

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 923 of 2024

&

I.A. No. 3351, 3352, 3353 of 2024

(Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-Court-V in I.A. No.5572 of 2023 in CP (IB) No.310/MB/2022)

IN THE MATTER OF:

Abhijit Realtors & Infraventures Pvt. Ltd. & Anr.

...Appellants

Versus

Rohit Mehra,

(RP of Reliance Broadcast Network Ltd.) & Anr.

...Respondents

Present:

For Appellants : Mr. Krishnendu Dutta, Mr. Abhijeet Sinha, Sr. Advocates with Mr. Kunal Kanungo, Mr. Anuj Tiwari, Mr. Pulkit Sharma, Ms. Tanushree Sogani, Ms. Niharika Sharma, Mr. Atishay Jain, Ms. Henna Kochhar, Ms. Aroshi Pal, Mr. Nishant Chotani and Ms. Bandita, Advocates.

For Respondents : Mr. Neeraj Kishan Kaul, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Shreya Mahalwan, Mr. Raghav Agarwal, Mr. Saurabh Bacchawat, Advocates for R-1/RP.

Mr. Sudhir K. Makkar, Sr. Advocate with Mr. Divij Kumar, Mr. Varun Tandon and Mr. Shivang Mukherjee, Advocates for R-2/CoC.

Mr. Ardhendmauli Kumar Prasad & Mr. Anupam Lal Das, Sr. Advocate with Mr. SP Singh Chawla, Mr. Sinha Shrey Nikhilesh, Mr. S. Shishir, Mr. Parth Davar, Mr. Rohit H. Nair, Ms. Sarakshi Asarsa, Mr. Swastik Verma, Ms. Shivali Singh, Advocates for R-3/SRA.

Mr. Ramji Srinivasan, Sr. Advocate with Ms. Mahima Singh and Ms. Pooja Mahajan, Advocates for RP.

With

Company Appeal (AT) (Insolvency) No.924 of 2024

&

I.A. No. 3354, 3355, 3356, 4692 of 2024

(Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-Court-V in I.A. No.614 of 2024 in CP (IB) No.310/MB/2022)

IN THE MATTER OF:

Abhijit Realtors & Infraventures Pvt. Ltd. & Anr. ...Appellants

Versus

**Rohit Mehra,
(RP of Reliance Broadcast Network Ltd.) & Anr. ...Respondents**

Present:

For Appellants : Mr. Krishnendu Dutta, Mr. Abhijeet Sinha, Sr. Advocates with Mr. Kunal Kanungo, Mr. Anuj Tiwari, Mr. Pulkit Sharma, Ms. Tanushree Sogani, Ms. Niharika Sharma, Mr. Atishay Jain, Ms. Henna Kochhar, Ms. Aroshi Pal, Mr. Nishant Chotani and Ms. Bandita, Advocates.

For Respondents : Mr. Neeraj Kishan Kaul, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Shreya Mahalwan, Mr. Raghav Agarwal, Mr. Saurabh Bacchawat, Advocates for R-1/RP.

Mr. Sudhir K. Makkar, Sr. Advocate with Mr. Divij Kumar, Mr. Varun Tandon and Mr. Shivang Mukherjee, Advocates for R-2/CoC.

Mr. Ardhendmauli Kumar Prasad & Mr. Anupam Lal Das, Sr. Advocate with Mr. SP Singh Chawla, Mr. Sinha Shrey Nikhilesh, Mr. S. Shishir, Mr. Parth Davar, Mr. Rohit H. Nair, Ms. Sarakshi Asarsa, Mr. Swastik Verma, Ms. Shivali Singh, Advocates for R-3/SRA.

**With
Company Appeal (AT) (Insolvency) No. 925 of 2024
&
I.A. No. 3357, 3358, 3359, 4691 of 2024**

(Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-Court-V in I.A. No.5391 of 2023 in CP (IB) No.310/MB/2022)

IN THE MATTER OF:

Abhijit Realtors & Infraventures Pvt. Ltd. & Anr. ...Appellants

Versus

**Rohit Mehra,
(RP of Reliance Broadcast Network Ltd.) & Anr.**

...Respondents

Present:

For Appellants : Mr. Krishnendu Dutta, Mr. Abhijeet Sinha, Sr. Advocates with Mr. Kunal Kanungo, Mr. Anuj Tiwari, Mr. Pulkit Sharma, Ms. Tanushree Sogani, Ms. Niharika Sharma, Mr. Atishay Jain, Ms. Henna Kochhar, Ms. Aroshi Pal, Mr. Nishant Chotani and Ms. Bandita, Advocates.

For Respondents : Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Shreya Mahalwan, Mr. Raghav Agarwal, Mr. Saurabh Bacchawat, Advocates for R-1/RP.

Mr. Sudhir K. Makkar, Sr. Advocate with Mr. Divij Kumar, Mr. Varun Tandon and Mr. Shivang Mukherjee, Advocates for R-2/CoC.

Mr. Ardhendmauli Kumar Prasad & Mr. Anupam Lal Das, Sr. Advocate with Mr. SP Singh Chawla, Mr. Sinha Shrey Nikhilesh, Mr. S. Shishir, Mr. Parth Davar, Mr. Rohit H. Nair, Ms. Sarakshi Asarsa, Mr. Swastik Verma, Ms. Shivali Singh, Advocates for R-3/SRA.

**With
Company Appeal (AT) (Insolvency) No. 980 of 2024
&
I.A. No. 3582, 3583, 3584 of 2024**

(Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-Court-V in I.A. No.290 of 2024 in CP (IB) No.310/MB/2022)

IN THE MATTER OF:

Creative Channel Advertising & Marketing Pvt. Ltd.

...Appellant

Versus

**Rohit Ramesh Mehra
RP of Reliance Broadcast Network Ltd. & Ors.**

...Respondents

Present:

For Appellant : Mr. Gaurav Mitra, Senior Advocate with Mr. Rakesh Kumar, Mr. Ankit Sharma, Advocates. Ms. Mansi Sharma, Ms. Shreya Arneja, Mr. Prabhat Kumar, Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate with Ms. with Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Shreya Mahalwan, Mr. Saurabh Bacchawat, Advocates for R1/RP.

Mr. Divij Kumar, Mr. Varun Tandon and Mr. Shivang Mukherji, Advocates for R-2/CoC.

Mr. Ardhendmauli Kumar Prasad & Mr. Anupam Lal Das, Sr. Advocate with Mr. SP Singh Chawla, Mr. Sinha Shrey Nikhilesh, Mr. S. Shishir, Mr. Parth Davar, Mr. Rohit H. Nair, Ms. Sarakshi Asarsa, Mr. Swastik Verma, Ms. Shivali Singh, Advocates for R-3/SRA.

With
Company Appeal (AT) (Insolvency) No. 981 of 2024
&
I.A. No. 3588, 3589, 3590 of 2024

(Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-Court-V in I.A. No.5391 of 2023 in CP (IB) No.310/MB/2022)

IN THE MATTER OF:

Creative Channel Advertising & Marketing Pvt. Ltd. ...Appellant

Versus

Sapphire Media Ltd. ...Respondent

Present:

For Appellant : Mr. Gaurav Mitra, Senior Advocate with Mr. Rakesh Kumar, Mr. Ankit Sharma, Advocates. Ms. Mansi Sharma, Ms. Shreya Arneja, Mr. Prabhat Kumar, Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate with Ms. with Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Shreya Mahalwan, Mr. Saurabh Bacchawat, Advocates for R1/RP.

Mr. Divij Kumar, Mr. Varun Tandon and Mr. Shivang Mukherji, Advocates for R-2/CoC.

Mr. Anupam Lal Das, Sr. Advocate with Mr. SP Singh Chawla, Mr. Sinha Shrey Nikhilesh, Mr. S. Shishir, Mr. Parth Davar, Mr. Swastik Verma, Ms. Shivali Singh, Advocates for R-3/SRA.

J U D G M E N T

ASHOK BHUSHAN, J.

These five Appeal(s) arise out of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor (“**CD**”) – Reliance Broadcast Network Limited. Abhijit Realtors & Infraventure Pvt. Ltd. and Creative Channel Advertising & Marketing Pvt. Ltd., the unsuccessful Resolution Applicants have filed these five Appeal(s) challenging the orders passed by National Company Law Tribunal, Mumbai Bench dated 06.05.2024 in different IAs. The Adjudicating Authority by the impugned order dated 06.05.2024 has approved the Resolution Plan submitted by the Sapphire Media Ltd. (Respondent No.3 herein).

2. Company Appeal (AT) (Ins.) No.923 of 2024 has been filed by Abhijit Realtors & Infraventure Pvt. Ltd. challenging order dated 06.05.2024 passed in IA No.5572 of 2023 filed by the Appellant raising objections, claiming irregularities in the challenge process conducted on 27.10.2023. Company Appeal (AT) (Ins.) No.924 of 2024 has been filed by Appellant - Abhijit Realtors & Infraventure Pvt. Ltd. challenging order dated 06.05.2024 passed in IA No.614 of 2024 where the Appellants raised objections regarding eligibility of Successful Resolution Applicant (“**SRA**”). Company Appeal (AT) (Ins.) No.925 of 2024 has been filed by Appellant - Abhijit Realtors & Infraventure Pvt. Ltd. challenging order dated 06.05.2024 passed by

Adjudicating Authority allowing IA No.5391 of 2023 filed by the Resolution Professional (“**RP**”) for approval of Resolution Plan submitted by Respondent No.3. Company Appeal (AT) (Ins.) No.980 of 2024 has been filed by Creative Channel Advertising & Marketing Pvt. Ltd. against the order dated 06.05.2024 passed in IA No.290 of 2024, where the Appellant raised objection on the ground of alleged ineligibility of SRA. Company Appeal (AT) (Ins.) No.981 of 2024 has been filed by Creative Channel Advertising & Marketing Pvt. Ltd. against plan approval order dated 06.05.2024 passed in IA No.5391 of 2023 in CP No.310 of 2022.

3. All the Appeal(s) have been heard together and are being decided by this common judgment.

4. Brief facts of the case necessary to be noticed for deciding these Appeal(s) are:

- (i) The Corporate Debtor – Reliance Broadcast Network Limited was admitted to the CIRP on an Application filed by IDBI Trusteeship Services Ltd. (Financial Creditor) under Section 7 by an order dated 24.02.2023.
- (ii) On 14.04.2023, the RP issued Form-G inviting Expression of Interest (“**EoI**”). Abhijit Realtors & Infraventure Pvt. Ltd. as well as Creative Channel Advertising & Marketing Pvt. Ltd. submitted their EoIs along with several other Prospective Resolution Applicants (“**PRAs**”). On 15.06.2023, the RP issued the request for the Resolution Plan, Evaluation Matrix and

Information Memorandum and provided access to Virtual Data Room to PRAs.

- (iii) Six Resolution Plans were received from Resolution Applicants, where Abhijit Realtors & Infraventure Pvt. Ltd. gave a bid of Rs.80.20 crores, Creative Channel Advertising & Marketing Pvt. Ltd. gave a bid of Rs.100 crores, Entertainment Network (India) Limited (“**ENIL**”) gave bid of Rs.37.17 crores and Sapphire Media Ltd. gave a bid of Rs.104.28 crores. The Committee of Creditors (“**CoC**”) decided to hold Challenge Process as per the RFRP. On 12.10.2023, the RP issued Challenge Process Document (Process Note) containing key terms for conduct of Challenge Process. Base price of INR 240 crores was set for start of the Bid Process. At the end of each round, the bid with highest value will be the “Threshold Bid Amount” for the next round. The Resolution Applicant was required to either match or exceed the Threshold Bid amount for the respective round in order to continue participating in the Challenge Process. Each incremental bid of the Resolution Applicants was to be in multiple of Rs.10 crores. Abhijit Realtors & Infraventure Pvt. Ltd. and ENIL came together and informed that they wish to participate as a Consortium.
- (iv) On 27.10.2023 during the 10th CoC Meeting Challenge Process was conducted and three round of bidding was conducted. In round one, Sapphire Media Ltd. gave a bid of Rs.241 crores,

which was the highest bid received for first round. In the second round, the Abhijit Realtors & Infraventure Pvt. Ltd. and ENIL (hereinafter referred to as a “**Consortium**”) gave a bid of Rs.242 crores. In third round, the Sapphire Media Ltd. gave a bid of Rs.251 crores, which was the highest bid. The Creative Channel Advertising & Marketing Pvt. Ltd. did not participate in the Challenge Process.

- (v) In 11th CoC Meeting, the result of Challenge Process was discussed and CoC decided to undertake further negotiations with all Resolution Applicants as per the RFRP. The CoC requested all Resolution Applicants to put their best offers and submit revised financial proposals. All PRAs were asked by the RP to submit their final financial proposal by 04.11.2023. On 04.11.2023, revised financial proposals were received from Consortium of Rs.248 crores, Creative Channel Advertising & Marketing Pvt. Ltd. Rs.240 crores and SRA Rs.261 crores. On 06.11.2023, 12th CoC Meeting was held where the revised proposals were opened in presence of the Resolution Applicants. Resolution Applicants expressed their satisfaction with the negotiation process undertaken by the CoC.
- (vi) In 13th CoC Meeting held on 08.11.2023, CoC Members deliberated on the feasibility and viability of the Resolution Plan. Five Resolution Plans were put to vote. E-voting concluded on 16.11.2023 and Resolution Plan submitted by

Sapphire Media Ltd. was approved with 88.97% vote shares. On 21.11.2023, the RP filed IA No.5391 of 2023 before the Adjudicating Authority for approval of Resolution Plan of Sapphire Media Ltd. (the SRA).

- (vii) The Consortium filed an Application – IA No.5572 of 2023 praying for setting aside the decision of the CoC to approve the Resolution Plan of another Resolution Applicant. It was further prayed that an order be issued directing the RP to recommence the entire process of approving the Resolution Plan. Certain other prayers were made in the Application. Another IA No.614 of 2024 was filed by the Consortium praying for setting aside the decision of the CoC approving the Resolution Plan of Sapphire Media Ltd. and declaring the Applicant as the unsuccessful Resolution Applicant. Certain other prayers were made in the Application, including direction to recommence the entire process. IA No.614 of 2024 was filed on 03.02.2024, after the plan approval application was reserved on 02.01.2024.
- (viii) Creative Channel Advertising & Marketing Pvt. Ltd., who did not participate in the challenge process, however, participated in the negotiation process, filed IA No.290 of 2024 seeking declaration that SRA - Sapphire Media Ltd. was ineligible to submit its Resolution Plan. It was also prayed that IA No.5391 of 2023 seeking approval of the Resolution Plan be rejected. Direction was also sought to start *de novo* process for the

examination of the Resolution Plans of other existing qualified PRAs.

- (ix) The Adjudicating Authority heard both the parties in IAs filed by the Consortium as well as Creative Channel Advertising & Marketing Pvt. Ltd. and by order dated 06.05.2024 dismissed IA No.5572 of 2023 filed by the Consortium. By a separate order dated 06.05.2024, IA No.614 of 2024 filed by Consortium and IA No.290 of 2024 filed by Creative Channel Advertising & Marketing Pvt. Ltd. were rejected. By a separate order of the same date i.e. 06.05.2024, IA No.5391 of 2023 filed by the RP for approval of Resolution Plan was allowed and the Resolution Plan submitted by Sapphire Media Ltd. was approved.
- (x) Company Appeal (AT) (Insolvency) Nos. 925 and 981 of 2024 have been filed by Consortium and Creative Channel Advertising & Marketing Pvt. Ltd. respectively, challenging the order dated 06.05.2024 approving the Resolution Plan. Company Appeal (AT) (Insolvency) No.923 of 2024 has been filed by the Consortium challenging order dated 06.05.2024 rejecting IA No.5572 of 2023. Company Appeal (AT) (Insolvency) Nos.924 and 980 of 2024 has been filed by the Consortium and Creative Channel Advertising & Marketing Pvt. Ltd. against rejection of IA Nos.290 and 614 of 2024.

5. We have heard Shri Krishnendu Datta, Learned Senior Counsel and Shri Abhijeet Sinha, Learned Senior Counsel for the Appellants in Company

Appeal (AT) (Ins.) Nos.923, 924, 925 of 2024; Shri Gaurav Mitra, Learned Senior Counsel has appeared for Appellant in Company Appeal (AT) (Ins.) Nos.980 of 2024 and 981 of 2024. We have heard Shri Neeraj Kishan Kaul, Learned Senior Counsel, Shri Ramji Srinivasan, Learned Senior Counsel and Ms. Pooja Mahajan, Learned Counsel for the Resolution Professional. Shri Sudhir K. Makkar, Learned Senior Counsel has appeared for the CoC. Shri Anupam Lal Das, Learned Senior Counsel and Shri Ardhendmauli Kumar Prasad, Learned Senior Counsel have appeared for Successful Resolution Applicant.

6. Learned Senior Counsel for the Appellant appearing in Company Appeal (AT) (Ins.) Nos.980 of 2024 and 981 of 2024 has adopted the submissions made by Learned Senior Counsel for the Appellants in Company Appeal (AT) (Ins.) Nos.923, 924, 925 of 2024. We refer to the submissions advanced on behalf of the Appellants as submissions of the Appellants cumulatively.

7. Learned Senior Counsel for the Appellants contends that the entire challenge process conducted by the Resolution Professional was in violation of CIRP Regulations 2016 and the Process Note dated 12.10.2023. The consortium was illegally exited from challenge process after second round whereas consortium having given a higher bid to the highest bid of first round was not entitled to be exited. The SRA in the first round having not given incremental bid was liable to be exited from the process. The challenge mechanism carried out in pursuance of the process note was in contravention of Regulation 39(1A) of CIRP Regulations 2016. Under

Regulation 39(1A) of the CIRP Regulations, a Resolution Professional can allow modification of the Resolution Plan not more than once or use a challenge mechanism to enable PRAs to improve their plans. It is impermissible in law to adopt both the process in the Resolution Process. The illegal process adopted by the Resolution Professional goes to the root of the entire process which was *ex facie* contrary to the IBC and Regulations. No Resolution Plan in pursuance of such process could have been approved. The mere participation in the Resolution Process by the consortium or giving an undertaking cannot stop the consortium from bringing to the notice of the Tribunal illegalities in the Resolution Process which go to the root of the matter vitiating the entire process. The entire process commencing from issuance of process note is materially irregular, contrary to the IBC and no such Resolution Plan can pass muster. Clause 7 of the process note contemplate that at the end of each round, Resolution Applicants must match or exceed the threshold bid amount for the next round. The bid of the Appellant was Rs.242 Crores (more than Rs.241 Crores of the threshold bid) which is more than matching the threshold bid. The Appellant could not have been exited the process. In round three, SRA gave a bid of Rs.251 Crores. Appellant had option to not bid in round three given the fact that its bid of Rs.242 Crores was the highest bid. Resolution Professional ought to have organized Round 4 but wrongly deemed the Appellant to have exited the process and failed to conduct Round 4. Appellant was not supplied the details of the highest bid either for Round 2 or Round 3. The Resolution Professional permitted those who did not participate in the challenge process in the negotiation process and obtained a bid. Two documents were

provided at the fag end of the negation process i.e. letter dated 18.10.2023 and letter dated 19.10.2023. Had this letter been uploaded on the VDR, all Resolution Applicants would have been aware of the letter and could have submitted bids accordingly. Bidding process conducted by the Resolution Professional being marred by procedural irregularities, deliberate ambiguities and an opaque approach that fundamentally undermines the sanctity and fairness of the resolution process. The consortium by filing an application IA No.5572 of 2023 raised issues pertaining to procedural violations and material irregularity which application has been erroneously rejected by the Adjudicating Authority.

8. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Consortium further contends that Successful Resolution Applicant was not eligible to submit Resolution Plan as per the terms envisaged in Invitation for Expressions of Interest (Clause 3). It is submitted that the SRA was incorporated only on 21.10.2022. It did not fulfil eligibility of either turnover or net worth. The Resolution Professional committed error in adding the net worth and turnover of promoter, Sahil Mangla which could not be treated to have been included in the 'group' as defined in Invitation of Expression of Interest. It is submitted that the expression 'entity' as occurring in definition of "group", any individual cannot be included. The definition given in Invitation of Expression of Interest and other terms and conditions contained therein clearly means that reference is to a company only and not to an individual. The word 'entity' is intended to refer exclusively to a company or limited liability partnership and not to any other category of

entity. SRA was only incorporated nearly six months before submission of the plan. The definition of group is exhaustive and does not include an individual. The corporate entity is different from that of its shareholders. EoI envisaged a provision for consortium, however, SRA has not submitted its Resolution Plan in a consortium. Resolution Professional and CoC cannot be allowed to take shelter of commercial wisdom to conceal the frauds in the CIRP leading to approval of the Resolution Plan of an ineligible Resolution Applicant. The mere fact that no objection was raised by consortium when the final list of eligible PRA was published cannot stop the consortium from raising objection before the Adjudicating Authority when the plan approval application came up for consideration. An SRA who is ineligible cannot be allowed to implement the Resolution Plan nor any such Resolution Plan of an ineligible SRA can be approved by the Adjudicating Authority. CA Certificate dated 04.11.2023 has been referred by the Adjudicating Authority which obviously could not have been there at the time when plan was submitted by SRA in May, 2023. Under the guidelines issued by MIB (Ministry of Information and Broadcasting) only a company incorporated is eligible to run the business of F.M Radio. It is further submitted that as per Note (d) of EOI, the SRA was ineligible to participate in the process it having been blacklisted by Indian Oil Corporation. It is submitted that the approval of the Resolution Plan submitted by SRA suffers from significant legal and procedural infirmities, including non-compliance with statutory requirements and for not meeting the eligibility criteria under the guidelines of the MIB. The CoC in the name of commercial wisdom cannot approve a plan where SRA is ineligible as per the IEOI. Counsel for the Appellant

referring to IA Nos. 4691 of 2024 and 4692 of 2024 filed in Company Appeal (AT) (Ins.) Nos. 924 of 2024 and 925 of 2024 submits that the Appellants after filing of the rejoinder-affidavit has come across various relevant materials which have bearing on the eligibility of the SRA i.e. GST Returns submitted by Sahil Mangla and Income Tax Return for the assessment years 2022-23 and 2023-24 of Sahil Mangla which documents have been filed along with above IA to be taken on record as the said documents are relevant for determination of the issues raised in the Appeal.

9. Learned Senior Counsel appearing for the Resolution Professional submits that no objection was raised by any of the Appellants for six months and it was only after approval of the Resolution Plan by the CoC that objections regarding challenge process and the eligibility has been sought to be raised. In the challenge process, Rs.240 Crores was base price. SRA has given a bid of Rs.241 Crores in the 1st Round whereas consortium has given a bid of Rs.240 Crores. Threshold bid for 2nd Round was declared as Rs.241 Crores. In Round 2, SRA did not bid since it has option not to bid if its bid was highest in the previous round. The consortium gave a bid of Rs.242 Crores in 2nd Round which was not in accordance with incremental bid of Rs.10 Crores, hence, consortium was treated to be exited from the process. As against the highest bid of 2nd Round of Rs.242 Crores, SRA in the 3rd Round has given a bid of Rs.251 Crores which was incremental bid of Rs.10 Crores towards its earlier bid of Rs.241 Crores. SRA has given the highest bid in the challenge process. It is submitted that the CoC decided to adopt a challenge process with the object of maximisation of the assets of the

Corporate Debtor. All the Resolution Applicants were informed by the Resolution Professional to put the highest offer. On 04.11.2023, revised final financial proposals were submitted by the Resolution Applicants. SRA gave financial proposal of Rs.261 Crores, Consortium gave Rs.248 Crores and Creative gave Rs.240 Crores. On 06.11.2023, in the 12th CoC meeting where the revised proposals were opened in the presence of the relevant Resolution Applicants, the representatives of the consortium have expressed their satisfaction with the negotiation by the CoC. The CoC deliberated on the feasibility and viability of the Resolution Plans and evaluated them as per the evaluation matrix and by vote share of 88.97% approved the Resolution Plan of SRA. The submission of the consortium that they were wrongly exited after Round 2 is incorrect. During the challenge process, there were objections by e-mail raised by consortium which was duly replied by the Resolution Professional clarifying the process. All Resolution Applicants had given undertaking that they accept the challenge process. All Resolution Applicants were explained the steps in challenge process by the Resolution Professional. Challenge process was conducted as per the CIRP Regulations and Process Note. It is submitted that as per the CIRP Regulations, objections can be raised by the Resolution Applicants on the eligibility within five days from publication of list of Prospective Resolution Applicants. List of Prospective Resolution Applicants was published by the Resolution Professional and no objection was filed by any of the Resolution Applicants. Consortium having participated in the process without raising any objection, it is estopped from raising objection regarding the process as well as eligibility of the SRA. The interpretation which is sought to be put by the

Appellant on the Clause 3 of Invitation of Expression of Interest is not the correct interpretation. Resolution Professional has issued EoI with the approval of the CoC and both Resolution Professional and the CoC understood that expression 'entity' includes an individual. In the list of Prospective Resolution Applicants, it was clearly mentioned by the Resolution Professional that net worth of the promoter was also included while determining the eligibility of SRA. Shri Kaul, Learned Senior Counsel appearing for the Resolution Professional referring to Clause 3 of the Invitation for Expression of Interest submits that the definition of 'group' under (i) and (iv), the inclusion of net worth and turnover of promoter can very well be added. It is submitted that the business of the Corporate Debtor was earlier being run by a proprietary concern of Sahil Mangla which was incorporated on 21.10.2022. Sahil Mangla has 99.99% shareholding in the Corporate Debtor, hence, Sahil Mangla is fully covered in the definition of Group and as per the Invitation for Expression of Interest, for net worth and turnover it has to be looked into in a group level. It is submitted that the interpretation put on the Clause 3 of IEoI by the Resolution Professional and CoC have to be given credence, who are the author of the document. It is submitted that the Corporate Debtor has already 58 licenses from the Ministry of Information and Broadcasting and has been operating 58 FM Radio. One-year time is available as per Section 31(4) of the IBC to obtain all approvals. In guidelines issued by the Ministry of Information and Broadcasting filed along with the rejoinder, Clause 2.5 itself indicate that the expression 'entity' includes an individual. The CA Certificate dated 08.05.2020 was given to the Resolution Professional by the SRA which was

verified by the Resolution Professional fulfilling both the criteria of turnover and net worth. When the revised financials were to be given by the Resolution Applicants which was given by the Appellant on 04.11.2023 with an updated CA Certificate signed by Garima Grover, which has been referred to and noted by the Adjudicating Authority which has shown increase in the financials. The CA Certificate by one Sachin which is relied by Appellant was not certificate given by the SRA but was certificate obtained by Creative, another Resolution Applicant which did not reflect the correct financial position of the SRA. Resolution Professional has conducted due-diligence on the basis of materials on record and was satisfied about the eligibility of SRA and other Resolution Applicants. It is submitted that the documents which are sought to be introduced by IA Nos.4691 of 2024 and 4692 of 2024 needs no consideration and those documents need not be permitted to be taken on record. GST Returns and Income Tax assessments were not required to be filed as per the Invitation for Expression of Interest and RFRP. What relevant certificates were required to prove the turnover and net worth were already filed.

10. Counsel for the CoC contends that SRA was fully eligible to submit a Resolution Plan. The expression 'entity' as occurring in definition of group can also be an individual. The submission of the Appellant that entity has to be corporate entity cannot be accepted. It is submitted that the list of Prospective Resolution Applicants was shared with Appellant on 10.06.2023. Final list was published on 25.06.2023 by the Resolution Professional. No objection was filed to the eligibility of SRA. The amendments were made in

the CIRP Regulations 2019 to obviate the delays which was occasioned due to objections raised by unsuccessful Resolution Application regarding eligibility. When no objection is filed in the CIRP process by any Resolution Applicant, Unsuccessful Resolution Applicants are estopped from raising any objection regarding eligibility of SRA. There is no error in the challenge process which was conducted in accordance with the process note. The CoC invited all Resolution Applicants for negotiation which is fully permissible by virtue of RFRP Clause 2.3.11 and the Appellant having participated in the negotiation and having given enhanced offer of Rs.248 Crores which is final financials given by the Appellant consortium, it has no right to raise any objection regarding challenge process. In the 12th CoC meeting held on 06.11.2023, representatives of the consortium stated that they have no objection to the negotiation process. SRA was qualified both under clauses (a) and (b). The Promoter of an entity has to be an individual and while looking into group turnover, the turnover of the promoter cannot be denied. Two documents on which complaints are being made by the Appellant were also put on VDR, however, the fact that said documents was shared after completion the challenge process in no manner prejudiced the Appellant.

11. Counsel for the SRA submits that the SRA is fully eligible to submit a Resolution Plan. It is submitted that the definition of 'group' as given in Invitation for Expression of Interest is an expansive definition. Appellant wants to substitute word 'corporate' before entity. Interpretation put by CoC and the Resolution Professional who are framers of Expression of Interest has to be accepted who are well versed with the documents and intention.

The interpretation which was put by the CoC is with the object to maximise the assets of the corporate debtor. Certificate which was given by statutory auditor in May 2023, net worth was Rs.84 Crores. A fresh certificate was given on 04.11.2023 where net worth was shown as Rs.175 Crores. Average turnover of 12 group companies also fulfilled the threshold. Blacklisting by the IOC has been set aside by the Lucknow Bench of Allahabad High Court by its final judgment, however, the blacklisting by IOC is not covered by clause 8(d). The Income Tax Returns and GST Returns which are sought to be filed by IA No.4691 of 2024 and IA No.4692 of 2024 cannot be accepted. There is a clear bar on the appellants under Section 151 of the Central Goods and Services Tax Act, 2017 and Section 138 of the Income Tax Act, 1961 to produce or rely on to the returns. Appellant has not disclosed the source from which it has received the said documents. Appellant cannot be permitted to rely on the said documents nor the said document can be accepted on record. Both the applications filed by the Appellants deserve to be rejected. Counsel for the SRA submits that the SRA's plan has been approved by the CoC. CoC which consist of the financial institutions who are well versed with the financials of all applicants and have taken their commercial decision in the commercial wisdom cannot be interfered with, which is law well settled by the Hon'ble Supreme Court.

12. From the submissions made by Counsel for the parties and materials on the record, following questions arise for consideration in these Appeals:-

- (I) Whether the Challenge Process conducted by the Resolution Professional on 27.10.2023 was not in accordance with the

CIRP Regulations, 2016 as well as Process Note dated 12.10.2023?

- (II) Whether Negotiation Process initiated by the CoC/Resolution Professional after the Challenge Process was in accordance with the CIRP Regulations and RFRP/ Process Note?
- (III) Whether the SRA was ineligible to submit a Resolution Plan as per Clause 3 of the Invitation for Expression of interest and the net worth and the turnover of the promoter Mr. Sahil Mangla could not be included for purpose of net worth of a group it being not a 'entity' within the meaning of Clause 3 of Invitation for Expression of Interest?
- (IV) Whether there are any material irregularities committed by the Resolution Professional within the meaning of Section 61(3)(ii) of the IBC so as to interfere with the order of the Adjudicating Authority approving the Resolution Plan dated 06.05.2024?

Question Nos. (I) & (II)

13. The first question relates to the Challenge Process conducted by the Resolution Professional. We need to notice certain clauses of Request for Resolution Plans and Process Note issued for challenge mechanism for considering the respective submissions raised by the parties. Clause 2.3.8 of the RFRP empowers the CoC to decide any method or process for negotiations with the Resolution Applicant(s) regarding the Resolution Plans which may include, a price discovery process. Clause 2.3.8 of the RFRP is as follows:-

“2.3.8. The Resolution Professional (acting on the instructions of the CoC) and Committee of Creditors shall have the right to discuss and negotiate terms of the Resolution Plan with any or all Resolution Applicant(s) (including Resolution Applicants who do not score the highest on the Evaluation Matrix) at any stage to achieve a successful insolvency resolution of the Company and maximize the value for all stakeholders. The CoC and/or the Resolution Professional (acting on the instructions of the CoC) may, at their sole discretion, decide any method or process for negotiations with the Resolution Applicant(s) regarding the Resolution Plans received prior to voting in accordance with Applicable Law, which may include, but shall not be limited to, a price discovery process, outbidding process, open challenge or Swiss challenge process and each Resolution Applicant shall be bound by the terms governing such a process, which shall be decided by the CoC in its commercial wisdom. The timelines and process for the negotiation shall be determined and/or communicated if considered necessary, at a later date. The Resolution Applicant shall not object to, and must participate in, the implementation of such negotiation process. By submitting the Resolution Plan, the Resolution Applicant shall be deemed to have unequivocally agreed that any process of negotiation adopted by the Committee of Creditors shall be binding on them and that they have no objection in following any such process. The Resolution Professional/Committee of Creditors shall also have the right to disclose the financials and scores of any

Resolution Applicant (basis Evaluation Matrix) to other Resolution Applicant, pursuant to any challenge mechanism adopted by them. Provided however that the Resolution Professional or the CoC shall not be bound to disclose the commercials or scores of any Resolution Applicant or disclose the methodology adopted in arriving at such scores. It is further clarified that the Resolution Applicant shall not have the right to request clarifications on the scoring made as per Evaluation Matrix or seek information as regards the methodology adopted for scoring of its Resolution Plan.”

14. As noted above, after receipt of the Resolution Plans, the CoC decided to hold a Challenge Process. The Resolution Professional issued a Challenge Process Document on 12.10.2023 containing Rules of the Challenge Process. Resolution Professional also asked by email dated 12.10.2023 to the Resolution Applicants asking them to submit undertaking before commencement of the Challenge Process. As per Annexure 1, the details pertain to financial bid in Challenge Process, base price, increment and other relevant clauses were mentioned. Clause 5(h) provided that value submitted by highest bidder of each round will be disclosed at the end of each round during the meeting to all the participating Resolution Applicants. Clause 6 provided for ‘base price’ which was fixed as Rs.240 Crores. Clause 7 dealt with the ‘increment’ which is as follows:-

“7. Increment.

At the end of each round, the bid with highest value will be the "Threshold Bid Amount" for the next round. The Resolution Applicants must match or

exceed the Threshold Bid Amount for the respective round in order to continue participating in the Challenge Process. Resolution Applicants will have to improve their bid in each round in multiple of Rs. 10 Crores.

Alternatively, if any Resolution Applicant is unable to match or exceed the Threshold Bid Amount for the respective round, they will have an option to put forward their best bid (which may be lower than the Threshold Bid Amount for that particular round, but higher than their previous bid submission) and exit the Challenge Process by informing the Resolution Professional of such decision via the authorised e-mail-ID. The bid so, submitted will be considered as their final bid.

Resolution Applicants shall be required to participate in each round except where they have already communicated their decision to exit the Challenge Process in writing. Provided that in case the amount bid by a Resolution Applicant in the previous bid round constitutes Threshold Bid Amount for the next round, such Resolution Applicant shall have the option to either not participate in such next round or he may improve its financial proposal over Threshold Bid Amount in such next round. Provided further that where all the active participating Resolution Applicants are at the Threshold Bid Amount, all such Resolution Applicants shall be required to participate in the next round (in such a case it would be conveyed to the Resolution Applicant)”

15. Clause 9 deals with the ‘elimination/ exit’ which is to the following effect:-

“9. Elimination/Exit. *In the event a Resolution Applicant does not match or exceed the Threshold Bid Amount for a particular round, the highest Financial Proposal of such Resolution Applicant shall be considered as the final bid of the Resolution Applicant and such Resolution Applicant shall be deemed to have exited the Challenge Process and such Resolution Applicant shall not be allowed to participate in the next round of bidding unless otherwise decided by CoC.”*

16. Post Challenge Process, Resolution Applicants were required to submit a draft of its Resolution Plan to incorporate the highest bid amount submitted by such Resolution Applicant in the Challenge Process to the Resolution Professional within a period of 24 Hrs. from the conclusion of the Challenge Process.

17. After communicating the Rules of Challenge Process to all Resolution Applicants, Challenge Process commenced on 27.10.2023. In the 10th CoC meeting, three rounds of bidding were conducted. Resolution Applicants were not made aware of the amounts of the bid placed by others. At the end of each round, the highest bid was displayed to participating Resolution Applicants. In the Challenge Process, following bids were submitted by Consortium as well as SRA. In the 10th CoC meeting in Annexure 1, following has been captured:-

Round	Base/Threshold Bid	SRA bid	Consortium bid	Highest Bid	Highest Bidder at the end of round

Round 1	240 (base)	241	240	241	SRA
Round 2	241 (threshold bid)	.*	242	242	Consortium
Round 3	242 (threshold bid)	251	.**	251	SRA

**As permitted in Clause 7 of the Process Note, SRA did not participate in Round 2 (as its bid was threshold bid).*

***Consortium was deemed to have exited the Challenge Process on account of its incremental bid in round 2 not being in multiple of INR 10 Crores over its previous bid as mandated under Clause 7 of the Process Note.”*

18. From the table as given above, it is clear that in the 1st round, the base bid was Rs.240 Crores. SRA gave a bid of Rs.241 Crores and Consortium gave a bid of Rs.240 Crores. Highest bid was treated as Rs.241 Crores. The other Resolution Applicants did not bid. It is also relevant to notice that during the Challenge Process, the Resolution Applicants were permitted to raise queries by e-mail. The consortium has sent an e-mail to the Resolution Professional requiring clarification. As noted above, in the 1st round, SRA gave bid of Rs.240 Crores. E-mail was sent by Entertainment Network India Ltd. as well as on behalf of Abhijit Realtors raising queries with regard to bid of Rs.241 Crores given by SRA. Objection was that SRA has to give bid in increment of Rs.10 Crores and SRA gave bid of Rs.241 Crores, hence, SRA should not be allowed to bid further. The e-mail sent on behalf of Abhijit Realtors on 27.10.2023 at 12.49 PM is as follows:-

*“On Fr, Oct 27, 2023 at 12:49 PM Vijay P Lulla ***:*

Dear Sir.

Please note that at the end of round 1 the highest bid was declared at Rs. 241 crores.

As per the challenge process document and our discussions with the RF team we were made to understand the base price for bidding is Rs. 240 crores with increments of Rs. 10 crores. Only in case any RA does not want to give bid above the threshold value then they may give their best bid and it will be their last bid in this case the bid of the RA who has given the bid of Rs. 241 crores should be taken as the last bid and not allowed to bid further.

However, in the meeting you allowed him to bid further. This is in contravention to the challenge process mechanism. Kindly either announce that this was his last bid or strap the process and redo the entire process again.

*Regards
Vijay Lulla"*

19. The Resolution Professional immediately replied e-mail dated 27.10.2023 at 13:34:25 PM informing that the process is conducted as per the Challenge Process document. INR 240 Crores was the base price and there was no requirement for the initial bid to be in the increment of Rs.10 Crores which could have been of any value higher than the base price. E-mail of the Resolution Professional is as follows:-

"Subject: Re: Objection to Bid of Rs. 241 crores in Round 1 of RBNL

From Rohit Mehra-RBNL <ip.rbnl@gmail.com> on Fri, 27 Oct 2023 13:34:25

To: Vijay P Lulla <vijayplulla@rediffmail.com>

*Cc: ******

Dear Sir.

Please note that the process is being conducted as per the Challenge Process document. INR 240 Crore was the base price as specified in Clause, of the

Rules for Challenge Process. As per the challenge process document, there was no requirement for the initial bid to be in the increment of 10 Crore and could have been of any value higher than the base price. After the initial bid, only the incremental bid by each resolution applicant is required to be in multiples of INR 10 Crore (of their own bid) as per Clause 7 of the Rules of Challenge Process

Hope the above clarifies.”

20. We have already noticed that the Consortium itself in the 1st round has given a bid of Rs.240 Crores. When Consortium itself has given a bid of Rs.240 Crores i.e. equal to base bid, the objection that bid of SRA which is not increments of Rs.10 Crores should not be accepted, is not in accordance with the Process Note. In the 2nd round, the SRA has not given a bid as in earlier round, it had highest bid and as per Process Note, it is not necessary for bidder whose bid is highest in the earlier round to bid. However, in the 2nd round, Consortium has given a bid of Rs.242 Crores. The Resolution Professional has sent an email enquiring as to bid of Rs.242 Crores as submitted is the final bid of the Consortium. Resolution Professional sent following e-mail to the Consortium representative which e-mail was sent at 13:01:40:

“Dear Sir,

Given the queries you have raised vide a separate email few minutes back, please confirm that this bid is a valid, unconditional bid from your end.

Regards”

“On Fri, Oct 27, 2023 at 1:12 PM Vijay P Lulla <vijayplulla@rediffmail.com> wrote

Dear Sir,

We have given a valid bid, subject to the queries raised.

Regards

Vijay Lulla”

21. The confirmation was sent on behalf of the Consortium that they have given a valid bid. On same day at 13.44, Resolution Professional sent an e-mail informing the Consortium that the bids submitted being not in the terms of Challenge Process, the consortium shall be deemed to have been exited to the Challenge Process. E-mail sent by the Resolution Professional is as follows:-

“Subject: Re: Bid for Round 2

*From Rohit Mehra RBNL <**@gmail.com> on Fri, 27 Oct 2023 13:44:20*

To: Vijay P Lulla <vijayplulla@rediffmail.com

*Cc: Mehul Shah
<mehul.shah@timesgroup.com, <ip.rbnl@in.ey.com>*

Dear Sir,

Basis the bid submitted by you in the last round, in terms of the Challenge Process document, you are deemed to have exited the Challenge Process. Accordingly, you are requested to submit the draft of the revised resolution plan after incorporating the highest financial proposal submitted by you in round 2.

Thanks & Regards,”

22. Submission has been advanced by the Appellant that the Appellant has been exited from 2nd round illegally. It is submitted that the Consortium

was entitled to match the last threshold bid, in Round 1 Rs.241 Crores was highest bid and the bid which was to be given of Rs.242 Crores was higher than the last threshold bid. Consortium could not have been exited from the Challenge Process. It is relevant to note that the Resolution Professional's reply was sent immediately that bid in 2nd round given by consortium is not in accordance with the process document. We need to look into Clause 7 of the Challenge Process Document. The first part of Clause 7 is as follows:-

“7. Increment.

At the end of each round, the bid with highest value will be the "Threshold Bid Amount" for the next round. The Resolution Applicants must match or exceed the Threshold Bid Amount for the respective round in order to continue participating in the Challenge Process. Resolution Applicants will have to improve their bid in each round in multiple of Rs. 10 Crores.”

23. The above clause provide that the Resolution Applicant must match or exceed the threshold bid amount for the respective round in order to continue participating in the Challenge Process. The next sentence in Clause 7 is “Resolution Applicants will have to improve their bid in each round in multiple of Rs.10 Crores”. The consortium has given a bid in 1st round of Rs.240 Crores, hence, in the 2nd round they are obliged to give a bid of increment of multiple of Rs.10 Crores i.e. atleast Rs.250 Crores. Both the above requirements have to be fulfilled and to be given effect to. Matching or exceeding the threshold bid amount is one aspect for respective rounds and the Resolution Applicants has to improve their bid in each round by

multiple of Rs.10 Crores. Consortium having bid only Rs.242 Crores in the 2nd round which was not in accordance with Clause 7 as noted above. Hence, Resolution Professional has rightly exited consortium from Challenge Process and highest bid of Rs.242 Crores was treated to be taken as a bid of consortium.

24. We do not find any error in the Challenge Process insofar as consortium was exited after 2nd round. In the 3rd round, SRA has given a bid of Rs.251 Crores which was with increment of Rs.10 Crores to its earlier bid which was Rs.241 Crores. In the 3rd round, highest bid was Rs.251 Crores and there are no other Resolution Applicants. The Challenge Process was rightly closed. We, thus, are of the view that the Challenge Process was conducted by the Resolution Professional in accordance with Process Note. Counsel for the Appellant has also contended that the Challenge Process adopted by the Resolution Professional is in violation of Regulation 39(1A) of the CIRP Regulations. Regulation 39(1A) of the CIRP Regulations is as follows:-

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

25. The use of challenge mechanism is fully provided in the Regulation also as noted above. Further, RFRP, as noted above, provided for conducting

a Challenge Process. We do not find any violation of Regulation 39(1A) of the CIRP Regulations in the Challenge Process conducted by the Resolution Professional.

26. Now we come to the Negotiation Process which was undertaken by the Resolution Professional under the decision of the CoC. All Resolution Applicants were called for negotiation. Clause 2.3.11 of the RFRP clearly empowers the CoC to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximisation. Clause 2.3.11 is as follows:-

“2.3.11 Further, notwithstanding anything stated herein, there shall be no restriction on the right of the Committee of Creditors to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximization.”

27. Thus, negotiations after Challenge Process is fully permissible. Counsel for the Respondent has rightly placed reliance on the judgment of this Tribunal in **“Visra ITCL (India) Ltd. vs. Torrent Investments Pvt. Ltd. & Ors.-Company Appeal (AT) (Ins.) Nos.132, 133 and 134 of 2023”** in which judgment, paragraphs 60 and 61 following was held:-

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

further steps of negotiations with the Resolution Applicants, which resolutions are received after completion of Challenge Mechanism.

61. In view of the above discussions, we allow the Appeals in following manner:

(i) The order impugned dated 02.02.2023 is set aside. IA No.1/MB/C-I/2023 and IA No.99/MB/C-1/2023 filed by Respondent No.1 are rejected.

(ii) It is held that CoC is fully empowered as per the Clauses of RFRP to further negotiate with one or more Resolution Applicants, even after completion of Challenge Mechanism on 21.12.2022 and the decision of CoC taken on 06.01.2023 to undertake an Extended Challenge Mechanism is not violative of Regulation 39(1A).

(iii) The CoC may proceed to fix a date after two weeks for holding a Revised Challenge Mechanism or/and to take any steps for further negotiations with the Resolution Applicants as per the relevant Clauses of the RFRP.

(iv) A further exclusion of 30 days period is allowed. The parties shall bear their own costs.”

28. We further notice that the Consortium as well as SRA gave their enhanced financial offers by submitting a plan on 04.11.2023. The SRA has given proposal for Rs.261 Crores and Consortium has given proposal for Rs.248 Crores, thus, both the SRA and the Consortium have increased their last financial proposal which was given in the challenge process. Creative also gave proposal of Rs.240 Crores although did not participate in the Challenge Process. In the 12th CoC meeting held on 06.11.2023, the revised proposals received from the Resolution Applicants were opened. One of the CoC members even asked the Consortium if they are satisfied with the

Challenge Process and further negotiations by the CoC. In the minutes of 12th CoC meeting, representative of the Consortium stated that they are satisfied with the negotiation process which is recorded in the minutes. Resolution Professional has filed the minutes of 12th CoC meeting (has also filed unredacted copies of the minutes as directed by this Tribunal while reserving the judgment). It is useful to extract following part of the minutes where statement made by Consortium was recorded that they agreed to negotiation process conducted by the CoC:-

“HSBC representative requested representative of the Consortium to confirm if they were satisfied with the opportunities provided to them to improve their financial proposal. Representative of Consortium clarified that they agreed to the overall process conducted by the CoC to negotiate with the Resolution Applicants. CoC took note of the same and requested representatives of RA were asked to leave the meeting.”

29. The Consortium participated in the negotiation process and also gave increased bid. Negotiation process was conducted by the CoC for the value maximisation as is permitted by the RFRP. We do not find any error in the negotiation process conducted by the Resolution Professional under the decision of the CoC. From the above discussions, we are of the considered opinion that there is no error in the Challenge Process conducted by the Resolution Professional on 27.10.2023 as well as negotiation process which was undertaken by the CoC after challenge process. We answer Question (I) & (II) accordingly.

(I) Challenge Process dated 27.10.2023 was conducted in accordance with the CIRP Regulations as well as the Process Note dated 12.10.2023.

(II) The CoC was fully competent to conduct Negotiation Process for value maximisation after completing the Challenge Process which Negotiation Process was conducted in accordance with RFRP and Process Note.

Question No.III

30. The Appellant has challenged the eligibility of SRA and has filed application before the Adjudicating Authority both by the Consortium and Creative questioning the eligibility of SRA to submit a Resolution Plan. Before we proceed further, we need to consider one argument which has been advanced by the Respondent that the Appellant having not raised any objection to the eligibility of SRA during process when the final list of Prospective Resolution Applicants was published, they are precluded from raising any challenge to the eligibility of the SRA. The argument is that the final list of Prospective Resolution Applicants was issued by the Resolution Professional to which no objections were filed by any of the Resolution Applicants including the Consortium and the Creative. Reliance has been placed on Regulation 36B. Regulation 36B (1) provides as follows:-

“36B. Request for resolution plans. (1) The resolution professional shall, within five days of the date of issue of the final list under sub-regulation (12) of regulation 36A, issue the information

memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list:

Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.”

31. One of the submissions has also been raised on Regulation 36B (3) that minimum 30 days’ period was required to be allowed to submit a Resolution Plan. In the present case, RFRP was issued and required period of 30 days was very well provided. The objection by the Respondent was that since no objection was filed, provisional list of Prospective Resolution Applicants became final.

32. It is true that when no objection was raised to inclusion of Resolution Applicants in the provisional list and the final list, the Resolution Applicants are to be treated eligible to participate in the process and in the process, no objection can be taken regarding eligibility. However, when the Resolution Plan came for approval before the Adjudicating Authority, in a case where it is found that Resolution Applicant is not eligible and does not fulfil any requirement of eligibility, the Adjudicating Authority in no manner is deprived from considering the said question regarding eligibility. The objection regarding eligibility of Resolution Applicant, thus, can very well be considered by the Adjudicating Authority while considering the approval of the Resolution Plan. Thus, we are not persuaded to accept the submission of the Respondent that since in the process no objection was raised to the eligibility of SRA, the same question cannot be raised before the

Adjudicating Authority. We are of the view that regarding eligibility of the Resolution Applicant, the same can very well be considered and examined by the Adjudicating Authority when the application to approve the Resolution Plan comes for consideration.

33. Now we come to the grounds of challenge raised by the Appellant regarding eligibility. The Invitation for Expression of Interest issued by the Resolution Professional provided for eligibility of the Resolution Applicants in Clause 3. Clause 3 which deals with 'eligibility criteria under Section 25(2)(H)' of the IBC is as follows:-

"3. ELIGIBILITY CRITERIA UNDER SECTION 25 (2)(H)

Pursuant to the provisions of Section 25(2)(h) of Code, read with Regulation 36A of the CIRP Regulations, the RP, hereby issues this IEOI inviting EOIs for submission of resolution plan(s) for the Corporate Debtor from prospective resolution applicants ("Prospective Resolution Applicants "PRAS") who fulfils the following eligibility criteria.

A. Category A: Body Corporates, limited liability partnerships (LLPs):

a) A minimum Tangible Net Worth (consolidated) of at least INR 50 crores at a group level as per latest audited financial statements which shall not be earlier than the financial year ending on 31st March 2022; or

b) Consolidated turnover at a group level should average at least INR 75 crores or more for the three immediately preceding audited financial years. The immediately preceding financial year should not be earlier than the financial year ending on 31st March 2022.

Calculation of Tangible Net Worth and Turnover criteria shall be duly certified by statutory auditor of the Prospective Resolution Applicant/ practicing Chartered Accountant.”

34. Clause 3(a) indicates that Category (A) is for ‘body corporates, limited liability partnerships’. Under sub-clause (a), a minimum tangible net worth at least INR 50 Crores at a group level as per latest audited financial statements. Under sub-clause (b) provides for consolidated turnover at a group level should be average at least Rs.75 Crores. The SRA’s case is that the SRA fulfils both the eligibility mentioned in sub-clauses (a) and (b) which is also the case of the CoC as well as the Resolution Professional also. It is relevant to notice that when the Resolution Professional was examining the list of EoIs received from the Corporate Debtor. In the 4th CoC meeting held on 08.06.2023, a list of 22 EoIs received has been tabulated by the IRP which has been brought on the record at Pages 96 and 97 of the common reply filed by the Resolution Professional in these Appeals. It is useful to extract the list where the name of SRA is mentioned and there is a Note (2) in the list which is to the following effect:-

“2. Applicant incorporated on 21st Oct, 2022, earlier a sole proprietorship. We have considered the net

worth of individual Promoter for eligibility Received EOI on 1st June 2023 10:50 AM IST from Indian representatives of the applicant.”

35. Thus, the Resolution Professional has treated the net worth of individual promoter for eligibility of SRA which is fact mentioned in the list of EoIs received which was placed before the CoC. The challenge of the Appellant is that it is only body corporate which is entitled to become a Resolution Applicant and it is only body corporate whose net worth and turnover in a group need to be considered. As noted above, the net worth and turnover has to be considered at a group level. ‘Group’ has been defined in Notes 5(a) of Invitation for Expression of Interest which provides as follows:-

“a) For the purpose of this Invitation for EoI, please note the following definitions:

"Group" shall mean and include (i) an entity, which, directly or indirectly, holds 26% (twenty six percent) or more of the share capital of the Prospective Resolution Applicant or (ii) an entity in which the Prospective Resolution Applicant, directly or indirectly, holds 26% (twenty six percent) or more of the share capital or (iii) an entity in which the Prospective Resolution Applicant, directly or indirectly, has the power to direct or cause to be directed the management and policies of such entity whether through the ownership of securities of agreement or any other arrangement or otherwise or (iv) an entity which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Prospective Resolution Applicant

whether through the ownership of securities or agreement or any other arrangement or otherwise or (v) an entity which is under common Control with the Prospective Resolution Applicant.”

36. The bone of contentions between the parties is that the expression ‘entity’ whether it is contemplated as a corporate entity or it also include an individual. Both the CoC and the Resolution Professional’s case is that the entity can be individual also and the word ‘entity’ has been used in the expansive manner so to include the individual. What is the meaning of expression ‘entity’ is the question to be answered? When we look into the definition of ‘group’, there are five sub-clauses. Sub-clause (i) and sub-clause (iv) which are relevant for the present case are as follows:-

“(i) an entity, which, directly or indirectly, holds 26% (twenty six percent) or more of the share capital of the Prospective Resolution Applicant or;
(iv) an entity which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Prospective Resolution Applicant whether through the ownership of securities or agreement or any other arrangement or otherwise or”

37. Sub-clause (i) provides for requirement of an entity directly or indirectly holding 26% or more of the share capital of the Prospective Resolution Applicant. An entity which directly or indirectly holds 26% share capital may be an individual or a corporate entity or both. Sub-clause (iv), as noted above, is an entity which directly or indirectly has power to direct the

management and policies of the Prospective Resolution Applicant whether through the ownership of securities or agreement or any other arrangement or otherwise. The above clause is couched in a very wide sense. An entity which has the power to direct or cause to be directed the management and policies of the Prospective Resolution Applicants can both may be an individual or corporate entity. In the present case, Sahil Mangla holds 99.99% shares of the Corporate Debtor. There is no indication in the definition of group which can be read to mean that word 'entity' has been used in the sense that it should be a corporate entity. Ministry of Information & Broadcasting Guidelines dated 25.07.2011 has also been brought on the record by Rejoinder-Affidavit filed by the Appellant. The expression 'entity' has been used in the said guidelines which was issued in 2011. We may refer Clause 2.5 of the Guidelines which is as follows:-

"2.5. Permission will be granted only in cases where equity held by the largest Indian shareholder is at least 51% of the total equity, excluding the equity held by, Scheduled Banks and Public Financial Institutions as defined in Section 4A of the Companies Act, 1956. The term largest Indian shareholder, used in this clause, will include any or a combination of the following:

(1) In the case of an individual shareholder,

(a) The individual shareholder.

(b) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.

(c) A company group of companies in which the individual shareholder HUF to which he belongs has management and controlling interest.

(2) In the case of an Indian company.

(a) The Indian company

(b) A group of Indian companies under the same management and ownership control.

For the purpose of this Clause, "Indian company" shall be a company, which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

Provided that in case of a combination of all or any of the entities mentioned in Sub Clause (1) and (2) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company”

38. When we look into 2nd proviso, the word ‘entity’ has been used with regard to combination of all or any of the entities mentioned in sub-clause (1) and (2). Sub-clause (1)(a) refers to individual shareholder. Thus, the word ‘entity’ as used in Clause 2.5, 2nd proviso shall also cover an individual shareholder. Thus, the use of expression of ‘entity’ which has occurred in the MIB Guidelines which meaning of entity in the said guidelines can also refer to an individual.

39. Counsel for the Respondent has also submitted that the documents which has been prepared by the CoC has to be read and interpreted with commercial common sense approach as a reasonable business purpose and in a manner which further the commercial intent of the CoC and advance competition by allowing participation of maximum number of PRAs. Counsel for the Respondent has relied on the judgment of the Hon'ble Supreme Court in **“Agmatel India Pvt. Ltd. vs. Resourcesys Telecom and Ors.- (2022) 5 SCC 362”** where in paragraphs 24 and 26, following has been laid down:-

“24. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject-matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be refer to the three-Judge Bench decision of this Court in Galaxy Transport Agencies wherein, among others, the said decision in Afcons Infrastructure has also been considered; and this Court has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.

26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the

tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.”

40. This Tribunal has also occasion to take the above view in the judgment of this Tribunal in **“Authum Investment and Infrastructure Ltd. Vs. Rajneesh Sharma Administrator of SREI Equipment Finance Ltd. and SREI Infrastructure Finance Ltd. & Ors.- 2024 SCC OnLine NCLAT 29”** where in paragraph 22, following was held:

“22. The determination of NPV of the Respondent No.2 as per final Resolution Plan as done by the Consolidated CoC and its advisors, thus, has to be treated as final and cannot be allowed to be challenged by any other Resolution Applicants. Present is a case where Appellant is challenging the determination of NPV by CoC and its Process Advisors contrary to the aforesaid Clause 2(ii) which is impermissible. The evaluation matrix and Process Document are documents which have been issued by the CoC and the CoC is the best judge to interpret its document and apply it for evaluation of NPV of the Resolution Applicants. The Hon’ble Supreme Court in “Silppi Constructions vs. Union of India- (2020) 16 SCC 489” held that the author of a document is a best

judge as to how the document has to be interpreted. In paragraph 20 of the judgment, following has been held:-

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

41. We, thus, are of the view that the inclusion of the net worth and turnover of the promoter while examining the eligibility of the SRA cannot be said to be contrary to the Invitation for Expression of Interest. Resolution Professional has verified the eligibility of SRA and other Resolution Applicants and found the SRA eligible. The Resolution Professional in common reply filed in the appeal has pleaded that the SRA fulfils both net worth criteria and turnover criteria. It is useful to extract paragraph 10.17 of the common reply, which is as follows:-

“10.17. Notably, even though the requirement as per the IEOI is to meet either the net worth or turnover criteria at group level, the SRA met both criteria. It is

relevant to point out that the SRA was corporatized on 21 October 2022, prior to which, the business of the SRA was being operated under a sole proprietorship of Mr. Sahil Mangla, the promoter of SRA who holds 99.99% shareholding in the SRA. The business was corporatized through incorporation of a company by Mr. Sahil Mangla on 21st October 2022 and transfer of proprietary business to the company as a going concern with Mr. Sahil Mangla as the 99.99% shareholder. It is submitted that the SRA met both the criteria stipulated in the IEOI, as explained below.

(a) Net Worth Criteria. This test requires a PRA to have a minimum net worth of at least INR 50 Crores at a group level. While considering the net worth of the SRA, the net worth of INR 85.04 Crores of Mr. Sahil Mangla (being 99.99% shareholder and promoter of SRA) was also considered. Hence, at a group level, the minimum net worth requirement of INR 50 Crores was met.

It is submitted that narrow interpretation of the term 'group' as canvassed by unsuccessful resolution applicants cannot be accepted as the intention was not to limit the meaning of 'group' to only corporate entities. The IEOI was intended to also cover promoter and promoter group. Hence, while the person submitting the IEOI was restricted to corporate entities (SRA was a corporate entity at the time of submission), the definition of the term 'group' in the IEOI was not meant to restrict the same to companies alone and could include the promoter that was holding/ owning 99.99% of the SRA

(b) Turnover Criteria: As per this test, a PRA, which is a corporate entity, must have consolidated turnover at a group level which averages at least INR 75 Crores or more for the three immediately preceding financial years, not earlier than the financial year ending on 31 March 2022.

As mentioned, SRA was incorporated on 21 October 2022 and its turnover for FY 2022-2023 (as per the audited balance sheet provided to RP by SRA) was INR 128.50 Crores, which is much more than the stipulated turnover.

Creative has alleged that turnover criteria for SRA cannot be considered since it was incorporated on 21 October 2022 and that the purpose of keeping turnover for 3 preceding FYs was to check the performance of the company for all 3 years. However, it is submitted that the average turnover of the business of the SRA for the immediately preceding 3-year financial years was also more than the stipulated turnover (average of INR 140.16 Crores). In this regard, as mentioned earlier, prior to corporatization, the business of the SRA was being operated under a sole proprietorship of Mr. Sahil Mangla who corporatized the business through incorporation of a company and transfer of proprietary business to the company as a going concern. Since the turnover is of a business (turnover of company sans business has no meaning), in terms of averaging, the turnover of the business for FY 2020-2021 and FY 2021- 2022 would necessarily

need to be considered and added to the turnover for FY 2022-2023.

Apart from the above, the average consolidated turnover of the SRA at the promoter group level was also higher than the minimum stipulated amount of INR 75 Crores for the 3 immediately preceding audited financial years.”

42. Submission was also made that CA certificate which was referred to by the Adjudicating Authority dated 04.11.2023 whereas EoI was submitted in May 2023, Resolution Professional has explained and clarified that at the time of submission of EoI, a CA Certificate was submitted in May 2023 by Garima Grover, however, when increase financial proposals were submitted by a plan as was asked by the Resolution Professional by letter dated 02.11.2023, on 04.11.2023, when plan was submitted SRA has given fresh CA Certificate dated 04.11.2023 which was an updated certificate as required. In updated certificate dated 04.11.2023, there was increase in the financials. There is another CA Certificate which was obtained by Creative for filing an application objecting to the eligibility of the SRA which certificate was obtained by Creative and was not a certificate obtained by SRA and given by SRA, hence, the said certificate is not relevant for determining the net worth or turnover of the SRA.

43. The CoC which consists of financial institutions is well versed with the financials of all Resolution Applicants. The CoC under whose direction the Resolution Professional has issued Invitation for Expression of Interest is well aware of the clauses and eligibility provided. As noted above, the

Resolution Plan has placed before the CoC, while computing the net worth and turnover of the SRA, net worth and turnover of the promoter has been included. We have already held that in Clause 3, the definition of 'entity' as occurring in Note 5 'group' also includes an individual. We are not persuaded to accept the submission of the Appellant that expression 'entity' occurring in clause 3 has to be read as 'corporate entity'. We find that the SRA was fully eligible to submit Resolution Plan it having complied with the eligibility as prescribed in Clause 3.

44. Appellant has filed IA No.4691 of 2024 in Company Appeal (AT) (Ins.) No.925 of 2024 and IA No.4692 of 2024 in Company Appeal (AT) (Ins.) No.924 of 2024 praying for acceptance of additional documents on record which documents include GST Returns of Sahil Mangla and the Income Tax assessment for the years 2022-23 and 2023-24 of Sahil Mangla. The application has been opposed by Counsel for the SRA. It is submitted that the GST Returns as well as the Income Tax Assessment sought to be brought on record by the Appellant are documents to which no access can be there for the Appellant. Counsel for the SRA has referred to Section 151 of the Central Goods and Service Tax Act, 2017 and Section 138 of the Income Tax Act, 1961 which contains a legal bar to produce or rely on the returns. In the Invitation for Expression of Interest, the Resolution Applicants has been provided necessary requirements for submission of the EoI in Clause 8 which clause 8 is as follows:-

"SUBMISSION OF EOI

The EOI should be unconditional and should be submitted in the format attached as Annexure 'B', It should be accompanied with the following documents information, as applicable:

a) For all PRAs-Profile of PRA including subsidiary (wholly-owned subsidiary and partly owned subsidiary if any), promoter and promoter group, parent company and ultimate parent company, key managerial personnel and board of directors.

b) For all PRAs-Proof of address along with copies of Certificate of Incorporation/Registration and Constitutional Documents (MOA, AOA) or other equivalent organizational documents. Copy of PAN card. GST number or equivalent documents.

c) For all PRAS- Audited financial statements of the last three years and its group company as per eligibility criteria.

d) For all PRAS- A notarized declaration from the PRA in order to demonstrate that the promoter/ promoter Group or any other Group company are part of the same group, in case the interested party is using such entities for meeting the eligibility criteria. Please note that the PRA shall provide all relevant documents for its promoter/ promoter Group or any other Group company. if required to meet the eligibility criteria.

e) For all PRAS-A certificate from statutory auditor or practicing chartered accountant certifying Tangible Net Worth, turnover. AUM, committed funds, Net Owned Funds (in case of ARC), as the case may be.

f) An Undertaking in the format attached as Annexure 'A'

g) An Undertaking in the format attached as Annexure "C".

h) A Confidentiality Undertaking in the format attached as Annexure 'D'.

i) A list of connected persons of the PRAs (including of each member of the Consortium), as defined under Section 29A of the Code.

j) A statement showing how the PRA meets the conditions laid down in the eligibility criteria along with documents to substantiate the same.

k) A statement giving details if the PRA or any of its related parties has withdrawn from or failed to implement or contributed to the failure of implementation of any other resolution plan.

l) Any additional document information asked by RP or CoC must be furnished by PRA

m) EOI shall be submitted in the following manner:

- i. Electronically at ip.rbnltd@gmail.com with a copy to ip.rbnl@in.ev.com*
- ii. Hard copy EOI shall be submitted to following address:*

*Unit No. 503, 5th Floor, ARC Plaza Industrial Estate.
48 Oshiwara Village, Jogeshwari (West). Mumbai
400102”*

45. The documents which are required to be filed along with the submissions of the EoI having already been prescribed and there is no requirement of Income Tax assessment or GST Returns, we are of the view that the additional documents sought to be brought on record by the Appellant need no consideration. The decision of the Resolution Professional and the CoC regarding eligibility of the SRA was on the basis of materials which were on the record. It is not the case of the Appellant that the necessary documents as was required to be submitted along with the EoI were not submitted by the SRA. We, thus, are of the view that the documents sought to be brought on record by IA No.4691 of 2024 and IA No.4692 of 2024 cannot be accepted. IA No.4691 of 2024 and IA No.4692 of 2024 are thus, rejected.

46. One more submission which has been made by Counsel for the Appellant is that the SRA was blacklisted by Indian Oil Corporation, hence, ineligibility is also attached as per Clause 5(d) of the Invitation for Expression of Interest. Clause 5(d) is as follows:-

“d) Any entity which has been barred by the Central State Government or any other relevant regulator, or any entity acting jointly or in concert or controlled by them, from operating or engaging in its business, as on the date of submission of the EOI, would not be eligible to submit the EoI, either individually or as member of a Consortium and its networth turnover etc. can also not be taken into consideration. In case any such prohibition is imposed after the submission of the EoI, then such applicant shall be disqualified. In case the RP or the CoC subsequently becomes aware or is made aware of any disqualification of the Prospective Resolution Applicant, then they shall have a right to disqualify such Prospective Resolution Applicant from the resolution process.”

47. When we look into the said clause 5(d) ‘entity’ which has been barred by the Central Government/ State Government or any other relevant Regulator only then Clause (d) shall be attracted. Indian Oil Corporation is not covered under Clause 5(d). Furthermore, in view of the order of the Lucknow Bench of Allahabad High Court which has been placed by the Respondent for consideration, it is clear that the period of such blacklisting is over. We, thus, are of the view that no ineligibility can be attached on the SRA under Clause 5(d).

48. Appellants have also raised grievance with regard to non-upholding of two letters on the VDR i.e. letter dated 18.10.2023 sent by Reliance ADAG to Resolution Professional to cease and desist use of trademark/ tradename/ domain names and other intellectual property and other letter dated 19.10.2023 sent by Resolution Professional to one Vrushvik Entertainment Pvt. Ltd. for rectification of certain records relating to Big FM Trade Marks. The said document was subsequently put on VDR after challenge process. The above letters were written to the Resolution Professional and by Resolution Professional respectively. With regard to subject matter as referred to in the letter, we fail to see how non-receipt of the letter by Appellant prior to challenge mechanism has prejudiced the Appellant in submitting its bid. The Resolution Plans were submitted on “as is where is basis”. No extra information was provided to the SRA and on the basis of same information all Resolution Applicants including SRA has submitted their bids. We, thus, are of the view that the mere fact that above two letters were put on VDR subsequently on 03.11.2023 in no manner has any effect on challenge process.

49. It is also relevant to notice that the Resolution Plan submitted by SRA has been approved by the CoC. The CoC in its commercial wisdom after deliberating on the feasibility and viability of the Resolution Plan and after evaluating the plan, has approved the Resolution Plan. The commercial wisdom of the CoC in approval of the Resolution Plan cannot be interfered with by the Adjudicating Authority or this Tribunal unless the plan is non-

compliant with Section 30(2) or there are any other valid grounds to interfere with the commercial wisdom of the CoC. The Hon'ble Supreme Court has time and again laid down that there should be least interference in the approval of Resolution Plan by the CoC which has approved the plan in exercising its commercial wisdom. Judgment of the Hon'ble Supreme Court in **"K. Sashidhar vs. Indian Oil Overseas Bank and Ors.- (2019) 12 SCC 150"** is referred where in paragraphs 52 and 55 following has been laid down:-

"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.

55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the

management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

50. The Hon’ble Supreme Court in **“Jaypee Kensington Boulevard Apartments Welfare Assn. Vs. NBCC (India) Ltd., (2022) 1 SCC 401”** has again reiterated that the Adjudicating Authority has limited jurisdiction

in the matter of approval of Resolution Plan. Paragraph 108 of the judgment is as follows:-

“108. To put in a nutshell, the adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions abovereferred. The jurisdiction of the appellate authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the adjudicating authority or the appellate authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and expounded by this Court.”

51. We answer the Question No.III as follows:-

“The SRA was eligible to submit a Resolution Plan as per Clause 3 of Invitation for Expression of Interest and the net worth and turnover of the promoter Mr. Sahil Mangla could be included for purposes of net worth of a group it being entity within the meaning of Clause 3 of Invitation for Expression of Interest.”

Question No.IV

52. In the foregoing discussions, we have considered the submissions of the Appellant alleging material irregularity in the process adopted by the Resolution Professional. We have already found that the challenge mechanism as well as negotiation conducted by the Resolution Professional is in accordance with the CIRP Regulations and Process Note. In evaluation of eligibility of the SRA also there is no irregularity committed by the Resolution Professional. We, thus, do not find any tenable ground raised within the meaning of Section 61(3)(ii) of the IBC, to interfere with the order approving the Resolution Plan. Question No.(IV) is answered accordingly.

53. In view of the foregoing discussions and conclusions, we do not find any ground to interfere in the order dated 06.05.2024 impugned in the above Appeals. In result, all the Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

23rd December, 2024