NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 344 of 2022

(Arising out of the Order dated 23.12.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai) in IA No. 2028/2021 in CP (IB) No. 1137/MB/2017)

IN THE MATTER OF:

Bank of Maharashtra
Stressed Asset Management Branch
Janmangal, 45/47, 6th Floor,
Mumbai Samachar Marg, Mumbai-400001 **...Appellant**

Versus

1. **Ms. Vandana Garg**
(Erstwhile Resolution Professional/
Monitoring Committee Chairperson) of
Jyoti Structures Limited)
Residing at: C-3803, Oberoi Esquire,
Oberoi Garden City, Goregaon East,
Mumbai. **...Respondent No.1**

2. **Mr. Sharad Sanghi**
(Successful Resolution Applicant
For Jyoti Structures Limited)
Residing at: 23, Seagull Carmichael Road
Mumbai-400 026 **...Respondent No.2**

3. **Monitoring Committee of Jyoti Structures Limited**
(represented by RP being Chairperson and
RA, SBI, ICICI and IDBI)
Having address at: C-3803, Oberoi Esquire,
Oberoi Garden City, Goregaon East,
Mumbai **...Respondent No.3**

4. **Jyoti Structures Limited**
Valecha Chambers, 6th Floor,
New Link Road, Andheri (West,)
Mumbai – 400053 **...Respondent No.4**

5. **State Bank of India**
Through the authorised representative
Mr. Manish Patel, Corporate Centre,

21 Floor, Maker Tower 'E', Cuffe Parade, Mumbai – 400005 **...Respondent No.5**

6. **Bank of India**
Andheri Large Corporate Branch,
Through the Deputy General Manager,
M.D.I. Building, First Floor, 28,
S.V. Road, Andheri (W), Mumbai-400 058 **...Respondent No.6**

7. **Indian Bank**
Through the Assistant General Manager,
Sir P.M. Road, Fort, Mumbai-400001. **...Respondent No.7**

8. **Union Bank of India**
Through the Deputy General Manager, Mumbai Main Office, Union Bank Bhavan, Nariman Point, Mumbai-400 021. **...Respondent No.8**

9. **IDBI Bank Ltd.**
Through the General Manager, 49,
Maker Arcade, 7th Floor, NMG Dept.,
Cuffe Parade, Mumbai-400005

Also at: Plot No. C 7, G Block, BKC,
Opposite NSE Building, Bandra (E),
Mumbai - 400051 **...Respondent No.9**

10. **ICICI Bank Ltd.**
Through the authorised person
Mr. Krishnakumar R, 4, Laxmi Towers Kurl Complex, B Wing, Bandra Kurla Complex Road, G Block BKC, Bandra East,
Mumbai-400051 **...Respondent No.10**

11. **Bank of Baroda**
Stressed Assets Management Branch
(Formerly Dena Bank),
Through the Deputy General Manager,
1st Floor, 17/B, Mumbai Samachar Marg,
Horniman Circle, Mumbai 400023. **...Respondent No.11**

12. **Canara Bank**
Through the Branch Manager,
Maker Tower-E, 20th Floor,
Cuffe Parade, Mumbai. **...Respondent No.12**

13. **Phoenix ARC Pvt. Ltd.**
(South Indian Bank)

Through the Assistant Vice President,
5th Floor Dani Corporate Park,
158 CST Road, Kalina Santacruz (E),
Mumbai-400098 **...Respondent No.13**

14. **Standard Chartered Bank**
Through the authorised person
Mr. Srinivasan, Crescencenzo, 6th Floor,
C-38/39, G-Block, Behind MCA Club, BKC,
Mumbai-400051. **...Respondent No.14**

15. **Tata Capital Financial Services Ltd.**
Through the authorised person
Mr. Ravi Kabra, RM-SAMG, One Forbes,
Dr. VB Gandhi Marg, Fort,
Mumbai -400001 **...Respondent No.15**

16. **Mahindra & Mahindra Financial Service Ltd.**
Through the authorised person
Mr. Sumanth Parasram, Sadhana House,
2nd Floor, 570, P.B. Marg, Worli,
Mumbai-400018 **...Respondent No.16**

17. **Assets Care and Reconstruction Enterprise Ltd,**
Through the authorized signatory,
Having registered office at 2nd Floor,
Mohandev Building, 13, Tolstoy Marg,
New Delhi-110001 **...Respondent No.17**

18. **IDBI Trusteeship Services Limited**
Through the authorized signatory,
Ground Floor, Asian Building, 17,
R Kamani RD, Ballard Estate, Fort,
Mumbai-400001. **...Respondent No.18**

19. **AION Direct Singapore PTE Ltd.**
Unit G-1/G-19, Grand Hyatt Plaza
Santacruz East, Mumbai. **...Respondent No.19**

20. **Apollo Asia Private Credit Master Fund Pte. Ltd.,**
Ground floor, A-83, Pocket D,
Okhla Phase II, Okhla Industrial Estate,
New Delhi, Delhi 110020 **...Respondent No.20**

Present:

For Appellant : Mr. Ravi Raghunath, Ms. Rathina Maravarnani, Mr. Namanjeet Singh Bhatia, Advocates

For Respondent : Mr. Malak Bhatt, Ms Samridhi, Advocates for R2.
Mr. Dhruv Dewan, Advocate for R4.
Mr. Rajeev Kumar Panda, Advocate for R1.
Mr. Siddharth Sangal, Ms. Richa Mishra, Advocates for R5.

With
Company Appeal (AT) (Insolvency) No. 345 of 2022

IN THE MATTER OF:

Central Bank of India
Stressed Asset Management Branch II
Chandramukhi, Ground Floor,
Nariman Point, Mumbai – 400021 **...Appellant**

Versus

1. **Ms. Vandana Garg**
(Erstwhile Resolution Professional/
Monitoring Committee Chairperson) of
Jyoti Structures Limited)
Residing at: C-3803, Oberoi Esquire,
Oberoi Garden City,
Goregaon East, Mumbai. **...Respondent No.1**

2. **Mr. Sharad Sanghi**
(Successful Resolution Applicant
For Jyoti Structures Limited)
Residing at: 23, Seagull Carmichael Road
Mumbai-400 026 **...Respondent No.2**

3. **Monitoring Committee of Jyoti Structures Limited**
(represented by RP being Chairperson and
RA, SBI, ICICI and IDBI)
Having address at: C-3803, Oberoi Esquire,
Oberoi Garden City, Goregaon East,
Mumbai **...Respondent No.3**

4. **Jyoti Structures Limited**
Valecha Chambers, 6th Floor,
New Link Road, Andheri (West,)
Mumbai – 400053 **...Respondent No.4**

5. **State Bank of India**
Through the authorised representative
Mr. Manish Patel, Corporate Centre,
21 Floor, Maker Tower 'E', Cuffe Parade,
Mumbai – 400005 **...Respondent No.5**

6. **Bank of India**
Andheri Large Corporate Branch,
Through the Deputy General Manager,
M.D.I. Building, First Floor, 28,
S.V. Road, Andheri (W), Mumbai-400 058 **...Respondent No.6**

7. **Indian Bank**
Through the Assistant General Manager,
Sir P.M. Road, Fort, Mumbai-400001. **...Respondent No.7**

8. **Union Bank of India**
Through the Deputy General Manager,
Mumbai Main Office, Union Bank Bhavan,
Nariman Point, Mumbai-400 021. **...Respondent No.8**

9. **IDBI Bank Ltd.**
Through the General Manager, 49,
Maker Arcade, 7th Floor, NMG Dept.,
Cuffe Parade, Mumbai-400005

Also at: Plot No. C 7, G Block, BKC,
Opposite NSE Building, Bandra (E),
Mumbai - 400051 **...Respondent No.9**

10. **ICICI Bank Ltd.**
Through the authorised person
Mr. Krishnakumar R, 4, Laxmi Towers Kurl Complex, B Wing, Bandra Kurla Complex Road, G Block BKC, Bandra East,
Mumbai-400051 **...Respondent No.10**

11. **Bank of Baroda**
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(Formerly Dena Bank),
Through the Deputy General Manager,
1st Floor, 17/B, Mumbai Samachar Marg,
Horniman Circle, Mumbai 400023. **...Respondent No.11**

12. **Canara Bank**
Through the Branch Manager,
Maker Tower-E, 20th Floor,
Cuffe Parade, Mumbai. **...Respondent No.12**

13. **Phoenix ARC Pvt. Ltd.**
(South Indian Bank)
Through the Assistant Vice President,
5th Floor Dani Corporate Park, 158 CST Road, Kalina Santacruz (E),
Mumbai-400098 **...Respondent No.13**

14. **Standard Chartered Bank**
Through the authorised person
Mr. Srinivasan, Crescencenzo, 6th Floor,
C-38/39, G-Block, Behind MCA Club, BKC,
Mumbai-400051. **...Respondent No.14**

15. **Tata Capital Financial Services Ltd.**
Through the authorised person
Mr. Ravi Kabra, RM-SAMG, One Forbes,
Dr. VB Gandhi Marg, Fort,
Mumbai -400001 **...Respondent No.15**

16. **Mahindra & Mahindra Financial Service Ltd.**
Through the authorised person
Mr. Sumanth Parasram, Sadhana House,
2nd Floor, 570, P.B. Marg, Worli,
Mumbai-400018 **...Respondent No.16**

17. **Assets Care and Reconstruction Enterprise Ltd,**
Through the authorized signatory,
Having registered office at 2nd Floor,
Mohandev Building, 13, Tolstoy Marg,
New Delhi-110001 **...Respondent No.17**

18. **IDBI Trusteeship Services Limited**
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Ground Floor, Asian Building, 17,
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Mumbai-400001. **...Respondent No.18**

19. **AION Direct Singapore PTE Ltd.**
Unit G-1/G-19, Grand Hyatt Plaza
Santacruz East, Mumbai. **...Respondent No.19**

20. **Apollo Asia Private Credit Master Fund Pte. Ltd.,**
Ground floor, A-83, Pocket D,
Okhla Phase II, Okhla Industrial Estate,
New Delhi, Delhi 110020 **...Respondent No.20**

Present:

For Appellant	:	Mr. Ravi Raghunath, Ms. Rathina Maravarnani, Mr. Namanjeet Singh Bhatia, Advocates.
For Respondent	:	Mr Malak Bhatt, Ms Samridhi, Advocates for R2. Mr. Dhruv Dewan, Advocate for R4. Mr. Rajeev Kumar Panda, Advocate for R1. Mr. Siddharth Sangal, Ms Richa Mishra, Advocates for R5.

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

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed under Section 61 of the Insolvency and Bankruptcy Code, 2016, (the "Code") against the order dated 23.12.2021 ("Impugned Order") passed by the Hon'ble National Company Law Tribunal, Court-I, Mumbai Bench ("Ld. Adjudicating Authority, Mumbai") in IA 2028 of 2021 in CP No. 1137/MB/2017.

2. The brief facts relevant to decide the case are as under:-

a) On 04.07.2017 C.P. No.1137/MB/2017 was filed by State Bank of India against Jyoti Structures Ltd., and the same was admitted by Ld. Adjudicating Authority, Mumbai

b) On 26.03.2018 to 27.03.2018 the e-voting on the Resolution Plan by the COC was held:

- 62.66% of CoC members voted in favour of Resolution Plan;
- 23.12% voted against the Resolution Plan, and
- 14.21% of CoC members abstained from voting.

The Bank of Maharashtra abstained from voting for the Resolution Plan, while Central Bank of India cast a dissenting vote. IDBI Trusteeship Services (0.04%), Indian Bank (6.31%) and Standard Chartered Bank (3.31%) changed their voting from Dissenting to Assenting.

c) On 06.04.2018 Bank of India (9.11%) assented and hence Plan got the assenting votes of 81.31% of voting share.

d) On 31.07.2018 Ld. Adjudicating Authority, Mumbai refused to approve the Resolution Plan on the ground that CIRP period had expired and that voting cannot be changed.

e) On 19.03.2019 the above order was set aside by this Appellate Tribunal and remitted back the matter, after excluding certain period, and holding that CoC can extend time for voting and permit change of votes as there is no bar under the Code.

f) On 25.03.2019 Respondent No.2 submitted an amended resolution plan.

g) On 27.03.2019 Adjudicating Authority approved the amended resolution plan.

h) On 22.02.2021, Adjudicating Authority passed an order dated 22.02.2021 observing that Definitive Agreement as per the Resolution Plan had not been finalized.

i) On 09.09.2021, the Appellant filed IA 2028 of 2021 before the Adjudicating Authority, Mumbai inter alia praying for equal treatment of all Secured Financial Creditors for payment of Plan value on the ground that their exists glaring inequality between Assenting and Dissenting / Abstaining Financial Creditors and definitive Agreements have not been finalized / executed.

j) On 28.10.2021, Adjudicating Authority issued notice in IA 2028 of 2021

k) Definitive agreement signed on 15.09.2021.

l) On 23.12.2021, Adjudicating Authority dismissed IA 2028 of 2021 by the present Impugned Order.

3. The Appellant – Bank of Maharashtra, in CA(AT)(Ins.) No. 344 of 2022 is a Secured Financial Creditor of M/s. Jyoti Structures Limited ("Corporate Debtor") and had abstained from voting on the resolution plan. The Appellant in Company Appeal (AT)(Ins.) No. 345 of 2022 – Central Bank of India, is another Secured Financial Creditor, who had cast a dissenting vote against the Resolution Plan.

4. The questions which arise for consideration in the present Appeal are:

(i) Whether amongst the same class of creditors (i.e., Secured Financial Creditors) there can be discrimination in payment of the resolution value only on the basis of the vote cast by them?

(ii) Whether the Adjudicating Authority failed to appreciate that Section 30(2)(b)(ii) of the Code only provides for the minimum amount payable, and that the said provision does not permit inequitable, unfair and discriminatory treatment between Assenting Secured Financial Creditors and Dissenting / Abstaining Secured Financial Creditors when it comes to payment/distribution of the resolution amount?

(iii) Whether the Adjudicating Authority, Mumbai erred in dismissing IA 2028 of 2021 in CP No. 1137/MB/2017 filed by the Appellant by relying on the decision in Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657?

5. The admitted claim of Bank of Maharashtra is to the extent of Rs.184,55,84,031/-, out of which the liquidation value proposed to be paid proportionate to their exposure is of Rs.27,51,67,000/-. The admitted claim of Central Bank of India is to the extent of Rs.144,10,31,047/- out of which the liquidation value proposed to be paid proportionate to their exposure is of Rs.21,48,51,000/-.

6. Appellants claim that the inequitable, unfair and discriminatory treatment in payment of resolution value is evident from the following:

S. No.	Particulars	Amount Admitted	Amount Paid under Plan	Percentage to the Admitted claim	Haircut
1	Assenting creditors	50,45,61,52,427	36,39,83,24,001	73%	27%
2.	Dissenting/ Abstaining creditors	13,59,92,28,646	202,75,78,000	14%	86%
3	Operational creditors	4,80,53,00,000	115,00,00,000	23.95% (24%)	76%

7. The payment which the appellant would have been entitled to, if there was fair and equitable treatment, is as under: -

<table>
<tr><td rowspan="2">Bank of Maharashtra</td><td>Liquidation amount</td><td>Rs 27,51,67,000</td><td></td></tr>
<tr><td>If resolution amount is offered at par with other Assenting Secured Financial Creditors</td><td>Rs 105,86,27,000</td><td>+
Rs 78,34,60,000</td></tr>
<tr><td rowspan="2">Central Bank of India</td><td>Liquidation amount</td><td>Rs 21,48,51,000</td><td></td></tr>
<tr><td>If resolution amount is offered at par with other Assenting Secured Financial Creditors</td><td>Rs 96,45,00,000</td><td>+
Rs 74,96,49,000</td></tr>
</table>

8. Appellant claims that the Impugned Order merely records the contentions of the Appellant, extracts the said provision and paraphrases the said provision of the Code and thus claimed to be cryptic order, which is liable to be set aside. [**CCT v. Shukla & Bros., (2010) 4 SCC 785 (para 23)].**

9. Appellant claims that Section 30(2)(b)(ii)[1] of the Code provides for the minimum payment to be made to a dissenting/abstaining creditor, and that provision does not permit inequitable, unfair and discriminatory treatment between Assenting Secured Financial Creditors and Abstaining / Dissenting Secured Financial Creditors when it comes to payment/distribution of the resolution amount. Further, the Explanation I to 30(2)(b)(ii) of the Code mandates that the distribution shall be fair and equitable. Appellant advances the argument that merely because one Bank (i.e., Bank of Maharashtra) had abstained from voting and another bank (i.e., Central Bank of India) had cast a dissenting vote, they cannot be paid only as per the liquidation value, and not on par with the other Secured Financial Creditors. If discrimination in payment of resolution value between the same class of creditors (i.e., Secured Financial Creditors) on the basis of their voting is permitted, then it will have far reaching consequences in as much as a person who abstains or dissents is punished for such vote. This will have a chilling

[1] Section 30(2)(b)(ii) –
(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.- For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

effect and not encourage a participative CoC. Furthermore, that under the fear of being given only liquidation value, most of the members of the CoC will be forced to vote in favour of a plan, which may not really be in the best interests of all stakeholders and achieve the object of the Code of maximisation of the assets and revival of the Corporate Debtor.

10. Appellant places its reliance on **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531** (para 90), wherein the Hon'ble Supreme Court has observed that equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational. Appellant has also relied on **Central Bank of India Vs Resolution Professional of Sirpur Paper Mills Ltd and Others 2018 SCC OnLine NCLAT 1034**. Appellant has also relied on **RBL Bank Ltd Vs Sical Logistics Ltd, Company Appeal (AT) (CH) (Ins) No.36/2024**, which is similar to the above cited judgment.

11. Appellant also contends that the decision in **Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657** has no application to the present case in as much as the Appellant is not seeking to make any claims which are not part of the resolution plan, but is only seeking for proper distribution of the resolution amount in a non-discriminatory manner. The Appellant claims not to be seeking to setting aside of the Resolution Plan, but only seeking to establish that the Adjudicating Authority has failed to discharge the statutory duty enjoined under the Code.

12. Appellant claims that a resolution plan, which is contrary to the Code cannot be approved by the Adjudicating Authority **[State Tax Officer (1) v. Rainbow Papers Limited, 2022 SCC OnLine SC 1162** (para 15, 41, 43, 45, 47-48, 59)]. It is claimed that in the event that the discrimination in payment is set aside, then the same would not in any manner affect the basic structure of the Resolution Plan as the tenure of the payment (12 years), the Resolution Plan Value (Rs. 3965.06 Crores) and other pre-conditions for the benefit of Resolution Applicant would remain unaltered and only the payment to the Financial Creditors would get readjusted as per their exposure towards Corporate Debtor.

13. Resolution Professional/now member of the Monitoring Committee of the Corporate Debtor (Jyoti Structures Limited) has raised the question of maintainability of the present appeal, which to us is the most important issue. RP brings to our notice that in the same CIRP this Appellate Tribunal in another IA had already adjudicated and therefore the present Appeal attracts res-judicata. It was brought to our notice, that in the same CIRP, the resolution applicant Sharad Sanghi had submitted a resolution plan which was approved, basis negotiation with the CoC with 81.31% of voting shares. However, NCLT vide order dated 31.07.2018 rejected the resolution plan, which was approved by the CoC and ordered the RP to file for liquidation for Corporate Debtor. The Resolution Applicant Sharad Sanghi had come before this Appellate Tribunal under Section 61 and on March 19, 2019 and this Appellate Tribunal had remitted the mater back to NCLT to approve the resolution plan with one modification. The relevant portion of the said order

dated March 19, 2019 passed by this Appellate Tribunal has been reproduced below:

> "24. In view of the aforesaid findings and as we have already held that the Resolution Process' took place within 270 days and the "Committee of Creditors' had the jurisdiction to change its opinion in favour of the "Resolution Plan to make it a success and Regulation 26(2) being directory which also stands deleted, we set aside the impugned order and hold that the "Resolution Plan being in conformity with Section 30(2) warranted approval by the Adjudicating Authority.
>
> 25. However, we make it clear that to make the "Resolution Process successful, though it is open to the 'Committee of Creditors to change its opinion by assenting in favor of one or other plan, we further hold that the Committee of Creditors' once voted in favour of the Resolution Plan cannot change its views.
>
> 26. In the result, the case is remitted to the Adjudicating Authority, Mumbai Bench, Mumbai to approve the plan in terms of Section 31 of the Insolvency and Bankruptcy Code, 2016 with modification, i.e that the plan is to be implemented within the period of 12 years as offered by the Successful Resolution Applicant. The appropriate order be passed on an early date preferably within two weeks from the date of the production of the copy of this order"
>
> (Emphasis supplied)

14. Respondent No.2, which is the Successful Resolution Applicant, also canvases arguments similar to the arguments presented by the RP that the Appellant is effectively seeking to challenge the resolution plan at this belated stage, after the resolution plan has already attained finality, and therefore questions the maintainability of the Appeal. SRA brings to our notice that Adjudicating Authority vide order dated 27.03.2019 had approved the resolution plan. No appeals were filed against the resolution plan approval

order within the statutory period prescribed under the Code and therefore the resolution plan approved attained finality. It also brings to our notice that, being a Financial Creditor of the company, the appellant was at all times aware of all the developments with respect to the resolution plan from the date of the plan approval order till its implementation on 09.11.2021. Despite this, Appellant had chosen to file an application in September 2021, about 30 months after the approval of the resolution plan. It brings to our notice that there is an unjustifiable delay on the part of the Appellant in challenging the provisions of the resolution plan. The Respondent No. 2/SRA also brings to our notice that the plan has been implemented as on November, 2021 and the business of the company has already been taken over by the new management of the company. Furthermore, the pay outs as envisaged under the resolution plan are already under process and disrupting them will militate against the very logic of the due process envisaged under the code.

15. The Respondent No.2/SRA also brings to our notice that once the resolution plan has been approved, it is binding on all the stakeholders. The resolution plan is claimed to be unfair and inequitable to dissenting / abstaining Financial Creditors as the quantum of payments provided to the Appellant is less than the payments provided to the assenting secured Financial Creditors under the resolution plan and basis this discriminatory treatment the Appellant has sought for a modification of the resolution plan. SRA – Respondent No.2 brings to our notice that the plan provides for the payments to dissenting Financial Creditors as per Section 30(2) of the Code, which provides for the payment of debts of Financial Creditors, who do not

vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the Corporate Debtor. The above has also been accepted by the Adjudicating Authority in the impugned order. Respondent No.2/SRA brings to our notice that the provision relating to payment to dissenting Financial Creditors as is being claimed was not existing in Section 30(2) of the Code at the time of the approval of the resolution plan by the CoC.

16. Furthermore, Regulation 38 of the CIRP Regulations, contained the following as mandatory contents of the resolution plan:

> "…
>
> (c) liquidation value due to dissenting Financial Creditors and provide that such payment is made before any recoveries are made by the Financial Creditors who were voted in favour of the resolution plan."

17. SRA - Respondent No.2 has also relied on the judgment of **Jaypee Kensington Boulevard Apartments Welfare Association vs. NBCC (India) Ltd.**, **(2022) 1 SCC 401**, wherein it was held that the amount prescribed under the code and CIRP Regulations was the amount payable to dissenting Financial Creditors, which we will deal in hereinafter. Furthermore, Appellant relies on the judgement of Appellate Tribunal in **Facor Alloys Limited and Anr. Vs. Bhuvan Madan, 2020 SCC OnLine NCLAT 789** wherein it was noted that the only requirement for a resolution plan under the Code was to provide for the prescribed payment to dissenting Financial Creditors.

18. Respondent No. 4/Corporate Debtor has contended that the Appellant is seeking indirectly to challenge the resolution plan by challenging the impugned application and indirectly extend the period of limitation to challenge the resolution plan. Respondent No.4 relies on the decision of Hon'ble Supreme Court in **National Spot Exchange Vs. Anil Kohli, 2021 SCC Online SC 716** wherein the Hon'ble Supreme Court has held that:

> "…
> 19. In view of the afore-stated settled proposition of law and even considering the fact that even the certified copy of the order passed by the adjudicating authority was applied beyond the period of 30 days and as observed hereinabove there was a delay of 44 days in preferring the appeal which was beyond the period of 15 days which maximum could have been condoned and in view of specific statutory provision contained in Section 61(2) of the IB Code, it cannot be said that the NCLAT has committed any error in dismissing the appeal on the ground of limitation by observing that it has no jurisdiction and/or power to condone the delay exceeding 15 days."
>
> [Emphasis supplied]

19. Respondent No. 4/Corporate Debtor also contends that the resolution plan once approved is binding on all the stakeholders. It brings to our notice the same judgments which have been relied upon by the Respondent No. 2. Respondent No. 4 also brings to notice the relevant provisions for payments to such creditors who do not vote in favour or abstain from voting the resolution plan which are follows:

> "Those financial creditors of the Company who qualify as "dissenting financial creditors" (as defined under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, as amended from time to time) ("Dissenting Financial Creditors") shall be paid an amount as

would have been paid to them in respect of their financial debt in case of liquidation of the Company ("Dissenting Financial Creditor Dues"), As set out in the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder, the Dissenting Financial Creditor Dues shall be paid from the cash flows of the Company including from the equity infusion as per the terms of this Final Resolution Plan and arising from the business operations of the Company, before any recoveries are made by the Financial Creditors who voted in favor of the Final Resolution Plan."

20. Respondent No. 4/Corporate Debtor has also relied on the judgment of Hon'ble Supreme Court in **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531** wherein it has held that:

"…
129. As has been held in this judgment, it is clear that Explanation 1 has only been inserted in order that the Adjudicating Authority and the Appellate Tribunal cannot enter into the merits of a business decision of the requisite majority of the Committee of Creditors. As has also been held in this judgment, there is no residual equity jurisdiction in the Adjudicating Authority or the Appellate Tribunal to interfere in the merits of a business decision taken by the requisite majority of the Committee of Creditors, provided that it is otherwise in conformity with the provisions of the Code and the Regulations, as has been laid down by this judgment."

[Emphasis supplied]

And claims that there cannot be any interference with the commercial wisdom of the CoC provided the payments are made to dissenting Financial Creditors in accordance with the provisions of the Code. Such minimum payment as prescribed under the Code has been stated to be fair and equitable, and beyond the minimum payment any amount is to be paid or not is left to the commercial wisdom of the CoC.

21. Respondent No.4 have also relied upon the judgment of **Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, Civil Appeal No. 8919 of 2019** even though the Appellant claims the **Ghanashyam Mishra (supra)** is not applicable in this case.

22. Respondent No. 5 – State Bank of India, which was impleaded, as a party brings to our notice that the abstaining / dissenting Financial Creditors with a voting share of 4.41% are seeking pay outs under the resolution plan on par with the assenting Financial Creditors (which were having 81.31% voting share). In their Appeal before NCLT, Respondent No.4 – SBI was not made a party. However, they have been impleaded before NCLAT. Respondent No. 5 – State Bank of India brings to our notice that out of 34 Financial Creditors around 20 Financial Creditors (81.31% voting share) voted in favour of the resolution plan, yet the Appellants with 4.41% voting share have moved to implead, only SBI as a party when the prayer, they are seeking in these appeals affects the rights and financials of all the Financial Creditors. Therefore, others are also relevant parties. Respondent No. 5 also bring to our notice that the terms and provisions of the resolution plan are in accordance with the provisions of Code. Since the resolution plan has been approved by the CoC and Adjudicating Authority by its order dated 27.03.2019 and this order has attained finality, therefore, the contents and provisions of the resolution plan are binding on all the parties or stakeholders including the Appellants herein. Thus, the present appeal cannot be sustained in law.

Appraisal

23. We observe that the Appellant had filed an IA No. 2028/2021 in CP (IB) No. 1137/MB/2017 on 09.09.2021 before the Adjudicating Authority with the following prayers:

> "a) That the discrimination in payment under the Resolution Plan on the basis of the Assenting and Dissenting / Abstaining Financial Creditor be modified to the extent that all Secured Financial Creditors (SFCs) inter alia Applicant be treated equally for payment of Plan value subject to their individual exposure with the same terms as that of Assenting Financial Creditors.
>
> b) That the Monitoring Agency (MA) be given a direction to consult with all Secured Financial Creditors (SFCs) forming part of erstwhile COC by convening a Joint meeting and file a report within a period of three weeks with regard to their stand for treatment of all Secured Financial Creditors at par without discriminating their payment under the Resolution Plan on the basis of Assenting / Financial Creditors.
>
> c) That till the said report is filed by MA the implementation of Resolution Plan (exclusive of compliances part of pre-condition) and the enforcement of Financing documents be stayed for a period of three weeks.
>
> d) That in the event that definitive documents have already been executed between the parties, appropriate direction be issued to the signatories to execute an Addendum Agreement incorporating with regard to the sharing of plan value ordered to be modified by this Hon'ble Tribunal.
>
> e) That it be ordered that the share of Bank of Maharashtra i.e. Rs.78.34 Crores out of balance amount of Rs.579.72 Crores for which this Dissenting / Abstaining Creditors are entitled, be deposited with this Hon'ble Forum in proportionate to the payments

getting released to the Assenting Financial Creditors year wise under the Resolution Plan.

f) Any other Order as this Hon'ble Tribunal may deem fit and proper."

[Emphasis supplied]

24. The Adjudicating Authority vide order dated 23.12.2021 had dismissed the above-mentioned I.A. No.2028 of 2021 with following observations:

"8. Further, Resolution Plan once approved by the AA shall stand frozen and binding on all stakeholders including FCs. The Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Co. Ltd. (Civil Appeal 8129 of 2019, dated 13.04.2021) in para 95 (i) at pg. 103 held "That once a Resolution Plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate Debtor, and its employees, members, creditors, including the Central Government any State Government or any local authority, guarantors and other stakeholders."

[Emphasis supplied]

25. We note that now in the present Appeal before us, the Appellant has sought the following reliefs:

"a) Set aside the Order dated 23.12.2021 passed by the Ld. Adjudicating Authority, Mumbai in LA 2028 of 2021 in CP No. 1137/MB/2017;

b) Direct that the discrimination in payment under the Resolution Plan on the basis of the Assenting Financial Creditor and Dissenting / Abstaining Financial Creditor be modified to the extent that all Secured Financial Creditors including the Appellant Bank shall be treated equally for payment of Plan value subject to their individual exposure with the same terms as that of Assenting Financial Creditors;

c) Direct that, in the event that definitive documents have already been executed between the parties, to execute an Addendum Agreement incorporating with regard to the sharing of plan value ordered to be modified by this Hon'ble Appellate Tribunal;

d) Pending the hearing and disposal of this Appeal, direct that the share of the Appellant Bank, i.e., Rs.78.34 Crores out of balance amount of Rs.579.72 Crores for which the Dissenting/Abstaining Creditors are entitled, be deposited with this Hon'ble Appellate Tribunal in proportion to the payments getting released to the Assenting Financial Creditors year wise under the Resolution Plan;

e) Pending the hearing and disposal of this Appeal, pass an order granting stay of the Resolution Plan (exclusive of compliances part of pre-condition) and the enforcement of Financing documents;

f) Interim and Ad-interim relief in terms of prayer clause (d) and (e); and

g) Pass such other or further order(s) as this Hon'ble Appellate Tribunal deems fit and proper in the facts and circumstances of the present case.

26. We observe that resolution plan of the Corporate Debtor was approved by NCLT on 27.03.2019. The IA No. 2028 of 2021 was filed before the NCLT on 07.09.2021 by the Appellant praying that the discrimination in payment under the Resolution Plan on the basis of the Assenting and Dissenting / Abstaining

Financial Creditor be modified to the extent that all Secured Financial Creditors (SFCs) inter alia Applicant be treated equally for payment of Plan value subject to their individual exposure with the same terms as that of Assenting Financial Creditors. This IA No. 2028 of 2021 was dismissed by NCLT on 23.12.2021 along with the application of Central Bank of India. Pursuant to such rejection of these applications, the applicant filed this appeal before Appellate Tribunal on 04.03.2022 which is filed with a delay of around 41 days from the permissible last date of filing an appeal i.e. 22.01.2022. We find that sufficient cause for the condonation of delay has not come on record or explained in any hearing. Perusal of record shows that there is no application for condonation of delay. The law as per Section 61(2) of the Code is very clear that the Appeal has to be filed within 30 days and beyond 30 days, basis sufficient cause, the condonation can be allowed up to 15 days. Basis date of issue of the certified copy of the impugned order, which is placed on record, with a date of 14.02.2022, the limitation has been counted and taken within time, but which is against the provisions in the Code. And the Appeal should be dismissed on this ground alone.

27. Furthermore, we also observe that in the present case, the resolution plan was approved by the CoC on 27.03.2018 / 06.04.2018 while the same was approved by the Adjudicating Authority on 27.03.2019. However, the IA Nos. 2028/2021 and 2035/2021 were preferred by the Appellants only in September, 2021, which is after more than 3 years 6 months from approval of the resolution plan by the CoC and after more than 2 years 6 months from approval of the resolution plan by the Adjudicating Authority. Thus, the said

IAs were belated and unjustified and could not have been entertained. There is nothing on record to suggest that the Appellants objected to the Resolution plan, post approval by the CoC and pre-approval by the Adjudicating Authority even though they were having full knowledge of contents of the resolution plan. We observe that even though the Appellant claims that it is not challenging the resolution plan and it is just raising a question of discrimination, basis which distribution to the dissenting Financial Creditor is lower than the assenting Financial Creditor and even less than the Operational Creditor, effectively it is challenging the resolution plan. To us this is a case of challenge of resolution plan disguised as the modification in the distribution. We are convinced with the arguments of R5/SBI that IAs filed before the AA were much belated and unjustified and ought not to have been entertained at all. We observe that the Resolution Plan was approved by the CoC with 81.31% on 27.03.2018/06.04.2018, and the same was approved by the Adjudicating Authority on 27.03.2019. However, the I.A. Nos. 2028/2021 & 2035/2021 before AA were preferred by the appellants only in September 2021 i.e. after **more than 3 years 6 months** from approval of the Resolution Plan by the CoC and after **more than 2 years 6 months** from approval of the Resolution Plan by the Adjudicating Authority as noted by as earlier herein. Thus, the said IAs were much belated and unjustified and ought not to have been entertained at all because of acquiescence and gross delay on the part of the Appellants. We are also convinced with the arguments of R5/SBI that the Appellants, that in order to create appellate jurisdiction, the Appellants approached the Adjudicating Authority by filing the IA Nos.

2028/2021 & 2035/2021 despite knowing fully that the Adjudicating Authority does not have the power/jurisdiction to change/modify the approved Resolution Plan and thus, the said power/jurisdiction could not have been exercised by way of appellate jurisdiction before this NCLAT.

28. Perusal of the submissions of the SRA and RP and the reliefs sought by the Appellant, which, interalia, include modifying the provisions of the resolution plan which provide for the distribution of amounts payable to assenting and dissenting Financial Creditors, modifying the definitive documents executed pursuant to implementation of the resolution plan and in effect to stay the implementation of the resolution plan, we observe that it is effectively challenging the resolution plan. Such a challenge could have been done as an appeal before the Adjudicating Authority, within the statutory period provided under the Code, but it was not done so. We observe that the Appellant has filed the impugned application on 09.09.2021, only to circumvent the limitation period for filing appeals. The resolution plan was approved vide order dated 27.03.2019 and the order is not under challenge and has never been under challenge by any of the two parties. The Appellants cannot be allowed to challenge the resolution plan in the garb of their IAs being dismissed, when the order dated 27.03.2019, of the Adjudicating Authority approving the resolution plan has attained finality.

29. Respondents also get support from the judgment of **Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, Civil Appeal No. 8919 of 2019** which has been relied

upon by Adjudicating Authority. Hon'ble Supreme Court has held as follows in this judgment:

> "...
>
> 95. In the result, we answer the questions framed by us as under:
>
> i. That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of the Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority guarantors and other stakeholders. <u>On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan</u>;
>
> ii. 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;
>
> iii. 'Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants approval under Section 31 could be continue."

30. The above judgment reaffirms the binding nature of the resolution plan as per Section 31 of the Code and we observe that the Appellant cannot be permitted to take recourse to any other mode or manner to satisfy the

payment or recover the amounts payable to it other than what was envisaged under the resolution plan. We note that the resolution plan stands frozen upon its approval. By seeking amounts other than in the resolution plan, the resolution applicant could not be saddled with liabilities which were not foreseen by it. The present situation is similar to **Ghanashyam Mishra & Sons Private Limited (supra)** and therefore as claimed by the Appellants. it cannot be said that the judgment is not applicable in this case.

31. It was also argued by the Appellants that in the event that the discrimination in payment is set aside, then the same would not in any manner affect the basic structure of the Resolution Plan as the tenure of the payment (12 years), the Resolution Plan Value (Rs. 3965.06 Crores) and other pre-conditions for the benefit of Resolution Applicant would remain unaltered and only the payment to the Financial Creditors would get readjusted as per their exposure towards Corporate Debtor. For arguments sake if it is claimed that there is no change in the value of the resolution plan and it is only distribution within the same size of total plan and for that reason Ghanashyam (supra) is not applicable, we note that such an argument is not convincing as it upsets the resolution plan and brings uncertainty for the SRA. Even if this argument is accepted, we find that basis other arguments as noted herein earlier – particularly non-maintainability for which the Appeal cannot be entertained by us and also the extant legal provisions in the Code come in the way of the Appellants.

32. In the facts and circumstances of the case, we thus find that the appeal filed is belated one without sufficient cause and is not maintainable. We also observe that in the guise of intervention application, it is an appeal.

33. We also observe that the resolution plan had been agitated earlier by one Resolution Applicant Sharad Sanghi and it was settled as per orders of this Appellate Tribunal on 19th March 2019 and Appellant in the present case being a FC, was fully aware of the proceedings. Thus, we observe that it could have intervened or filed an Appeal, which it didn't do. By allowing the present IA of the Appellant in this case we cannot reopen the approval of the resolution plan. The Appellant is thus estopped from any relief on this Appeal.

34. We also note that the plan has been implemented as on November, 2021 and the business of the company has already been taken over by the new management of the company. The pay outs as envisaged under the resolution plan are already under process and disrupting them will militate against the very logic of the due process envisaged under the Code.

35. Adjudicating Authority vide order dated 27.03.2019 had approved the resolution plan. No appeals were filed against the resolution plan approval order within the statutory period prescribed under the Code and therefore the resolution plan approved attained finality. Being a Financial Creditor of the company, the appellant was at all times aware of all the developments with respect to the resolution plan from the date of the plan approval order till its implementation on 09.11.2021. Despite this, Appellant had chosen to file an application in September 2021, about 30 months after the approval of the

resolution plan. There is an unjustifiable delay on the part of the Appellant in challenging the provisions of the resolution plan. The Appellant is effectively seeking to challenge the resolution plan at this belated stage, after the resolution plan has already attained finality.

36. Thus, on the count of limitation under Section 61(2) of the Code, the Appeal is not maintainable. Accordingly, the Appeal doesn't deserve to be entertained. No intervention is required in the orders of the Adjudicating Authority. We also observe that the Appellants have been wasting the precious time of both NCLT and NCLAT by filing unjustified claims and that too belatedly.

Orders

37. Basis above analysis, the appeal is dismissed as not maintainable. All related IAs are also disposed of. No orders as to costs.

[Justice Yogesh Khanna]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi.
January 09, 2026.

Pawan