NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI BENCH
Chennai
(Appellate Jurisdiction)
Company Appeal(AT) (CH)(Insolvency) No. 166 of 2021
[Arising out of impugned order dated 24.06.2021 passed by the National Company Law Tribunal, Hyderabad Bench-II, Hyderabad in I.A. No. 244 of 2021 C.P.(IB) No.184/7/HDB/2019]

In The Matter of:

Committee of Creditors of Meenakshi Energy Ltd.
Through State Bank of India,
Stressed Assets Management Branch-II,
D.No. 3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda,
Hyderabad – 500027. **...Appellant**

Vs

Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P Ltd.
Through Mr. Chandan Sau, Director **Respondent No. 1**

Mr. Ravi Sankar Devarakonda,
Resolution Professional of
Meenakshi Energy Limited
Third Floor-1B, Uma Chambers,
Punjagutta,
Hyderabad – 500082. **Respondent No. 2**

Present:

For Appellant :	**Mr. Ramji Srinivasan, Sr. Advocate For Mr. Edward James, Advocate**
For Respondent No.1 :	**Mr. Joy Saha, Sr. Advocate Mr. P. H. Arvindh Pandian, Sr. Advocate Ms. Rubaina Khatoon, Advocate Mr. H S Hredai, Advocate.**
For Respondent No.2 :	**Mr. Sumant Batra, Advocate, Mr. Aditi Deshpande, Advocate**
Resolution Professional:	**Mr. Jash Shah, Advocate for Mr. Ravishankar Devara Konda, Advocate**

With

Company Appeal(AT) (CH)(Insolvency) No. 174 of 2021

In The Matter of:

Mr. Ravi Sankar Devarakonda,
Resolution Professional of
Meenakshi Energy Limited
Third Floor-1B, Uma Chambers,
Punjagutta,
Hyderabad – 500082. **...Appellant**

Vs

Consortium of Prudent ARC Limited & Vizag
Minerals and Logistics Private Limited
611, Sixth Floor, D Mall, Plot No. A-1, Netaji Subhash Palace,
Pitampura,
New Delhi – 110034. **....Respondent No. 1**

Committee of Creditors of Meenakshi Energy Ltd.
Through State Bank of India,
Stressed Assets Management Branch-II,
D.No. 3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda,
Hyderabad – 500027. **.....Respondent No. 2**

Present:

For Appellant :	**Mr. Sumant Batra, Advocate Mr. Aditi Deshpande, Advocate Mr. Jash Shah, Advocate**
For Respondent No.1 :	**Mr. Joy Saha, Sr. Advocate Mr. P. H. Arvindh Pandian, Sr. Advocate Ms. Rubaina Khatoon, Advocate Mr. H S Hredai, Advocate.**
For Respondent No.2 : Resolution Professional	**Mr. Ramji Srinivasan, Sr. Advocate For Mr. Edward James, Advocate Mr. Bishwajit Dubey, Advocate**

Coram: **Mr. Justice M. Venugopal Member (J)**
Mr. Kanthi Narahari Member (T)

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

M. Venugopal (J)

Company Appeal (AT) (CH) (INS.) No. 166 of 2021

Preface:

1. The Appellant/ Committee of Creditors of Meenakshi Energy Limited, Hyderabad through State Bank of India has preferred the instant Company Appeal (AT) (CH) (INS.) No. 166 of 2021 being dissatisfied with the impugned order dated 24.06.2021 in I.A. 244 of 2021 in CP(IB)No.184/HDB/7/2019 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bench-II, Hyderabad).

Company Appeal (AT) (CH) (INS.) No. 174 of 2021

2. The Appellant / Resolution Professional of Meenakshi Energy Limited, Hyderabad has filed the present Company Appeal (AT) (CH) (INS.) No. 174 of 2021 as an 'aggrieved person' in respect of the certain observations and findings made against the Appellant/ Resolution Professional and the Second Respondent / Committee of Creditors of Meenakshi Energy Limited that they had acted in a manner inconsistent with the Code and 'CIRP' Regulations etc., in the impugned order dated 24.06.2021 in I.A. 244 of 2021 in CP(IB)No.184/HDB/7/2019 (filed under Section 60(5) of the Code read with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP'

Regulations) passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bench-II, Hyderabad).

3. The 'Adjudicating Authority'/ National Company Law Tribunal, Bench-II, Hyderabad while passing the impugned order in I.A. 244 of 2021 in CP(IB)No.184/HDB/7/2019 on 24.06.2021 (Filed by Consortium of Prudent Asset Reconstruction Company Ltd. and M/s Vizag Minerals and Logistics Pvt. Ltd./ Applicant) at paragraph 13 to 18 had observed the following:

> *13 "We heard the Senior Counsel appearing for the Appellant, Senior Counsel appearing for the Resolution Professional and Senior Counsel appearing for Vedanta Limited. The issue before us for consideration are:*
>
> *(i) Whether the CoC can extend the timelines for RFRP while two Resolution Plans submitted before the CoC as per the earlier timelines are for consideration before them.*
>
> *(ii) Whether the CoC is empowered to keep on extending timelines beyond 330 days in the guise of maximization of value.*
>
> *14. To arrive at a definite and conclusive answer, we refer to IBC, 2016 and CIRP Regulations.*
>
> *Section 30(1) laid down that a resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.*
>
> *Whereas Regulation 36A(5) speaks of the methodology of submission of EoI by the Prospective Resolution Applicants.*

The Prospective Resolution Applicants who meet the requirements of the invitation for expression of interest, shall submit expression of interest within the "time specified" in the invitation under clause (b) of sub-regulation (3).

Regulation 36A(6) also very clearly mentions that the EoIs received after the time specified in the invitation under Clause (b) of sub-regulation (3) shall be rejected.

15. *Regulation 36B deals with Request for Resolution Plan and Regulation 36B(2) details each step in the process and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines and Regulations 36B(6) deals with extension of timelines for submission of resolution plans with the approval of committee. Regulation 36B(7) empowers the resolution professional to re-issue request for resolution plan with the approval of the committee, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list.*

16. *Regulation 36A and Regulation 36B(2) clearly speaks that timelines specified are mandatory. In the instant case, the 330 days period completed on 08.03.2021. The Applicant claimed that two resolution plans were placed before the CoC for consideration as per the timelines specified in RFRP*

and before the timelines expired, the Resolution Professional has further extended the time at the request of another Resolution Applicant viz Vedanta Limited, who is qualified as prospective Resolution Applicant in final list of EoI. The Two Resolution Plans pending before the committee were deliberated at length and the contents known to all the CoC members. The CoC in its commercial wisdom has requested the Resolution Professional to extend the RFR timelines beyond 330 days with a view to given an opportunity to Vedanta Limited to submit their Resolution Plan in the name of value maximization of Corporate Debtor, albeit opportunity was given to the other two resolution applicants to revise their proposal. As this being status, we are of the view that CoC and Resolution Professional have taken the process into their own hands even though they cannot extend timelines beyond 330 days unilaterally without the approval of Adjudicating Authority. This action of Resolution Professional is contrary to the letter and spirit of the Code and its Regulations.

17. *The moot point to be decided whether the CoC is correct in extending the RFRP timelines when two Resolution Plans are already before them for consideration and negotiation were held with these two resolution applicants, just to accommodate another Resolution Applicant who had qualified in the EoI. In our view, the CoC and the Resolution*

Professional has categorically violated the timelines in the name of value maximization, thereby kept on extending the process beyond 330 days and CoC in its wisdom has stepped into the shoes of the Adjudicating Authority and extended the period without any rhyme or reason. The CoC has no business to extend RFRP beyond 330 days without specific approval of the Adjudicating Authority. We strongly express our reservations on the decision of CoC as well as RP in this regard and accordingly direct the Resolution Professional/ CoC to consider the two plans received prior to last extension of RFRP timeline i.e. received before 330 days period to complete the CIRP."

and ultimately allowed the 'Interlocutory Application' with the aforesaid direction.

Appellant /Second Respondent's Submissions (In Both Appeals)

4. The Learned Counsel for the Appellant/Second Respondent submits that the 'Adjudicating Authority' (National Company Law Tribunal, Bench-II, Hyderabad Bench) by virtue of the 'impugned order' dated 24.06.2021 had directed the Appellant/ Committee of Creditors and the 2nd Respondent/ Resolution Professional to only consider the 'Resolution Plan' received before the expiry of 330 days of 'CIRP' period forego 'Resolution Plans' received subsequently, although, they are far superior 'commercially' and 'financially', by ascribing unjustifiable reason that such Plan was received belatedly post expiry of 330 days, despite, extending the period of 'CIRP' by 45 days. In

short, it is the stand of the Appellant that the impugned order is untenable in law, against equity and it is an erroneous one in the eye of law.

5. The Learned Counsel for the Appellant/ Second Respondent contends that the 'impugned order' of the 'Adjudicating Authority' had addressed the First Respondent/ 'Prospective Resolution Applicants' Application on merits directly, without even addressing the preliminary issue of 'Maintainability' and 'Locus-standi' of the First Respondent/ 'Prospective Resolution Applicant to raise any objection in the 'Corporate Insolvency Resolution Process'.

6. The Learned Counsel for the Appellant/ Second Respondent points out that the 'prospective Resolution Applicant' as per the judgment of the Hon'ble Supreme Court in Arcelor Mittal's case (vide judgment dated 04.10.2018 in Civil Appeal No.9402-9405 of 2018) reported in MANU/SC/1123/2018 has no vested right to raise the objections to the 'CIRP' seeking to (1) have its 'Resolution Plan' approved; and/ or (2) to have its 'Resolution Plan' being considered in exclusivity or in priority over the 'Resolution Plan' of other 'Resolution Applicants'.

7. The Learned Counsel for the Appellant/ Second Respondent takes a stand that the 'impugned order' passed by the 'Adjudicating Authority' had failed to appreciate that the First Respondent/ 'Prospective Resolution Applicant's' Application was a premature one at the moment, since no 'Resolution Plan' was approved for the 'Corporate Debtor' in 'CIRP'.

8. The Learned Counsel for the Appellant/ Second Respondent proceeds to project an argument that I.A. No.120 of 2021 (an extension Application) was filed by the Resolution Professional (2nd Respondent) praying for an extension of time of 60 days, after the approval of the 'Committee of Creditors'

on 03.03.2021 itself and the same was pending before the 'Adjudicating Authority'. According to the Learned Counsel for the Appellant, the said 'Interlocutory Application' was filed before the receipt of any 'Resolution Plans' and with a view to provide the 'Committee of Creditors' and the 'Resolution Professional' to exercise all powers under the provisions of the I&B Code, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) including under Regulation 36B(7) thereof, if the need had arisen.

9. The grievance of the Appellant/ Second Respondent is that the 'Adjudicating Authority' (National Company Law Tribunal, Bench-II, Hyderabad) had proceeded to hear and determine the 'Application' projected by the First Respondent (Prospective Resolution Applicant on 02.06.2021) almost three months after filing of the 'Extension Application' and very nearly 45 days after the communication of the 'Committee of Creditors' decision of 21st April, 2021 and passed the 'impugned order' without firstly deciding an 'Extension Application' and without considering the law laid down by the Hon'ble Supreme Court and the 'Appellate Tribunal' in number of judgments including 'Arcelor Mittal's' case which holds that the First Respondent / 'Prospective Resolution Applicant' does not have any 'Locus' to file such Application and the decision of Hon'ble Supreme Court in ***Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Limited and Anr., reported in (2021) SCC OnLine SC 204*** whereby it is held that in view of the paramount importance given to the decision of the 'Committee of Creditors', which is to be taken on the basis of commercial wisdom.

10. The contention of the Learned Counsel for the Appellant/ Second Respondent is that the 'Committee of Creditors' consideration of 'Resolution Plan' received subsequent to 330 days was (1) pursuant to the decision (approved by 95.71%) to reissue the request for 'Resolution Plans' in the 20th 'Committee of Creditors' meeting and (2) during the pendency and subject to the 'Extension Application', which was finally allowed on 15.07.2021.

11. Also that, it is projected on the side of the Appellant/ Second Respondent that in view of the fact that time was granted by the 'Adjudicating Authority' (National Company Law Tribunal, Bench-II, Hyderabad) in any event, the said 'Authority' had no reason to interfere with the decision of the 'Committee of Creditors' and the 'Resolution Professional' based on the binding decision of the ***Hon'ble Supreme Court of India in Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Limited and Anr.***

12. It is represented on behalf of the Appellant/ Second Respondent that the decision of the 'Committee of Creditors' (arrived at by a thumping majority) was meant to provide an equal opportunity to all the 'Prospective Resolution Applicants' in the final list to submit fresh/ revised plans in accordance with the Regulation 36B(7) of the 'CIRP Regulations', because of the fact that the Plans received earlier that too were not found satisfactory. As a matter of fact, it was the decision of the 'Committee of Creditors' taken at the meeting held on 20.04.2021 by 95.71% majority and in tune with the judgment of the ***Hon'ble Supreme Court in Kalpraj Dharamshi's case*** culminated in the large increase in the overall value of the 'Resolution Plans' from all the 'Prospective Resolution Applicants' (including the First Respondent/ 'Prospective Resolution Applicant').

13. The Learned Counsel for the Appellant/ Second Respondent submits that the 'impugned order' had ignored the prime fact that the no 'Resolution Plan' was approved earlier to the expiry of 330 days for the Corporate Debtor and that if the 'Committee of Creditors' is expected not to consider fresh plans post 330 days, then the 'Committee of Creditors' is equally not expected to even consider the existing plans, in the absence of an extension order.

14. The Learned Counsel for the Appellant/ Second Respondent submits that nowhere the 'I&B Code, 2016' mentions that the 'Committee of Creditors' and the 'Resolution Professional' is to seek only the revisions and not fresh submissions of the 'Resolution Plans' in such extended process, despite it being in the larger interests of the 'Stake holders of the Corporate Debtor'. Furthermore, for maximising the interest of one 'Prospective Resolution Applicant', the interest of various stake holders, at whose instance the 'CIRP' is carried on may not be prejudiced.

15. The Learned Counsel for the Appellant/ Second Respondent forcefully comes out with a plea that the 'impugned order' passed by the 'Adjudicating Authority' erroneously notes that the 'Committee of Creditors' and the 'Resolution Professional' had usurped the 'Adjudicating Authority's' role as it had extended the process and considered 'Resolution Plans' post expiry of 330 days without specific direction from the 'Adjudicating Authority'.

16. On behalf of the Appellant/ Second Respondent it is brought to the notice of this 'Tribunal' that the 'Committee of Creditors' had acted mainly, in the interest of the 'stake holders' by striving to revive the 'Corporate Debtor' and maximise its value. With this aim, the 'Resolution Professional' with the 'Committee of Creditors Approval' had filed an 'Extension Application' praying

for an extension beyond 330 days to have a successful resolution and prevent liquidation of the Corporate Debtor.

17. The Learned Counsel for the Appellant/ Second Respondent points out that because of the delay in deciding the 'Extension Application' and considering that it was essential to keep the 'Corporate Debtor' as a 'going concern' for 'Successful Resolution', the 'Committee of Creditors' together with the 'Resolution Professional' had continued the 'CIRP' after the lapse of 330 days, subject to the Adjudicating Authority's order on the 'Extension Application'. In fact, the 'Committee of Creditors' and the 'Resolution Professional' had disclosed to all the stake holders (including the First Respondent/ 'Prospective Resolution Applicants') that such process post expiry of 330 days was subject to the order of the 'Adjudicating Authority' and indeed unless the 'Extension Application' is approved, all the stakes would not create any rights and obligations.

18. The Learned Counsel for the Appellant/ Second Respondent, for an illustration, adverts to the Form G (Re-Issue) dated 19.05.2021 which mentioned the following:

> *"The timelines provided above are subject to receipt of approval from NCLT for extension of timeline for completion of CIRP beyond 330 days and are tentative in nature which may undergo change on account of various reasons including any extension that the CoC may grant in the exercise of its sole discretion".*

19. The Learned Counsel for the Appellant/ Second Respondent submits that the 'CIRP' does not '*ipso facto*' stood terminated on the expiry of 330 days. In this connection the Learned Counsel for the Appellant/ Second Respondent points out that the 330 days' period mentioned in Section 12 of the 'I&B' Code is 'not mandatory' and the said term mandatorily figuring in the 2nd proviso to Section 12(3) of the Code was struck down by the Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors.*** (vide judgment dated 15.11.2019 in Civil Appeal No.8766-8767 of 2019).

20. Advancing his argument, the Learned Counsel for the Appellant/ Second Respondent points out that in the decision of Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited* case, it is observed and held that though ordinarily, the CIRP of the Corporate Debtor must be completed within the outer limit of 330 days from the insolvency commencement date, the period of CIRP can be further extended if (i) only a short period is left for completion of CIRP (ii) it would be in the interest of all the stake holders that the Corporate Debtor be put back on its feet instead of being sent into liquidation (iii) the fault for the time taken in the legal proceedings or a large part thereof cannot be ascribed to the parties. Further, that in such cases the 'Adjudicating Authority' would have the discretion to make an allowance and grant a further extension beyond 330 days as done in the present case, as per order dated 15.07.2021.

21. The Learned Counsel for the Appellant/ Second Respondent submits that since the 'Resolution Plans' received namely viz. of the First Respondent/ 'Prospective Resolution Applicant' and Sindhu Trade Links Ltd. (STLL) prior

to this request was made, were found unsatisfactory, the 'Committee of Creditors' had approved the decision with 95.71% vote to re-issue the request for submission of 'Resolution Plans' to all the 'Prospective Resolution Applicants'. In fact, the decision to reinvite plans from all 'Prospective Resolution Applicants' had increased the 'competition' and resulted in almost 60% increase in the value that was offered by the 'Prospective Resolution Applicants' (including the First Respondent/ 'Prospective Resolution Applicant').

22. It is the version of the Appellant/ Second Respondent that by seeking resubmission of all the 'Prospective Resolution Applicants', the 'Committee of Creditors' and the Resolution Professional had fulfilled the requirement of Regulations 36B(7) and ensured that no preference was given to anyone of the 'Prospective Resolution Applicants' over the other. Besides this, a level playing field was created for all the 'Prospective Resolution Applicants' by adhering to the due process as per the I&B Code and the 'CIRP Regulations'.

23. The Learned Counsel for the Appellant/ Second Respondent contends that the based on the invitation for 'Expression of Interest' dated 21.01.2020 and 'Expression of Interest' dated 25.01.2021 the Vedanta had submitted its 'Expression of Interest and was included in the final list of 'Prospective Resolution Applicants' published each time that it on 23.03.2020 and on 08.02.2021. Therefore, 'Vedanta' cannot be termed as just an 'outsider' which is endeavouring to submit its plan, at a later stage thereby delaying the completion of 'Corporate Insolvency Resolution Process'.

24. The Learned Counsel for the Appellant/ Second Respondent submits that the First Respondent/ 'Prospective Resolution Applicants' reliance upon

the decisions in ***Pioneer Rubchem Pvt. Ltd. vs. Vivek Raheja & Anr.*** and Kalinga Allied Industries Ltd. vs. Hindustan Coils Ltd. & Anr. to contend that no 'Resolution Plan' submitted beyond the dead line was to be considered is not tenable because of the fact that in both these matters, the 'Expression of Interest' were not submitted by the 'Prospective Resolution Applicants' within the time frame, unlike Vedanta. In fact, in these cases, the Resolution Applicants had intervened in the 'Corporate Insolvency Resolution Process' for the first time at a stage where either the 'Resolution Plans' were already in discussion or an Application for approval was pending before the 'Adjudicating Authority'. As such, it is the plea of the Appellant that the reliance placed on the aforesaid decisions are inapplicable, as they are factually different.

25. The Learned Counsel for the Appellant/ Second Respondent points out that the First Respondent/ 'Prospective Resolution Applicant' had submitted the 'Revised Proposal' at least three times beyond the dead line. In fact, owing to such revisions, the First Respondent/ 'Prospective Resolution Applicant' had improved its initial financial proposal by more than 60%, which also explains why the First Respondent/ 'Prospective Resolution Applicant' sought to interfere with the 'Committee of Creditors' exercise of commercial wisdom and prevent any further 'value maximisation'.

26. The Learned Counsel for the Appellant/ Second Respondent adverts to the fact that the First Respondent/ 'Prospective Resolution Applicant' had sought and obtained extensions for submission of revisions/ modifications in its 'Resolution Plan' both earlier and post expiry of 330 days' period. In fact, on 22.02.2021, an extension for two weeks i.e. till 08.03.2021 was sought for,

while being aware that the 330 period was to end on 09.03.2021. Again, an extension was sought on 18.03.2021, 02.04.2021, 28.04.2021, 10.05.2021, 02.06.2021, 08.06.2021, 18.06.2021 and 25.06.2021, viz; even after filing of an 'application' on 02.06.2021.

27. Based on the aforesaid extensions, the First Respondent had submitted its 'Revisions'/ 'Modifications' in its 'Resolution Plans' especially on 15.04.2021, 12.05.2021, 15.05.2021, 11.06.2021, 29.06.2021, 03.07.2021 and 10.07.2021 and since the First Respondent/ 'Prospective Resolution Applicant' had reaped the benefit of extension of timeline for submitting the 'Resolution Plan' itself, it is the contention of the Appellant that the First Respondent/ 'Prospective Resolution Applicant' is stopped from objecting to the 'Committee of Creditors' decisions to provide similar opportunities to the other 'Prospective Resolution Applicants'.

28. The Learned Counsel for the Appellant/ Second Respondent refers to the judgment of this Tribunal dated 12.08.2021 in the matter of ***Unicon Buildtech vs. Aishwarya Mohan Gahrana RP, Durha Virak Private Limited*** (vide Comp App (AT) (Ins.) No.517 of 2021) and submits that the 'Appeal' preferred by the 'Prospective Resolution Applicant' objecting to the non-grant of time and rejection of its plan by the 'Committee of Creditors' was rejected.

29. The Learned Counsel for the Appellant/ Second Respondent submits that the impugned order in the instant Appeal was passed in an unreasonable and arbitrary manner and also is indicative of an inconsistent approach by the very same 'Adjudicating Authority' who had passed an order in Riddhi Siddhi case on 23.09.2021 in I.A. 325 of 2021 in CP(IB)492/07/HDB/2019

wherein the only consideration that weighed was to make all possible endeavours at resolution and keeping liquidation at the last resort. In that view of the matter, the 'Committee of Creditors' with the same object attempted at value maximisation which will be in the interest of the all stake holders of the Corporate Debtor.

Appellant's Citations

30. The Learned Counsel for the Appellant/ Second Respondent refers to the judgment of this Tribunal in ***Unicon Buildtech vs. Aishwarya Mohan Gahrana RP, Durha Vitrak Private Limited*** (vide Comp App (AT) (Ins) 517 of 2021) wherein at paragraphs 6 and 7 it is observed as under:

> *6. "The Appeal itself shows that the Appellant had been participating in the CIRP and had on earlier occasion also filed revised plan. The CoC in the Minutes considered e-mail claimed by the Appellant to have been sent on 22nd January, 2021 and having considered e-mail decided to proceeded to consider the Resolution Plan which had been submitted clause by clause. The CoC in its wisdom did not find it appropriate to give more time to the Appellant and discussed the Resolution Plan and rejected the same for reasons recorded. These are commercial decisions and we cannot hear the Appellant claiming*

that he was offering bigger amount and so the CoC should be directed to consider his plan. In Judgment in the matter of "Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta & Ors." [Civil Appeal No. 9402-9405 etc. of 2018] Judgment of the Hon'ble Supreme Court dated 4th October, 2018 (MANU/SC/1123/2018), the Hon'ble Supreme Court in para 79 of the judgment has observed that there is no vested right or fundamental right in the Resolution Applicant to have its Resolution Plan approved. In the present matter, the CoC considered and in its wisdom did not grant further time and rejected the Resolution Plan. As such, we do not find any reason to interfere in the impugned order only on the basis that the Appellant had filed an I.A before the Adjudicating Authority and the Adjudicating Authority without deciding the I.A passed order of liquidation.

7. In this matter, Section 7 Application was admitted on 8th November, 2019 and the order of liquidation came to be passed on 31st May, 2021…."

31. The Learned Counsel for the Appellant/ Second Respondent as regards the plea that the CIRP can be extended beyond 330 days' period seeks in-aid of the decision of ***Hon'ble Supreme Court in The Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors.*** (vide judgment dated 15.11.2019 in Civil Appeal No.8766-8767 of 2019) wherein at paragraph 79 it is observed as under:

> 79 *"In Atma Ram Mittal v. Ishwar Singh Punia (1988) 4 SCC 284, this Court applied the maxim to time taken in legal proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973, holding:*
>
> *"8. It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit" — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the 129 ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of*

shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."

Likewise, in Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62, this Court held that for the purpose of computing limitation under Section 468 of the Code of Criminal Procedure, 1973 the relevant date is the date of filing of the complaint and not the date on which the Magistrate takes cognizance, applying the aforesaid maxim as follows:

"39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 : 2004 SCC (Cri) 39] , Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and Vanka Radhamanohari [Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4 : 1993 SCC (Cri) 571]. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim nullum tempus aut locus occurrit regi, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin

maxim vigilantibus et non dormientibus, jura subveniunt. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim actus curiae neminem gravabit which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."

Both these judgments have been followed in Neeraj Kumar Sainy v. State of Uttar Pradesh (2017) 14 SCC 136 at paragraphs 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot

take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date - without any exception thereto - may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem (supra). Thus, while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within

the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind.

It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation."

32. In regard to the contention of the Appellant/ Second Respondent that the 'Prospective Resolution Applicants' have no fundamental or vested rights vis-à-vis the CIRP, the Learned Counsel for the Appellant cites the judgment of the ***Hon'ble Supreme Court in Arcelor Mittal India Private Limited vs. Satish Kumar Gupta and Ors.*** (***vide judgment dated 04.10.2018 in Civil Appeal No.9402-9405 of 2018) reported in MANU/SC/1123/2018*** wherein at paragraphs at 76, 79 to 81

76. "Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the

first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.

....

79. Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no

application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place.

80. It is the Committee of Creditors which will approve or disapprove a resolution plan, given the statutory parameters of Section 30. Under Regulation 39 of the CIRP Regulations, sub clause (3) thereof provides:-

"(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan."

This regulation shows that the disapproval of the Committee of

Creditors on the ground that the resolution plan violates the provisions of any law, including the ground that a resolution plan is ineligible under Section 29A, is not final. The Adjudicating Authority, acting quasi-judicially, can determine whether the resolution plan is violative of the provisions of any law, including Section 29A of the Code, after hearing arguments from the resolution applicant as well as the Committee of Creditors, after which an appeal can be preferred from the decision of the Adjudicating Authority to the Appellate Authority under Section 61.

81. If, on the other hand, a resolution plan has been approved by the Committee of Creditors, and has passed muster before the Adjudicating Authority, this determination can be challenged before the Appellate Authority under Section 61, and may further be

challenged before the Supreme Court under Section 62, if there is a question of law arising out of such order, within the time specified in Section 62. Section 64 also makes it clear that the timelines that are to be adhered to by the NCLT and NCLAT are of great importance, and that reasons must be recorded by either the NCLT or NCLAT if the matter is not disposed of within the time limit specified. Section 60(5), when it speaks of the NCLT having jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person, does not invest the NCLT with the jurisdiction to interfere at an applicant's behest at a stage before the quasi-judicial determination made by the Adjudicating Authority. The non-obstante clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has

jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."

33. The Learned Counsel for the Appellant/ Second Respondent in regard to the submission that 'Commercial wisdom' is paramount and not to be interfered with relies on the judgment dated 05.02.2019 of the Hon'ble Supreme Court in ***K. Shashidhar vs. Indian Overseas Bank*** reported in (2019) 12 SCC at page 150 wherein at paragraph 52 it is observed as under:

52. "As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of

the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given

paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

34. The Learned Counsel for the Appellant/ Second Respondent points out the decision of the ***Hon'ble Supreme Court in Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Limited and Anr., reported in (2021) SCC OnLine SC 204*** wherein at paragraph 155 to 157 it is observed as under:

> *155. "This Court observed, that the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.*
>
> *156. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.*

157. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of

84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of 'commercial wisdom', NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%."

35. The Learned Counsel for the Appellant/ Second Respondent refers to the order of the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench) dated 23.09.2021 in I.A. No.325 of 2021 in CP (IB) No.492/07/HDB/2019 in ***M/s Riddhi Siddhi Gluco Biols Limited, Ahmedabad vs. Mr. Sumit Binani, Resolution Professional and Anr.*** wherein at paragraphs 6 to 9 it is observed as under:

6. *"It appears to us that CIRP period is already over but since one plan is pending and since there is likelihood of Resolution of Insolvency of Corporate Debtor, we did not pass order of Liquidation.*

7. *To maintain parity of process, we direct the RP and CoC to allow the Applicant to submit the Plan on the basis of amendment of Form – G on which the Group Companies of M/s. Jindal Power Ltd were allowed to submit the plan.*

8. *The Applicant to submit the Resolution Plan within two weeks from today without fail. We further direct the RP and CoC to consider both Resolution Plans within two weeks thereafter.*

9. *We further direct the RP to complete the CIRP process within 30 days without fail because CIRP period is already over (excluding the lockdown period and period under which CIRP was stayed).”*

First Respondent’s Submissions (in Both Appeals)

36. The Learned Counsel for the First Respondent contends that the ‘impugned order’ of the Adjudicating Authority had considered the relevant facts, timelines and the breach of such timelines committed by the Resolution Professional and the ‘Committee of Creditors’. At this juncture, the Learned Counsel for the First Respondent points out that the impugned order apart from taking into account all the citations referred to by the parties and especially the ratio enunciated in the case of ‘Committee of Creditors’ of ‘Essar Steel of India’ V. ‘Satish Kumar Gupta’, 2020 Vol. 8, SCC 531 which provides that while the

period of 330 days is not mandatory, the same can be violated only in certain specific circumstances and not for considering the new Resolution Plans submitted after the expiry of prescribed time as well as after the lapse of 330 days.

37. The Learned Counsel for the First Respondent points out that the impugned order was passed based on due consideration of Regulations 36A and 36B of the Corporate Persons Regulation, 2016. Furthermore, it is represented on behalf of the First Respondent that the last Form G (third one) published by the 'Resolution Professional' was dated 12.05.2021 and this would exhibit that the 'Resolution Professional' had acted arbitrarily, dehors the provisions of the Code and under the false assumption that 'Form G' could be issued even beyond the 330 days' period and without securing the approval in this regard, from the 'Adjudicating Authority'.

38. The Learned Counsel for the First Respondent points out that the 'Adjudicating Authority' had rightly allowed the I.A. 244/2021 and passed the 'impugned order' by not permitting the 'Resolution Professional and the 'Committee of Creditors' to extend the time frame beyond 330 days. In this connection, the Learned Counsel for the First Respondent places reliance on the judgement of this Tribunal in '***Pioneer Rubchem Pvt. Ltd.' Vs. 'Vivek Raheja Resolution Professional, Trading Engineers (International) Limited' and Anr. vide Comp. App. (AT)(Ins.) 706/2020*** wherein at para 4 and 5 it is observed as under: -

> *(3) "Section 12 of the IBC, 2016 provides for a time line of 180 days for completion of CIRP and even if he considers the extended period, it is another 90 days*

and hence, within 270 days the CIRP should be completed.

(4) Although it is directory that CIRP can be completed upto a period of 330 days or so which is largely to consider the time frame of judicial process. Hence, practically all attempt be made to complete the CIRP within 270 days.

(5) In the present case already two Resolution Plans have been received and hence the aspect of competitive bidding is complied with, if we permit the present Appellant, it will open a floodgate for such applications & will derail CIRP & purpose of IBC, not only in this case but in other cases also. The Appeal is devoid of any merit."

39. According to the Learned Counsel for the First Respondent the 330 days' period may be extended in exceptional circumstances and only when '*a short period is left for the completion of the Insolvency Resolution Process'*. Moreover, the principle of 'Maximisation of Asset Value' is to be read in conjunction with the directive of 'time bound process', as made mention of in the 'I&B' Code and also reiterated in various Hon'ble Supreme Court decisions.

40. The Learned Counsel for the First Respondent contends that the 'Committee of Creditors' which is the 'creation of a statute' is required to act within the parameters of the 'I&B' Code, 2016 and it cannot be breached under the garb of 'commercial wisdom'.

41. The Learned Counsel for the First Respondent adverts to the fact that the Court has allowed extension of time beyond 330 days' period to dispose of the pending Resolution Plans, where there is a real possibility of Resolution over liquidation. In this regard, the Learned Counsel for the First Respondent relies on the judgment of this Tribunal in Comp App (AT) (Ins) No.05 of 2020 dated 10.02.2020 ***Ashish Chaturvedi Vs. Inox Leisure Ltd. & Ors***. wherein at paragraph 17 it is observed as under:

> *17. "It is to be noted that 'Speedy' is the gist for an effective, efficacious functioning of the Bankruptcy Code. As per Section 12(3) of the Code, the time period of 'CIRP is not to be extended more than once. It is to be borne in mind by the concerned authorities to adhere to the model 16 timeframe envisaged in Regulation 40(A) of IBBI (CIRP for corporate person) Regulations 2016 as far as possible. In an extraordinary circumstance(s), the 'Adjudicating Authority' can extend the 'Corporate Insolvency Resolution Process' beyond the time limit adumbrated in Section 12(3) of the Code. The extension of time can be only on an application*

made by the Insolvency Resolution Professional on the basis of 'Committee of Creditors' as mentioned in sub-Section 2 and 3 of Section 12 of the IBC, 2016."

42. The Learned Counsel for the First Respondent submits that the First Respondent's challenge was not founded on its rights to be approved but against an illegal procedure adopted by the 'Resolution Professional' and the 'Committee of Creditors' in violation of the provisions of the Code, whereby the CIRP was derailed completely, i.e. by extending the last date of submission of 'Resolution Plans' and keeping the 'CIRP' process open ended instead of closing the same and by illegally allowing Vedanta's 'Resolution Plan' in the '*zone of consideration'* well after the completion of 330 days on an illegal premise that 'Vedanta' had sought an extension of time to file its 'Resolution Plan' .

43. Yet another contention of the Learned Counsel for the First Respondent in the instant case neither there was a challenge made to the rejection or non-approval of the 'Resolution Plan' by the First Respondent, nor the First Respondent sought any relief before the 'Adjudicating Authority' requiring consideration and approval of its 'Resolution Plan' exclusively. As a matter of fact, the First Respondent only had prayed for directions to be issued to the 'Resolution Professional' for not receiving and considering the 'Resolution Plan' submitted after the dead line of 08.03.2021 mentioned in 'Form G' dated 25.01.2021 and placed only those before the 'Committee of Creditors' which were submitted before the lapse of 330 days, which got expired on 08.03.2021.

44. According to the Learned Counsel for the First Respondent / 'Resolution Applicant', the 'Resolution Professional' and the 'Committee of Creditors' continue to deliberately misconstrue the distinction between a 'Resolution Plan' and a 'Revised Offer' and the time lines qua the same.

45. The Learned Counsel for the First Respondent points out that the term 'Resolution Plan' is defined u/s 5(26) of the 'I&B' Code to mean a 'Plan' proposed by the Resolution Applicant for 'Insolvency Resolution' of the 'Corporate Debtor' as a going concern in accordance with part II. However, there is no definition for a Revised offer and / or Revised financial proposal and in this regard, the Learned Counsel for the First Respondent cites the judgement of this Tribunal in '***Binani Industries Ltd.' V. 'Bank of Baroda and Anr.' reported in 2018 SCC online NCLAT 565*** wherein it is observed and held as under: -

> *"34. Section 25(2)(h) provides invitation of prospective lenders, investors and any other persons to put forward a 'Resolution Plan'. Submission of revised offer is in continuation of the Resolution Plan already submitted and accepted by the Resolution Professional. It is not in dispute that after invitation was called for, the Ultra Tech Cement Ltd. submitted the revised Resolution Plan on 12th February, 2018 i.e. well within the time. It is not the case of the Committee of Creditors that the Plan of the Ultra Tech Cement Ltd. was in violation of Section 30(2) of the I&B Code. The Resolution Plan having submitted by Ultra Tech*

Cement Ltd. within time on 12th February, 2018 it was open to the Committee of Creditors to notice the revised offer given by Ultra Tech Ltd. on 08th March, 2018. The Committee of Creditors has taken note of revised offer given by the 'Rajputana Properties Private Limited' on 07th March, 2018 but refused to notice the revised offer submitted by Ultra Tech Cement Limited on 08th March, 2018 i.e. much prior to the decision of the Committee of Creditors (14th March, 2018).

39. On a careful reading of the aforesaid clauses, it is clear that all the Resolution Plan' which meet the requirements of Section 30(2) of the 'I&B Code' are required to be placed before the 'Committee of Creditors' and the Resolution Professional' can review the Resolution Plan' and the 'Committee of Creditors' is entitled to negotiate and modify with consent of the Resolution Applicant. To apply this clause there is no time limit prescribed except that the Resolution Process should be completed within the stipulated period of 180 days or maximum 270 days."

46. We appreciate the aforesaid submissions made by Mr. Gopal Subramanian, Ld. Senior Counsel that the Committee of Creditors,

Resolution Professional and all Resolution Applicants are bound by the process documents prepared under the mandate of Section 25(2)(h) of the I&B Code but non-adherence to process stipulated in terms of Section 25(2)(h) of the 'I&B' Code and to stipulation made in the process documents will render such decision illegal."

46. The Learned Counsel for the First Respondent brings to the notice of this Tribunal that the 'Resolution Professional' and the 'Committee of Creditors' had commenced the extensive discussions and negotiations with the First Respondent on its 'Resolution Plan' before accepting the bid of Vedanta. In fact, emails dated 16.07.2021 and 21.07.2021 were exchanged between the First Respondent and 'Resolution Professional' in regard to the 'Addenda' / revised financial proposals. Apart from this, the 'Resolution Plan' of the First Respondent, on 09.03.2021 was already placed before the 'Committee of Creditors', based on which negotiations took place and a revised and modified 'Resolution Plan' was submitted on 26.06.2021. Therefore, it is projected on the side of the First Respondent that there is no possibility to re-examine the Resolution Plan of the First Respondent, for placing it before the 'Committee of Creditors'.

47. The Learned Counsel for the First Respondent points out that consequent to the negotiations and discussions held with the 'Committee of Creditors', the 'Committee of Creditors' from time to time had asked for clarifications and modifications to the 'Plan' had also asked for the 'Upward Revision of the Plan size' and these were complied with by the First Respondent, which does not fell within the purview of a fresh 'Resolution Plan'. As such, it is the plea of the First

Respondent that the secrecy of the First Respondent bid was completely compromised and that the 'Resolution Professional' and the 'Committee of Creditors' had unduly favoured 'Vedanta' which was granted with an opportunity to file a 'Resolution Plan', after coming to know of the contents of the bids of the 'First Respondent' and 'STLL'.

48. The Learned Counsel for the First Respondent refers to the judgement of this Tribunal in '***Kalinga Allied Industries Ltd. Vs. Hindustan Coils Limited (vide Comp. App. (AT)(Ins.) No. 518 of 2020*** wherein it is observed as under: -

> "*15. There is no provision in the Code or regulation which provides that while exercising the power under Section 31 of the IBC, the Adjudicating authority can direct the CoC to consider the resolution plan of such person who has not been part of CIRP. Otherwise also if such procedure adopted, then the CIRP will be frustrated. Once the resolution plan has been opened and fundamentals and financials of the plan and offer made therein were disclosed to all the participants including RP. Then anyone can enhance its offer before the Adjudicating Authority in the guise of maximisation of realization. Therefore, no further fresh bid or offer would have accepted or considered…*
>
> *16. This Appellate Tribunal in the case of Chhatisgarh Distilleries Ltd. Vs. Dushyant Dave and Ors. Company Appeal (AT)(Ins.) No. 461 of 2019 in*

the light of the pronouncement of Hon'ble Supreme Court in the case of Committee of Creditors Essar Steel India Ltd. Vs. Satish Gupta & Ors. 2019 SCC online SC1478 held that:

"In the light of the above pronouncement of Hon'ble Supreme Court we have examined the issues raised in these appeals. Admittedly, the A-1 filed its Resolution Plan before the Adjudicating Authority on 13.02.2019 whereas, the last date for submission of Resolution Plan before RP was 15.10.2018. Resolution Plan of Successful Resolution Applicant i.e. Dera Finvest Pvt. Ltd. (R2) was approved by 98.72% of the Committee of Creditors in e.voting conducted on 1.11.2018 and on 2.11.2018. When the Resolution Plan is filed before the Adjudicating Authority than the Authority has to satisfy that the Resolution Plan approved by the Committee of Creditors fulfils the requirements as specified in sub-section 2 of Section 30. However, the Adjudicating Authority cannot direct the CoC to consider the second Resolution Plan submitted before the Authority although the second Resolution Applicant is ready to invest more amount in comparison to the first Resolution Applicant. Ld. Adjudicating Authority has rightly held that the Adjudicating

Authority cannot suo moto direct the CoC to consider new Resolution Plan and reconsider already approved Resolution Plan. The Hon'ble Supreme Court in the above referred judgement held that u/s 30(2) of I&B Code, decision of Committee of Creditor is purely commercial and cannot be adjudicated by the Authority. Thus, we are of the view that the Adjudicating Authority is well within its jurisdiction while rejecting the application of A-1."

17. With the aforesaid, we are of the considered view that the Adjudicating Authority has erroneously entertain the application and Resolution Plan of the Respondent No. 1 and directed the RP to put up the same before CoC for consideration."

49. The Learned Counsel for the First Respondent submits that the 'Resolution Professional' as well as the 'Committee of Creditors' till date, have not complied with the impugned order and the deliberate delay, on their part, had led to the 'value destruction' in contra distinction to 'maximisation', because of the fact that the only real asset of the Corporate Debtor i.e. the power purchase agreement with PTC for supply of power to Bangladesh appears to be in default, considering the fact that PTC through letter dated 04.08.2021 had served the Resolution Professional with a notice of Intent to terminate the said 'PPA'.

First Respondent's Citations

50. The Learned Counsel for the First Respondent relies on the decision of the ***Hon'ble Supreme Court in Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Limited and Anr., reported in (2021) SCC OnLine SC 204*** wherein at paragraph 143, 145, 156, 157 it is observed and held as under:-

> *143 "This Court has held, that it is not open to the Adjudicating Authority or Appellate Authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their*

team of experts. It has been held, that the opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the Adjudicating Authority and that the decision of CoC's 'commercial wisdom' is made non-justiciable.

145 This Court held, that what is left to the majority decision of CoC is the "feasibility and viability" of a resolution plan, which is required to take into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. It has further been held, that CoC is entitled to suggest a modification to the prospective resolution applicant, so that carrying on the business of the Corporate Debtor does not become

impossible, which suggestion may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, etc. It has been held, that what is important is, the commercial wisdom of the majority of creditors, which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.

156. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.

157. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B

Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on

the basis of 'commercial wisdom', NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%."

51. The Learned Counsel for the First Respondent relies on the judgment of this Tribunal (Dated 04.02.2019) in ***Tata Steel Ltd. vs. Liberty House Group Pte. Ltd. & Ors.,*** Comp App (AT) (Ins.) 198 of 2018 wherein at paragraph 32 and 39 it is observed as under:

32. "It is true that the 'Committee of Creditors' will have to ensure a time bound process, to better preserve the economic value of the asset. Simultaneously, it is duty of the 'Committee of Creditors' to ensure that the 'Resolution Plan' is viable, feasible and should maximize the assets of the 'Corporate Debtor'.

39. Similar provisions were noticed by this Appellate Tribunal in "Binani Industries Limited" (Supra), and held that the 'Committee of Creditors' in its sole discretion can ask the 'Resolution Professional' to negotiate better terms with the 'Compliant Resolution

Applicant(s)'. However, such negotiation to be made and completed within the timeframe i.e. within 180 days' subject to extension if granted by the Adjudicating Authority which should not be extended beyond 270 days."

52. The Learned Counsel for the First Respondent cites the decision of Hon'ble Supreme Court in ***The Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors.*** reported in (2020) 8 SCC at page 531, wherein at paragraph 127 it is observed as under:

127. "Both these judgments in Atma Ram Mittal [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] and Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] have been followed in Neeraj Kumar Sainy v. State of U.P. [Neeraj Kumar Sainy v. State of U.P., (2017) 14 SCC 136 : 8 SCEC 454] , SCC paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the

litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem [Madras Petrochem Ltd. v. BIFR, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478] . Thus, while leaving the

provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into

liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the

outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation."

53. The Learned Counsel for the First Respondent, in regard to the contention of the Appellant that the 'Prospective Resolution Applicants' have no fundamental or vested rights vis-â-vis the CIRP, the Learned Counsel for the Appellant cites the judgment of the ***Hon'ble Supreme Court in Arcelor Mittal India Private Limited vs. Satish Kumar Gupta and Ors.*** (vide judgment dated 04.10.2018 in Civil Appeal NO.9402-9405 of 2018) wherein at paragraphs at 76, 79 to 81

76. "Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This

is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.

....

79. Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him.

It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place.

81. If, on the other hand, a resolution plan has been approved by the Committee of Creditors, and has passed muster before the Adjudicating Authority, this determination can be challenged before the Appellate Authority under Section 61, and may further be challenged before the Supreme Court under Section 62, if there is a question of law arising out of such order, within the time specified in Section 62. Section 64 also makes it clear that the timelines that are to be adhered to by the NCLT and NCLAT are of great importance, and that reasons must be recorded by either the NCLT or NCLAT if the matter is not disposed of within the time limit

specified. Section 60(5), when it speaks of the NCLT having jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person, does not invest the NCLT with the jurisdiction to interfere at an applicant's behest at a stage before the quasi-judicial determination made by the Adjudicating Authority. The non-obstante clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."

54. The Learned Counsel for the First Respondent refers to the judgment of the Hon'ble Supreme Court dated 13.09.2021 in ***Ebix Singpore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. & Anr.*** (Civil Appeal No.3224 of 2020) wherein at paragraph 125, 143, 146, 147, 156, 159 and 205 it is observed as under:

125 "The absence of any specific provision in the IBC or the regulations referring to a CoC-approved Resolution Plan as a contract and the lack of clarity in the BLRC report regarding the nature of such a Resolution Plan, constrains us from arriving at the conclusion that CoC-approved Resolution Plans will be governed by the Contract Act and common law principles governing contracts, save and except for the specific prohibitions and deeming fictions under the IBC. Regulation 39(3) of CIRP regulations, as it stood before the IBBI (CIRP) (Fourth Amendment) Regulations 2020 and applicable to the three appellants before us, enabled a framework where a draft Resolution Plan would involve several rounds of negotiations and revisions between the Resolution Applicant and the CoC, before it is approved by the latter and submitted to the Adjudicating Authority ((3) The committee shall evaluate the

resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record its deliberations on the feasibility and viability of the resolution plans). However, this statutorily-enabled room for commercial negotiation is not enough to over-power the other elements of regulation that detract from the view that CoC-approved Resolution Plans are contracts. CoC-approved Resolution Plans, before the approval of the Adjudicating Authority under Section 31, are a function and product of the IBC's mechanisms. Their validity, nature, legal force and content is regulated by the procedure laid down under the IBC, and not the Contract Act. The voting by the CoC also occurs only after the RP has verified the contents of the Resolution

Plan and confirmed that it meets the conditions of the IBC and the regulations therein. The amended Regulation 39(3) ("39….(3)The committee shall- (a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix; (b) record its deliberations on the feasibility and viability of each resolution plan; and (c) vote on all such resolution plans simultaneously. (3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes. (3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved: Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting: Provided further that

where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code……") further regulates the conduct of the CoC on voting on Resolution Plans and has introduced the requirement of simultaneous voting. The IBBI's Discussion Paper issued on 27 August 2021 has invited comments on regulating the process on revisions that can be made to resolution plans submitted to the CoC (available at https://www.ibbi.gov.in/uploads/whatsnew/fbe59358a8c440d001f3b950be4a1c67.pdfaccessed on 5 September 2021). These developments bolster the conclusion that the mechanism prior to submission of a CoC approved resolution plan is subject to continuous procedural scrutiny by the IBC and cannot be considered as a simple

contractual negotiation between two parties. Section J below details how a common law remedies of withdrawal or modification on account of frustration or force majeure are not applicable to CoC approved Resolution Plans owing to the nature of the IBC. Similarly, the whole host of remedies such as liquidated and unliquidated damages, restitution, novation and frustration, unless specifically provided by the IBC, are not available to a successful Resolution Applicant whose Plan has been approved by the CoC and is awaiting the approval of the Adjudicating Authority. The Insolvency Law Committee Report of February 2020 has recommended the CIRP process to mandate Resolution Plans to provide for the apportionment of the profit or loss accrued by the Corporate Debtor during the CIRP (1 Pages 55-56, Report of the Insolvency Law Committee (February 2020), Ministry of Corporate Affairs, available

at https://www.mca.gov.in/inistry/pdf/ICLReport_05032020.pdf accessed on 20 August 2021). These reports are periodically commissioned by the parliament to review the functioning of the Code and suggest amendments. However, if the intention was to view a CoC approved Resolution Plan as a contract, the principles of unjust enrichment would have been sufficient to address the issue and an amendment may not be considered necessary. A Resolution Applicant, as a third party partaking in the insolvency regime, seeks to acquire the business of the Corporate Debtor without the entirety of its debts, statutory liabilities and avoiding certain transactions with third parties. These benefits are a function of the coercive mechanisms of the IBC which enable a third party to acquire the assets of a Corporate Debtor without its liabilities, for a negotiated amount of the debt that is owed by the

Corporate Debtor. Typically, resolution amounts envisage payment of a fraction of debt that is owed to the creditors and the business is acquired as a going concern with its employees. The Resolution Plan is drafted in a way that it is implementable in the future and brings about a quietus to the CIRP. Enabling Resolution Applicants to seek remedies that are not specified by the IBC, by seeking recourse to the Contract Act would be antithetical to the IBC's insolvency regime. The elements of contractual interpretation can be relied upon to construe the language of the terms of the Resolution Plan, in the event of a dispute, but not to re-fashion and distort the mechanism of the IBC altogether. This Court in Laxmi Pat Surana v. Union Bank of India ((2020) SCC On Line SC 1187) has held that the IBC is a self-contained Code. Thus, importing principles of any other law or a statute like the Contract Act into

the IBC regime would introduce unnecessary complexity into the working of the IBC and may lead to protracted litigation on considerations that are alien to the IBC. To give an example, the CoC can forfeit the PBG furnished by the successful Resolution Applicant under certain circumstances in terms of the RFRP and Resolution Plan including, inter alia, on the ground that the Resolution Applicant has failed to implement the resolution or has contributed to its failure. Regulation 36B (4A) of CIRP regulations provides for the furnishing of such performance security once the plan is approved by creditors. The Regulations do not provide that the performance security has to be a reasonable estimate of loss as is expected of penalty clauses under contract law, rather the explanation provides that the performance security should be of "such nature, value, duration and source, as may be

specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor". Further, in the event that the CoC enters into a settlement with the Corporate Debtor and withdraws from the CIRP under Section 12A, Regulation 30A provides for only payment of insolvency costs and not compensation or damages to Resolution Applicant for investing time and money in the process. The parties may resort to invoking principles of frustration or force majeure to evade implementation of the Resolution Plan leading to unnecessary litigation. This Court in Amtek Auto (supra), had curbed a similar attempt by a successful Resolution Applicant who had relied on a force majeure clause in its Resolution Plan to seek a direction compelling the CoC to negotiate a modification to its Resolution Plan. The Court held that there was no scope for

negotiations between the parties once the Resolution Plan has been approved by the CoC. Thus, contractual principles and common law remedies, which do not find a tether in the wording or the intent of the IBC, cannot be imported in the intervening period between the acceptance of the CoC and the approval by the Adjudicating Authority. Principles of contractual construction and interpretation may serve as interpretive aids, in the event of ambiguity over the terms of a Resolution Plan. However, remedies that are specific to the Contract Act cannot be applied, de hors the over-riding principles of the IBC.

143 The statutory framework governing the CIRP seeks to create a mechanism for resolving insolvency in an efficient, comprehensive and timely manner. The IBC provides a detailed linear process for undertaking CIRP of the Corporate Debtor to minimize any

delays, uncertainty in procedure and disputes. The roles and responsibilities of the important actors in the CIRP are clearly defined under the IBC and its regulations. In Innoventive Industries Ltd v. ICICI Bank (2018) 1 SCC 407) a three judge Bench of this Court observed that "one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process". Recently, in Gujarat Urja ((2021) SCC OnLine 194, para 71) (supra) a three judge Bench of this Court observed that a "delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner". The stipulation of

timelines and a detailed procedure under the IBC ensures a timely completion of CIRP and introduces transparency, certainty and predictability in the insolvency resolution process. The UNCITRAL Guide also states that the insolvency law of a jurisdiction should be transparent and predictable. It notes the value of such predictability in the following terms (Page 13, UNCITRAL Guide, supra 56):

"11. An insolvency law should be transparent and predictable. This will enable potential lenders and creditors to understand how insolvency proceedings operate and to assess the risk associated with their position as a creditor in the event of insolvency. This will promote stability in commercial relations and foster lending and investment at lower risk premiums. Transparency and predictability will also enable creditors to clarify priorities, prevent disputes by providing a backdrop against which

relative rights and risks can be assessed and help define the limits of any discretion. Unpredictable application of the insolvency law has the potential to undermine not only the confidence of all participants in insolvency proceedings, but also their willingness to make credit and other investment decisions prior to insolvency. As far as possible, an insolvency law should clearly indicate all provisions of other laws that may affect the conduct of the insolvency proceedings (e.g. labour law; commercial and contract law; tax law; laws affecting foreign exchange, netting and set-off and debt for equity swaps; and even family and matrimonial law).”

This Court should proceed with caution in introducing any element in the insolvency process that may lead to unpredictability, delay and complexity not contemplated by the legislature. With this birds’-eye view of the framework of insolvency through the CIRP, we proceed to answer the question of law raised in this judgement - whether

a Resolution Applicant is entitled to withdraw or modify its Resolution Plan, once it has been submitted by the Resolution Professional to the Adjudicating Authority and before it is approved by the latter under Section 31(1) of the IBC.

146 Judicial restraint must not only be exercised while adjudicating upon the constitutionality of the statute relating to economic policy but also in matters of interpretation of economic statutes, where the interpretative manoeuvres of the Court have an effect of transgressing into the law-making power of the legislature and disturbing the delicate balance of separation of powers between the legislature and the judiciary. Judicial restraint must be exercised in such cases as a matter of prudence, since the court neither has the necessary expertise nor the power to hold consultations with stakeholders or experts to decide the direction of economic policy. A court may be inept in laying down a detailed

procedure for exercise of the power of withdrawal or modification by a successful Resolution Applicant without impacting the other procedural steps and the timelines under the IBC which are sacrosanct. Thus, judicial restraint must be exercised while intervening in a law governing substantive outcomes through procedure, such as the IBC. In this case, if Resolution Applicants are permitted to seek modifications after subsequent negotiations or a withdrawal after a submission of a Resolution Plan to the Adjudicating Authority as a matter of law, it would dictate the commercial wisdom and bargaining strategies of all prospective Resolution Applicants who are seeking to participate in the process and the successful Resolution Applicants who may wish to negotiate a better deal, owing to myriad factors that are peculiar to their own case. The broader legitimacy of this course of action can be decided by the legislature alone, since any other course of action would result in a flurry of litigation

which would cause the delay that the IBC seeks to disavow.

147 The IBC is silent on whether a successful Resolution Applicant can withdraw its Resolution Plan. However, the statutory framework laid down under the IBC and the CIRP Regulations provide a step-by-step procedure which is to be followed from the initiation of CIRP to the approval by the Adjudicating Authority. Regulation 40A describes a model-timeline for the CIRP that accounts for every eventuality that may arise between the commencement of the CIRP and approval of the Resolution Plan by the Adjudicating Authority, including the different stages for pressing a withdrawal of the CIRP under Section 12A. Even a modification to the RFRP is envisaged by the CIRP Rules and is subject to a timeline. The absence of any exit routes being stipulated under the statute for a successful Resolution Applicant is indicative of the IBC's proscription of any attempts at

withdrawal at its behest. The rule of casus omissus is an established rule of interpretation, which provides that an omission in a statute cannot be supplied by judicial construction. Justice GP Singh in his authoritative treatise, Principles of Statutory Interpretation (7GP Singh, Principles of Statutory Interpretation (1st edn., Lexis Nexis 2015)), defines the rule of casus omissus as:

> *"It is an application of the same principle that a matter which should have been, but has not been provided for in a statute cannot be supplied by courts, as to do so will be legislation and not construction. But there is no presumption that a casus omissus exists and language permitting the court should avoid creating a casus omissus where there is none."*
>
> *(emphasis supplied)*

The treatise further discusses that a departure from this rule is only allowed in cases where words have been

accidently omitted or the omission has an effect of making any part of the statute meaningless. Further, only such words can be supplied to the statute which would have certainly been inserted by the Parliament, had the omission come to its notice. The relevant paragraph is extracted below:

"As already noticed it is not allowable to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words". A departure from the rule of literal construction may be legitimate so as to avoid any part of the statute becoming meaningless. Words may also be read to give effect to the intention of the Legislature which is apparent from the Act read as a whole. Application of the mischief rule or purposive construction

may also enable reading of words by implication when there is no doubt about the purpose which the Parliament intended to achieve. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these or similar words would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law."

In the wake of the COVID-19 pandemic, several Resolution Plans remained pending before Adjudicating Authorities due to the lockdown and significant barriers to securing a hearing. An Ordinance was swiftly promulgated on 5 June 2020 which imposed a temporary suspension of initiation of CIRP under Sections 7, 9 and 10 of the IBC for defaults arising for six months from 25 March 2020 (extendable by one year). This was followed by an amendment through the IBC (Second Amendment) Act

2020 on 23 September 2020 which provided for a carve-out for the purpose of defaults arising during the suspended period. The delays on account of the lockdown were also mitigated by the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations 2020, which inserted Regulation 40C on 20 April 2020, with effect from 29 March 2020, and excluded such delays for the purposes of adherence to the otherwise strict timeline. Recently, the IBC (Amendment) Ordinance 2021 was promulgated with effect from 04 April 2021 providing certain directions to preserve businesses of MSMEs and a fast-track insolvency process. There has been a clamor on behalf of successful Resolution Applicants who no longer wish to abide by the terms of their submitted Resolution Plans that are pending approval under Section 31, on account of the economic slowdown that impacted every business in the country. However,

no legislative relief for enabling withdrawals or renegotiations has been provided, in the last eighteen months. In the absence of any provision under the IBC allowing for withdrawal of the Resolution Plan by a successful Resolution Applicant, vesting the Resolution Applicant with such a relief through a process of judicial interpretation would be impermissible. Such a judicial exercise would bring in the evils which the IBC sought to obviate through the back-door.

156 Regulation 40A envisages a model-time line for the CIRP. Any deviation from this timeline needs to be specifically explained by the RP in Clause 10 of Form H. Regulation 40B imposes a time-limit on the RP for filing the requisite forms at different stages of the CIRP, including forms seeking extensions on account of delays at any stage. The failure to fill these forms within the stipulated deadline results in disciplinary action against the RP by the IBBI. Further, as discussed in

Section I of the judgement, various mandatory timelines have been imposed for undertaking specific actions under the CIRP. If the legislature intended to allow withdrawals or subsequent negotiations by successful Resolution Applicants, it would have prescribed specific timelines for the exercise of such an option. The recognition of a power of withdrawal or modification after submission of a CoC-approved Resolution Plan, by judicial interpretation, will have the effect of disturbing the statutory timelines and delaying the CIRP, leading to a depletion in the value of the assets of a Corporate Debtor in the event of a potential liquidation. Hence, it is best left to the wisdom of the legislature, based on the experiences gained from the working of the enactment, to decide whether the option of modification or withdrawal at the behest of the Resolution Applicant should be permitted after submission to the Adjudicating Authority; if so, the conditions and the safeguards subject in

which it can be allowed and the statutory procedure to be adopted for its exercise.

159 After the amendment to Section 12 in 2019 which mandate a 330 days outer-limit for conclusion of the CIRP (which can be breached only under exceptional circumstances as held in Essar Steel (supra)), it would be antithetical to the purpose of the IBC to allow the Adjudicating Authority to use its plenary powers under Section 60(5)(c) to potentially extend these timelines to enable the CoC to either issue a fresh RFRP if the Resolution Plan is withdrawn by a successful Resolution Applicant or direct further negotiations with the Resolution Applicant who is seeking a modification of the plan, whose failure could result in withdrawal as well. The likely consequence of a withdrawal by a successful Resolution Applicant after going through the stages of the CIRP for nearly 180 days (provided all statutory timelines have been strictly followed) would inevitably be a delayed liquidation

after the value of the assets has further depreciated. In the event of intervening delays on account of litigation or otherwise, the delay would be even more severe. If a CoC, could be compelled by the Adjudicating Authority to negotiate with the successful Resolution Applicant, it would have to resign itself to a commercial bargain at a much lower value. If Parliament intended to permit such withdrawals/ modifications sought by successful Resolution Applicants as being beneficial to the economic policy, which it has sought to pursue while enacting the IBC, it would have prescribed timelines for setting the clock-back or directing immediate liquidation if the withdrawals occur after a certain period. For instance, under Regulation 36B (5) any modification to the RFRP or the evaluation matrix is deemed as a fresh issue of the RFRP and the timeline for submission of Resolution Plan starts afresh. Parliament has not legislated to provide for the eventuality argued by the appellants.

205 It would also be sobering for us to recognize that whilst this Court has declared the position in law to not enable a withdrawal or modification to a successful Resolution Applicant after its submission to the Adjudicating Authority, long delays in approving the Resolution Plan by the Adjudicating Authority affect the subsequent implementation of the plan. These delays, if systemic and frequent, will have an undeniable impact on the commercial assessment that the parties undertake during the course of the negotiation.

xxx xxx xxx

....The NCLT and the NCLAT should endeavor, on a best effort basis, to strictly adhere to the timelines stipulated under the IBC and clear pending resolution plans forthwith. Judicial delay was one of the major reasons for the failure of the insolvency regime that was in effect prior to the IBC. We cannot let the present insolvency regime meet the same fate."

55. The Learned Counsel for the First Respondent refers to the judgement of this Tribunal dated 28.06.2021 in ***Comp App (AT)(INS) No.233 and 333 of 2021 reported in MANU/NL/0240/2021 Between Dwarkadhish Sakhar Karkhana Ltd and Ors Vs Pankaj Joshi and Ors*** wherein (for Issue No. iv) whether to allow DSKL after due date to file the EOI is a commercial decision? at paragraph 28 to 41 it is observed as under:-

> *"28. As per sub-section 30 of the IBC, when the CoC approved a Resolution Plan by a vote of not less than 66% of voting share of the Financial Creditors after considering its feasibility and viability, such decision of CoC is a commercial decision. Thus, decision taken by the CoC in the 0th CoC meeting to allow DSKL after due date to file EOI is not a commercial decision.*
>
> *29. Now we have considered whether the CoC can review its own decision at any point of time in contravention of Regulation 36-A)6) of the Regulations 2016.*
>
> *30. Ld. Se. Counsel for DSKL submitted that Regulation 36-A cannot override the mandate of Code i.e. maximization of value and commercial*

wisdom of CoC and for this contention, cited the Judgement of Hon'ble Supreme Court in the Case of Brilliant alloys Vs S. Rajagopal in which Hon'ble Supreme Court while dealing with Regulation 30-A has explicitly held that seemingly mandatory language of Regulation has to be read along with provision of the Code. Thus, Hon'ble Supreme Court held that Regulation 30A would be directory. Additionally, Regulation 36 is not mandatory in nature. The word 'shall' has to be read as 'may' since no consequence of non-compliance are provided.

31. We have considered the argument in the case of Brilliant Alloys, Corporate Debtor as well as Financial Creditor and Operational Creditor were agreed to withdrawal of the Application. However, in view of Regulation 30A, withdrawal was not permitted. In that context, Hon'ble Supreme Court held that this

Regulation has to be read along with the main provision of Section 12A which contains no such stipulation. Therefore, it held that this stipulation can only be construed as directory depending on the facts of each case. It is not ruled, that Regulation 36-A is not in consonance with any of the provision of the IBC or Regulation 36-A is not mandatory in nature. Thus, this Judgement also does not support the case of DSKL. The second limb of argument, that the word 'shall' has to be read as 'may' since no consequence of noncompliance are provided, is not acceptable as Regulation 36-A (6) itself provides that EOI received after the time specified shall be rejected.

32. Learned Senior Counsel for DSKL and Ld. Counsel for Mr. Pankaj Joshi heavily placed reliance on Para 156 of the Judgement of Hon'ble Supreme Court in the case of Kalpraj (supra) which reads as under:-

"156. No doubt, it is sought to be urgent, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form ''G', in the event he found, that the proposals received by it prior to the date specified in last Form ''G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 8436%. The only creditor voted in favour of KIAL is

Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of 'commercial wisdom', NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%."

33. In the case of Kalpraj (Supra), Hon'ble Supreme Court examining an appeal against the order u/s 61(3) of IBC, whereby this Appellate Tribunal allowed the Appeal on the ground of material irregularity where we are examining this appeal u/s 61(1) of IBC. The scope of Appeal u/s 61(3) is limited to the grounds as specified in sub-section 3. However, there is no such limit for the Appeal u/s 61(1) of IBC. In the case of Kalpraj, Hon'ble Supreme Court held that all the actions of RP, including acceptance of Resolution Plan of Kalpraj after due date, albeit before

the expiry of time line specified by the IBC for completion of the process, have been consciously approved by the COC. In the present case, as we have already discussed, in the 7th CoC meeting with the consultation of Mr. Pankaj Joshi, the request for submitting EOI after due date was rejected. After two months, when Mr. Pankaj Joshi appointed RP, he in contravention of Regulation 36A in his own accord overturned the decision of 07th COC and permitted DSKL to submit EOI. However, DSKL has not requested the COC to re-visit their earlier decision. Mr. Pankaj Joshi by suppressing material facts and misguiding the CoC procured the desired decision and inducted DSKL in the list of prospective Resolution applicant. In the case of Kalpraj, RP's actions are bonafide, impartial and fair and, therefore, the CoC has approved all his actions including the acceptance of Resolution Plans of Kalpraj after due date. Thus, the facts of the present case

are quite distinguishable from the case of Kalpraj. Therefore, we are of the considered view that the ratio of the judgement of Kalpraj's case does nto support the case of DSKL.

34. With the aforesaid discussion we are of the considered view that, to allow DSKL after due date at the instance of Pankaj Joshi to file EOI is not a commercial decision.

35. The COC, while reviewing its earlier decision, has not assigned any good reason for revisiting their earlier decision. It seems that the COC have taken the decision in the influence and misguidance of Pankaj Joshi.

36. The 07th COC meeting was convened on 03.04.2020 and after two months, the 09th CoC meeting was convened on 13.06.2020 and when the CoC reviewed its earlier Resolution these same challenges were there too, there is no change in circumstances which compel them to review/revisit their earlier decision. They have not assigned any

good reason for revisiting their earlier decision. The CoC in the shelter of maximisation of value of asset, cannot be permitted to take any decision at any point of time in the name of commercial wisdom. In the present case the Resolution Plan of DSKL is yet to be examined with the comparison of other PRAs. Therefore, at this stage, how one can say that the decision taken in the favour of DSKL was for maximization of value of asset.

37. Now, we have considered whether the decision taken by the CoC in 09th CoC meeting was an independent decision or was it procured by Pankaj Joshi by suppressing material facts.

38. At the time of 9th CoC meeting, Pankaj Joshi has suppressed the fact that he was served with the Application of DSKL and that they are going to file application before the Adjudicating Authority against the decision of 7th CoC . If such fact was disclosed by Pankaj Joshi at the time of convening 9th CoC then they might be

precluded from revisitng their earlier decision on the ground that the Adjudicating Authority is seized of the matter. On the other hand, being RP, he should have advised the CoC to wait till the decision of the Adjudicating Authority.

39. Pankaj Joshi has suppressed the fact that he himself has overturned the decision of 7th CoC meeting and permitted DSKL to submit its EOI. Pankaj Joshi also misguided the CoC that he is not required to take express permission from the CoC to issue a request for Resolution Plan to an eligible Prospective Resolution applicant. This is not the position in this case the request for submission of EOI after due date was rejected by the CoC then there is no question to issue a request for resolution plan to DSKL.

40. Pankaj Joshi in 09th CoC meeting canvassed the case of DSKL and when one of CoC Members proposed to publish fresh Form 'G' then he suggested that

this is impracticable and delayed the CIRP.

41. With the above discussion, we are of the view that the decision taken in 09th Meeting of the CoC was not transparent, fair and was under the influence of Pankaj Joshi."

56. The Learned Counsel for the First Respondent cites the judgement of this Tribunal dated 20.12.2019 in **Amit Gupta V. Yogesh Gupta(Resolution Professional) in Comp App (AT)(Ins) No.903/2019** wherein at paragraph 16 to 20 it is observed as under:-

"16.Under Section 25(2)(h), the Resolution Professional is required to invite prospective Resolution Applicants who fulfil such criteria as may be laid down by him with the approval of Committee of Creditors having regard to the complexity and scale of operations of the business of the Corporate Debtor and such other conditions as may be specified by the Board, to submit a Resolution Plan or plans. This was done by the Resolution Professional as can be seen from Annexure A-3. The invitation was

issued with last date and time fixed as 12 o'clock noon of 18th August, 2018. Regulation 36-A of "The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016" (Regulation-in short) deals with invitation for expression of interest. Clause -6 of Regulation 36-A provides that "The expression of interest received after the time specified in the invitation under Clause (b) of the sub-regulation (3) shall be rejected." Although the Resolution Professional in his Affidavit before Adjudicating Authority mentioned the time of receipt of e-mail dated 18th August, 2018 (Annexure A-9) from the Appellant at 11:50:58 hours, the document filed by the Appellant himself shows that it was received/sent after 12 o'clock. In terms of Clause -6 of Regulation 36-A, even if such e-mail was to be categorized as an expression of interest, it would require to be rejected.

Apart from this, if Sub-Clause -7 of Regulation 36-A is seen, it requires that the expression of interest shall be unconditional and should be accompanied by undertakings, records, information as specified in Sub-Clause 'a' to 'g'. One of the requirements for the prospective Resolution Applicant is giving undertaking that it meets the criteria specified by the Committee under Clause 'h' Sub-Section (2) of Section 25. We have already reproduced the e-mail dated 18th August, 2018. It can hardly be said to be complying with any of the requirements as provided under IBC. No doubt the RP sent the Appellant e-mail (Annexure A-10) that the CoC had discussed and found the e-mail not to be in conformity with the requirements asked for and also the provisions of IBC. We have gone through the expression of interest (Annexure A-3), it is apparent that the requirements had not been complied

with. Such e-mail like (Annexure A-9) cannot at all qualify the Appellant as prospective Resolution Applicant, even if it was to be said that the Corporate Debtor is MSME.

17. At the time of arguments, the learned counsel for Respondent pointed out that the Appellant had himself moved Section 10 Application so as to invoke provisions of IBC for the Corporate Debtor and neither at that time nor at any time including when e-mail dated 18th August, 2018 was sent at any point of time, the claim was made that the Corporate Debtor is an MSME. It appears from record that such claim was made directly before the Adjudicating Authority by filing CA 259/2018. This too after more than 1 ½ month after the last correspondence from Respondent which was Annexure A-12 dated 31st August, 2018.

18. Under Sub-Clause 'c' of Clause – 7 of Regulation 36-A, there is provision

that the prospective Resolution Applicant should give undertaking that it does not suffer from any ineligibility under Secton 29-A to the extent applicable. It is apparent from record that the Appellant gave no such undertaking and clearly the provisions of IBC were not complied and moving the Adjudicating authority after a delay would not help. When the Resolution Professional receives the expression of interest, (if there is no dispute that the Corporate Debtor is MSME, it would be different, but otherwise), he is not expected to sit down and decide applying facts to provisions of Section – 7 of MSME Act and applying them to the Corporate Debtor on the basis of various parameters as provided to see whether or not the Corporate Debtor will fit into the requirement of one or the other class of enterprise or not under MSME. There is no reason why, looking to the nature of proceedings

under the BC the prospective Resolution applicant who claims eligibility on the basis that the Corporate Debtor is MSME, should not provide necessary Memorandum Certificate. The Resolution Professional cannot be going into investigations and enquiries and findings whether or not a Corporate Debtor falls under the classifications of MSME and Adjudicating Authority is also not expected to make such investigations, enquiries on such evidence or give findings on such issues, which may not be accurate without assistance of an opposite side or Government Counsel bringing forth which or the other Notification etc. applies. Under Sections of MSME Act, even if getting Memorandum Certificated for a given enterprise may be optional, if advantage is to be taken of MSME Act, the Applicant must take pains to get the Memorandum Certificate to seek benefits under IBC.

19. The Learned Counsel for the Appellant relied on the Judgement in the case of ***"Saravana Global Holdings Ltd & Anr Vs.Bafna Pharmaceuticals Ltd & Ors."*** *of this Tribunal in Company Appeal (AT) (Ins) No.203 of 2019 dated 4th July, 2019 to submit that in that matter benefit was given to the Corporate Debtor when it was claimed that it was MSME. If para – 8 and para -19 of that Judgement are seen, the Resolution Professional in that matter had confirmed that the Resolution Applicant therein was an MSME and was eligible under Section 29-A of IBC. That being not the case in present matter and there being disputes of facts being raised, the Appellant cannot take benefit of the said Judgement.*

20.When this Appeal was filed, and the appellant claimed that the Corporate Debtor was MSME by Interim Order dated 3rd September, 2019. This Tribunal had directed that during the

pendency of the Appeal, the Order will not come in the way of Appellant submitting a Resolution Plan and that uninfluenced by the Order passed by the Adjudicating Authority and in accordance with Sub-Section 4 of Section 30, Committee of Creditors may consider the same which shall be subject to the decision of this appeal. As we find that the Impugned Order where it finds that the Appellant has failed to show that it is MSME, for reasons recorded above although it is stated that the Appellant has submitted a proposed Resolution Plan, copy of which has been filed which is stated to have been sent only on 14.11.2019 (as endorsed on the copy), we do not propose to go into such plan which again has been put up only after 2 months of the September Order. The Counsel for Respondent has further submitted that the statutory period has also expired and COC has already moved the Adjudicating Authority for

passing orders of liquidation in view of pendency of this Appeal."

57. The Learned Counsel for the First Respondent points out the Judgement of this Tribunal dated 29.05.2020 in ***First Global Finance Pvt Ltd V. IVRCL Ltd and others (vide Comp App (AT)(INS) No.918-919 of 2019 dated 29.05.2020)*** wherein at paragraph 23 and 24 it is observed and held as under:-

"23. State Bank of India has submitted on behalf of the Committee of Creditors through its affidavit dated 04.12.2019 that the Resolution Plan submitted by the Reconstituted Consortium was not commercially acceptable to the CoC and in spite of repeated request by the CoC to the "Reconstituted Consortium" to improve the commercial and technical aspect of the Resolution Plan, Reconstituted Consortium did not do so. The decision of the COC is well informed and well thought of the business and commercial decision taken considering all the options available to it in the interest of all the stakeholders and also keeping in view the spirit of the I&B Code, 2016. He has also confirmed that

the majority decision of the CoC has been taken on prudent business and commercial proposition and accordingly, the Adjudicating Authority has passed the requisite order. He has cited Hon'ble Supreme Court Judgement in the case of K. Sashidhar Vs. Indian Overseas Bank and Ors. reported in MANU/SC/0189/2019 and Committee of Creditors of Essar Steel India Ltd Vs. Satish Kumar Gupta & Ors. Civil Appeal No.8766-67/2019, to support the commercial wisdom of CoC. Finally, he has also submitted that the present appeal is misconceived in law and facts and the Application needs to be dismissed.

24.We have gone through the submission of the Appellant, SBI and Respondent it is observed that the Appellant has strictly not complied with the terms and conditions of Expression of Interest (EOI) dated 14.08.2018 and non-submission of EMD along with submission of Resolution Plan dated

4.10.2018 as required by the Bid Process Memorandum. They have also deviated on other parameters. And hence CoC after deliberation has rejected the plan and accordingly the Resolution Professional has communicated to the Resolution Applicant. Since, liquidation proceedings as a going concern is already on from July 2019 and there is always scope for Resolution Applicants to opt for Arrangements under Section 230-232 of the Companies Act, 2013, if they are eligible in accordance with provisions of Insolvency and Bankruptcy Code, 2016 along with relevant Rules. Hence there is no merit in the case to consider the relief of setting aside the impugned order of NCLT, Hyderabad Bench. We hphold the order of NCLT Hyderabad Bench and with the passing of this order, the order dated 06.03.2013 stands vacated. No order as to costs.

Pleas of Second Respondent's (Resolution Professional) (In Comp App (AT) (CH) (Ins.) No.166 of 2021) and Appellant (In Comp App (AT) (CH) (Ins.) No.174 of 2021)

58. The Learned Counsel for the Second Respondent/ Resolution Professional submits that the Appellant/ Committee of Creditors of Meenakshi Energy Ltd. Through State Bank of India and the Second Respondent/ Resolution Professional had only considered the "Vedanta Resolution Plan" in accordance with the Code, with a view to achieve value maximization under the Code and further that no 'determination' vis-à-vis its approval was taken in regard to the same.

59. The Learned Counsel for the Second Respondent contends that the right to challenge 'is available to a Resolution Applicant' only on the approval of a 'Resolution Plan' by the 'Adjudicating Authority' and not at any stage earlier. Also it is projected on the side of the Second Respondent that there is no vested right to a 'Resolution Applicant' to have its 'Resolution Plan' be considered by the Committee of Creditors. Therefore, no challenge can be made before the 'Adjudicating Authority' by a 'Resolution Applicants' till a 'Resolution Plan' is approved by the said Authority.

60. Expatiating his submission, the Learned Counsel for the Second Respondent proceeds to point out that the decision of the Appellant and the Second Respondent to extend the timeframe beyond 08.03.2021 was at all times be subject to the outcome of 33-390 days 'Extension Application' and the same was recorded by the Appellant/ Committee of Creditors of Meenakshi Energy Ltd. in the Minutes of 20th Committee of Creditor's meeting that took place on 20.04.2021 and all other correspondence exchanged with the

Prospective Resolution Applicants (including the first Respondent). Therefore, it is projected on the side of the Second Respondent that at no stage of the 'CIRP' the Appellant and the Second Respondent attempted to overstep their authority under the Code, as wrongly observed in the impugned order.

61. The Learned Counsel for the Second Respondent comes out with an argument that the 'Adjudicating Authority' had committed an error in deciding the impugned Application prior to the adjudication of the 33-390 days Extension Application and the approval of the Resolution Plan by the said Authority, as the same was premature and therefore, not maintainable. In this connection, the Learned Counsel for the Second Respondent submits that the I&B Code, 2016 does not prohibit the 'Committee of Creditors' from excepting a 'Resolution Plan' from a Prospective Resolution Applicant who had submitted the 'Expression of Interest' within the time prescribed by the 'Committee of Creditors'.

62. According to the Learned Counsel for the Second Respondent, the Adjudicating Authority had not appreciated the 'Fact on Record' that Vedanta Ltd. was taking part as a 'Prospective Resolution Applicant' in the Corporate Insolvency Resolution Process of the Corporate Debtor from the year 2020. That apart, Vedanta Ltd. had submitted its 'Expression of Interest' on 27.02.2020 and was also included in the final list of 'Prospective Resolution Applicant' issued by the Respondent on 08.03.2020 and later on 03.02.2021 as per 'Regulation 36A(12) r/w Regulation 36B(7) of the CIRP Regulations'. In fact, Vedanta Ltd. had an access to the 'Data Room' together with the other shortlisted 'Prospective Resolution Applicants' forming part of the final list of the 'Prospective Resolution Applicants'. As such, Vedanta Ltd. was not a 'New

Resolution Applicant' in the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor'.

63. The Learned Counsel for the Second Respondent emphatically contends that there is no provision in the I&B Code, 2016 or the Regulations which mentions the last date for submission of a 'Resolution Plan' by the shortlisted persons cannot be extended and in reality, the same falls within the purview of the 'commercial wisdom of the Appellant'.

64. The Learned Counsel for the Second Respondent submits that the First Respondent had strongly objected to the consideration of the Vedanta 'Resolution Plan' through email dated 28.04.2021 and letter dated 30.04.2021, based on the reason that it was beyond the last date for submission and that the first Respondent sought further time till 05.05.2021 to submit its 'Resolution Plan'. Again, the 'First Respondent' had prayed for more time through email dated 10.05.2021, sought further time till 24.05.2021 to submits its 'Resolution Plan'.

65. Because of the fact that the Learned Counsel for the Second Respondent points out that on the instructions of the Appellant, since the Second Respondent had extended the last date for submission of 'Resolution Plan' till 12.05.2021, the first Respondent submitted the 'Resolution Plan' of May 12.2021. Subsequently, on 02.06.2021, the First Respondent again sought time to submit a revised 'Resolution Plan' simultaneously with the filing of the 'Impugned Application', and even after filing of the 'Impugned Application', the First Respondent continued to pray for an additional time and at last submitted its final plan on 10.06.2021. Also, that the First Respondent took part in the

'Corporate Insolvency Resolution Process' without any protest, until even after filing of the 'Impugned Application'.

66. It is the clear cut stand of the Second Respondent that the First Respondent having availed the benefit of the extension of time given by the Second Respondent and the Appellant, it is not open to the First Respondent to challenge that very extension.

67. The prime contention advanced on behalf of the Second Respondent is that in the absence of an order from the 'Adjudicating Authority' on the expiry of the 330 days of 'Corporate Insolvency Resolution Process', the Appellant and the Second Respondent were left with no option but to continue with the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor' in the best interest of the 'Corporate Debtor', its employees and other stake holders, bearing in mind the object and spirit of the Code.

68. The Learned Counsel for the Second Respondent contends that the impugned order of the 'Adjudicating Authority' begs the question that in the event of lapse of 330 days' period and in the absence of an order from the 'Adjudicating Authority', pertaining to an extension, whether the 'Corporate Insolvency Resolution Process' can be stopped until such an order is passed.

69. The Learned Counsel for the Second Respondent (Resolution Professional)/ Appellant submits that the 'Adjudicating Authority' in the impugned order dated 24.06.2021 in I.A. 244 of 2021 in CP(IB) No.184/HDB/07/2019 at paragraph 16 had wrongly observed that:

> *"…we are of the view that CoC and Resolution Professional have taken the process into their own hands even*

though they cannot extend timelines beyond 330 days unilaterally without the approval of the Adjudicating Authority. This action of Resolution Professional is contrary to the letter and spirit of the Code and its Regulations."

and finally came to the conclusion that the 'CoC' has no business to extend RFRP beyond 330 days without the specific approval of 'Adjudicating Authority' etc.

Assessment

70. Before the 'Adjudicating Authority', because of the fault committed by the Corporate Debtor (M/s. Meenakshi Energy Ltd.) in regard to the payment of the financial debt, a petition/ application (under Section 7 of the I&B Code) was filed by the Financial Creditor/ State Bank of India, and the said petition was admitted on 07.11.2019 by the 'Adjudicating Authority' in CP (IB) No.184/HDB/7/2017 and that the Second Respondent/ Ravi Shankar Devarakonda was appointed as an 'Interim Resolution Professional' of the 'Corporate Debtor'. Later, the Resolution Professional's appointment was affirmed in the first meeting of the 'Committee of Creditors' and later, Mr. Ravi Shankar Devarakonda was appointed as 'Resolution Professional' on 05.12.2019.

71. According to the First Respondent/ Applicant the Second Respondent/ Resolution Professional initially, published Form G, on 21.01.2020, based on which, the First Respondent/ Applicant submitted its 'Expression of Interest' on 21.02.2020. Later, the 'Resolution Professional' prepared a final list of

'Prospective Resolution Applicants' on 23.03.2020, but because of the 'Covid-19 Pandemic' and on account of the imposition of the nationwide lockdown on 23.03.2020, the Second Respondent/Resolution Professional lost significant time and was unable to consider the proposal made by the 'Prospective Resolution Applicants'.

72. In fact, it comes to be known that an I.A. 582/2020 filed by 'Resolution Professional'/ Second Respondent the 'Adjudicating Authority' granted an extension of time as per order dated 25.08.2020. Because of the fact that CIRP period of 270 days came to an end on 10.11.2020. I.A. No.1079 of 2020 was filed by the 'Resolution Professional' praying for an extension of the 'CIRP' period. In the interregnum, the Resolution Professional had circulated the request for 'Resolution Plan' dated 29.10.2020 and in fact the 'Adjudicating Authority', had extended the 'CIRP' period by another 60 days as per order dated 08.01.2021 and directed the Respondent/ Resolution Professional to complete the process within 330 days, failing which mandatory 'Liquidation Proceedings' would commence.

73. Later, I.A. No.120 of 2021 was filed by the Second Respondent/ 'Resolution Professional' before the 'Adjudicating Authority' praying for extension of 60 days that was granted as per order dated 08.01.2021. In view of the fact, that CIRP must be completed within 330 days as noted in the order of the 'Adjudicating Authority' dated 08.01.2021, failing which the liquidation proceeding would be initiated the Second Respondent / 'Resolution Professional' filed an Appeal before 'National Company Law Appellate Tribunal', Chennai Bench in Comp App (AT) (CH) (INS) No. 15 of 2021 and that the 'Appellate Tribunal' through an order dated 25.03.2021 directed the

'Adjudicating Authority' to take up the I.A. No.120 of 2021 and dispose of the same by passing a *'reasoned order'* and dismissed the Appeal 'as withdrawn'.

74. It is brought to the notice of this Tribunal that upon the extension of 'CIRP' period, as per order dated 08.01.2021 the Second Respondent/ Resolution Professional had re-issued the Form G on 25.01.2021, pursuant to the original Form G, which was earlier published on 21.01.2020.

75. In terms of the Invitation for 'Expression of Interest', a final list of 'Prospective Resolution Applicants' was drawn on 08.02.2021 and they were to furnish their respective Resolution Plan on or before 08.03.2021. Also that, as per the 'Form G' (Re-issued) the 'Successful Resolution Plan' was required to be submitted before the 'Adjudicating Authority' on 09.03.2021 for its approval.

76. The First Respondent/ Applicant submitted its 'Resolution Plan' date 06.03.2021 to the 'Resolution Professional' and the 'Committee of Creditors' before the ending of the 'CIRP' period of i.e. 08.03.2021. Indeed, the Applicant/ First Respondent made an 'Earnest Money Deposit of Rs.1 crores as per clause 14A.1.(d) of the Request for 'Resolution Plan' dated 29.10.2020 and after the submission of the 'Resolution Plan' before the Resolution Professional, the same was presented before the 'Committee of Creditors' in a sealed envelope in the 18th Meeting of the 'Committee of Creditors' that took place on 10.03.2021. Furthermore, in the CoC meeting that took place on 10.03.2021, the 'Resolution Plan' furnished by the First Respondent/ Applicant was presented and lengthly discussed.

77. Apart from the above, the Second Respondent/ Resolution Professional had requested the First Respondent/ Applicant to furnish an excel model version on financial projections pertaining to the 'Resolution Plan' through

email dated 12.03.2021 and on through email dated 17.03.2021, the Second Respondent/ Resolution Professional had insisted that 'CIRP' is a 'time bound' process and requested the First Respondent/ Applicant to furnish the clarifications by 19.03.2021 and the clarifications were submitted through email 25.03.2021.

78. It is the version of the First Respondent/Prospective Resolution Applicant that the 'Resolution Professional' sought the response of the Applicant to the certain comments made by the Committee of Creditors pertaining to the 'Resolution Plan' and requested the First Respondent/Applicant to respond early, as the same was to be discussed in the ensuing Committee of Creditor's Meeting to be held on 05.04.2021. However, the First Respondent/Applicant had prayed for time till 08.04.2021 and submitted his response through email dated 09.04.2021 alongwith other relevant documents.

79. The First Respondent/Applicant had finally submitted a 'Revised Offer' tailored to meet the requirements of the Committee of Creditors, which was informed to the Resolution Professional through email on 15.04.2021. Further, the Resolution Professional had addressed an email to the First Respondent/Applicant informing them that the deadline to furnish the 'Resolution Plan' by the 'Prospective Resolution Applicants' was extended unilaterally, as per the decision of the 'Committee of Creditors' and further informed that the 'Committee of Creditors' had received an additional "Plan" after the deadline for submission of the 'Resolution Plan' and hence decided to extend the deadline for all 'Prospective Resolution Applicants' included in the final list of the 'Prospective Resolutions Applicants' dated 21.02.2021 (one time opportunity to submit 'Improvised Plan'). In fact, the Resolution Professional

through its email dated 21.04.2021 had informed that the consideration of the 'Additional Resolution Plan' would be subject to the decision of the 'Adjudicating Authority'.

80. It is averred by the First Respondent/Applicant in IA 244/2021 in CP (IB)No.184/HDB/2019 that being dissatisfied with the email of the 'Resolution Professional' dated 21.04.2021, it, on 30.04.2021 had addressed a Letter/email to the 'Resolution Professional' strongly objecting to the consideration of the 'Additional Resolution Plan', for which no reply was received from the 'Resolution Professional'. Further, the deadline to submit the final 'Resolution Plan' was again extended till 05.05.2021. Also that, no extension of CIRP period beyond 08.03.2021 was granted, although an application was pending determination before the 'Adjudicating Authority'.

81. The stand of the First Respondent/Applicant is that IA No.1079/2020 and 120/2021 and the 'Appeal' filed before the NCLT, Chennai, are to the limited extent of an extension of the CIRP period after 330 days. In fact, as on date, no extension was granted by the Adjudicating Authority, because of the fact, IA No.120/2021 was not heard.

82. The plea of the First Respondent/Applicant in IA No.244/2021 in CP(IB)No.184/HDB/2019 is that the said I.A. was filed because of the fact that 'Resolution Plan' of the First Respondent/Applicant was disclosed to the 'Committee of Creditors' and the contents of the same were made known to all the creditors and since the confidential details of the First Respondent/Applicant plan were disclosed, the 'Resolution Professional' cannot consider the 'Resolution Plan' filed by any proposed 'Resolution Applicant' subsequently at a later stage.

83. The pivotal stand of the First Respondent/Applicant is that the action of the 'Resolution Professional' in considering the 'Additional Plan' which was submitted after deadline, and after the 'Resolution Plan' made by the First Respondent/Applicant was disclosed and neither the 'Resolution Professional' nor the 'Committee of Creditors' do have the powers to unilaterally conduct 'CIRP' against the spirit of 'I&B' Code, in the guise of 'Commercial Wisdom'.

84. It is useful for this Tribunal to make a pertinent mention that in IA No. 244/2021 in CP No. (IB)184/HDB/7/2019 (filed by the First Respondent/Prospective Resolution Applicant (Consortium of Prudent ARC Ltd and M/s Vizag Minerals & Logistics Pvt Ltd)) ((under Section 60(5) of the I&B Code read with Regulation 36-A of IBBI Regulations 2016 read with Rule 11 of NCLT Rules, 2016) before the 'Adjudicating Authority', the undermentioned reliefs were sought for:-

> *a) To direct the Respondent/Resolution Professional to not receive/consider any Resolution Plan submitted by any prospective Resolution Applicants after the deadline specified in Form G dated 25.01.2021; and*
>
> *b) To direct the Respondent/Resolution Professional to place only the plans submitted before the due date before the Committee of Creditors for its consideration;*

85. Before the 'Adjudicating Authority' in the 'Reply' filed on behalf of Members belonging to the Committee of Creditors of the Corporate Debtor through 'State Bank of India' at paragraph 4 (a) and 4(c) it is averred as under:-

> *"a) The Applicant Consortium lacks the locus standi to file the instant Application. The Applicant Consortium being a prospective resolution applicant has no vested or fundamental right vis-à-vis the CIRP until their resolution plan is approved for the Corporate Debtor as held by the Hon'ble Supreme Court decision in the case of* ***Arcelor Mittal India Pvt Limited Vs. Satish Kumar Gupta and Ors, (Judgement dated October 4, 2018 in Civil Appeal Nos 9402-9405 of 2018)."***
>
> *c) The instant Application is not maintainable and premature at this stage in as much as (a) no resolution plan has yet been approved by the CoC so far: (b) Applicant Consortium has no vested or fundamental right to raise challenge vis-à-vis the CIRP at this stage: and (c) the Extension Application seeking time for*

completion of CIRP is pending adjudication before the Hon'ble Tribunal."

86. Before the Adjudicating Authority, the 2nd Respondent/Resolution Professional in the Reply to IA No.244/2021 in CP(IB) No.184/HDB/7/2019 had referred to the judgement of Hon'ble Supreme Court dated 04.10.2018 in the matter of **Committee of Creditors of Essar Steel India Ltd V Satish Kumar Gupta and Others** wherein it was observed that 'no vested right inheres in any Resolution Applicant to have its Resolution Plan considered by the Committee of Creditors' and further, it was held that no challenge can be made before the 'Adjudicating Authority' by a 'Resolution Applicant' until a 'Resolution Plan' is approved by the 'Adjudicating Authority'.

87. The stand of the Resolution Professional/2nd Respondent of Meenakshi Energy Ltd is that the 'Applicant' can only assail a 'Resolution Plan' which is approved by the 'Adjudicating Authority' and as on date, 'no adjudication' is made and as such the IA No.244/2021 in CP (IB) No.184/HDB/7/2019 on the file of the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench) is a 'premature' and 'not maintainable' one.

88. At this juncture, this Tribunal points out that in the impugned order dated 24.06.2021 in IA No.244/2021 in CP(IB)No.184/HDB/7/2019 passed by the 'Adjudicating Authority' paragraph 1 reads as under:-

"1. This Application is filed under Section 60(5) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as Code) by prospective Resolution Applicant seeking

directions not to allow the Resolution Professional to accept any plan after the closure of due date of CIRP i.e. 08.03.20221."

89. A cursory perusal of the Impugned Order dated 24.06.2021 in IA No.244/2021 in CP (IB) No.184/HDB/7/2019 (filed by the First Respondent/Applicant) indicates that no reference was made to the 2nd relief sought for in the aforesaid IA No.244/2021 i.e. in regard to the issuance of direction to the Resolution Professional to place only the plans submitted before the due date before the 'Committee of Creditors' for its consideration.

90. Continuing further, this 'Tribunal' relevantly points out that in the 'Impugned Order' dated 24.06.2021 in IA No.244/2021 in CP (IB) No.184/HDB/7/2019, the Adjudicating Authority, (National Company Law Tribunal, Bench II, Hyderabad) had not dealt with the aspect of 'pleas' of 'Locus Standi' of the First Respondent/Prospective Resolution Applicant to file IA No.244/2021 and the 'Maintainability' of the 'Application', (although the said pleas were taken by the Committee of Creditors of Meenakshi Energy Ltd as well as by the Resolution Professional) to the effect that 'as on date, 'no adjudication' has been made in regard to the 'Resolution Plan'. However, keeping in mind the jurisdiction of the 'Adjudicating Authority', (National Company Law Tribunal) as per ingredients of Section 60(5)(c) of the I&B Code, 2016, 'this Tribunal' holds that the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench-II) is entitled to determine the question of priorities, question of law or facts arising out of or in relation to Insolvency

Resolution (relating to the 'Corporate Debtor') in I.A. No.244 of 2021 in CP (IB) No.184/HDB/7/2019 and to dispose of the same on merits, of course, by passing a reasoned/speaking order.

91. At this stage, it is not out of place for this Tribunal to make a relevant mention that the 'Adjudicating Authority' on 07.11.2019 had admitted the Section 7 Application filed by the State Bank of India (Financial Creditor) under 'I&B' Code, 2016 initiating the 'CIRP' against the 'Corporate Debtor'/Meenakshi Energy Ltd., Telangana.

92. In fact, the Resolution Professional on 21.01.2020 had issued the First Form G inviting 'Expression of Interest' from prospective Resolution Applicant. The Adjudicating Authority in IA No.581 and 582/2020 in CP(IB) No.184/HDB/7/2019 filed by the 2nd Respondent/Resolution Professional/Applicant on 25.08.2020 had excluded the period from 25.3.2020 to 30.06.2020 from the computation of 'Corporate Insolvency Resolution Process' and thus the period of 180 days of CIRP comes to an end on 11.08.2020 and also granted extension of CIRP period in the matter of M/s Meenakshi Energy Ltd beyond 180 days by a further period of 90 days with effect from 12.08.2020.

93. In the instant case, the Adjudicating Authority on 08.01.2021 in IA No.1079/2020 in CP (IB) No.184/HDB/7/2019 (filed by the 2nd Respondent/Resolution Professional) had granted another 60 days extension from 08.01.2021 expiring on 08.03.2021 and that the 330 days period was also to lapse on the same day.

94. It transpires that the Resolution Professional had re-issued the Form G on 25.01.2021 because of the perceived increase in value of the Corporate

Debtor as per Regulation 36-A read with Regulation 36(B)(7) of IBBI (Insolvency Resolution for Corporate Persons) Regulations 2016. The last date for submission of 'Resolution Plan' was on 24.02.2021 and further, that the said date was extended to 01.03.2021, till 06.03.2021 and then, finally till 08.03.2021.

95. Be it noted, that on 05.03.2021 another prospective Resolution Applicant/Sindhu Trade Links Ltd ("STLL") had submitted his 'Resolution Plan'. Further, on 06.03.2021 the 'Resolution Plan' of the First Respondent/Consortium of Prudent ARC Ltd was filed together with the Plan, payment of 'Earnest Money' Deposit of Rs.1 crore was made.

96. On 08.03.2021, the 330 days' period had expired and that the for submission of 'Resolution Plan' through 'Resolution Professional' 'Form G' was re-issued on 06.03.2021.

97. It is significant to point out that in Comp App (AT) (CH) (Ins) No.15/2021 on the file of NCLAT, Chennai, filed by the Second Respondent/Resolution Professional (as an 'Appellant') against the 'Committee of Creditors of Meenakshi Energy Ltd.' on 24.03.2021, this 'Tribunal', at paragraph 17 had observed the following: -

> "*17. However, this 'Tribunal' directs the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) to take up the IA No.120 of 2021 (filed by the Appellant/Applicant seeking extension of 60 days for completion of*

'CIRP') pending on its file, on the next date of hearing i.e. 23.04.2021 and to dispose of the same on merits by passing a 'reasoned order', of course, in a fair, Just and dispassionate manner in accordance with Law and in the manner known to Law, at an early date."

98. The 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench) in I.A. No.120 of 2021 filed by the Resolution Professional (seeking for an 'extension of CIRP process', which was pending before it), on 15.07.2021 passed an order granting 45 days for completion of the CIRP process, much after the order passed by it in IA No.244/2021 in CP (IB) No.184/HDB/7/2019 (filed by the First Respondent/ Consortium of Prudent ARC and Vizag Minerals/Applicant).

99. It must be borne in mind that in IA No.244/2021 in CP (IB) No.184/HDB/7/2019 (filed by the First Respondent/ Consortium of Prudent ARC and Vizag Minerals/Applicant) an order was passed on 24.06.2021, but the said impugned order was published on the 'Adjudicating Authority' (Tribunal's website) on 09.07.2021. In this connection this tribunal adverts to Rule 150 of the National Company Law Tribunal Rules, 2016 which reads as under:

150. "Pronouncement of Order.- (1) The Tribunal, after hearing the applicant and

respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.

(2) Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.

(3) A certified copy of every order passed by the Tribunal shall be given to the parties.

(4) The Tribunal, may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu.

(5) Every order or judgment or notice shall bear the seal of the Tribunal."

100. At this stage, this Tribunal aptly points out that in Comp App (AT) (CH) (Ins) No.15/2021 on the file of National Company Law Appellate Tribunal, Chennai Bench a direction was issued to the 'Adjudicating Authority' to take up I.A. No. 120 of 2021 on the next date of hearing i.e. 23.04.2021 and to dispose of the same on merits etc. at an early date.

101. I.A. No.120 of 2021 in CP (IB) No.184/HDB/7/2019 (seeking Extension of CIRP period) was filed by the Resolution Professional on 03.03.2021, six days before the expiry of 330 days on 09.03.2021 and prior to the receipt of any 'Resolution Plans'. In fact, the I.A. No.120 of 2021 in CP (IB) No.184/HDB/7/2019 was decided on 15.07.2021, more than four months from the date of filing of the said Interlocutory Application. In this connection, this Tribunal 'very pertinently points out that 'judicial propriety', 'sobriety' and comity of judicial discipline require that it is the 'primordial duty' of the Tribunal to adhere to the direction issued by an 'Appellate Tribunal' in a given concluded Appellate legal proceedings of course with utmost care, caution and circumspection, in our processual justice delivery system. Viewed in that perspective, 'this Tribunal' is of the considered opinion that I.A. 120 of 2021 filed by the Resolution Professional on 03.03.2021 (six days before the expiry of 330 days on 09.03.2021) ought to have been determined by the 'Adjudicating Authority', prior to the passing of the impugned order in I.A. No.244 of 2021 in CP (IB) No.184/HDB/7/2019 dated 24.06.2021 (uploaded on 09.07.2021), with a view not to give room for complications and to avoid wider ramifications and implications. Unfortunately, such a course was not resorted to, which in the considered opinion of this Tribunal is not a desirable/ palatable one.

Need of Speed

102. It cannot be gainsaid that *'speed'* is the gist for an effective functioning of the 'I&B' Code. As per Section 12(2) of the Code, an application for an extension of 'Insolvency Resolution Process' must be made by Resolution Professional, if directed/ instructed in that regard, by means of a Resolution passed by the 75% 'majority of the Creditors'. The timeline i.e. prescribed is

for the reason that liquidation proceedings otherwise should not be for an interminable period, thereby jeopardizing the interest of all Stakeholders in the 'Corporate Insolvency Resolution Process'.

Observance of Time Frame

103. Indeed, all the concerned Authorities are necessarily required to adhere to the timeline enunciated in Regulation 40A of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No wonder, the I&B Code, 2016 provides for the consequences of the period mentioned in Section 12 coming to an end in the event that the said period is over without the receipt of a 'Resolution Plan' or after rejection of a 'Resolution Plan' in terms of Section 31.

Adjudicating Authority's Power

104. The power of the 'Adjudicating Authority' to extend further time limit cannot be extended beyond 90 days, which is the maximum period in Section 12 of the I&B Code. Section 12(3) of the Code further enjoins that any extension of CIRP under this Section shall not be granted more than once and Section 12(3) of the Code is to be read with the third proviso to Section 30(4) which mentions that the maximum period of 30 days specified in the second proviso is permissible, as the only exception to the extension of the period not being granted more than once as per decision of the ***Hon'ble Supreme Court in 'Arcelor Mittal India Pvt. Ltd.' Vs. 'Satish Kumar Gupta', 2018 SCC online SC 1733.*** Undoubtedly, an extension of time limit for CIRP is a grey/ critical arena. In a case, where CIRP is pending and not completed within 330 days within which the Resolution of stressed asset is to take place, only in an

exceptional / extraordinary case, the outer time limit of 330 days can be extended with a view to secure the ends of justice.

Effect of Non-Observance of Time Line

105. A Tribunal/ Appellate Tribunal is to follow the requirement and discipline of 'I&B' Code, 2016, enacted by the Parliament, to streamline the Resolution of Corporate Insolvencies, of course bearing in mind of the fact that the relevant provisions of the Code are well thought of in 'public interest' and to ensure good Corporate Governance. The repercussions in not following the timeline prescribed in IBC are that (i) maximisation of the value assets of the Corporate Debtor will weaken the realisation potential prospect of the Creditors; (ii) The promoters of the Company will remain undischarged from their obligation/liability. The individual who is to proceed against the Company, is suspended from exercising his right for moratorium remains in force till the CIRP period is continuing.

106. According to the amended Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a Resolution Plan shall provide for the measures as may be necessary for Insolvency Resolution of 'Corporate Debtor' for maximisation of his assets including but not limited to the matters mentioned in this Regulation.

107. As per Regulation 40 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Committee may instruct the Resolution Professional to make an application to the 'Adjudicating Authority' under this Section (12) to extend the Insolvency Resolution Process period. Upon receiving an instruction from the Committee

under this 'Regulation', the 'Resolution Professional' shall make an application to the 'Adjudicating Authority' for such an extension.

108. It is to be pointed out that the Tribunal/ Appellate Tribunal are showered with restricted jurisdiction mentioned in the 'I&B' Code, 2016 and they cannot function as 'Courts of Equities' or exercise plenary powers. In short, they are scrupulously bound by the '*discipline of statutory provisions'* and they cannot traverse beyond the parameters of law.

Resolution Professional's Duty

109. A 'Resolution Professional' is not to be made liable because his perception is incorrect unless it is unreasonable. He is required to take prudent/ reasonable care in arriving at a subjective judgment based on circumstances that the 'best price', to be permitted by him, as per decision **Standard Chartered Bank Ltd. v. Walker**, reported in (1982) 1 WLR 1410. One is to prove that the 'Resolution Professional' had committed an error which reasonably skilled and careful insolvency practitioner would not have made.

110 As per Section 25(h) of the 'I&B' Code, 2016 the 'Resolution Professional' has a duty to invite 'Prospective Resolution Applicants', who satisfy such criteria as may be laid down by him with the approval of 'Committee of Creditors', considering the complexity and scale of operations of the 'Business' of the 'Corporate Debtor' and such other conditions as may be prescribed by 'IBBI' to project 'Resolution Plans', present such Plan(s) to the 'Committee of Creditors' etc. As per Section 30(2) of the I&B Code, the 'Resolution Professional' is to examine each 'Resolution Plan' received by him and confirm that it meets the requirements mentioned in sub-section (2).

Confidentiality of Plan

111. In fact, the 'Resolution Plan' furnished by one or the other 'Resolution Applicant' is a 'confidential' one and it cannot be disclosed to any 'Competing' 'Resolution Applicant' nor any view can be taken or objection can be asked for from other 'Resolution Applicants' in regard to one or the other 'Resolution Plan'. It cannot be lost sight of that the conduct of 'Resolution Professional' is important in deciding whether he is guilty of 'Misfeasance' or 'Fraud' or any other 'Serious Irregularity' in the preparation of 'Resolution Plan'. As a matter of fact, the 'Resolution Plan' 'is confidential in nature'. No wonder, the Resolution Professional is to act in an expeditious fashion. In short, an 'Insolvency Professional' is to perform his duties by facing challenges that he come across during CIRP.

112. It is relevantly pointed out that Section 60(5) of the I&B Code, 2016 is not an all pervading section conferring jurisdiction upon an 'Adjudicating Authority' to determine any issue pertaining to the 'Corporate Debtor', arising out of Insolvency Resolution Process. In determining the aspect of priorities, all points/ issues of law of facts arising out of an order pertaining to the Insolvency Resolution, the 'Adjudicating Authority' is to follow the procedural aspects enumerated in the relevant Sections of the Code, depending on the points/ issues involved.

113. As far as the present case is concerned, the 'Resolution Plan' of the First Respondent/ Consortium of Prudent ARC Limited & Vizag Minerals and Logistics Pvt. Ltd. was filed along with plan, payment of Earnest Money Deposit of Rs.1/- crore on 06.03.2021. As a matter of fact, on 05.03.2021 Sindhu

Trade Links Ltd. (STLL – another 'Prospective Resolution Applicant') submitted its Resolution Plan. The Vedanta submitted its 'Resolution Plan' on 16.04.2021 i.e. after the due date of 08.03.2021 (the expiry of 330 days' period). The 'Committee of Creditors' on 20.04.2021 had decided to consider the 'Vedanta 'Resolution Plan' ' in the absence of any orders being obtained from the 'Adjudicating Authority' in the teeth of the ingredients of the 'I&B' Code, 2016.

114. Although, on behalf of the Second Respondent/Resolution Professional it is brought to the notice of this 'Tribunal' that since the decision of the 'Committee of Creditors' to extend the time beyond 08.03.2021 was at all times been subject to 330-390 days Extension Application and the same was also adequately recorded in the Minutes of the 20th CoC Meeting that took place on 20.04.2021 and all other correspondence exchanged with the 'Prospective Resolution Applicants' (including the First Respondent/ Applicant) and later, an extension of 45 days was granted as per order dated 15.07.2021 in I.A. 120 of 2021 in CP (IB) No.184/HDB/7/2019 (and despite the fact that on the date of passing the impugned order in I.A. No.244 of 2021 in CP (IB) No.184/HDB/7/2019, I.A. 120 of 2021 in CP (IB) No.184/HDB/7/2019 was pending on the file of the 'Adjudicating Authority') yet this Tribunal, keeping in mind of the averment made by the First Respondent/ Applicant at paragraph 21 inter alia to the fact that I.A. No.120 of 2021 in CP (IB) No.184/HDB/7/2019 was filed 'essentially on the ground that since the 'Resolution Plan' of the Applicant (First Respondent) has been disclosed to the 'Committee of Creditors' and the contents of the same have been made known to all the Creditors pursuant to disclosing all the confidential details of the Appellant's Plan and not maintaining the secrecy of 'fidelity' / 'confidentiality' comes to a resultant

conclusion that the 'Resolution Plan' of Vedanta which was submitted after the due date 08.03.2021 (expiry of 330 days period-general rule of outer limit, of) and as such, the same is not to be considered either by the 'Committee of Creditors' or the Second Respondent/'Resolution Professional' (Appellant in Comp App (AT) (CH (INS) 174 of 2021), because of the breach of the 'confidentiality' of the 'Resolution Plan'.

Result

115. In the light of foregoing upshot, 'this Tribunal' considering the entire conspectus of the attended facts and circumstances of the case in an holistic fashion and in view of the fact that as per the ingredients of Section 60(5) of the I&B Code, the facts/ points of law were raised in I.A. 244 of 2021 in CP (IB) No.184/HDB/7/2019 (filed by the First Respondent/ 'Prospective Resolution Applicant') arising out of the impugned order pertaining to the Insolvency Resolution Process (concerning the 'Corporate Debtor') and further that the 'Adjudicating Authority' is to adhere to the procedural aspect prescribed in relevant sections of the I&B Code, of course depending on the question of priorities/ question of law and facts involved, and this Tribunal, by adhering to the statutory requirements of I&B Code, 2016 directs the Second Respondent/ Resolution Professional to place only the 'Resolution Plan' of First Respondent/ Consortium of Prudent ARC Limited & Vizag Minerals and Logistics Pvt. Ltd. ('Prospective Resolution Applicant') and the 'Resolution Plan' of 'Sindhu Trade Links Ltd.' ('STLL'), which were submitted before the due date, before the 'Committee of Creditors' for its consideration and to complete the 'CIRP' keeping in mind on 07.11.2019, the C.P.(IB) No.184/7/HDB/2019 was admitted by the 'Adjudicating Authority' commencing 'CIRP' against the

'Corporate Debtor', a timely resolution of stressed assets is a prime factor in the successful working of the Code, the interest of the 'Stakeholders' including the 'Creditor(s)', effectively balancing within the four corners of 'Law', and as per 'I&B' Code, 2016 and 'Regulations' without any further loss of time.

116. With the aforesaid observations and directions the Company Appeal (AT) (CH) (INS.) Nos.166 & 174 of 2021 stand disposed of. No costs. All connected pending IAs are closed.

117. Before parting with the case, in view fact that the Second Respondent/ Resolution Professional/ Appellant in Comp App (AT) (CH) (INS) 174 of 2021 has come out with a clear cut stand that the decision of the CoC that timeline beyond 08.03.2021 was at all times being subject to the outcome of 330-390 days Extension Application, which was adequately recorded in the Minutes of 20th CoC Meeting that took place on 20.04.2021 and all other correspondence exchanged with the 'Prospective Resolution Applicants' including the First Respondent/ Applicant (vide para 13 of the reply affidavit filed on behalf of Resolution Professional, Mr. Ravi Sankar Devarakonda, the observation of the 'Adjudicating Authority' (National Company Law Tribunal, Bench-II, Hyderabad) at para 16 of the impugned order in I.A. No.244 of 2021 in CP (IB) No.184/HDB/7/2019 dated 24.06.2021 to the effect that .....

> *"CoC in its commercial wisdom has requested the Resolution Professional to extend the RFRP timelines beyond 330 days with a view to given an opportunity to Vedanta Limited to submit their Resolution Plan in the name of value maximization of Corporate Debtor, albeit*

opportunity was given to the other two resolution applicants to revise their proposal. As this being status, we are of the view that CoC and Resolution Professional have taken the process into their own hands even though they cannot extend timelines beyond 330 days unilaterally without the approval of the 'Adjudicating Authority'. This action of Resolution Professional is contrary to the letter and spirit of the Code and its Regulations." and the observations made in paragraph 17 of the impugned order to the effect that …. *"In our view, the CoC and the Resolution Professional has categorically violated the timelines in the name of value maximization, thereby kept on extending the process beyond 330 days and CoC in its wisdom has stepped into the shoes of the Adjudicating Authority and extended the period without any rhyme or reason. The CoC has no business to extend RFRP beyond 330 days without the specific approval of Adjudicating Authority. We strongly express our reservations on the decision of CoC as well RP in this regard."*

are not warranted in the considered opinion of this Tribunal, of course based on the facts and circumstances of the instant case, which float on the surface.

Viewed in that perspective, those observations and any other observations made against the 'Committee of Creditors' and the 'Resolution Professional' by the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench-II, Hyderabad) in the impugned order dated 24.06.2021 I.A. No. 244 of 2021 C.P.(IB) No.184/7/HDB/2019, detriment to their interest, are set aside to prevent an '*aberration of justice'* and to promote 'substantial cause of justice'.

(**Justice M. Venugopal]**
Acting Chairperson

[Kanthi Narahari]
Member (T)

25th October, 2021

Shashi