**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**CHENNAI BENCH**
**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Ins) No.309/2023**
**(IA Nos.952, 953 and 954/2023)**
**(Under Section 61 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 22 of NCLAT Rules, 2016)**

**(Arising out of the Impugned Order dated 25.08.2023 in IA(IBC)493(CHE)/2023 in IA(IBC)/349(CHE)/2023 in CP(IBC)/279/CHE/2021, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai Bench)**

**IN THE MATTER OF:**

**1. Mr. G. Balasubramaniam**
**Promoter / Suspended Director of**
**GBJ Hotels Private Limited**
**(Currently under Corporate Insolvency Resolution Process)**
**T.S. No. 4035,**
**Krishnasamy Nagar,**
**50 Feet Road, Ramanathapuram**
**Coimbatore – 641045** **…Appellants No.1/ Suspended Director**

**2. Mrs. B. Jeevarathinam**
**Suspended Director of GBJ**
**Hotels Private Limited**
**(Currently under Corporate Insolvency Resolution Process)**
**T.S. No. 4035,**
**Krishnasamy Nagar,**
**50 Feet Road, Ramanathapuram**
**Coimbatore – 641045**
**Mobile No. 9994055713**
**E-mail – legal@ksrandco.in** **…Appellants No.2/ Suspended Director**

**Versus**

**1. CA Mahalingam Suresh Kumar**
**Resolution Professional for GBJ Hotels Private Limited**
**IBBI/IPA-001/IP-P00110/2017-2018/2017**

**Having office at:**
**S.P.P. & Co., Chartered Accountants**
**27/9, Nivedh Vikas,**
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**Puliyakulam Road,**
**Coimbatore – 641045**
**Ph: +91 7373052341** **…Respondent No.1/**
**E-mail – msureshkumar@icai.org** **Resolution Professional**

**2. Committee of Creditors**
**represented by**
**Indian Overseas Bank**
**Represented by its Chief Manager**
**Asset Recovery**
**Management Branch**
**Cross-cut road, Gandhipuram**
**Coimbatore – 641012** **…Respondent No.2/**
**E-mail – iob1551@iob.in** **Financial Creditors**

**3. K.P. Advisory Services LLP**
**D. No. 6-3-865/1/2, Flat No. 203**
**Greenland Apartments**
**Ameerpet, Begumpet,**
**Secunderabad, Hyderabad,**
**Telangana – 500 016** **…Respondent No.3/**
**E-mail- dgopi@glandecelsus.com** **Successful Resolution Applicant**

**Present:**

**For Appellants : Mr. R. Sankaranarayanan, Sr. Advocate**
**For Dr. K.S. Ravichandran, PCS**
**Ms. S. Manjula Devi, Advocate**

**For Respondent : Mr. E. Om Prakash, Sr. Advocate**
**For Mr. A.G. Sathyanarayana, Advocate for Caveator/R1**
**Mr. M.L. Ganesh, Advocate for IOB – R2**
**Mr. Rahul Balaji, Advocate-R3**

**WITH**

**Company Appeal (AT) (CH) (Ins) No. 321/2023**
**(IA Nos.979 and 980/2023)**
**(Under Section 61 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 22 of NCLAT Rules, 2016)**

**(Arising out of the Impugned Order dated 25.08.2023 in IA(IBC)349(CHE)/2023 in CP(IBC)/279/CHE/2021, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai Bench)**

**IN THE MATTER OF:**

**1. Mr. G. Balasubramaniam**
**Promoter / Suspended Director of**
**GBJ Hotels Private Limited**
**(Currently under Corporate Insolvency Resolution Process)**
**T.S. No. 4035,**
**Krishnasamy Nagar,**
**50 Feet Road, Ramanathapuram**
**Coimbatore – 641045**
**Mobile No. 9994055713** **…Appellants No.1/**
**E-mail – legal@ksrandco.in** **Suspended Director**

**2. Mrs. B. Jeevarathinam**
**Suspended Director of GBJ**
**Hotels Private Limited**
**(Currently under Corporate Insolvency Resolution Process)**
**T.S. No. 4035,**
**Krishnasamy Nagar,**
**50 Feet Road, Ramanathapuram**
**Coimbatore – 641045**

**Mobile No. 9994055713** **…Appellants No.2/**
**E-mail – legal@ksrandco.in** **Suspended Director**

**Versus**

**1. CA Mahalingam Suresh Kumar**
**Resolution Professional for GBJ**
**Hotels Private Limited**
**IBBI/IPA-001/IP-P00110/2017-**
**2018/2017**

**Having office at:**
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**Accountants**
**27/9, Nivedh Vikas,**
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**Puliyakulam Road,**
**Coimbatore – 641045**
**Mobile No. 7373052341** **…Respondent No.1/**
**E-mail – msureshkumar@icai.org** **Resolution Professional**

**2. Committee of Creditors**
**represented by**
**Indian Overseas Bank**
**Represented by its Chief**
**Manager Asset Recovery**
**Management Branch**
**Cross-cut road, Gandhipuram**
**Coimbatore – 641012**
**Phone No. 0422-2497832** **…Respondent No.2/**
**E-mail – iob1551@iob.in** **Committee of Creditors**

**3. K.P. Advisory Services LLP**
**D. No. 6-3-865/1/2, Flat No. 203**
**Greenland Apartments**
**Ameerpet, Begumpet,**
**Secunderabad, Hyderabad,**
**Telangana – 500 016** **…Respondent No.3/**
**E-mail- dgopi@glandecelsus.com** **Successful Resolution Applicant**

**Present:**

| | | |
|---|---|---|
| **For Appellants** | **:** | **Mr. R. Sankaranarayanan, Sr. Advocate**<br>**For Dr. K.S. Ravichandran, PCS**<br>**Ms. S. Manjula Devi, Advocate** |
| **For Respondent** | **:** | **Mr. E. Om Prakash, Sr. Advocate**<br>**For Mr. A.G. Sathyanarayana, Advocate for Caveator/R1**<br>**Mr. M.L. Ganesh, Advocate for IOB – R2**<br>**Mr. Rahul Balaji, Advocate-R3** |

**J U D G M E N T**
**(Virtual Mode)**

**Justice M. Venugopal, Member (Judicial):**

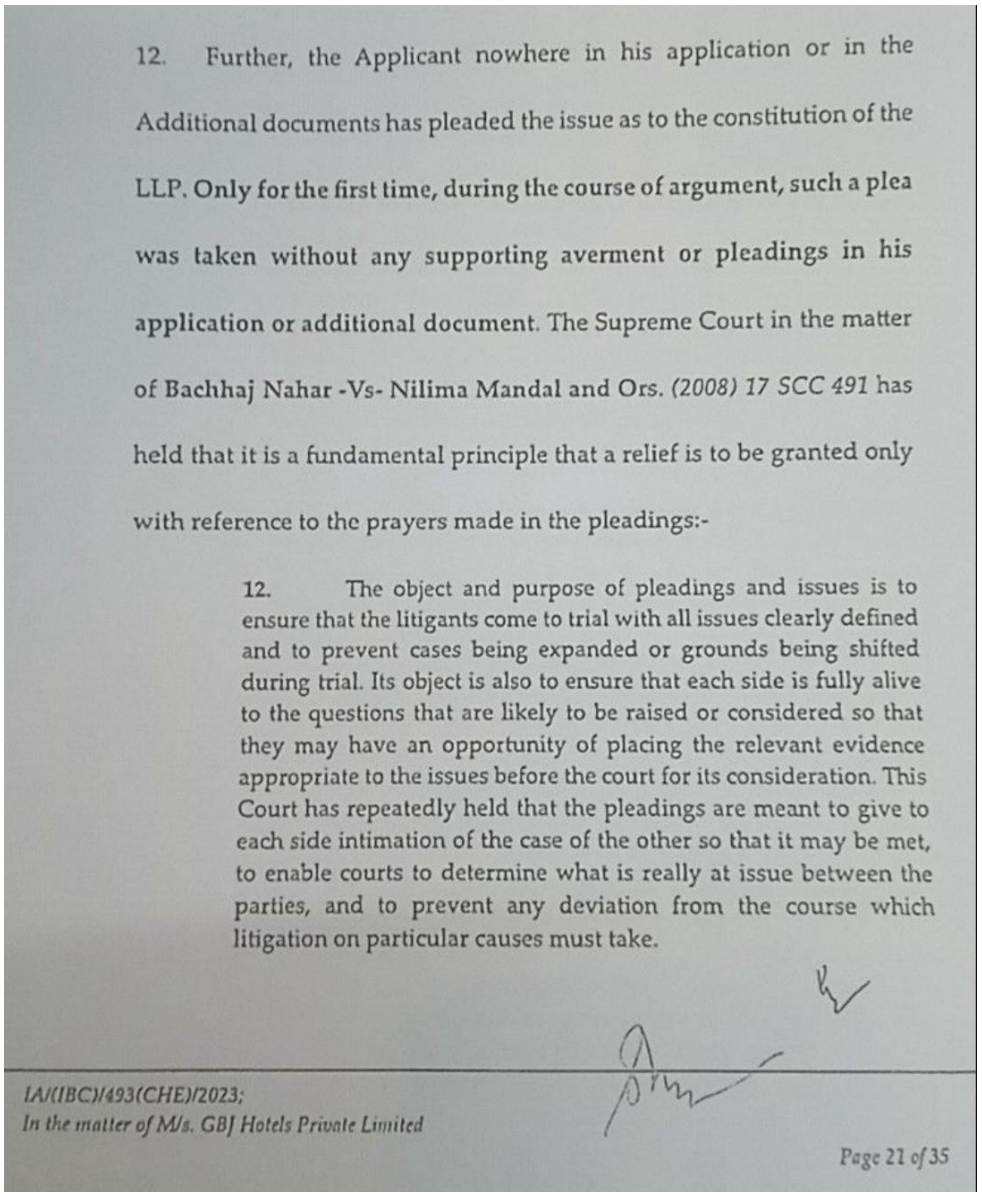
**Preamble**

The Appellants / Petitioners have preferred the two Company Appeals No. Company Appeal (AT) (CH) (Ins) No.309/2023 and Company Appeal (AT) (CH) (Ins) No. 321/2023, in respect of the impugned orders, in IA(IBC)/493/CHE/2023 and IA(IBC)/349(CHE)/2023 dated 25.08.2023 passed by the Adjudicating Authority / National Company Law Tribunal, Division Bench No.1, Chennai.

2. According to the Ld. Sr. Counsel for the Appellants (in both Appeals) the 'Adjudicating Authority' / 'Tribunal', Division Bench-I, Chennai had approved a 'Resolution Plan' u/s 31 of the I&B Code, submitted by the 3rd Respondent /

Successful Resolution Applicant(SRA) in the matter of GBJ Hotels Private Limited/Corporate Debtor.

3. The 'Adjudicating Authority' / 'Tribunal', while passing the impugned order dated 25.08.2023 in, IA/493(CHE)/2023 in IA(IBC)/349(CHE)/2023 In, CP(IB)/279/CHE/2021, among other things, at paragraphs No. 12 to 29 had observed the following:-



12. Further, the Applicant nowhere in his application or in the Additional documents has pleaded the issue as to the constitution of the LLP. Only for the first time, during the course of argument, such a plea was taken without any supporting averment or pleadings in his application or additional document. The Supreme Court in the matter of Bachhaj Nahar -Vs- Nilima Mandal and Ors. *(2008) 17 SCC 491* has held that it is a fundamental principle that a relief is to be granted only with reference to the prayers made in the pleadings:-

> 12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

*IA/(IBC)/493(CHE)/2023;*
*In the matter of M/s. GBJ Hotels Private Limited*

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13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

15. The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated by a Constitution Bench of this Court in *Bhagwati Prasad* v. *Chandramaul* [AIR 1966 SC 735] : (AIR p. 738, para 10)

> *"10. ... If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial,* then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : *did the*

*parties know that the matter in question was involved in the trial, and did they lead evidence about it?* If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. *To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."*

17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in *Bhagwati Prasad* [AIR 1966 SC 735] and *Ram Sarup Gupta* [(1987) 2 SCC 555 : AIR 1987 SC 1242] referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.

*(emphasis supplied)*

13. In the present case, as already alluded *supra* for the first time, during the course of argument, a plea is taken by the Applicant in

relation to the constitution of LLP without any supporting averment or pleadings in his application or additional document. As a result of which, the Respondents have been denied an opportunity to deny the said allegation made by the Applicant, which amounts to violation of Principal of Natural Justice.

14. Hence in view of the decision of the Supreme Court in the matter of **Bachhaj Nahar** *(supra)* and also in view of the dispositive reasoning stated *supra*, the objections raised by the Applicants on the ground that the constitution of LLP, has no legal legs basis and is rejected.

15. In so far objections raised by the Applicant as to discrimination in payment to the Related parties are concerned, we find it apt to refer to the Judgment of the Hon'ble Supreme Court in the matter of **M.K. Rajagopalan -Vs- Dr. Periasamy Palani Gounder & Anr** in *Civil Appeal Nos. 1682 – 1683 of 2022*, wherein at para 52 to 54, it is held as follows;

> 52. Another factor taken into consideration by the Appellate Tribunal has been in relation to the so-called discrimination in the resolution plan in relation to a related party of the corporate debtor.
>
> 53. Learned counsel for the appellant in Civil Appeal No.1827 of 2022 has referred to several decided cases to submit that therein, even when certain dues of related parties were admitted, the

resolution plans not providing for any payment to such related parties were upheld by this Court; and that the principles of non-discrimination would not be applicable to the decision of CoC. It has been argued on behalf of the resolution professional that none of the statutory requirements are of any mandate that a provision has to be made in the resolution plan for payment to the related parties. According to the learned counsel, the need is, essentially, to ensure that the plan provides for payment to financial creditors (including dissenting financial creditors) entitled to vote. Thus, the plan in question cannot be said to be standing in contravention of any mandatory requirements. Per contra, the learned counsel appearing for the related party would submit that even when related party is to be treated as a separate class in terms of the principles laid down by this Court in Phoenix ARC (supra), so as to be excluded from CoC, there is no reason that they be treated as separate class when it comes to payment of dues under the resolution plan. It is submitted that failure to provide for discharge of debt of the related party is in violation of Section 30(2)(b), (e) and (f) of the Code. The submissions made on behalf of the related party and the observations of the Appellate Tribunal are difficult to be accepted.

54. The lengthy discussion of Appellate Tribunal in regard to the related party (the parts whereof have been reproduced in paragraph 19.7 hereinabove) depict rather unsure and irreconcilable observations of the Appellate Tribunal.

54.1. After taking note of the fact that related party is prohibited to be a part of CoC and is further prohibited to be a resolution applicant or an authorized representative etc., the Appellate Tribunal has rightly observed that involvement of a related party in CIRP in any capacity was seen as giving unfair benefit to the corporate debtor; and that the statutory recognition of related party as a different class would apply even to resolution plan when CoC would decide whether in its commercial wisdom it should pay to related party at all because that would mean paying to the same persons who are behind the corporate debtor. However, thereafter the Appellate Tribunal proceeded to observe that related party was required to be equated with the promoters as equity share-holders and then, further made certain observations about discrimination between related party unsecured financial creditor and other unsecured financial creditors as also between related

party operational creditor and other operational creditors. Such far-stretched observations of the Appellate Tribunal are difficult to be reconciled with the operation of the statutory provisions.

54.2. It has rightly been argued on behalf of the appellants and had rightly been observed by the Adjudicating Authority (vide extraction in paragraph 15.4.1 hereinabove) that there was no provision in the Code which mandates that the related party should be paid in parity with the unrelated party. So long as the provisions of Code and CIRP Regulations are met, any proposition of differential payment to different class of creditors in the resolution plan is, ultimately, subject to the commercial wisdom of CoC and no fault can be attached to the resolution plan merely for not making the provisions for related party.

*(emphasis supplied)*

16. The Judgment of the Hon'ble Supreme Court in the case of M.K. **Rajagpolan** *(supra)* would directly answer the objection raised by the Applicant in relation to the discrimination of payment in the Resolution Plan. Thus, the objections raised by the Applicants on the said ground also has no legal basis and is rejected.

17. In so far as the plea of material irregularity is concerned, the Learned Authorized Representative for the Applicant submitted that the RP has not prepared a proper marketing strategy in order to invite Resolution Applicants and no specific 'Sector' based effort was made by the RP in order to find a better PRA who can bring better value higher than the fair value of the assets of the Corporate Debtor.

18. It is required to be noted that the Applicant has not pointed out any violation in relation to the procedure through which the Resolution Plan was invited from the PRAs. However, it is the contention of the Applicant that the RP has not made a proper marketing strategy. In this connection, reference was made to Regulation 36C of CIRP Regulations which states as follows;

> **36C. Strategy for marketing of assets of the corporate debtor.**
>
> (1) The resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed one hundred crore rupees and may prepare such strategy in other cases.
>
> (2) Decision of implementing such strategy along with its cost shall be subject to the approval of the committee.
>
> (3) The member(s) of committee may also take measures for marketing of the assets of the corporate debtor

19. It could be seen that the aforesaid Regulation i.e. Regulation 36C was inserted by Notification No. IBBI/2022-23/GN/REG093, dated 16th September, 2022 (w.e.f. 16-09-2022). In the present case, the 1st Form – G was approved by the CoC as early as on 02.06.2022 and was published on 03.06.2022. The 2nd Form – G was published on 16.09.2022 i.e., the

date on which Regulation 36C of CIRP Regulations, 2016 came into force. It is seen that Form – G was given vide publicity by advertising in "Economic Times", (English) All India Editions" and "Dinamani", (Tamil) Coimbatore Edition". Hence, the arguments made by the Learned Authorized Representative for the Applicant is *non est* in law and without any substance and is required to be rejected outright.

20. In relation to the issue of cut – back facility of 20% paid to the Financial Creditor to be treated as 'preferential transaction', the said objection is required to be nipped at the bud itself since one of the main ingredients of Section 43 of IBC, 2016 is that the impugned transaction should have the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53 of IBC, 2016. In the present case, the cut back 20% was offered to the **sole** Financial Creditor / 2nd Respondent viz. Indian Overseas Bank, who is the **only** secured creditor in respect of the Corporate Debtor and is standing first in the queue under Section 53 of IBC, 2016. Hence it is absolutely preposterous on the part of the Applicant to state that the cut back facility of 20% is a 'preferential

transaction', since the said Financial Creditor is the only person entitled to such cut back facility. No other Financial Creditor has placed such an objection before us. Thus, the objections raised by the Applicants on the said ground has no legal basis, hence rejected.

21. In relation to the issue of payment of performance incentive to the RP is concerned, it is apposite to refer to Regulation 34B of the CIRP Regulations, which states as follows;

> **34B. Fee to be paid to interim resolution professional and resolution professional.**
>
> (1) The fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.
>
> (2) The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II: Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.
>
> (3) After the expiry of period mentioned in clause 2 of Schedule-II, the fee of the interim resolution professional or resolution

professional shall be as decided by the applicant or committee, as the case may be.

(4) For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance-linked incentive structure as it deems necessary.

(5) The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.

*(emphasis supplied)*

22. It is the contention of the Learned Authorized Representative for the Applicants that the COC in its 11th Meeting held on 01.02.2023 has approved a performance incentive to a roaring extent of 2.5% payable to the RP. It was submitted that the same was not in consonance with the table provided under Schedule – II.

23. Regulation 34B (4) of the CIRP Regulations clearly state that the CoC in its discretion may decide to pay the performance – linked incentive fee in accordance with the Schedule or any other performance – linked incentive structure as it deems necessary. In the present case, the CoC exercised its discretion by adopting to the second limb of

Regulation 34B (4) and accorded 2.5% of performance – linked incentive to be paid to the RP. Hence, there cannot be any quarrel by the Applicant in relation to the same.

24. Further, during the course of argument the Learned Authorized Representative for the Applicant raised an issue in relation to the SRA's capability to implement a Resolution Plan. All these issues are squarely falling within the domain of 'commercial wisdom' of CoC and cannot be subject to judicial intervention. In this connection we find it apt to refer to the decision of the Hon'ble Supreme Court in the matter of **Ngaitlang Dhar -Vs- Panna Pragati Infrastructure** *(2022) 6 SCC 172* has held in para 32 as follows;

> 32. It is trite law that "commercial wisdom" of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by IBC. It has been consistently held that it is not open to the adjudicating authority (NCLT) or the appellate authority (NCLAT) to take into consideration any other factor other than the one specified in Section 30(2) or Section 61(3) IBC. It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that the decision of the CoC's "commercial wisdom" is non-justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) IBC. This position of law has been consistently reiterated in a catena of judgments of this Court, including:

(i) *K. Sashidhar* v. *Indian Overseas Bank* [*K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] ,

(ii) *Essar Steel India Ltd. (CoC)* v. *Satish Kumar Gupta* [*Essar Steel India Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] ,

(iii) *Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh* [*Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh*, (2020) 11 SCC 467 : (2021) 1 SCC (Civ) 799] ,

(iv) *Kalpraj Dharamshi* v. *Kotak Investment Advisors Ltd.* [*Kalpraj Dharamshi* v. *Kotak Investment Advisors Ltd.*, (2021) 10 SCC 401 : (2022) 1 SCC (Civ) 233]

(v) *Ghanashyam Mishra & Sons (P) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.* [*Ghanashyam Mishra & Sons (P) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638]

25. In so far as the issue that the Resolution Plan value is much lesser than the Liquidation value, we may usefully refer to the decision of the Hon'ble Supreme Court in the matter of **Maharasthra Seamless Limited –Vs- Padmanabhan Venkatesh & Ors.** in *Civil Appeal No. 4242 of 2019* at para 26 and 27 has held as follows;

> "26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.

27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."

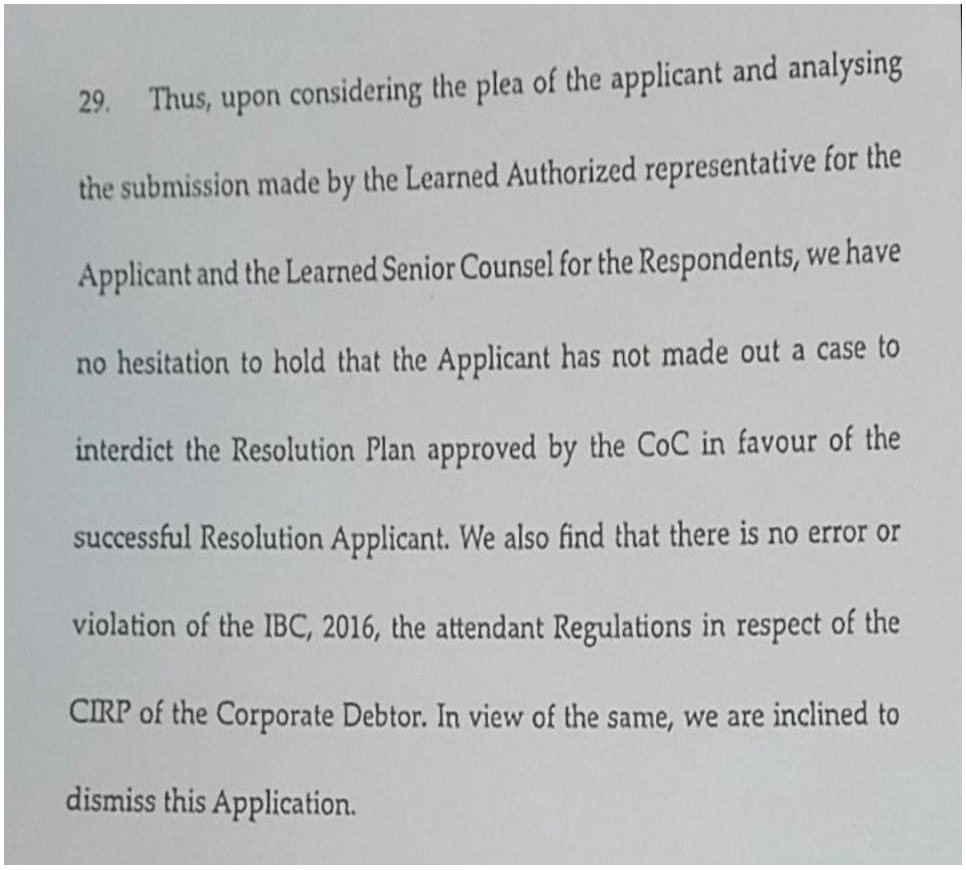
26. The Hon'ble Supreme Court has categorically held that there is no provision in IBC, 2016 or in the Regulations which stipulates that the bid of the Resolution Applicant has to match the Liquidation value of the Corporate Debtor. This answers the plea of the applicant.

27. Further, upon perusal of the minutes of the CoC, it is seen that the Applicant have been attending the CoC meetings from time to time. Also, the RP has filed an Application under Section 19(2) of IBC, 2016 i.e. IA(IBC)/641(CHE)/2022 against the Applicants herein for non – cooperation. It is seen from the order dated 28.07.2022, there was no appearance on the part of the Applicants in the said Application. Hence,

this Tribunal was constrained to pass an order against the Applicants herein to hand over the documents to the RP. Further, the Applicants herein who are all along participating in the CoC meetings cannot at this point of time question the valuation of the Corporate Debtor. At this juncture, it is necessary to refer to the Judgment of the Hon'ble NCLAT in **Rohit Jindal -Vs- Fanendra Harakchand Munot** in *Company Appeal (AT) (Ins.) No. 97 of 2023*, wherein at para 7, it has been held as follows;

> 7. The second submission of counsel for the appellant is with regard to valuation of the assets, the valuation of the assets was undertaken by the Resolution Professional in accordance with the CIRP Regulation, 2016. The promoters if they were aggrieved by the valuation taken by the IRP/RP and the valuation received before the CoC, the course open for the promoters was to approach the Adjudicating Authority questioning the valuation at the relevant time when the question could have been gone into and examined before Form-G was issued and Form-H has been submitted by the Resolution Professional on the basis of the valuation undertaken in the process. At this stage, appellant cannot be allowed to raise the question of valuation
>
> *(emphasis supplied)*

28. Further, it is also pertinent to mention here that the Applicant herein has been classified as 'Wilful Defaulter' by Reserve Bank of India on 12.04.2022. Thus, in any case, the Applicant herein cannot submit a Resolution Plan, since he is ineligible under Section 29A(b) of IBC, 2016.



29. Thus, upon considering the plea of the applicant and analysing the submission made by the Learned Authorized representative for the Applicant and the Learned Senior Counsel for the Respondents, we have no hesitation to hold that the Applicant has not made out a case to interdict the Resolution Plan approved by the CoC in favour of the successful Resolution Applicant. We also find that there is no error or violation of the IBC, 2016, the attendant Regulations in respect of the CIRP of the Corporate Debtor. In view of the same, we are inclined to dismiss this Application.

and resultantly, dismissed the 'Application' without costs.

**Appellant's Submissions (in (Company Appeal (AT) (CH) (Ins) Nos. 309 & 321/2023)**

4. The Learned Counsel for the Appellants, (in both Appeals) submits that the 'Adjudicating Authority' / 'Tribunal', had failed to look at the 'CIRP', and Resolution Plan, to see if the laudable objectives of the I&B Code, towards 'Asset Maximisation and Balancing of Interest of Stakeholders', were achieved, moreso, when there is, no 'financial insolvency', at all, except mere delays, in 'Repayment of Instalments' and are those aspects, a matter of 'commercial wisdom'.

5. The Learned Counsel for the Appellants points out that the 'Resolution Professional', the 'Committee of Creditors' and the Adjudicating Authority are bound to see if the 'Resolution Applicant' is lawfully constituted, in accordance with applicable law to ensure that it was legally and validly constituted.

6. The Learned Counsel for the Appellants contends that, when the 'Limited Liability Partnership Act, 2008', mandates, that the partners of an 'LLP', shall be either individuals, (natural persons) and or bodies, corporate and the Adjudicating Authority, had overlooked this fundamental aspect and 'approved', a 'Resolution Plan', submitted by such an 'entity'.

7. The Learned Counsel for the Appellants, proceeds to point out that the 'Committee of Creditors', is not entitled to approve a Resolution Plan, that is far less than the 'Fair Value' as well as Liquidation Value, just because it offers 100% recovery, to Financial Creditor, with more than 98% vote share in the Committee.

8. The Learned Counsel for the Appellants, takes a stand that when the Plan value is projected as Rs. 184/- crores, and all admitted claims, including disputed claims and admitted claims of related parties aggregate only Rs. 170 crores. Then it is mandatory on the part of the Adjudicating authority / Tribunal to ensure that Operational Creditors, whether related parties or otherwise, must be paid in full to the extent of the entitlement as per 'Liquidation Value' and that too in priority',

in as much as the 'Resolution Plan' value, is more than the aggregate of all admitted claims, including disputed claims of all the 'creditors'.

9. It is the version of the Appellants that when the plan value offers sufficient cushion, even though it is far less than the liquidation value, would not offering only 0.01% 'Redeemable Preference Shares' to a related party creditors, whose claims were admitted as Operational Creditors, resulting in violation of the mandatory provisions of the I&B Code, 2016, in as much as neither Section 30(2)(b) nor Regulation 38 of the CIRP Regulations nor Section 53 of the I&B Code, 2016 envisage a sub-classification, so as to provide them a discriminatory treatment.

10. The Learned Counsel for the Appellants, proceeds to point out, that the grievance of the Appellants in (Two Appeals), is that, the 'Successful Resolution Applicant' though a 'Limited Liability Partnership', is not legally constituted, and hence, is 'not a person' within the meaning of Section 3(23) of the I&B Code, 2016 and therefore, the 'Resolution Plan', is not submitted by a person' within the meaning of the I&B Code.

11. The other stand of the Appellants, is that the 'Resolution Plan' suffers from 'material irregularity', and is in violation of Section 61(3)(i)(ii) and (iii) of the Code, and Regulation 38 of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Profess for Corporate Persons) Regulations, 2016 ('CIRP Regulations').

12. According to the Learned Counsel for the Appellants, Section 3(23) of the I&B Code, 2016 defines the word 'person', unless the 'Successful Resolution Applicant' is entitled to be regarded as a 'person', the question of permitting it, to submit a 'Resolution Plan' does not arise.

13. The Learned Counsel for the Appellants adverts to Section 5 of the 'Limited Liability Partnership Act' in and by which, any 'individual' or 'body corporate', may be a 'partner' in 'LLP' and that a 'body corporate', is defined as per Section 2(d) of the LLP Act, 2008. Furthermore, a 'Trust', is not a body corporate, as per Section 2(d) and further a 'Trust', is not an individual in Law.

14. The Learned Counsel for the Appellants, points out that Section 12 of the LLP Act, 2008, deals with 'Registration Certificate', and as per Section 12(4), 'Registration Certificate', shall be 'conclusive evidence' that 'LLP' is incorporated, in the name specified therein, it does not establish anything beyond that 'certificate', issued by the Registrar, is a 'Ministerial' and cannot over ride Section 3 and 5 of the LLP Act, 2008.

15. The Learned Counsel for the Appellants, submits that an Adjudicating Authority / Tribunal, has jurisdiction because of the fact that the concept of Successful Resolution Applicant, is developed by the I&B Code, 2016 and the sole aim/object of the Code, is to provide a 'scheme' to rehabilitate a 'Corporate Debtor' under CIRP, and therefore, it cannot be said, that it is not a matter, relating to the 'Insolvency Proceedings'.

16. It is projected on the side of the Appellants, that in the matter of ***M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder & Ors., judgement of the Hon'ble Supreme Court (in Civil Appeal No. 1682-1683 of 2023),*** the Suspended Director / Shareholder (as in this case) filed an 'Appeal', assailing, the Approval of Resolution Plan. Also that he had not filed any objection to the Resolution Plan (in this case IA IBC /493/CHE/2023 was filed) and the 'Locus Standi', was contended, from paragraphs 65 to 74 of the 'judgement'. Apart from, that the analysis commences at paragraph No. 75 and issues were raised at paragraph 76 and precisely the same 'issues', as in this' case'.

17. The Learned Counsel for the Appellants adverts to paragraph 101 of the judgement of the Hon'ble Supreme Court, in M.K. Rajagopalan case, wherein, the 'ineligibility' of the Resolution Applicant, and violation of Section 88 of the Indian Trust Act, 1882 were considered. Also, at paragraph 103 of the said

judgement, the argument of the Resolution Applicant, that these points, were never raised, was also considered. At paragraph 112 of the said judgement, the 'legal eligibility' of the Resolution Applicant, was considered and held that he is barred. As a matter of fact, the plea of Locus Standi, was rejected impliedly, and the 'objection' raised by a Suspended Director / Shareholder, who had not raised this point, in any place, including before the 'Adjudicating Authority' / 'Tribunal', not only raised.

18. The Learned Counsel for the Appellants, comes out with a plea that in M.K. Rajagopalan's case, had not directed the parties to approach the Civil Court just because the legal principle, enunciated in Indian Trust Act, 1882, had to be considered by this 'Appellate Tribunal'.

19. The Learned Counsel for the Appellants, points out that the Appellants in (Both Appeals), is not only a 'shareholder' but also a 'personal guarantor' and Creditors, in as much as, in the teeth of Section 31 of the I&B Code, 2016, the 'Resolution Plan', is binding on all the 'Stakeholders', any stakeholder, who is aggrieved, is entitled to invoke the jurisdiction of the 'Appellate Tribunal' as per Section 61 of the Code. Furthermore, the only obligation, is to exhibit that they are Aggrieved, and the 'Appeal' is one or more of the grounds, enjoined as per Section 61(3) of the I&B Code.

20. The Learned Counsel for the Appellants, submits that the 'Adjudicating Authority' / 'Tribunal' had erroneously placed, reliance upon the decision in ***Aswathi Agencies Vs. Bijoy Prabhakaran Pullpra, & Ors. in Company Appeal (AT) (CHE)(Ins.) No. 179 of 2021***wherein at paragraph 11, it was held, that a Trust' can be a Resolution Applicant, and further, that the 'issue' that crops up for 'rumination', is about the entitlement of this 'LLP' as a, 'SRA' and not about any Trust, as 'Successful Resolution Applicant'.

21. It is the contention of the Appellants, that the Adjudicating Authority had rightly relied on the decision of the Hon'ble Supreme Court in ***Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Ors., (2020) 13 SCC 308*** but wrongly applied the Law.

22. The Learned Counsel for the Appellants, points out that the Hon'ble Supreme Court in Embassy Properties' case had laid down that the Law on the ambit of Section 60(5) of the Code, whereby and where under it was observed that 'all claims, and applications, arising, or in connection with Insolvency proceedings', shall be dealt with, only by the Adjudicating Authority (vide paragraph 37).

23. The Learned Counsel for the Appellants, adverts to the 'Tiffins Barytes Asbestos case' wherein at paragraph 39 it is observed that '*the discretion of the*

*Tribunals, is circumscribed by Section 31 limited to scrutiny of the Resolution Plan, if it is in violation of Section 30 of the I&B Code, 2016'.*

24. According to the Learned Counsel for the Appellants, that 'LLP documents' were already on record and that partners of 'LLP' are 'Trust', is an 'admitted' and 'indisputable fact', resultantly, the plea based on LLP Act, 2008, regarding the 'constitution of LLP', is a pure question of Law, as Facts are admitted and pure questions of Law can be raised, even at an 'Appellate stage'.

25. The Learned Counsel for the Appellants, submits that Liquidation value of the 'Corporate Debtor', is Rs. 203.26 crores and the 'pay-out plan', proposed by the 'Successful Resolution Applicant', finds a place in volume 8 of the Appeal Paper Book, vide page 1948. Furthermore, a sum of Rs. 35.49 crores, is proposed to be paid, to the 'Operational Creditors', under the category, 'other Creditors', by way of issue of 0% Non Cumulative Redeemable Preferential, shares, Redeemable, in 20 years. The net present value, of the NCRPS, is determined by the Resolution Professional as '0' in the 'Minutes of the Final Eleventh Meeting of the Committee of Creditors', that took place on 01.02.2023 (vide volume I of Appeal Paper Book at pg. 165).

26. The Learned Counsel for the Appellants, points out that in the Resolution Plan, the 'Operational Creditors' who are 'Related Parties' were mentioned

separately, and further that 'Regulation 7-9A of the CIRP Regulations', do not envisage, as such a separate class. The term 'other Creditors', refers to any 'Creditor', who is a 'Creditor' not covered under 'Regulations' 7, 8, 8A and 9 of the 'CIRP Regulations'.

27. In this connection, the Learned Counsel for the Appellants, refers to Section 30(2)(b) of the I&B Code, which clearly mentions that the 'Operational Creditors' must be paid the 'value' they are entitled to as per Liquidation Value. As per explanation 1 of Section 30(2)(b) of the Code, clearly mentions, that a Resolution Plan which provides a distribution, in accordance with the said section, shall be 'Fair' and 'Equitable' to such 'Creditors'.

28. The Learned Counsel for the Appellants, refers to paragraph 33 of the decision of the ***Hon'ble Supreme Court in Pratap Technorats Private Limited and Others Vs. Monitoring Committee of Reliance Infratel Limited and Another (2021) 10 Supreme Court Cases 623*** wherein at paragraph 33 it is observed as under:-

> *"33. As such, as long as the payment under the resolution plan is fair and equitable amongst the operational creditors as a class, it satisfies the requirements of Section 30(2)(b)."*

According to the Learned Counsel for the Appellants, when it was pointed out that treating creditors classified as 'Operational Creditors' (vide Vol. 8 of the

Appeal Paper Book, Pg. 1948) differently constitutes breach of Section 30(2)(b) of the Code, and such a treatment would not be fair and equitable, as per explanation-1 to clause (b) which is clarificatory in nature.

29. The Learned Counsel for the Appellants, adverse to 'Regulation 38 of CIRP Regulations' which specifies that such 'Operational Creditors', must be paid, in 'priority' and the 'term' 'priority', means, payment of 'such sum', and upon such terms, as is payable to the said 'Class of Creditors', with a priority, in the order of payment alone. Also that the Appellants / Suspended Director, cannot be paid in any other form, or mode, than, what is provided to the other 'Creditors', in the said same class, and this is a clear 'breach', of Section 30(2)(b), of the I&B Code, 2016 and Regulation 38(1)(a) of the 'CIRP Regulations'.

30. The Learned Counsel for the Appellants, falls back upon, the decision of the Hon'ble Supreme Court in ***Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. (Decision dated 24th March 2021)(2022) 1 Supreme Court Cases 401*** wherein at paragraph 167 it is observed as under:-

> *"167. In the true operation of the provision contained in the second part of sub-clause (ii) of clause (b) of sub-section (2) of Section 30 (read with Section 53), in our view, the expression "payment" only refers to the payment of money and not anything*

*of its equivalent in the nature of barter; and a provision in that regard is required to be made in the resolution plan whether in terms of direct money or in terms of money recovery with enforcement of security interest, of course, in accordance with the other provisions concerning the order of priority as also fair and equitable distribution."*

31. The Learned Counsel for the Appellants, refers to the decision of the ***Hon'ble Supreme Court in State Tax Officer Vs. Rainbow Papers Ltd.*** **2022 SCC online SC 1162** wherein at paragraph 41 it is observed as under:-

*"41. Section 31 of the IBC which provides for approval of a Resolution Plan by the Adjudicating Authority makes it clear that the Adjudicating Authority can approve the Resolution Plan only upon satisfaction that the Resolution Plan, as approved by the Committee of Creditors (CoC), meets the requirements of Section 30(2) of the IBC. When the Resolution Plan does not meet the requirements of Section 30(2), the same cannot be approved".*

32. It is projected on the side of the Appellants, that a perusal of form H (vide page 1946 to 1954 of Appeal Vol. 8) (page 29 to 37 of written submissions) will show that under the category of Operational Creditors, a sum of Rs. 13.55 crores, was provided, of which Rs. 13.55 crores, is going to be paid Others – Other than those under Related Party category, under which a claim of Rs. 9,18,48,031, was admitted, towards one M/s B.E. Billimoria & Co. Limited of (Page No. 841 of Volume-IV of the Appeal Paper Book). Also, that the said plea was separately

filed before the Adjudicating Authority, under 'Billimoria Memo', dated 10.07.2023.

33. It is represented on behalf of the Appellants that the aforesaid claim should not have been admitted because of the provision of the arbitration and Conciliation Act read with the Moratorium, specified in Section 14 of the Code. As a matter of fact, the claim, was 'contingent' in nature, for which a sum of Rs. 5 crores, was allocated by the 'Resolution Professional' under the category 'contingencies' thus, according to the Appellants, the said disputed sum, was wrongly, admitted by the 'Resolution Professional', belonging to none other than the 'shareholders/Suspended Directors'/Appellants having money available.

34. According to the Appellants, the Resolution Professional has over stepped his jurisdiction and converted a disputed liability into an admitted claim, contrary to the provisions of the Code and thereby pre-judged OP No. 44/2021 filed by the Corporate Debtor, before the Hon'ble Madras High Court u/s 34 of the Arbitration and Conciliation Act, 1996.

35. It is the version of the Appellants that there was a breach of not only the Arbitration and Conciliation Act, 1996 but also Section 14 of the Code and that the above flaw' is not an ordinary matter and it has a bearing on the 'distribution side alone'.

36. According to the Appellants, that 'CIRP' cost proposed under the 'Resolution Plan' to an extent of Rs.10 crores, only is nothing but a 'Mockery of Resolution' and the 'amount proposed' is to simply blow-up the Resolution Plan values proposed by the Successful Applicant. Also, that neither any 'CIRP' cost, is admitted by the Resolution Professional nor is any amount, pending to be paid. Moreover, all 'CIRP cost, were easily settled by way of revenue generated by the 'Corporate Debtor'.

37. The Learned Counsel for the 'Appellants' submits that under 'contingencies' the 'Successful Resolution Applicant' as proposed to the extent of Rs.5 crores with a provision that unadmitted bank guarantees, issued by the 'Financial Creditors', to be carried out in the form of Fixed Deposit for a period of 20 years, from the effective date, or a period and till such contingent liability exist, whichever is less and used to settle the 'contingent' claims. Also that the 'Successful Resolution Applicant' claims that the said amount of Rs.5 crores towards contingencies shall be used towards payment of 'statutory payments', an 'anonymous' category of other Operational Creditors, who had, in fact not made any claims till the date.

38. The Learned Counsel for the 'Appellants' contends that 'Adjudicating Authority' / 'Tribunal' had erroneously relied on the decision on the Hon'ble

Supreme Court in ***Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Os.*** *(vide Civil Appeal No. 4242/2019)* and further that, a 'perusal' of the 'Affidavit', containing 'Additional objections', filed on 27.04.2023, itself and repeated in 'Rejoinder', filed by the Appellants, to 'Counter', of 'Resolution Professional' in IA/IBC/493/CHE/2023 will establish, that the question, raised is, on the material Irregularity, committed by the 'Successful Resolution Applicant', on method of 'evaluation of a going concern'. Apart from the 'Corporate Debtor', is generating 'surplus' profits and infact more than Rs.10 crores, is in 'Fixed Deposit', of the 'Corporate Debtor'.

39. The Learned Counsel for the 'Appellants', points out that instead of valuing the Business, as a 'going concern', the 'Resolution Professional' had treated a Business Enterprise as a Real Estate, while doing the 'valuation'. The 'objection' was not above any number arrived at by a 'valuer'.

40. The Learned Counsel for the 'Appellants', submits that there is material irregularity in the conduct of CIRP of the 'Corporate Debtor', by the Respondents, and there are 'irregularities' and 'omissions', in relation to 'other aspects of CIRP' such as (i) Evaluation Matrix and eligibility criteria prepared (ii) to adopt any marketing strategy (iii) performance incentives calculated at 2.5% of resolution land value was pointed out in the 11$^{th}$ CoC Meeting of the

'Corporate Debtor' that took place on 1, 2 to 23, but the Adjudicating Authority has dealt with the above grounds in paragraphs D of the impugned order (in I (IBC)/493/CHE/2023. Also that, if one of the above, are considered in isolation separating one from another they may not be appearing to be a 'material irregularity', however, when all the aforesaid, or considered it will expose the 'material irregularity' in the conduct of 'CIRP'.

41. According to the Appellants, the Resolution Professional had failed to do a proper due diligence and thereby he committed 'a material irregularity' and belied the 'confidence', reposed by the system, on the Resolution Professional and the 'Committee of Creditors'.

42. The Learned Counsel for the 'Appellants', refers to the decision, of the Hon'ble Supreme Court, in ***K. Sashidhar Vs. Indian Overseas Bank & Ors.*** reported in ***(2019) 12 SCC 150***, wherein at paragraph 62, it is observed as under:

> *"62. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code."*

43. The Learned Counsel for the 'Appellants' contends that once it is shown that there is a contravention of the Section 30(2) of the I&B Code, 2016, the Adjudicating Authority ought not to approve the Resolution Plan. Likewise, if the Appellants are able to prove to the satisfaction of this Tribunal, that their Appeal is resting upon the grounds specified under Section 61(3) of the Code, *ipso facto*, the impugned order in Company Appeal (AT) (CH)(Ins) No. 321/2023 in 'approving', the 'Resolution Plan' is liable to be set aside.

**1st Respondent's Contentions (in (Company Appeal (AT) (CH) (Ins) No.309 & 321/2023)**

44. The Learned Sr. Counsel for the 1st Respondent submits that the instant (Company Appeal (AT) (CH) (Ins) No.309 & 321/2023) are not maintainable, in the capacity of shareholder and hence, the 'Appeals', cannot be entertained by this Tribunal, based on the aspect of 'Locus Standi', while placing reliance upon the observations made in paragraphs 20, 21, 23, 27-32, 36-40, 43-45 of the judgment, in TCA AT INS No.134 of 2021, of this 'Tribunal'.

45. According to the Learned Counsel for the 1st Respondent, the 'Corporate Debtor's' Account was classified as wilful defaulter by the 'Reserve Bank of India', as on 12.04.2024 itself which was recorded in paragraph 28 of the order passed in IA 493 (CHE)/2023 in CP(IBC)279/CHE/2021 and the same was covered in 'Welco Holdings', whereas the person who was 'disqualified' under

Section 29A of the I&B Code, 2016 cannot question the Approved Resolution Plan.

46. Moreover, this Tribunal, in Aswathy Agencies's case, confirmed even Trust can submit the 'Plan' and viewed in that perspective, the 'partners' of 'LLP', holds bad in Law, and further, that the 'Successful Resolution Applicant', is a registered entity with the 'Ministry of Corporate Affairs', which is sufficient to allow them to participate in the 'Corporate Insolvency Resolution Process'.

47. According to the Learned Counsel for the 1st Respondent, the Adjudicating Authority, had passed an order in paragraph 10-14 of the impugned order, by recording their objections and the same was dealt with, in accordance with Law.

48. The Learned Counsel for the Appellants, points out that the 'National Company Law Tribunal' and the 'National Company Law Appellate Tribunal' have 'no civil court jurisdiction' and it is clarified that the 'Appellate Tribunal', is not a Civil Court, to 'adjudicate' 'all the 'disputes', questioning the formation / members, when the LLP is a registered entity, with the Ministry of Corporate Affairs, New Delhi.

49. It is the stand of the 1st Respondent that in the I&B Code, 2016 Section 5(23) 'Person', includes, Trust and General clauses act defines, 'Person', includes 'Trust'.

50. The Learned Counsel for the 1st Respondent proceeds to point out that the Appellant, had not extended his co-operation during the CIRP deliberately, and a petition was filed u/s 19 of the Code, 2016 and the same was allowed. In fact, the 1st Respondent, had 'retrieved' the Accounts and other details like material litigations etc. As a matter of fact, the claim of 'M/s. B.E. Billimoria & Co.' was never questioned by the 'Promoter' at any of the 'Committee of Creditors meetings' and indeed, no averment was made, if at all raised at any 'given point of time'.

51. According to the 1st Respondent, he was not handed over with the Books and accounts of the Corporate Debtor, despite plurality of requests, made by the 1st Respondent, in this regard. Also that the Principal Bench of the NCLAT, in CA(AT)(Ins.) No. 97/2023, dealt in paragraph 7-8 that the objections to be raised at the relevant point of time, about valuation and material 'irregularities' were before filing of Form G and Form H.

52. According to the 1st Respondent, the 'Successful Resolution Applicant' is providing 100% pay out to all the Creditors, even provided contingencies, to provide pay out, upto the 'Approval' of Resolution Plan, by the Adjudicating Authority / 'Tribunal', and for the Related Parties, it had provided viz. instrument as 'Redeemable Preference Shares' and hence, the plea that they are getting 'zero' is false.

53. The Learned Counsel for the 1st Respondent, refers to the judgement of this Tribunal in CA(AT)(Ins.) 793 of 2023 wherein it was confirmed that the 'Resolution Professional', is entitled to 'performance fees', vide, September 16.09.2023 amendment, inserts 'Regulation 34(b) of the CIRP Regulations, 2016', about Performance Fees payable by the Resolution Professional, and the same, is permissible in Law. However, the 'Committee of Creditors' had approved a performance incentive of 2.5%, because, this 'Resolution Professional' is receiving only Rs. 75,000/-, per month below the Regulations, fixed, for 'Resolution Professional's fees and this Respondent had deputed lot of his resources for the 'CIRP' going concern management, for which only Rs.40,000/- p.m. as support services cost. Hence, the 'Committee of Creditors' had discussed, and approved the said Fees, bearing in mind that the Resolution Professional after his control revived the 'Corporate Debtor' and generated a cash surplus of 12+ crores, during the 'CIRP' period, even after 'incurring' additional cost for revival, marketing, repairs, and maintenance.

54. According to the 1st Respondent with the cumulative, efforts the Hotel had achieved the No.1 position, Five-star Hotel, in terms of occupancy in Coimbatore for the past five consecutive months before the start of 'CIRP', the Hotel was in last position among the five-star category because of no proper repair, and maintenance work were carried out.

55. It is represented on behalf of the Appellant that in Shiva Industries' case, the 'National Company Law Tribunal'/'National Company Law Appellate Tribunal' has 'no jurisdiction' to look into the feasibility and viability of the Plan. In this context, the Appellant questioning the contingent, CIRP costs, etc. are being verified, discussed and approved by the Committee of Creditors, exercising its commercial wisdom.

56. According to the 1st Respondent, the 'commercial wisdom', of the Committee of Creditors, is not interfered with, except the limited purview, as per Section 30(2) of the I&B Code, in respect of an Adjudicating Authority, and in terms of Section 61(3) of the Code ('Appellate Tribunal').

57. More importantly, it is not open to an 'Adjudicating Authority'/ 'Tribunal' or an Appellate Tribunal, to consider any other feature than the one mentioned in Section 30(2) of the Code, or Section 61(3) of the I&B Code, which was reiterated, in numerous, other 'judicial precedents' and also the 'Hon'ble Supreme Court's decision' in Ngailang Dhar Vs. Panna Pragati Infrastructure Private Limited & Ors. (vide Civil Appeal Nos. 3665-3666 with 3742-3743 of 2020- paragraph 31).

58. The Learned Counsel for the 1st Respondent, points out, that the 'Successful Resolution Applicant' is providing 100% claim, pay out, to the

Creditors interested and in this regard, adverts to the judgement, of this Tribunal in Maharashtra Seamless Limited Vs. Padamanabhan Venkatesh & 3 Ors. wherein at paragraph 26 and 27 it is held as under:-

> "26. *No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution 1st Respondent has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgement.*
>
> *27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan property. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the Resolution Plan."*

59. It is the version of the 1st Respondent that the Appellants have 'No Locus Standi' in regard to CIRP cost and that is a matter, between the Resolution Professional, and Committee of Creditors.

60. In this connection, the Learned Counsel for the Appellant refers to the judgement of this Tribunal dated 05.09.2022 in ***'Bharat Hotels Vs. Tapan Chakraborty*** (vide Company Appeal (AT) (Insolvency) No. 1074 of 2022) paragraphs 5, wherein it is held as under:-

> 5. "……*The Appellant who is a minority shareholder in the CoC cannot resist the passing of the resolution. The Adjudicating Authority has rightly rejected the application filed under Section 18 of Code and Regulation 34A, which was not to be entertained. The Appellant asked Resolution Professional to disclose item wise insolvency resolution process costs in such manner as required by the Board (IBBI). Question of cost and its approval lays in the domain of the Coc. The CoC may ratify, modify or set aside the cost claimed. These issued may be decided in the meeting of the CoC and are not to be examined by the Adjudicating Authority even before the CoC take a decision. It shall be always open for the appellant to raise issue regarding the cost in the meeting of the Committee of Creditors."*

61. The Learned Counsel for the 1st Respondent, draws the attention of this Tribunal, that in terms of the Approved Plan, of the Resolution Applicant, the excess of the funds proposed in the 'CIRP' cost will be transferred to 'contingency' fund which will be available for distribution, to future claims as mentioned in the Plan, and further that 'many claims' were received, after the

'approval of the plan', and the same, was admitted, for distribution, as per the agreed, and 'approved' implementation of the schedule.

62. According to the Learned Counsel for the 1st Respondent, there is no 'material irregularity' in Approval, of the Resolution Plan, but the Appellant's Application filed u/s 60(5) of the I&B Code, 2016 in IA / 493/2023 was entertained by the Adjudicating Authority / Tribunal and dealt with in detail, recording their objections in the order dated 25.08.2023, although the application u/s 60(5) of the Code, is not maintainable and taken the 'likewise grounds' in the instant 'Appeal'.

63. Continuing further, according to the 1st Respondent, the Appellant being a 'wilful defaulter', had deliberately not cooperated in the 'CIRP', having attended all the Committee of Creditors' Meeting, and raising all his objections in the Committee of Creditors' Meetings.

64. The Learned Counsel for the 1st Respondent points out that the Appellants, in 6th CoC meeting, that took place on 14.09.2022 had suggested to issue Form G by rejecting the M/s. Poppys Knitwear Private Limited, Resolution Plan, which was recorded in the Minutes. As such, the Appellant, is candidly, aware of the Meetings of the Committee of Creditors.

65. In summing up, the Learned Counsel for the 1st Respondent, prays for declaration that there is no material irregularity, in Approval of the Resolution Plan, and for further declaration, that the Appeal is not maintainable in Law, nor on facts, and resultantly prays for dismissal of the Appeal(s) with 'exemplary costs'.

**1st Respondents citations**

66. The Learned Counsel for the 1st Respondent cites the decision of this Tribunal, in ***JM Financial Asset Reconstruction Company Ltd. V. M/s Well-Do Holdings and Exports Pvt. Ltd. & Ors.*** (vide Comp. App. (AT) (Ins) No. 134/2019, wherein at paragraphs 24, it is observed as under:

> *"24. In the present case, we find that two Interlocutory Applications preferred by the shareholders and promoters were not maintainable, as they were not eligible as 'resolution applicants'. The other 'resolution applicant' namely 'M/s Well-Do Holdings and Exports Private Limited' having not submitted the 'resolution plan' within the time nor the 'earnest money'. Further, 'M/s Well-Do Holdings and Exports Private Limited' having not moved before the Adjudicating Authority before the last date of submission of the 'resolution plan' and the Interlocutory Applicants was filed without challenging the approved 'resolution plan' the Interlocutory Application should have been rejected."*

67. The Learned Counsel for the 1st Respondent relies on the order dated 06.02.2023 in ***Vivek Parthi Erstwhile RP Vs. H.s. oberol Buildtech Pvt. Ltd. & Anr.*** (vide Comp. App. (AT) (Ins) No. 793/2022), wherein at paragraphs 6 & 7, it is observed as under:

> *"6. Learned Counsel for Earth Iconic project (Home Buyers' Association) who had filed the application for impleadment submits that the Appellant is not entitled for any success fee since no Resolution for payment of success fee was passed and it was by only passing way the note was recorded in the Minutes. He further submits that issue of payment of success fee is also pending consideration before the Hon. Supreme Court. We have heard the Counsel for the parties and perused the record.*
>
> *7. The plan which was approved for the project in question is still under implementation and has not been implemented so far. As submitted by the Counsel for the parties that there is an issue of (DGTCP) Director General, Town and Country Planning, Haryana due to which implementation has not taken place. When the plan has not yet been taken place, we see no reason to issue any direction as prayed for, in this appeal. We grant liberty to the Appellant to file a fresh application which may be decided in accordance with law after hearing all the affected parties including SRA, CoC as well as Monitoring Committee."*

68. The Learned Counsel for the 1st Respondent seeks in aid of the order dated 30.01.2023, in Comp. App. (AT) (Ins) No. 97/2023, between the ***Rohit Jindal Vs. Fanendra Harakchand Munot Resolution Professional of Shree Siddhi Vinayak Ispat Pvt. Ltd. & Ors.*** wherein at paragraph 7 & 8, it is observed as under:

> *"7. The second submission of counsel for the appellant is with regard to valuation of the assets, the valuation of the assets was undertaken by the Resolution Professional in accordance with the CIRP Regulation, 2016. The promoters if they were aggrieved by the valuation taken by the IRP/RP and the valuation received before the CoC, the course open for the promoters was to approach the Adjudicating Authority questioning the valuation at the relevant time when the question could have been gone into and examined before Form-G was issued and Form-H has been submitted by the Resolution Professional on the basis of the valuation undertaken in the process. At this stage, appellant cannot be allowed to raise the question of valuation.*
>
> *8. Coming to the third submission of the appellant that the Andhra Bank, Punjab National Bank and Oriental Bank of Commerce could not be treated as unsecured creditors since the corporate guarantee on basis of which they have been treated as unsecured creditors was never invoked, in the resolution process the claim submitted by the aforesaid banks as unsecured creditors was accepted by the RP, appropriate stage for challenging the acceptance of the claim was to file an I.A. before*

*the Adjudicating Authority which was not done by the appellant or any one. At this stage, appellant cannot be allowed to raise the question of admission of the claim of the aforesaid banks as unsecured creditor."*

69. The Learned Counsel for the 1st Respondent refers to the order dated 17.07.2023 of the Hon'ble Supreme Court of India in Civil Appeal No.4273/2023 between ***G. Balasubramaniam Vs. Indian Overseas Bank (Financial Creditors) & Anr.*** wherein, it is observed as under:

*"We do not find any good ground and reason to interfere with the impugned judgment. In fact, the learned counsel(s) appearing for the Resolution Professional and the Financial Creditor / respondent No.1 submit that the resolution plan submitted has been approved by the Committee of Creditors, which fact has been concealed in the present appeal.*

*We are not commenting on this aspect, but as observed above, we do not find any good ground and justification to interfere and accordingly the present appeal is dismissed."*

**2nd Respondent / Bank Pleas Contentions (in (Company Appeal (AT) (CH) (Ins) No.309 /2023)**

70. According to the Learned Counsel for the 2nd Respondent / Bank, the Appellants cannot question the constitution of Successful Resolution Applicant (SRA), unless it violates of Section 29A of the Code. Further, Section 29A of the Code forbids only under the following situations:

i) If the 'Resolution Applicant', is an 'un discharged' insolvent.

ii) 'Wilful defaulter'.

iii) 'Convicted, for any offence'.

iv) Disqualified, to act as Director, under the Companies Act, 2013.

v) 'Prohibited by SEBI'

vi) 'Preferential' or fraudulent or undervalued or extortionate credit transaction done by the Promoter and order has been passed by the 'Adjudicating Authority' 'Tribunal'.

vii) Guarantee executed in favour of a creditor in respect of a 'Corporate Debtor' against which an Application for 'Insolvency Resolution', made by such creditors, was been admitted.

71. The Learned Counsel for the 2nd Respondent / Bank points out, that the 'Resolution Applicant' is not falling under any of the aforesaid categories, and that I&B Code, 2016 does not prohibit, a Limited Liability Partnership, to be the Resolution Applicant. Further, the Appellants, are aware of the status of 'Successful Resolution Applicant', before the Approval of Resolution Plan, of the 'Committee of Creditors'. In fact, the 'Suspended Director' had attended the 'Committee of Creditors' Meetings and took note of the status of the 'Successful Resolution Applicant', but had not raised any objection. Besides this, the Appellants, had not raised this Ground in the Application filed before the Adjudicating Authority.

72. It is represented on behalf of the 2nd Respondent / Bank, that the Suspended Directors / Appellant are declared as wilful defaulters by the Financial Creditors / IOB and as against which, the Appellants had filed a Writ Petition in W.P. No. 3377/2022 before Hon'ble Madras High Court and 'no stay' was granted till date.

73. The Learned Counsel for the 2nd Respondent / Bank proceeds to point out that the Appellants as 'Suspended Directors' had committed the 'acts' of 'omission' and 'commission' while doing the business operation as observed by the 'Forensic Auditor'. In reality, the act of wilful default observed by the 'Forensic Auditor' is furnished as under:

| Sl. No. | Act of Wilful Default observed by Forensic Auditor |
|---|---|
| 1 | The CD was operating the current account No.50200022176702 with HDFC Bank without permission from IOB. |
| 2 | The CD Company suffers from lack of financial discipline.<br>There are innumerable transactions with the group companies which are unsecured, not based on any formal agreement between the CD Company and its group entities and others. In the absence of any such contract, it is difficult to comprehend whether the transactions are prejudicial to be interests of the Company and its associates.<br>The CD Company received Rs.4,45,00,000/- in cash from various parties as at 31.03.2019.<br>The cash received had been booked under advance. However, the purpose not specified in the transaction (narration) and during the FY 2019-20 (up to 31.12.20) also the advance received had not been transferred to the relevant head. Hence, the transaction appears to be not in the normal course of business transaction.<br>It is noted from the audited financial statements for 2018-19, the advance payments made to the vendors amounted to Rs.4,72,24,401/- and remained outstanding for more than two years which may not be true in normal circumstances. Further, the advances have been set off against the trade payable which is again incorrect.<br>It is noted from the audited financial statements for FY 2018-19, the trade payables remained the same for more than two years. It is quite unlikely that the creditors will allow more than two years for payment unless there exists a dispute between the CD Company and the creditor. Hence, the genuineness of the transaction is questionable.<br>Rs.4,31,25,000/- has been treated as Share advance from M/s. Hindustan Trade Link.<br>On examination of the details of the transaction, it is understood that the CD Company had paid Rs.2,67,47,400/- on various dates. And from 22 December 2015 onwards the CD company started receiving funds from M/s Hindustan Link Rs.4,31,25,000/- and the same has been treated |

as Share Advance Account.

It is not clear as to why was the payment first of all made by the CD Company to M/s. Hindustan Link and the details of the transaction recorded was that the payment was made as per the instruction of the MD. It appears that it was a mere finance transaction between the parties and the credit balance has been treated as Share Advance Account. The history of the transaction dates back to 29.06.2015 (the date of first payment released by the CD Company to M/s. Hindustan Link). Looking at the nature of transaction it appears that the transaction is not in the ordinary course of the business, unless the CD Company proves it otherwise. Further, funds have been diverted from M/s.Shree Murugan Flour Mills Private Limited and M/s. Hindustan Flour Mills to M/s. Hindustan Trade Link, which have been round tripped and shown as Share Advance in the CD Company.

Rs.88,35,000/- had been shown as Share Advance received from Mr. Mohammed Salim. However, the analysis of transaction reveals that the nature of transaction is more of a finance transaction, as the last transaction was carried out on 24/10/2017. There have been diversion of funds to Mr. Mohammed Salim from Associate companies and it is only round tripping of funds unless otherwise proved by the CD Company.

Rs.4,88,18,000/- had been shown as Share Advance Account received from M/s. Sri. Ganesh Traders, Pollachi. However, the nature of transaction does not appear to be transaction towards share Advance unless the CD Company produces a formal agreement for the transaction. Further, there has been diversion of funds from the associate companies which have been round tripped and shown as Share Advance received from M/s.Sri.Ganesh Traders, Pollachi.

Rs.1,26,50,450/- has been shown as Share Advance account received from M/s. SVMA Agro Product. However, the nature of transaction does not appear to be in the nature of receipt towards Share Advance. The last transaction was dated on 28/11/2018. Further, funds have been diverted from associate companies to M/s SVMA Agro Product and the same has been round tripped and shown as Share Advance from M/s.SVMA Agro Product.

On 1.4.2015, there was a borrowing of Rs.1,95,00,000/- from M/s.Hindustan Flour Mills and on 11.07.2015 a journal entry has been passed for Rs.1,95,00,000/- for return of loan to Hindustan Flour Mills from Mr.G.Balasubramaniam's Share Advance Account. (The narration is it is done at the instruction of the auditor CA Chandra Mouli).

In this case, the loan amount has been converted as Share Advance Account of Mr.G.Balasubramanian. M/s. Hindustan Flour Mills is a Partnership firm and there are four Partners in the firm up to AY 2018-19. A loan given by a Partnership firm has been transferred to one Partner, namely Mr.G.Balasubramanian. It is not clear whether there is written consent of other two outside Partners. Further, after adjusting all the outstanding through transfers an amount of Rs.66,28,050/- has been paid to M/s.Hindustan Flour Mills and hence, there is a diversion of funds from the CD Company.

Further it is evident that the loans have not been utilized for the purpose for which it appears to have been sanctioned. Receiving/transferring of funds from/to the CD Company/Associates has resulted in the shorted of working capital for every entity. Hence, there is

| | |
|---|---|
| | every possibility that in addition to the internal accruals the long terms funds have been used for short-term purposes and vice-versa.<br>Round tripping of funds to the tune of Rs.11.34 Cr by way of Share Advances. Transaction not in the normal course of business to the tune of Rs.4.80 Cr.<br>The CD Company has been giving different set of financial statement to stakeholders i.e., Banks, IT Department and RoC. |

74. The Learned Counsel for the 2nd Respondent / Bank, submits that in the present case, the 'Committee of Creditors', took note of the 'Resolution Plan', furnished by the 3rd Respondent / Successful Resolution Applicant, which includes provision for 'CIRP cost', performance incentives, Technical and Economical Viability (TEV) of Resolution Plan submitted by 'Successful Resolution Applicant', evaluation matrix of the Assets Liability of the Corporate Debtor Company and after much deliberations and negotiations, the Resolution Plan, was approved in the 'Committee of Creditors'.

75. In this connection, on behalf of the 2nd Respondent / Bank, it is pointed out that all the aforesaid 'contentious issues' were placed in the 'Committee of Creditors' Meeting, and a 'Suspended Directors' were very much present and had not raised 'any objection' for the same.

76. According to the 2nd Respondent / Bank, the Appellants cannot raise any objection, in regard to CIRP cost as a ground for challenging the Resolution Plan'. As per the plan, the excess funds, will be transferred to the 'contingency',

fund, which will be distributed for the 'claims', received 'post approval' of the plan.

77. The Learned Counsel for the 2nd Respondent / Bank comes out with a plea, pertaining to the claim of Rs.9.18 Crores by M/s B.E. Billimoria & Co. Ltd., an 'Award', was passed before the approval plan, by an 'Arbitrator' and 'no stay' was obtained by the Appellants, against the 'Award', before the Hon'ble Madras High Court. The Appellants, filed Civil Appeal No. 4273/2023, before the Hon'ble Supreme Court of India, which was dismissed on 17.07.2023. Hence, the 2nd Respondent side, prays, for dismissal of the Company Appeal (AT) (CH) (Ins) No.309/2023, in the interest of justice.

**Assessment (Comp. App. (AT) (Ins) No. 309/2023) & Comp. App. (AT)(CH) (Ins) No. 321/2023**

78. At the outset, this Tribunal, relevantly points out, that Appellant / Petitioner, filed an IA/493(CHE)/2023 in IA/349(CHE)/2023, in CP(IB)279/CHE)/2021 before the 'Adjudicating Authority' / 'Tribunal', (u/n Section 60(5) of the I&B Code, 2016, r/w Section 31(2) of the I&B Code, 2016. The Appellants / Petitioner, in IA/493(CHE)/2023 had sought the relief of (i) Rejecting the Resolution Plan of R3/ 'Successful Resolution Applicant', which would otherwise be prejudicial to the interest of the Applicants / 'Suspended Directors'.

79. The Appellants / Petitioner in IA(IBC)/493(CHE)/2023 in main CP(IBC)/279/CHE/2021 had averred that the 'Corporate Debtor' has been a 'going concern', and that 'recovery' is the aim and it is primarily visible, from several aspects, of the documents, including the Resolution Plan, the same indicates that it is nothing but a malicious Application of 'CIRP'.

80. The Learned Counsel for the Appellants, point out that the 'Resolution Professional' of the Corporate Debtor / G B J Hotels Private Limited, before the 'Adjudicating Authority' / 'Tribunal', had filed an IA(IBC)/349(CHE)/2023 (u/s 30(6) & 31 of the I&B Code, r/w Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person), Regulations, 2016, seeking a relief of passing of an order by the 'Adjudicating Authority' / 'Tribunal' in approving the Resolution Plan, which was approved by the 'Committee of Creditors' in the 11th CoC Meeting, that took place on 01.02.2023, as per Section 30(6) & 31 of the Code.

81. The Learned Counsel for the Appellants, adverts to the fact that currently, the 'revenue generation' of the 'Corporate Debtor', was smooth and in para 2 of the '11th CoC Meetings Minutes' dated 01.02.2023, the Resolution Professional, had mentioned as under:

> *"RP explained business outcome of corporate debtor during CIRP with a brief summary of profit & loss statement*

*[comprising of Gross revenue ad expenses, gross operating profit and EBITDA] to the CoC Members along with occupancy percentage. For the consecutive month [Dec 22 & Jan 23] the hotel turnover was above 3 Crores, which has set a new benchmark for the hotel."*

82. It is projected on the side of the Appellants, that post 'CIRP' period profit and 'loss of the Corporate Debtor' table, indicates, that the 'gross revenue', generation for April to January, 2023, was on an average of Rs. 2, crores and above per month. In reality, the 'Resolution Professional' in para 2 of the said 11th CoC meeting mentions that the business during the 'CIRP' period had generated a surplus of Rs. 5.25 crores till January, 2023 (after meeting all the repairs and maintenance, CAPEX Property Tax expenses.

83. According to the Appellants, the overall revenue trend from the inception of the Hotel was Rs. 20 crores and above, as mentioned in para 3 of the 11th CoC meeting minutes and only in the year 2020 and 2021, the 'Revenue' of the Corporate Debtor was Rs. 7.32 crores, and Rs. 10 crores, respectively, which was also obviously due to 'COVID'. There was a Fixed Deposit made by the 'Resolution Professional', aggregating, to a total sum of Rs. 5.25 crores, till January, 2023.

84. The Learned Counsel for the Appellants, submits that the 1st Respondent / Resolution Professional, was indeed, misled, by permitting the Successful

Resolution Applicant, to state as though a sum of Rs. 10 crores, were appropriated, in respect of 'CIRP' costs, while in effect such statement only appears to be intended, to hike up the 'RPB' to steer clear, of objections.

85. The Learned Counsel for the Appellants, takes a stand that the 'Successful Resolution Applicant', and the 'Committee of Creditors', had failed to see that the Resolution Plan value was jacked up by providing for Rs. 10 crores, in respect of non-existent CIRP costs, Rs. 5 crores, towards unnecessary 'contingencies and Rs. 35 crores padded up by agreeing to issue 0.01% preference shares redeemable in 20 years. Also, that the 'sanctioned Letter' dated 04.10.2017 issued by the Indian Overseas Bank will show, that the valuation of the 'prime security' was Rs. 194 crores, at that point of time itself, when the 'Corporate Debtor' had just commenced its 'operations'.

86. It is represented on behalf of the Appellants, that there is no maximisation of value of assets, and there was no proof, of any negotiation, with the Successful Resolution Applicant, for the purpose of maximisation, of value of assets and the Resolution Professional was not precluded, from adding a premium, mainly because from the 1st day onwards, the Successful Resolution Applicant, will be able to enjoy the whole revenue, generated from the Hotel property, without any waiting period, for 'construction' or for any other purposes whatsoever.

87. According to the Appellants, the Bank being a Creditor, had diverted the funds of the Corporate Debtor, more than two years before the commencement of the 'CIRP' and such a diversion of funds, constitute preferential treatment to a financial creditor, being opposed to the scheme of the I&B Code, 2016 and they are to be brought back to the 'Committee of Creditors' and made available for distribution to stakeholders.

88. It is the stance of the Appellant that the Resolution Professional had admitted 30 claims of 'operational creditors' (other than workman and employees and govt. dues) as on 13.12.2022 to the tune of Rs. 13,55,03,657/-. Moreover, out of Rs. 13,55,03,657/- M/s. B.E. Billimoria & Co. Limited claim of Rs. 9,18,48,031 was admitted by the Resolution Professional.

89. The Learned Counsel for the Appellants, takes an emphatic plea, that in negation to the amended Regulation 34B of the IDBI (Insolvency Resolution Process for Corporate Persons, 2016) the Committee of Creditors, of the Corporate Debtor in the 11th meeting, that took place on 01.02.203 had approved a 'performance' incentive to a roaring extent of 2.5% payable to the Resolution Professional. Furthermore, the Resolution Professional had appeared to have presented in a clandestine manner, as if it was of Rs. 184 crores in value. In fact, the Resolution Professional had sought and a Committee of Creditors had in fact

approved, a performance linked incentive, as per Regulation, 34B of the CIRP Regulations.

90. The Learned Counsel for the Appellants proceeds to points out that the Resolution Professional had over stepped his jurisdiction and converted a disputed liability into an admitted claim, in violations of the provision of the I&B Code and thereby pre-judged the OP No. 44 of 2021, filed by the Corporate Debtor before the Hon'ble Madras High Court, under Section 34 of the Arbitration and Conciliation Act, 1996.

91. The Learned Counsel for the Appellants brings to the notice of this Tribunal that the second Respondent / Committee of Creditors is represented by 'Indian Overseas Bank', the sole secured 'Financial Creditor' to the 'Corporate Debtor'. As a matter of fact, other persons who are added as Financial Creditors, are negligible and the Indian Overseas Bank alone is the substantial Creditor, holding 98.34% of voting right of 'Committee of Creditors', as well as the one and only 'secured Creditor' and further that 'Indian Overseas Bank' is the 'alter ego', of the 'Committee of Creditors'.

92. The Learned Counsel for the Appellants, takes a stand that the Appellants, never got themselves, involved or charged of any 'Avoidance Transaction', under Sections 43, 45, 49 and 66 of the I&B Code.

93. According to the Appellants, they had objected to the approving of the Resolution Plan, which were rejected by the second Respondent / Committee of Creditors. In fact, the 1st Respondent, categorically had averred, that the 'Plan Value' was far less than the fair value', and had objected to the proposal, to the issuing of 0.01% Non-cumulative Redeemable Preference Shares, redeemable in 20 years.

94. On behalf of the Appellants, it is brought to the notice of this Tribunal that through a Resolution, passed by the 'Committee of Creditors', in the 11th CoC meeting dated 01.02.2023, Final Revised Resolution Plan, of the Successful Resolution Applicant, stood approved with a majority of 98.34% votes, by the Indian Overseas Bank.

95. Before the Adjudicating Authority / Tribunal the 3rd Respondent / Successful Resolution Applicant in its counter to IA 493/2023 in IA 349(CHE)/2021 in CP(IB)/279(CHE) 2021 in its counter, had averred that the 'evaluation matrix', was held by courts, to fall, within the ambit of the 'commercial wisdom' of the ''Committee of Creditors', which in turn was held to be susceptible to 'limited judicial review'.

96. On behalf of the Successful Resolution Applicant, it is brought to the notice of this Tribunal, that the Resolution Plan of SRA, was passed with 98.71%

majority, in person and the balance 1.29% for a total of 100% majority. Also that, even before the 'COVID 19' Pandemic the Corporate Debtor was in default of its debts and constituted a fit case for the commencement of 'CIRP' and the same was taken note of by the Adjudicating Authority / Tribunal as per order dated 19.04.2022, which provides for the detailed reasoning, on why the Corporate Debtor was a fit, case for 'Insolvency'.

97. On behalf of the' Successful Resolution Applicant', it is pointed out that in the Minutes of the second meeting of the Committee of Creditors dated 02.06.2022 ' Radisson International' had blocked the Corporate Debtor's online booking facility, owing to pending dues, which clearly reflected the poor financial health of the Corporate Debtor at that time.

98. Moreover, in the 'Evaluation Matrix', the 'Committee Creditors', had taken into account, all relevant commercial factors and assigned due weightage, for the experience of the Applicant. Added further, there are no unpaid 'CIRP cost and the Commercial outlay, in the present case, under the plan, was approved by the 'Committee of Creditors'.

99. It comes to be known. that according to 'Successful Resolution Applicant', in regard to the allocation of INR 10 crores, there are number of litigations, in which, the 'Corporate Debtor', was involved, before the various

forums and to meet contingencies, future events, whose occurrence, cannot be predicted with certainty. Besides these, the Resolution Plan, does not legally discriminate any similarly placed group or class of Creditors and the pay outs envisaged under the Plan or in line with the legal mandates applicable, particularly where related party creditors are involved. In reality, there is nothing to show that there is no maximisation of value in the plan.

100. Dealing with the plea of the Appellants, that the 'Successful Resolution Applicant', though a 'Limited Liability Partnership' is not legally constituted and, therefore, it is not a person within the meaning of Section 3(23) of the I&B Code and hence, the 'Resolution Plan', is not submitted by a person', within the meaning of the I&B Code, 2016, and further that the Appellants, are 'stakeholders' this Tribunal, aptly points out, that the instant 'Appeals', preferred by the Appellants, in their capacity as 'shareholders' are '*per se'* 'not maintainable' for want of '*Locus standi',* and a reference, is made to the judgment, in TA (AT)(Ins) No. 134/2021 (Comp. App. (AT) (Ins.) No. 653/2019) & TA (AT)(Ins) No. 135/2021 (Comp. App. (AT) (Ins.) No. 803/2019) dated 13.06.2023, wherein at paragraphs 20, 21, 23, 27-32, 36-40, 43-45 it is observed as under:-

> *20. "As can be seen from the aforenoted Para, the Hon'ble Supreme Court discussed the Rights of the Members of the*

*erstwhile Board of Directors to receive a 'Copy' of the Resolution Plan along with other documents, but does not decide the 'Rights of the Shareholders'.*

*21. This Tribunal, is of the considered view that once the 'CIRP' is triggered, the Management of the affairs of the Corporate Debtor lies with the Interim Resolution Professional and the shareholders do not have a Right to file any claim in the 'CIRP' but can only do so in the Liquidation Process. It is seen from the provisions of the Code that the Shareholders are excluded from 'representation', 'participation' or 'voting in the CoC' and are represented in the CoC only through the Directors.*

*23. As can be seen from the Explanation to Section 30(2) of the 'I&B Code, 2016', the Code contemplates for 'Deemed Approval' of the Shareholders of the Resolution Plan and its implementation and even a Shareholder, is deemed to have given its approval for implementation of the Resolution Plan, and such 'Deemed Approval' cannot be taken away or undone by objecting to the Resolution Plan. We are of the view that giving the shareholder a Right to challenge the Resolution Plan or raise objections against its Approval, would 'render the Explanation redundant'.*

*27. From the aforenoted observations, it is clear that once the affairs of the Corporate Debtor was handed over to the IRP, any action taken by Shareholder, even if a Majority shareholder, would not be maintainable.*

*28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has 'no locus standi' to challenge the Resolution Plan.*

*29. Now, this Tribunal addresses to the other contention raised by the Appellant that the Admission of CIRP itself was illegal. It is seen from the Record that the Admission Order dated 12/03/2018 was challenged by one of the Directors Ms. Nandita Vedam, in CA/116/2018 and this Tribunal, vide Order dated 31/07/2018 has dismissed the Appeal and has confirmed the 'Order of Admission' under Section 7 of the Code. Hence, the Admission of CIRP has attained Finality. With respect to 'Mr. Poobalan', being a related Party to the Corporate Debtor, it is evident from the Record that the Adjudicating Authority, vide Order dated 27/03/2019 in MA/573/2018 decided that Mr. Poobalan is not in any way related to the Corporate Debtor, but that his relationship was only as an Agency. The same can be seen from the Report of the Resolution Professional and it is significant to mention that an Appeal filed against Order dated 09/05/2019 was dismissed by this Tribunal in CA/503/2019.*

*30. The Learned Counsel for the Appellant has strenuously argued that had the Transaction Audit been carried out, the Resolution Plan would not have been approved. It is not in dispute that the Appellant is one of the largest shareholders of the Corporate Debtor and not having raised these issues earlier, at the later stage, contends that other shareholders and Directors have indulged in 'Fraudulent Transactions'. We find force in the Contention of the Learned Senior Counsel Mr. E. Om Prakash, that these issues were never raised earlier, no action was taken and that there are other remedies in Law for any of these grievances.*

*31. he Hon'ble Supreme Court in the matter of 'Arunkumar Jagatramka V. Jindal Steel & Power Ltd. & Anr.', reported in [(2021) 7 SCC 474] in Para 95 has observed as follows:*

> *" 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 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. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:*

> *"An adjudicating authority ensures adherence to the process At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the Directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating*

*authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator." (Emphasis Supplied)*

*32. From the aforenoted para, it is clear that the 'Foundational Principles' of the Insolvency and Bankruptcy Code, cannot be disturbed and this Tribunal is of the considered view that giving the 'Shareholder', the 'locus' to challenge the approval of the Resolution plan tantamounts to 'disturbing the Foundational Principles of the Insolvency and Bankruptcy Code'. Keeping in view the facts of the attendant case, the Judgments relied upon by the Appellant are not applicable to the matter on hand.*

*36. It is submitted that Mr. Sriram Vedam, the Applicant's brother died intestate on 21/05/2018 and at that point of time, the Corporate Debtor was in moratorium under IBC, vide Order dated 12/03/2018. As the Board was suspended during that time, the Shares would not have been transferred and therefore, this Applicant is not a shareholder and has no locus to file this Application. At this juncture, this Tribunal is of the earnest view that the impleadment Applications filed by Mr. Vishnu Vedam are devoid of merits and are hence being dismissed as we are of the considered view that the issues raised in these Appeals can be adjudicated without the intervention / impleadment of the Applicant herein.*

*37. The Adjudicating Authority, had rightly observed in MA/120/2019 that the gist of the objections raised by the very same Applicant in MA/179/2019 are similar and have been considered exhaustively and dismissed. It is clear that in MA/179/2019, the Adjudicating Authority has held that 'legislature did not mandate for seeking approval of shareholder in relation to the Resolution Plan. Therefore, any objection raised by the Shareholder cannot be considered by this Authority while approving or rejecting the Resolution Plan'.*

*38. The case of the Learned Counsel Mr. T.K. Bhaskar that the Adjudicating Authority has wrongly relied on 'JM Financial Assets Reconstruction Company Ltd. Vs. Well-Do and exports Private Limited and Ors.' reported in MANU/NL/01412019, as it was observed by NCLAT in the aforenoted Judgment that shareholders and Promoters who were ineligible under Section 29A, cannot raise their grievances, is untenable, keeping in view that the basic Principle laid down is that when a Shareholder and a Promoter is ineligible to file a Resolution Plan, (except, if an MSME), viewing from the same yard stick, their role cannot be extended in getting involved in the decision making on the commercial viability of disposing off assets etc., which clearly falls in the domain of the CoC, whose decision is final. Even with regard to distribution of assets of a Company, under Liquidation, as per Section 53(h), Equity shareholders have been placed at the bottom of the list of Priorities. Regulation 38 (1A) of IBBI (Insolvency Resolution Process for Corporate Persons)*

*Regulations, 2016 notes that 'a Resolution Plan shall include a statement as to how it has to be dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor'. The necessary and requisite condition was that the Resolution Plan has been adhered to by the 'Successful Resolution Applicant' and approved by the Adjudicating Authority. It is significant to mention that the Appellant/ Shareholder of the Corporate Debtor has challenged the decision of the Adjudicating Authority approving the Resolution Plan, at a belated stage. At this juncture, we find it relevant to place reliance on the Judgment of the Hon'ble Apex Court in the matter of 'Kalparaj Dharamshi v. Kotak Investment Advisors Ltd.' reported in [(2021) 10 SCC 401], in which the Hon'ble Apex Court has clearly laid down that the Commercial wisdom of the CoC cannot be set aside unless there is a 'material irregularity' as defined under Section 30(2) of the Code.*

*39. From these decisions rendered by the Hon'ble Supreme Court, it is crystal clear that the 'discretion of the Tribunals', is circumscribed by Section 31 limited to scrutiny of the Resolution Plan, if it is in violation of Section 30 of the 'I&B Code, 2016'.*

*40. The Successful Resolution Applicant (SRA), Mr. Embassy Property Development Limited was impleaded as the Respondent, vide Order dated 25/10/2019. The Learned Senior Counsel, Mr. Rana Mukherjee representing the SRA submitted that the Resolution Plan was approved by the CoC with 96.45% Voting Share in its 10th CoC Meeting, held on 27/02/2019 and*

*has already been implemented. Keeping in view the material on record, the Submissions of the Learned Counsels of both sides, this Tribunal is of the earnest view that there is no 'material irregularity' in the approval of the Resolution Plan and that Section 30(2) of the Code and Regulations 37, 38 (1) (A), and 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was adhered to and there is no contravention to Section 29A or any other Provisions of the Law, for the time being in force.*

*43. It is clear from the aforenoted Judgment of the Hon'ble Apex Court that the Commercial Wisdom of the CoC has been given paramount importance and that there can be judicial intervention only when there is any material irregularity or if the Plan is not in adherence to Section 30(2) of the Code.*

*44. The Hon'ble Apex Court, in the matter of 'Ebix Singapore Pvt. Ltd. & Ors. v. Committee of Creditors of Educomp Solutions Private Limited', reported in 2022 (2 SCC 401) has clearly laid down that subsequent to the approval of the Resolution Plan of the CoC and before the approval by the Adjudicating Authority, no modifications / alterations can be called for as IBC is a time bound process.*

*45. At the cost of repetition, in the instant case, this Tribunal finds no infirmity in the 'Order of the Learned Adjudicating Authority' in the 'Approval of the Plan' or in the rejection of MA/120/2019. The Learned Senior Counsel, Mr. Rana*

*Mukherjee has submitted that the 'Successful Resolution Applicant', in compliance with the timelines mentioned in the 'Plan' has brought in funds amounting to Rs. 26.50 Crores on 20/07/2019 and Rs. 62,97,11,280 on 12/10/2021. Further having regard to the fact that the Resolution Plan is successfully implemented and for all the aforegoing reasons, we do not find it a fit case to interfere in the well reasoned Orders of the Adjudicating Authority and hence both these Appeals fail and are accordingly dismissed. No Order as to costs.*

101. At this juncture, this Tribunal worth recalls and recollects the judgement of this Tribunal in ***Aswathi Agencies Vs. Bijoy Prabhakaran Pulipra & Ors.*** vide Company Appeal (AT)(CHE) Ins. No. 179 of 2021wherein it is held that a 'Trust' can furnish the Resolution Plan wherein at paragraph, 11 and a 'Trust' can be a 'Resolution Applicant'.

102. It is well settled by now that the 'National Company Law Tribunal' / 'National Company Law Appellate Tribunal' is not empowered, to have the jurisdiction of a Civil Court, to determine all controversies, touching upon the formation/members, when the 'Limited Liability' is a registered entity, with the 'Ministry of Corporate Affairs'.

103. It is not out of place for this Tribunal, to make a pertinent mention, that Section 3(23) (d) of the I&B Code, under the caption 'person' includes 'Trust'

and the General Clauses Act defines 'Person' includes 'Trust. As such the contra, plea taken on behalf of the Appellants is not accepted, by this 'Tribunal'.

104. It is the version of the 1st Respondent that in the judgement in CA(AT)(Ins.) 793/2023, the Appellate Tribunal, had affirmed that the Resolution Professional is entitled to performance fees, as per amendment 16.09.2023 whereby, an insertion, was made in Regulation 34B of the 'CIRP' Regulations, 2016, in regard to the 'Fees', payable, to the 'Resolution Professional'.

105. In the decision of the Hon'ble Supreme Court of India in 'Shiva Industries case', it was held, that the Tribunal / Appellate Tribunal, has no jurisdiction, to look into the 'feasibility' and 'viability' of the plan.

106. Be it noted, that an Adjudicating Authority / Tribunal is not to determine the matters, pertaining to a 'disputed question of fact'. It must be borne in mind, that Section 60(5) of the Code, 2016 is not an all pervasive section, showering jurisdiction, to the Appellate Authority/Tribunal to 'determine' any question pertaining to the 'Corporate Debtor.'

107. If a law, is laid down under the I&B Code, 2016, to do a 'particular act' in a 'certain manner', an 'Adjudicating Authority / Tribunal' cannot exercise this jurisdiction, under sub-Section (2) Section 60 of the Code, to override the

specification already mentioned in the Code, by giving interpretation, quite contra, to the mandate, in the particular section. It is to be remembered, that the commercial wisdom' of the 'Committee of Creditors' is not to be interfered with except in the limited purview, as specified, under Section 30(2) of the I&B Code, 2016.

108. In so far as the aspect of cut-back facility of 20% pay to the Financial Creditor, is to be treated as preferential transaction, this Tribunal significantly points out that, in the instant case, the cut-back 20% was offered to the single Financial Creditor / 2nd Respondent through Indian Overseas Bank / only secured Creditor, in respect of the 'Corporate Debtor', and the said Bank is waiting in the queue as first person, as per Section 53 of the I&B Code. As such, the 'objections' of the Appellants have no foundational basis and the point, is answered accordingly.

109. As regards, the plea that the Resolution Professional, had not prepared a proper marketing strategy, with a view to invite Resolution Applicants, and no specific/certain based effort was undertaken by the Resolution Professional, with a view to find a 'better prospective Resolution Applicant', who can provide / bring a 'better value' than the fair value of the assets of the Corporate Debtor. This Tribunal, is of the considered view, that the ingredients of Regulation 36C

of CIRP Regulations, were fulfilled and as seen from Form G, a wider publicity through advertisement in Economic Times (English), All India Editions Dinamani (Tamil), newspaper, Coimbatore edition was given. Therefore, the contra plea taken on behalf of the Appellants is unworthy of acceptance, as held by this Tribunal.

110. In regard to 'CIRP' costs, the Appellants' have no *'Locus Standi'*, because of the fact that the said issue is only between a 'Resolution Professional', and the 'Committee of Creditors'.

111. In terms of the approved plan of the 'Resolution Applicant', the 'excess funds', proposed in the CIRP cost, will be transferred to the contingency fund, which will be available for the 'distribution', to future claims, as mentioned in the Plan. Therefore, many claims were received, post approval of the Plan, and it is brought to the fore that the same was admitted for distribution, as per the 'agreed' and 'approved', 'implementation schedule'.

112. A mere running of the eye, in respect of Form-H, it is crystalline clear that the liquidation value of the 'Corporate Debtor' was arrived at Rs.203.26 crores and a corresponding fair value was arrived at Rs. 261 crores. In fact, the 'Resolution Professional, in the instant case, had not preferred any Application(s) as per Sections 43, 45, 49 & 66 of the I&B Code, 2016.

113. One cannot remain in oblivion of the prime fact that nowhere in the I&B code or in the Regulations, there is a specification that the 'Resolution Applications' is to match the Liquidator value, of the 'Corporate Debtor'.

114. It transpires that in the 'swiss challenge method (open bidding) two prospective Applicants took part on 29.12.2022 and 02.01.2023 and M/s K.P. Advisory Services (LLP) was turned out to be a Successful bidder, although and prayed for some time, to furnish the final plan, with appropriate changes to be made and the same was updated to the 'Committee of Creditors'.

115. No wonder, the 'Committee of Creditors', after quantitative and qualitative discussions, had approved the Resolution Plan of M/s K.P. Advisory Services (LLP) with 100% voting rights, through 'ballot sheet. Furthermore, the Resolution Plan of M/s Bommidala Enterprises Private Limited was turned down by the 'Committee of Creditors' with 100% voting rights.

116. The 'Resolution Professional' gave a letter stating that M/s K.P. Advisory Services (LLP), as the 'Successful Resolution Applicant' and made a request, to them, in furnishing the 10% required Performance Bank Guarantee. Indeed, an undertaking dated 09.02.2023 was provided by the Resolution Applicant mentioning to use the EMD-BG till they furnish the 'PBJ'. In fact, the value of

EMD-BG, was higher, than the 'Performance Bank Guarantee' for submission of approved Resolution Plan, before the 'Adjudicating Authority' / 'Tribunal'.

117. The Resolution Applicant had proposed to pay the whole admitted claim of the 'Operational Creditor', within a period of 45 days from the date of 'plan' Approval. Also, that the Resolution Applicant, had proposed to pay the whole claim of the workman and employees within a period of 45 days from the 'Approval of Plan Date'.

118. It is evident that, the admitted claims of the other creditors in aggregate, as on the insolvency commencement date was Rs.35,49,18,073/-. In fact, the Resolution Applicant had proposed to issue 0.01% of Non-cumulative Redeemable preference shares of INR 1 of the Corporate Debtor, to settle the wholesome admitted, in respect of other creditors. Besides these, the Resolution Applicant / M/s K.P. Advisory Services (LLP) had produced net worth certificate from the 'Chartered Accountant' and placed on record, the proof of funds, by way of bank statements.

119. Only upon subjective satisfaction of the 'Adjudicating Authority' / 'Tribunal', that the 'Resolution Plan' was as per requirement of Section 30 & 31 of the Code, and being satisfied, with the 'Regulations 38 & 39' of 'IBBI'

(Insolvency Resolution Process for Corporate Persons), Regulations, 2016, the 'Resolution Plan' was approved.

120. A perusal of the impugned order dated 25.08.2023 in IA/493(CHE)/2023 and in IA 349(CHE)/2023 in CP(IB)/279/CHE/2021 without any simmering doubt indicates latently and patently that there is 'no material irregularity' or 'patent illegality' in regard to the approval of the 'Resolution Plan'. Also it comes to light, that the Appellants (Wilful Defaulter) had not cooperated with the 'CIRP', and fact of the matter, is that they took part in all the CoC Meetings, and raised all their objections, in the 'Committee of Creditors' Meetings.

121. That apart, the Appellants, had suggested in the 6th CoC meeting that took place on 14.09.2022, to issue fresh Form G by rejecting the M/s. Poppys Knitwear Pvt. Ltd. Resolution Plan, which was recorded in the 'Minutes', therefore, the 'stance of the Appellants', that 'they were not aware of any meetings of the Committee of Creditors', is not accepted by this Tribunal.

122. Be that as it may, this Tribunal in the light of the foregoing qualitative and quantitative discussions, keeping in mind that the instant Comp. App. (AT)(CH) (Ins) No. 309/2023 and 321/2023, preferred by the Appellants, in their capacity / position as shareholders, are 'per se' 'not maintainable' and also considering the facts and circumstances of the instant case, this Tribunal, without any

hesitation comes to a consequent conclusion, that the instant Comp. App. (AT)(CH) (Ins) No.309/2023 and 321/2023, are not maintainable, in the 'eye of law' and even on merits, the impugned orders dated 25.08.2023 passed by the Adjudicating Authority/NCLT, Division Bench–I, Chennai in IA 493(CHE)/2023 (dismissing the Application), and in IA 349(CHE)/2023 (disposing of the Application), in CP(IB)/279/CHE/2021, are free from, any legal flaws. Accordingly, the instant 'Appeals', are 'devoid of merits'.

**Conclusion**

123. In fine, instant ***Comp. App. (AT)(CH) (Ins) No. 309/2023 and 321/2023 are dismissed.*** No Costs. The connect pending IA Nos. 952 – 954/2023, 979, 980/2023 are closed.

**[Justice M. Venugopal]**
**Member (Judicial**

**[Shreesha Merla]**
**Member (Technical)**

**10th October, 2023**

*ss/pks*