to annul the Resolution Process and embark on to re-issue RFRP. Regulation 39(1A) cannot be read as a fetter on the powers of the CoC to discuss and deliberate and take further steps of negotiations** with the Resolution Applicants, which resolutions are received after completion of Challenge Mechanism.*”

(emphasis provided)

d) Ld. Sr. Counsel for the Applicant sought to distinguish the above judgment on the ground that the observations therein were made in a factual context. However, this argument that the said judgment has to be confined to the facts of the case is unjustified as Hon'ble NCLAT has returned its observations on law in respect of the powers of CoC for further negotiation vis a vis Regulation 39(1)(a) & (b) of the CIRP Regulations after careful analysis of the relevant provisions of the Code and the Regulations.

17. Further, Regulation 39(1A) refers to the duty of RP, if envisaged in the RFRP. This Regulation does not refer to the powers of CoC. At this juncture, we would like to refer to the observations of Hon'ble Appellate Tribunal in ***Sagar Stone Industries vs. Sajjan Kumar Dokania & Ors. [Company Appeal (AT) (Ins) No. 524 of 2025]***:

“8. *Regulation 39(1A) is a regulation which provides that Resolution Professional shall not permit modification to resolution plan more than once, which regulation, however, does not bind the CoC and the **CoC has unfettered right to ask for revision of plan or negotiate with all Resolution Applicants once or more.***”

(emphasis provided)



18. In the wake thereof, we hold that the CoC's decision to conduct a second round of challenge mechanism process is not in violation of Regulation 39(1A) of CIRP Regulations. Accordingly, Issue I is answered in negative.

Issue II: Whether the CoC's decision to conduct a second round of challenge mechanism process is arbitrary and against the object of the Code?

19. We now move to the second question. Ld. Sr. Counsel for the Applicant submits that there have already been multiple structured negotiations which has resulted in extensive increase in the plan value. Thus, it is contended that the CoC's decision to go for a second challenge mechanism on the ground that the price discovery in the first e-challenge was "*sub-optimal and not satisfactory*" is without any basis or substantiating the same. Reliance is placed on the judgment of ***Smriti Debbarma vs. Prabha Ranjan Debbarma [(2023) 19 SCC 782]*** to contend that the onus is on the CoC to substantiate its determination that the value discovered in the first e-challenge process is sub-optimal and warrants improvement.
20. It was further submitted that in absence of any indication of a superior offer, the highest bid cannot be disregarded on the mere expectation of enhanced value in future. Reliance is placed on ***Golden Food Products India Pvt. Ltd. vs. State of Uttar Pradesh & ors. [Civil Appeal Nos. 56-57 of 2026]*** and ***Eva Agro Feeds Private Limited v Punjab National Bank [(2023) 10 SCC 189]***.
21. Before dealing with the judgments relied upon by the Applicant, we first need to examine the terms and conditions of RFRP to ascertain the power of CoC for negotiations with the resolution applicants as the terms and conditions of RFRP are binding on CoC and the Resolution Applicants as long as they are not in violation of the Code and Regulations. Without going into the entire RFRP, it would be sufficient to refer to the clauses of RFRP as noted in the order dated 16.06.2025 of Ld. Special Bench with respect to the powers of the CoC:




“19. We may refer certain clauses of RFRP which allows the CoC to negotiate and extend the period for submission.

1.2.7 The Successful Resolution Applicant shall be finalized by the CoC, based on the Resolution Plan(s) submitted by the Resolution Applicant(s) in accordance with the terms of this RFRP and Applicable Law. Further, **the CoC shall have the right to negotiate better terms with the Resolution Applicant(s).**

1.3.5 **The RP and the CoC shall have the right to negotiate with any Resolution Applicant and may adopt any process of negotiation as they may deem fit.** The CoC may vote on any of the Resolution Plan(s) presented to it for any of the Cluster(s) and the Resolution Applicant whose Resolution Plan is approved by the CoC will be identified as the "Successful Resolution Applicant" for the relevant Cluster(s). The Successful Resolution Applicant shall be identified by the CoC, based on the compliant Resolution Plans submitted by the Resolution Applicants and discussions with the CoC, undertaken as per the discretion of the CoC, with the Resolution Applicants. Nothing contained in this RFRP, shall affect the right of the CoC to reject any or all of the Resolution Plans for the relevant Cluster(s) submitted by the Resolution Applicants for any reason whatsoever or without assigning any reason and/ or call for submission of new resolution plans by other Resolution Applicants. The Resolution Professional (acting on the advice of the CoC) and the CoC may on basis of its commercial wisdom and towards maximizing the value of the Corporate Debtor for all stakeholders and/ or in the interest of viability and feasibility, as part of negotiation of the resolution plans waive or modify any term of the RFRP, in whole or in part, for the benefit of any one or more the Resolution Applicants without extending such benefit of waiver or modification to any other Resolution Applicant.

2.8.4. Step III - Negotiations with one or more Resolution Applicant(s) and Due Diligence of Resolution Applicant(s) as per the RFRP and in accordance with the provision of the Code read with CIRP Regulations

a) The Resolution Professional (acting on the instructions of the CoC) and CoC, reserves the right to negotiate any of the terms of the Resolution Plan with one or more Resolution Applicant(s) to maximize the value for all the stakeholders.



The timelines for the negotiation shall be determined and/or communicated, if necessary, at a later date. The Resolution Applicants may be required to re-submit their revised proposals on basis on the discussions and negotiations, if so, required by the CoC in its absolute discretion. The CoC and/ or the Resolution Professional (acting on the instructions of the CoC) may, at their sole discretion, decide any method or process for negotiation, finalization and determination of the Successful Resolution Applicant including an e-auction process/ open challenge process/ Swiss challenge process etc. and each Resolution Applicant shall be bound by the terms governing such a process, which shall be decided by the CoC. The Resolution Applicant shall not object to, and must participate in, the implementation of such negotiation process. By submitting the Resolution Plan, the Resolution Applicant shall be deemed to have unequivocally agreed that any process of negotiation adopted by the CoC shall be binding on them and that they have no objection in following any such process. The Resolution Professional/ CoC shall also have the right to disclose the financials and scores of any Resolution Applicant (basis evaluation matrix) to other Resolution Applicant, pursuant to any challenge mechanism adopted by them. Provided however that the Resolution Professional or the CoC shall not be bound to disclose the commercials or scores of any Resolution Applicant or disclose the methodology adopted in arriving at such scores. It is further clarified that the Resolution Applicant shall not have the right to request clarifications on the scoring made as per evaluation matrix or seek information as regards the methodology adopted for scoring of its Resolution Plan.

20. The abovementioned Clauses of the RFRP indicate that CoC can negotiate with the Resolution Applicant and for maximization of the value of assets can also ask the Resolution Applicant to resubmit the plan.”

22. The highlighted portion of the clauses of RFRP provide wide power to CoC for negotiations with Resolution Applicants. No part of RFRP is brought to our notice which restricts the power of CoC to negotiate with Resolution Applicants to improve their plans. We also note that Regulation 39(1A) refers to the power of Resolution Professional whereas CoC derives its power from the terms and conditions of RFRP. There is nothing in RFRP which may be construed to limit the power of CoC to conduct e-challenge



process second time. Considering the terms and conditions of RFRP and the judgment of Hon'ble Appellate Tribunal in **Sagar Stone Industries vs. Sajjan Kumar Dokania** (*supra*), it is amply clear that the CoC has unfettered powers to negotiate with the resolution applicants. The Applicant, by submitting its resolution plan, had accepted the terms and conditions envisaged in the RFRP. Thus, it cannot now object to the decision of the CoC to conduct second challenge process in exercise of their commercial wisdom.

23. It was also argued that CoC has to substantiate how the first e-challenge is sub-optimal and not satisfactory. In this regard, we are of the view that the financial aspects and viability and feasibility of a resolution plan are matters of commercial wisdom of the CoC which cannot be replaced by the assessment of this Tribunal. In a recent judgment of **Torrent Power Ltd. vs. Ashish Arjunker Rathi & Ors [Civil Appeals No. 11689-11690 & 12994-12995 of 2024]**, decided on 27.02.2026, the Hon'ble Supreme Court, has at para 12.5 observed:

*“The issue is no longer res integra, the law having been settled that the commercial wisdom of the CoC enjoys primacy and cannot be supplanted by judicial review. **Neither the NCLT, nor the NCLAT nor even this Court is empowered to substitute its assessment in place of the commercial decision** arrived at by a requisite majority of the CoC.”*

(emphasis provided)

24. Coming to the reliance of the Applicant on **Golden Food Products India Pvt. Ltd. vs. State of Uttar Pradesh & ors. [Civil Appeal Nos. 56-57 of 2026]** and **Eva Agro Feeds Private Limited v Punjab National Bank [(2023) 10 SCC 189]** to contend that in absence of any indication of a superior offer, the highest bid cannot be disregarded on the mere expectation of enhanced value in future.
25. In the matter of **Golden Food Products** (*supra*), the Ghaziabad Development Authority (GDA) decided to go for a fresh auction of the Subject Plot after noticing that similar properties had received substantially higher prices than what was offered by the Appellant who



was declared the highest bidder during the first auction of the subject plot. The Hon'ble Supreme Court after considering various judgments including the judgment of ***Eva Agro (supra)*** which is also relied upon the Applicant herein, held:

“32. An auction process has a sanctity attached to it and only for valid reasons that the highest bid can be discarded in an auction which is otherwise held in accordance with law. If a valid bid has been made which is above the reserve price, there should be a rationale or reason for not accepting it. Therefore, the decision to discard the highest bid must have a nexus to the rationale or the reason. Merely because the authority conducting the auction expected a higher bid than what the highest bidder had bid cannot be a reason to discard the highest bid. In the instant case, no other party had placed a bid higher than the appellant herein. There was no infirmity in the conduct of the auction. No other party had complained about the process of auction conducted by the GDA - respondent No.2. The bid offered by the appellant herein was the highest and above the reserve price. In the circumstances, the said bid ought to have been accepted by GDA - respondent No.2 rather than cancelling the same without notice to the appellant herein. Hence, the cancellation of the bid submitted by the appellant herein is quashed.”

26. It can be seen that the above case pertains to public auction conducted by GDA. Present is the case which pertains to the negotiation process by the CoC under the Code for improving resolution plans. Thus, the case of ***Golden Food Products (supra)*** is in a different context altogether. The process of negotiations and price discovery by CoC during insolvency resolution process cannot be equated to a public auction process. Thus, the said judgments do not come in aid of the Applicant and merely because the Applicant has submitted the highest plan value would not confer upon the Applicant the right to question the process adopted by the CoC.
27. At this juncture, we would like to refer to the order dated 28.07.2025 passed by Hon'ble NCLAT in ***Company Appeal (AT) (Ins) No. 1101 of 2025*** whereby the order dated 18.07.2025 passed by this Bench in the case of ***West End Investment and Finance Consultancy Pvt. Ltd. vs.***



Mrs. Neeraja Kartik, RP of SKM Real Infra Ltd. & Anr. [IA/5883/2024 in CP/3770/MB/2019] was upheld. It is to be noted that while dismissing the appeal, the Hon'ble NCLAT observed:

“6. In the RFRP, it is the CoC who is endowed by all powers to consider any plan or not. The fact that any Applicant is H-1 bidder does not oblige the CoC to approve the Resolution Plan. The CoC is fully entitled to negotiate with one or all Resolution Applicants.”

28. Another issue was raised by the Applicant in Rejoinder that voting on the resolution plan had already commenced on 22.05.2024 but was interrupted to accommodate Uniworth. The Applicant has made feeble efforts to allege collusion between CoC and Uniworth and repeated its contention while challenging the decision of CoC for conducting second e-challenge process. However, the Applicant has not placed any substantiating evidence to establish collusion between CoC and Uniworth. Such a bald statement is made merely on suspicion. It is settled jurisprudence that howsoever strong a suspicion may be, it cannot replace evidence/legal proof in the judicial proceedings. Adjudication cannot be based on conjectures, surmises and suspicions.
29. In the present case, while the Hon'ble NCLAT, at the time of dismissing the appeal of the applicant arising from the first round of litigation, has noted that the e-challenge mechanism conducted on 18.07.2025 has resulted in a bid of Rs. 148 crore by the Applicant and Rs. 146 crore by R-3 while the original bids of Applicant and R-3 were Rs. 30 crore and Rs. 15.10 crores respectively, which has vindicated the decision of CoC to permit revised resolution plans. Despite clear finding by Hon'ble NCLAT, the allegation by the Applicant that voting which commenced on 22.05.2024 was interrupted only to accommodate R-3 is rejected in strongest terms.
30. As held by Hon'ble Supreme Court in the matter of **Committee of Creditors AMTEK Auto Limited Through Corporation Bank v. Dinkar T Venkatasubramanian & Ors [(2021) 4 SCC 457]** which was followed in **Ebix Singapore Private Limited vs. Committee of Creditors of**



Educomp Solutions [2021 SCC Online SC 707], it is only after the approval of a resolution plan by the CoC, a restriction is imposed on the CoC to go for further negotiations with the resolution applicants. Admittedly, in the present case, till date no resolution plan has been approved by the CoC.

31. In the light of the facts and circumstances, the judgments of Hon'ble Supreme Court and Hon'ble Appellate Tribunal discussed above and considering the fact that the first challenge mechanism was conducted on 18.07.2025 and no resolution plan is approved by the CoC and the CoC having approved for conducting the second challenge mechanism, we are of considered opinion that in the present set of facts and circumstances, the said decision of the CoC cannot be held to be arbitrary in nature or against the principles of the Code. Thus, Issue II is also answered in negative.
32. In view thereof, we are not inclined to interfere with the decision of the CoC for running second round of challenge mechanism. However, given the fact that considerable time has already passed in the CIRP of the Corporate Debtor, the CoC shall endeavour to conduct the challenge mechanism and conclude the resolution process of the Corporate Debtor in an expeditious and time bound manner.
33. Accordingly, the IA/4320/2025 is **dismissed**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)