

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

Under Section 60(5) of the
Insolvency and Bankruptcy Code,
2016

M.A. No. 3263 of 2019

Anita Bakshi Singh Khokhar & 16
Ors.

... Applicants

V/s

Bhavi Shreyansh Shah,
Resolution Professional of
International Book House Private
Limited

... Respondent

M.A. No. 3879 of 2019

Jitendra Ramdas Patel and 10
Ors.

... Applicants

V/s

Bhavi Shreyansh Shah,
Resolution Professional of
International Book House Private
Limited

... Respondent

M.A. No. 528 of 2020

Anita Bakshi Singh Khokhar and
28 others

... Applicants

V/s

- 1) Bhavi Shreyansh Shah,
Resolution Professional of the
International Book House
Private Limited
- 2) Oriental Insurance Company
Limited

... Respondents

In C.P. (IB) 1613/NCLT/MB/2018

In the matter of:

Taxmann Publications Private
Limited

... Petitioner

V/s

International Book House Private
Limited

... Corporate Debtor

Order delivered on: 01.09.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

For the Applicant(s): Advocate Yachana Rawal i/b. D.G. Mishra in M.A.
3263/2019 & M.A. 3879/2019
Advocate Darshat Jain i/b. D.G. Mishra in M.A.
528/2020

For Respondent(s): Advocate Jehaan Mehta a/w. Advocate Amey
Hadwale a/w. Advocate Geeta Lundwani (for
Resolution Professional)

ORDER

Per: V. Nallasenapathy, Member (Technical)

MA 3263/2019:

1. This is an application filed by Ms. Anita Bakshi Singh Khokhar and 16 others stating that they were employees of the Corporate Debtor and filed their claim in "Form-D" claiming their salary dues. The applicants submit that due to inadvertence and oversight the Form-D filed in the month of January 2019 did not include gratuity amount receivable by them from the Corporate Debtor. Hence, they have filed revised claim form through their advocate on 06.08.2019 claiming Salary, LTA, Bonus and Gratuity.
2. The applicants submit that they are entitled to claim the amount as workmen's dues in accordance with Section 326 of the Companies Act, 2013. The revised Form-D filed through the advocate on 06.08.2019 is enclosed at Annexure-3 to the application.
3. It is submitted that the Resolution Professional (RP) by an email dated 10.08.2019 requested the applicants' advocate to furnish documents in support of their claims. The RP further stated that for some of the applicants the salary amount claimed in the previously submitted Form-D differs from the amount stated in the revised

Form-D. The advocate for the applicants by an email dated 16.08.2019 addressed to the RP, submitted that the applicants were never issued salary slip by the Corporate Debtor but instead their signatures were obtained on the salary register available in the office of the corporate debtor.

4. The applicants further submit that on 20.08.2019 the Resolution Professional (RP) by an email informed the advocate for the applicants that the representative of the applicants can co-ordinate with one Mr. Patel regarding the claims and also requested to send the gratuity calculations. Subsequently after arriving at calculations, the applicants submit that their advocate on the advice of the RP, again filed fresh Form-D vide letter dated 27.08.2019 along with copy of salary register, calculation of Bonus, LTA and gratuity. The revised Form-D is annexed to the application at Annexure-7. It is submitted that on 05.09.2019 the RP sent an email to the advocate for the applicants stating that, the revised Resolution Plan was discussed by the Committee of Creditors (CoC) and put for e-voting on 29.08.2019; the e-voting result was finalised at 12.30 p.m. on 03.09.2019 but the revised Form-D sent by the applicants were received by the RP on 03.09.2019 in the evening around 5 p.m.; the Resolution Plan has already been put for e-voting; therefore the RP could not accept any claims after the approval of the Resolution Plan. The advocate for the applicants by an email dated 09.09.2019 enquired about the applicants claim and also requested to furnish soft copy of the revised Resolution Plan.

5. The applicants submit that on 12.09.2019 the Resolution Professional informed that the revised claim submitted by the applicants cannot be accepted as it has been submitted belatedly after the approval of the Resolution Plan by the members of the CoC

and also stated that the original claims submitted individually by the applicants were accepted. The Resolution Professional also declined to share the Resolution Plan. The applicants filed this application for direction to the Resolution Professional and the CoC to consider the revised claims filed by the applicants.

6. The Resolution Professional vide affidavit in reply dated 05.01.2020 states that, public announcement inviting claims from all the creditors in Form A of the Schedule II, as per Regulation 6 of the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Resolution Process for Corporate Person) Regulation, 2016 (“CIRP Regulations”) was made on 23.12.2018 and on 24.12.2018. It is further submitted that the Resolution Professional received the claims under Form D from the applicants/employees of the Corporate Debtor in the month of January, 2019 which were duly accepted. It is further submitted that the Resolution Professional again received revised claims from the employees on 06.08.2019.

7. The Resolution Professional submitted that the revised claims submitted by the employees were not supported by proper documents and the salaries of few of the employees given in the earlier claim form and the revised claim form were different. Therefore, the Resolution Professional communicated the same to the advocate of the applicants on 10.08.2019 and requested to clarify the same. It is submitted that the Resolution Professional received an email dated 16.08.2019 from the applicants’ advocate stating that they wish to take an inspection of Salary Register, Bonus and LTA Register maintained at the office of the Corporate Debtor and that few of the employees may be allowed to visit the office for taking the copies of Salary Register and Bonus and LTA Register.

8. The Resolution Professional submits that she extended full co-operation and assistance to the applicants for submitting their revised claims and promptly replied to the queries raised by the applicants and their advocate. The Resolution Professional further submits that even though all the necessary assistance was provided to the applicants, the applicants submitted the revised claims under Form-D through their advocate's letter dated 27.08.2019 belatedly on 03.09.2019 i.e. after the approval of the Resolution Plan. The Resolution Professional submits that she being the officer of the court was bound by the timelines prescribed under the law and therefore could not accept the belated revised claims.
9. The Resolution Professional has further submitted that the applicants have made completely misleading and incorrect statements in their application that, they are entitled to claim Salary, LTA, Bonus and Gratuity amount as workmen's dues in accordance with Section 326 of the Companies Act, 2013. The Resolution Professional submits that the applicants in the present application are the employees and not the workmen of the Corporate Debtor.
10. The Resolution Professional submits that the applicants failed to appreciate the timelines prescribed for the CIRP and they were sleeping over their claims for a period of 8 months (23.12.2018 - 27.08.2019) without submitting their revised claims and have failed to file their revised claims within 90 days of the Insolvency commencement date, as provided under Regulation 12(2) of the CIRP Regulations and therefore their claims cannot be accepted under the prescribed law.

11. The Resolution Professional further submits that once the Resolution Plan is approved by the CoC and is pending before the NCLT for its consideration, the revised claims cannot be accepted. The Resolution Professional has relied on the Judgment of Hon'ble NCLAT in the matter of, "*G. V. Suresh Kumar and Ors. Vs Kapil Dev Taneja, RP in CIRP of M/s Apex Drugs Limited Company order in CA No. 1162 of 2019 dated 07.11.2019*" wherein it is held as follows:

"3. ...

6. We have gone through the contentions raised by the Respondent in his counter. After considering counter and annexure filed with it, and on perusal of Rules and regulations relied by the Respondent under Insolvency and Bankruptcy Code, 2016 we are of the considered view that the claims by RP can be admitted only within 90 days from the starting of CIRP Proceedings, upon submission of claim in prescribed form and formats.

4. The Adjudicating Authority observed that in the main petition Resolution Plan was pending for approval and thus claim now tendered by the Appellants could not be considered.

5. Learned Counsel for the Appellant submits that the Appellants are employees of the Corporate Debtor and did not know about the Corporate Insolvency Resolution Process. Appeal claims that the Appellants continued and still continue to be workmen and were continuously present in the premises on working days. We do not agree with the contention of the learned Counsel for the Appellant. When Public Notice was issued, whoever is eligible and wants to file claim, can file the claim with IRP/RP in prescribed form. After Resolution Plan has already been submitted, such claims cannot be accepted. The process cannot be reversed in a manner that clock is set back. Such actions can lead the Company into liquidation."

12. The Resolution Professional therefore submits that the CIRP is a time bound process and the IBBI has specified stipulated timelines and any delay or any hindrance caused in completion of CIRP in 270 days can lead the company into Liquidation and thus the Resolution

Professional plays very important role in adhering to those timelines. It is further submitted that the Corporate Debtor has received only one Resolution Plan which is pending for consideration before this Tribunal and in any eventuality if this plan is rejected the Corporate Debtor will be forced to face the wrath of Liquidation which is against the object of the Code.

13. The Resolution Professional finally submits that she has preferred a Miscellaneous Application bearing No. 3114/2019 for approval of resolution plan in furtherance to her duties as the Resolution Professional of the Corporate Debtor and has complied with all the applicable Regulations towards discharge of her functions as the Resolution Professional of the Corporate Debtor. The Resolution Professional therefore humbly requested this Tribunal to reject the contentions made by the applicants in the instant application and approve the Resolution Plan submitted by the Resolution Applicant as agreed upon by the requisite majority of the CoC as prescribed under the Provisions of the Code.

MA 3879/2019:

14. This is an application filed by Mr. Jitendra Ramdas Patel and 10 others stating that they are the employees of the Corporate Debtor and filed their claim application in "Form-D" claiming salary dues from the Corporate Debtor. It is submitted that due to inadvertence and oversight the Form-D filed does not include Gratuity amount and hence they have filed revised Form-D through their advocate on 11.09.2019 claiming Salary, LTA, Bonus and Gratuity amount. It is submitted that as workmen, they are entitled to make the claim in accordance with Section 326 of the Companies Act, 2013.

15. It is submitted that the Resolution Professional on 25.11.2019 in response to the applicants' advocate's email dated 23.11.2019 informed that the revised Resolution Plan was discussed and put for e-voting on 29.08.2019 and the e-voting result has been finalised at 12.30 p.m. on 03.09.2019. However, the claims sent by the applicants were received by the Resolution Professional after 03.09.2019 and as the Resolution Plan has already been put for e-voting the Resolution Professional informed that she cannot accept the claims after the approval of the Resolution Plan by the CoC. In view of this the applicants filed this application for direction to the Resolution Professional and the CoC to consider the claims filed by the applicants and to approve a revised Resolution Plan.
16. The Resolution Professional has filed a similar Reply as in MA No. 3263/2019 as narrated above in Para Nos. 6 to 13.

Decision in MA 3263/2019 & MA 3879/2019

17. Heard the counsel for both the sides. On-going through the averments in the applications we are of the view that the revised claims were filed by the applicants in these applications belatedly and the Resolution Professional has received the claims only after the approval of the Resolution Plan by the CoC. Further the individual claims filed by the applicants were already admitted by the Resolution Professional. In view of this there is no merit in the applications filed by the applicants, accordingly both the applications are dismissed. However, this Bench during the hearing of the approval of Resolution Plan required the Resolution Applicant to come forward with some payment so that these employee applicants will get some benefits and considering the same, the Resolution Applicant has agreed to make a payment of Rs.11,00,000/- to the Resolution Professional which will be distributed to all the

employees/workers equally, apart from the payment provided in the Resolution Plan. The Resolution Applicant, vide his letter dated 05.03.2020 sent to Resolution Professional, has confirmed and revised the Plan amount accordingly.

MA 528/2020:

18. This is an application filed by Ms. Anita Bakshi Singh Khokhar and 28 others. The Applicant Nos. 1 to 28 state that they were the employees of the Corporate Debtor. The Applicant Nos. 1 to 17 are the applicants in MA No. 3263/2019 and the Applicant Nos. 18 to 28 are the applicants in MA No. 3879/2019 in CP (IB) No. 1613/2018. The Applicant No. 29 in this application is, M/s Amicus Dictum and Associates, a partnership firm formed under the Indian Partnership Act, 1932 having its registered office at Shop No. 222, 2nd Floor, Patel Shopping Centre, Sainath Road Malad (W), Mumbai – 400 064 and is engaged in law practice. The Respondent No. 2 in this application is Oriental Insurance Company Limited situated at 6th Floor, Indian Mercantile Mansion, Madam Cama Road, Colaba Mumbai - 1, who has let out its premises to the Corporate Debtor.

19. It is submitted that the Applicant Nos. 1 to 28 have previously filed individual claim forms in "Form-D" claiming Salary from the Corporate Debtor. Subsequently they have filed revised Form-D claiming Salary, LTA, Bonus and Gratuity. The Applicants submit that during the hearing before this Tribunal the counsel for the Resolution Professional informed that the Corporate Debtor's liability is 40 Crores whereas only sum of Rs. 9 Crores was available with the Resolution Professional. The counsel appearing on behalf of the Applicant Nos. 1 to 28 pointed out that there is a property situated at Colaba and the same is not considered as the asset of the

Corporate Debtor in CIRP by the Resolution Professional. The advocate for the Resolution Professional replied that the property situated at colaba is a tenanted premise and the same is valued at Rupees Zero (Rs. 0) in the Resolution Plan by the CoC.

20. The Applicant Nos. 1 to 28 state that they are going to get only 25% of the claim filed by them in the month of January 2019 i.e. around Rs. 20,00,000/-. The Applicants submit that since no value was assigned for the tenanted premises at Colaba, the Applicant Nos. 1 to 28 request the CoC/Resolution Professional to handover the possession of the Colaba property to Applicant No. 29, which is a law firm, and the said law firm undertakes to satisfy and clear all dues payable to the Applicant Nos. 1 to 28 by the Corporate Debtor. Finally, the Applicants are seeking relief from this Tribunal that CoC and the Resolution Professional be directed to handover the possession and rights of the Colaba property to applicant No. 29 i.e. M/s Amicus Dictum and Associates.
21. On-going through this application it is clear that the Applicant No. 29, a total stranger to these proceedings, is trying to grab the property of R2, by inducing the Applicant Nos. 1 to 28, who were the employees of the Corporate Debtor, to file this application. This application is totally devoid of any merit and the same is dismissed. No cost.

-sd-

V. Nallasenapathy
Member (Technical)

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Suchitra Kanuparthi
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

M.A. 10 of 2020 in C.P. (IB)
1613/MB/2018
(Under Section 60(5) of IBC, 2016)

PHI Learning Private Limited
...Applicant

Vs.

Bhavi Shreyans Shah
...Resolution Professional

In the matter of:

Taxmann Publication Private Limited
...Petitioner

Vs.

International Book House Private
Limited

...Corporate Debtor

Order delivered on: 01.09.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri. V Nallasenapathy

For the Applicant : Advocate Sushila Vichare.

For Respondent : Advocate Jehaan Mehta a/w. Advocate Amey
Hadwale a/w. Advocate Geeta Lundwani (for
Resolution Professional)

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. This is an application filed by the Applicant/Operational Creditor under section 60(5) of the Insolvency and Bankruptcy Code, 2016 praying for the following reliefs:
 - a. To direct the Resolution Professional to provide the details and status of the claim filed with him by the Applicant;
 - b. To direct the Resolution Professional to supply the copy of the Information Memorandum and Resolution Plan as filed with this Hon'ble Tribunal to the Applicant;
 - c. Pass such other order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.
2. The Applicant submits that he has submitted on 30.01.2019 its claim in 'Form-B' as an operational creditor for Rs.3,26,20,893/-, which included principal amount being Rs.1,96,72,061/- and interest amount being Rs.1,29,48,822/-, calculated upto 21.12.2018.
3. The Applicant submits that they are in constant touch with the Interim Resolution Professional (hereinafter referred as IRP) through phone messages with regard to the status of the claim. However, the IRP had been merely informing the Applicant that the process is on and she would be finalizing the report within the time stipulated by National Company Law Tribunal.
4. On 16.09.2019, the IRP informed the Applicant that Committee of Creditors (hereinafter referred as CoC) approved the Resolution Plan which will be filed before the NCLT, Mumbai for approval. The Applicant requested for copy of the Resolution Plan but in vain.

Further the Applicant has not received any information from the IRP about its claim. The Applicant complains that neither the Information Memorandum nor the Resolution Plan was given to them and no consultation or whatsoever took place with the Applicant.

5. The Applicant submits that the Resolution Plan if approved would directly impact the Applicant and if aggrieved, the Applicant has right to file appeal against the order of the Adjudicating Authority with the Appellate Tribunal Under Section 61 of the Code. Therefore, the Applicant cannot be deprived of its right to get a copy of the Information Memorandum and Resolution Plan so that the Applicant can safeguard its interest.
6. The Applicant further submitted that the IRP has acted in contravention of its duties and arbitrarily deprived the Applicant copy of Information Memorandum and Resolution Plan. The Applicant further submits that this Tribunal can entertain the present application u/s. 60(5)(b) and 60(5)(c) of the Code read with rule 11 of NCLT Rules 2016.
7. The Respondent in her reply submitted that, the claim of the Applicant was admitted for Rs.1,96,72,061/- as an Operational Creditor. The Applicant is neither a member of the CoC as stipulated under Section 21 of the Code nor the Applicant is entitled to attend the meeting of CoC, reason being that the admitted debt of the Applicant is less than 10% of the total debt as provided under section 24(3) of the Code. The Respondent further submits that the application is not maintainable as the relief sought is directly in contravention to section 30(3) of the Code read with regulation 36(1) and 39(2) of CIRP Regulations 2016.

8. The Respondent submits that she has relied on the Judgment of Hon'ble Supreme Court in *Vijay Kumar Jain Vs. Standard Chartered Bank and others*, in which the Court has carved out an exception and laid down a ratio that the erstwhile directors and the operational creditors are also entitled to get a copy of resolution plan provided that the admitted debt of the operation creditors is more than 10% of the total debt of the Corporate Debtor. Thus, the Applicant's debt is less than 10% of the total debt of the Corporate Debtor and is therefore not entitled to get the copy of the Resolution Plan.
9. On hearing the counsel of either sides and on-going through the pleadings of the parties, we are of the view that since the Applicant's admitted claim as an operation creditor is less than 10% of the total debt of the Corporate Debtor, the Applicant is not entitled to get copy of the Resolution Plan.
10. As far as the status of the claim of the Applicant is concerned, the Respondent has submitted that the claim is admitted as an operational creditor. In view of the above nothing survives in the application and hence the application is dismissed.

-sd-

V. Nallasenapathy
Member (Technical)

-sd-

Suchitra Kanuparthi
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

MA 3114 of 2019

(Under Section 30(6) r/w Section 31
of the IB Code, 2016)

Bhavi Shreyans Shah

...Applicant /
Resolution Professional

MA 3197 of 2019

(Under Section 60(5) of the IB Code,
2016)

IndusInd Bank Limited

... Applicant

Vs.

1. CA Bhavi Shreyans Shah
(Resolution Professional)
2. Nitrex Chemicals India Limited
3. Religare Finvest Limited
& 7 Ors.

... Respondents

MA 3236/2019

(Under Section 60(5) of the IB Code,
2016)

Capfloat Financial Services Private
Limited

... Applicant

Vs.

1. International Book House Pvt.
Ltd. through the Resolution
Professional
2. Nitrex Chemicals India Limited

... Respondents

In CP (IB) 1613/(MB)/2018

In the matter of:

Taxmann Publications Private
Limited

...Operational Creditor

Vs.

International Book House Private
Limited

...Corporate Debtor

Order delivered on: 01.09.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

For the Applicant(s): Advocate Jehaan Mehta a/w. Advocate Amey
Hadwale a/w. Advocate Geeta Lundwani and Ms
Bhavi Shah (Resolution Professional) in M.A.
3114/2019

Mr Shyam Kapadia a/w Advocate Dhruv Gandhi
a/w Advovate Rubina Khan and Advovate
Aishwarya Doshi i/b. Fortis India Law in M.A.
3197/2019

Advocate Navin Arora in M.A. 3236/2019

For Respondent(s): Advocate Jehaan Mehta a/w. Advocate Amey
Hadwale a/w. Advocate Geeta Lundwani (for
Resolution Professional)

ORDER

Per: V. Nallasenapathy, Member (Technical)

MA 3114/2019:

1. This MA No. 3114/2019 has been filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("Code"), seeking approval

of the Resolution Plan submitted by the Resolution Applicant - Nitrex Chemicals India Limited (“Nitrex”).

2. The applicant submits that this Bench admitted the Petition filed by the Operational Creditor under Section 9 of the Code against the Corporate Debtor, International Book House Private Limited, on 21.12.2018 and the applicant was appointed as the Interim Resolution Professional (“IRP”).
3. The applicant adds that pursuant to the said admission order, public announcement inviting the claims from all the creditors in Form A of the Schedule II as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“Regulation”) was made by the IRP on 23.12.2018 and 24.12.2018. Copies of the public announcement inviting the claims are annexed with the application as Exhibit 2. Under the public announcement, the IRP received the claims from the creditors of the Corporate Debtor and accordingly the IRP constituted the Committee of Creditors (CoC). The final list of members of CoC as on 12.09.2019 with their respective voting shares is given below:

Sr. No.	Financial Creditors	Voting Share %
1.	Religare Finvest Limited	58.11
2.	IndusInd Bank Limited	27.81
3.	Aditya Birla Finance Limited	1.44
4.	Cap Float Financial Services Private Limited	1.58
5.	P. C. Bhatia (HUF)	0.58
6.	Premchand C. Bhatia	0.05
7.	Kunal P. Bhatia	0.12
8.	Shriram City Union Finance Limited	0.67
9.	Sandeep Harsulkar	8.88
10.	IDFC First Bank Limited	0.75
	TOTAL	100

4. The First meeting of the CoC was convened on 21.01.2019 wherein IRP was confirmed as Resolution Professional (RP) with 98.35%

voting. The confirmation of IRP as RP was intimated to this Bench on 05.02.2019. The copy of the minutes of the First CoC meeting are attached with the application as Exhibit 6.

5. On 31.01.2019, the RP appointed two registered valuers namely Mr Pranav Parikh and Mr Parag Sheth as per Regulation 27 to determine the fair and liquidation value of the assets of the Corporate Debtor as required under Regulation 35. The details of the Liquidation and Fair Market Value are given as under:

Valuer	Fair Market Value	Liquidation Value
Mr Pranav Parikh	11,36,65,000/-	8,22,75,000/-
Mr Parag Sheth	11,22,50,000/-	7,85,00,000/-
Average	11,29,57,500/-	8,03,87,500/-

6. The Second meeting of the CoC was held on 26.02.2019, wherein the members approved the eligibility criteria for inviting Expression of Interest (EOI) from the Prospective Resolution Applicants ("PRA") as per Section 25(2)(h) of the Code. The RP published a public announcement inviting the EOIs from the PRAs on 05.03.2019. The last date for submission of the EOI was 20.03.2019 and for submission of Resolution Plan was 01.05.2019.
7. The Third meeting of the CoC was held on 06.06.2019, wherein the RP informed the CoC that she had received a resolution plan from Nitrex. The CoC after discussion requested Nitrex to improve the plan as the plan was not satisfactory.
8. In the Fourth CoC meeting held on 13.06.2019, the CoC discussed on the resolution plan submitted by Nitrex offering Rs. 8 crores and the CoC thought that the resolution plan is not financially viable, looking into the value of the properties of the Corporate Debtor. However, the resolution plan was put to e-voting. It was also discussed that if the plan is rejected by the required vote share then the fresh EOI has to be published keeping the minimum criteria and Evaluation Matrix same as earlier resolved in the 2nd CoC meeting held on 26.02.2019. The e-voting was conducted on 14.06.2019 and 15.06.2019 and the resolution plan was

unanimously rejected by the CoC. In the said meeting a resolution was also put for voting for extension of the CIRP under Section 12(2) of the Code for 90 days which was approved by 97.11% voting share and the same was subsequently approved by this Bench, vide its order dated 19.06.2019. Accordingly, a fresh public announcement inviting the EOI from the PRAs was issued on 25.06.2019.

9. In the Fifth meeting of the CoC held on 29.08.2019, the CoC discussed the feasibility and viability of the resolution plan dated 22.08.2019 received from Nitrex (from now on referred to as RA), with the President of RA. The CoC requested the RA to increase the amount of the resolution plan as the same was not satisfactory. The RA informed the CoC that it had already increased the amount of the resolution plan from Rs. 8 crores to Rs. 9 crores when they submitted the same under the second EOI process. After negotiations, the RA agreed to provide an addendum to the resolution plan, wherein the RA would increase the amount of the resolution plan to Rs. 9.40 crores. The said addendum was received on 30.08.2019. E-voting was conducted on 31.08.2019 to 03.09.2019, and the CoC with 96.91% vote share passed the following resolution:

“Resolved that the amount of the resolution plan of Rs.9.40 crores as provided by the Resolution Applicant namely Nitrex Chemicals Limited vide addendum dated 30.08.2019 to the Resolution Plan dated 22.08.2019 and addendum dated 26.08.2019 is hereby approved.”

10. In the same 5th CoC meeting, the CoC also discussed the distribution pattern of the amount of the resolution plan, and the following distribution pattern was put to E-voting:

Sr. No.	Particulars	Amount of Resolution Plan (Rs. in Crores)	Timeline
1.	IRP Cost	0.38	To be paid within 90 days of the date of order approving the resolution plan by the Adjudicating Authority.
2.	Secured Financial Creditors		
(i)	Religare Finvest Limited	8.40	
(ii)	IndusInd Bank Limited	0.25	
3.	Unsecured Financial Creditors	0.05	
4.	Employees	0.22	
5.	Operational Creditors	0.10	
	TOTAL	9.40	

11. The CoC with 66.98% vote share passed the following resolution:
"Resolved that the distribution pattern of the amount of the resolution, i.e. Rs.9.40 crores to be distributed as mentioned in above table."
12. Thus, the CoC with 96.91% vote share approved the Resolution Plan and with 66.98% vote share approved the distribution pattern of the amount of the resolution plan.
13. The Resolution Plan defines 'Effective Date' as last of the dates on which the management control and physical possession of the assets of "Corporate Debtor" is handed over to "Resolution Applicant" post sanction of this Resolution Plan by NCLT, filing of requisite documents with ROC as required by Law.
14. The Resolution Professional has confirmed vide letter dated 23.08.2019 that she has received Rs. 90,00,000/- (Rupees Ninety Lakh Only) from the Resolution Applicant as and by way of Earnest Money Deposit (EMD). Copy of letter dated 23.08.2019; cheque dated 22.08.2019 submitted by the Resolution Applicant towards EMD and Bank statement of Corporate Debtor have been submitted in proof thereof.

15. The Resolution Professional has submitted Form H under Regulation 39(4). The Resolution Professional has certified that the resolution plan complies with all the provisions of the I&B Code, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
16. The Resolution Applicant has submitted an Affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The Resolution Professional has further certified that the said Resolution Plan has been approved by the CoC in accordance with the provisions of the I&B Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 96.91% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
17. The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the I&B Code and Regulations made thereunder.
18. The Resolution Plan reveals that the RA is bringing a sum of Rs. 76 Lakhs as promoter contribution through equity & preference share capital and a sum of Rs. 10.14 Crore through internal sources and retained earnings of Resolution Applicant.
19. The Resolution Applicant proposes the aggregate amount (OTS amount) of Rs. 940 lakhs (Rupees Nine Hundred Forty Lakh Only) to be paid within 90 days from the date of order of approval of Resolution Plan by this Tribunal, against full and final payment for all the liabilities of the Corporate Debtor. The Resolution Applicant further proposes to infuse fund to the extent of Rs. 150 lakhs (Rupees One Hundred Fifty Lakh Only) for running new business of electronic books.

20. The Resolution Plan proposes that the payment towards the Corporate Insolvency Resolution Process Cost (CIRP Cost) will be made in priority to any other debts of the Corporate Debtor. The Plan proposes an amount of Rs. 38 Lakhs to be paid towards CIRP Cost within 90 days from the date of order approving this plan.
21. Resolution Applicant proposes to settle the Corporate Financial Debts (Secured & Unsecured Financial Creditors) through One Time Settlement Amount (OTS Amount) to be paid within 90 days from the date of Order approving this Plan. The entitlement of financial creditors to be distributed in the ratio of liquidation value of their security asset.
22. As per the estimation of Resolution Applicant the liquidation value of the Corporate Debtor to the operational creditors is Nil, however the Resolution Plan proposes to pay the operational creditors an amount of Rs. 10 Lakhs under section 53 in compliance with section 30(2)(b) of IBC code. The amount offered to the operational creditors herein above shall be given priority in payment over financial creditor in compliance with Regulation 38(1) of the CIRP Regulation.
23. It is submitted that there are no workers and only employees in the Corporate Debtor. As per the estimation of Resolution Applicant the liquidation value of the Corporate Debtor to the employees is Nil, however the Resolution Plan proposes to pay the employees an amount of Rs. 22 Lakhs under section 53 in compliance with section 30(2)(b) of the code. Further, on our persuasion the Resolution Applicant agreed to provide additionally Rs. 11 Lakhs which will be exclusively distributed to all the employees/workers of the Corporate Debtor equally, apart from the payment of Rs. 22 Lakhs provided under the Plan to the employees. The Resolution Applicant, vide his letter dated 05.03.2020 sent to RP, has confirmed and revised the Plan amount accordingly. The amount to employees to be paid upfront within 90 days from the date of Order approving this Plan.

24. It is made clear that no further liability can be imposed on the Resolution Applicant in whatever manner except the above resolution amount of Rs. 9.40 Crore as provided in the Plan and a sum of Rs. 11 Lakhs (as mentioned in the above said para) as agreed at the time of hearing to be paid to RP who will distribute it to all the employees/workers. There won't be any further liability on RA towards Financial Creditors, Operational Creditors or other stakeholders, etc.

Restructuring of Existing Shareholding

25. On the effective date and with effect from the appointed date, all existing issued, subscribed and paid-up share capital comprising of 76,000 equity shares of Rs.100/- shall stand cancelled.
26. Equity shares of the Corporate Debtor having an aggregate face value equal to the subscription amount will be issued and allotted by the Corporate Debtor to the Resolution Applicant in consideration of the subscription amount.

Supervision and Monitoring

27. The Supervising Committee/Monitoring Committee will comprise of two members from the secured lenders, one member from the Resolution Applicant and one member from the newly formed Board of Directors of the Corporate Debtor (which is to be nominated by the Resolution Applicant).
28. The Supervising Committee shall supervise the implementation and execution of the Resolution Plan until the OTS amount is paid. After that, the Supervising Committee shall supervise the implementation and execution of the Resolution Plan and if desired, shall submit a yearly report to the CoC to appraise them.

Management and Control of affairs of the Corporate Debtor

29. The Board of Directors (as may be nominated by the Resolution Applicant) shall be handed over the management and control of the

affairs of the Corporate Debtor, and the Supervising Committee will do the necessary compliances in law.

Plan for revival

30. The Resolution Plan provides for the takeover of the corporate debtor as a going concern and ensures continuity of business of the Corporate Debtor and also to develop market and adequate general cash.
31. The Resolution Applicant in its Resolution Plan sought for various concessions, relaxations and reliefs from the Government, etc. This bench is not inclined to allow any of the said reliefs and concessions prayed by the Resolution Applicant under the provisions of the Resolution Plan. Therefore, the Resolution Applicant may apply to the relevant regulatory authorities for said reliefs and concessions and the relevant authorities may consider it as per the relevant applicable laws.
32. The Resolution Applicant has declared that neither the Resolution Applicant nor any of its related parties have failed to implement or contribute to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
33. Any relief sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.
34. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable laws for the time being in force.
35. The Resolution Applicant shall obtain the necessary approval required under any law for the time being in force.

36. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation. The CoC has approved this Resolution Plan with requisite vote of more than 66% as required under the law, in favor of the Resolution Plan.
37. We are satisfied that the Resolution Plan fulfils the mandatory requirements of Section 30 of the I&B Code and Regulation 38 & 39 of IBBI (CIRP) Regulations, 2016.
38. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code, we approve the resolution plan submitted for International Book House Private Limited as approved by the CoC. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.
39. Under the provisions of Section 31(3) of the Code, we also direct as under:-
- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 21.12.2018 shall cease to have effect; and
 - b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its data base.
40. The Resolution Plan is approved under section 31(1) of I&B Code with observations above. The MA 3114/2019 is accordingly allowed and disposed of.

MA 3197/2019:

41. IndusInd Bank Limited (IBL) has filed MA 3197/2019 against the Respondents seeking direction from this Tribunal that R1 and R2 be

ordered to provide to the IBL the sharing percentage of its admitted claim at par with the admitted claim of other Secured Financial Creditors without any discrimination; and R1 and R2 to submit the revised Resolution Plan taking into consideration the interest of all stakeholders and provide for distribution of the amount of Resolution Plan without any discrimination or preference and thereby equate it with other similarly situated Financial Creditors.

42. The applicant in support of its application raised the following contentions:

- A) In the 5th meeting of CoC the members of CoC were arbitrarily handed over a sheet with a table comprising of proposed distribution pattern of the amount of Resolution Plan whereby it was proposed by the Respondent Nos.1 and 2 that R3 (Religare Finvest Limited) will be allotted a sum of Rs. 8.40 Crores against its claim of Rs. 14.31 Crores and this applicant was given a meagre amount of Rs. 25 lakhs against its claim of Rs. 6.85 Crores.
- B) The distribution is *ex facie* discriminatory and barred in law, in as much as it differentiates between the similarly placed secured financial creditors. The law as it stands allows the CoC to differentiate only between the differently situated classes of Creditors. The term "Class" has been further defined to mean Operational Creditor vis-a-vis Financial Creditor and Unsecured financial creditor vis-a-vis Secured financial creditor. The law does not permit any differentiation among secured financial creditor *inter se* because such differentiation would amount to differentiating among the similarly situated persons. Hence there is a discrimination which is impermissible.
- C) In this case there is no basis to show that valuation of the security held by the applicant and by Respondent No. 3 were so different that they be treated differently. Nowhere in the application filed by R1 there is mention of valuation of the security held by the applicant and in fact R1 did not even attempt to make such study. The burden to show a basis for differentiation raises on the person who chooses to differentiate.

- D) There is a discrimination in treatment with reference to liquidation value of the respective security, the sum of Rs. 8.40 Crores proposed to be paid to R3 in excess of the liquidation value of its security i.e. Rs. 8 Crores which is found in the valuation report.
- E) The security comprises hypothecation charge on current assets, stocks, book dates, investments, trade receivable, current assets etc. of the Corporate Debtor and the liquidation value of the said hypothecated asset has not been considered at all by the R1 in distribution.
- F) The liquidation value of the above referred assets on which applicant has exclusive charge is approximately Rs. 2 Crores.
- G) No value has been assigned to the current assets worth of Rs. 2.07 Crores which is the exclusive security of the applicant. On the contrary it has been stated by the Resolution Applicant and also recorded in the minutes of the 5th CoC meeting that the Sundry Debtors will form part of the Resolution Plan.
- H) This Tribunal by invoking inherent powers can remedy the situation by equating the applicant with R3 at least in terms of proportion of the admitted claim. The applicant submits that, even the terms of settlement as stated in the Resolution Plan provided for distribution of amount in the ratio of admitted claims, however distribution pattern proposed is not in terms of the settlement. The value of the security of the applicant is worth Rs. 2.07 Crores consisting of Rs. 1.6 Crores in the form of receivables, Rs. 27 lakhs in the form of assets/stocks/investments and Rs. 22 lakhs in the form of bank balance. However, the applicant who is having security interest in these assets is assigned only Rs. 25 lakhs.
- I) The aforesaid distribution of amount of Resolution Plan as proposed and approved by the members of CoC having dominant position is not only unjust and unequal but is highly discriminative as it does not give equal treatment to all the similarly situated creditors as well as is causing grave prejudice to all the other stakeholders being unsecured financial creditors, employees, operational creditors which cannot be permitted in law.

J) It is clear from the above that Religare Finvest Limited is being given 89.36% of their admitted claim whereas the Applicant who is admittedly also a Secured Financial Creditor is being given 2.66% of the admitted claim, and hence it is biased and extremely unjust. Similarly, other Unsecured Financial Creditors are being given only 1.44% of their admitted claim, Employees are being given 25% of their admitted claim, and Operational Creditors are being given only 0.52% of their admitted claim. The said proposed distribution is discriminative and hence against well-settled principles of law.

43. The applicant relied on the Judgment of the Hon'ble NCLAT in *Hero Fincorp Ltd. Vs. Rave Scans Pvt. Ltd. and Ors.* (MANU/NL/0445/2019), wherein it was observed:

"5. From the tabulated chart given by the 'Successful Resolution Applicant'/'Corporate Debtor', we find that the Appellant- 'Hero Fincorp Limited' has been provided with 32.34% of its admitted claim as it has dissented with the plan. On the other hand, Tata Capital Financial Services Ltd.' has been provided with 75.63% of its admitted claim and other 'Financial Creditors' i.e. 'Indian Overseas Bank' has been provided with 45% of its admitted claim; the 'Bank of Baroda' has been provided with 45% of its admitted claim and the 'Punjab National Bank' has been provided with 45% of its admitted claim....

....

12. The impugned order approving the 'Resolution Plan' has been passed by the Adjudicating Authority on 17th October, 2018, but the Adjudicating Authority failed to notice that no 'Resolution Plan' can be approved discriminating the dissenting 'Financial Creditor' in terms with the post amended Regulation 38. It also failed to notice that this Appellate Tribunal much prior to the same, declared the un-amended (old) Regulation 38(1)(c), which stipulated liquidation value for the dissenting 'Financial Creditor', as illegal which resulted in amendment of Regulation 38.

13. In "Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors." (Supra), the Hon'ble Supreme Court observed that "the NCLAT while looking into viability and feasibility of resolution plans as approved by the committee of creditors, always gone into whether the operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded".

14. In the present case, the 'Resolution Plan' approved by the 'Committee of Creditors' do not confirm the test of Section 30(2)(e), being discriminatory, as having discriminated the similarly situated 'Secured Creditors'."

44. The applicant submits that while the Hon'ble Supreme Court did overturn the decision of the Hon'ble NCLAT in *Hero Fincorp Ltd.* case, the Hon'ble Supreme Court did not comment on the validity of the reasoning of the Hon'ble NCLAT on the point of the discrimination among the similarly situated creditors.

45. The applicant relied on the Judgment of the Hon'ble NCLAT in the case of *Binani Industries Limited and Ors. Vs. Bank of Baroda and Ors. (MANU/NL/0284/2018)*, wherein the NCLAT has observed:

"19. From the gist aforesaid, it will be evident that the 'Financial Creditors' such as, 'Edelweiss Asset Reconstruction Company Limited', 'IDBI Bank Limited', 'Bank of Baroda', 'Canara Bank', 'Bank of India' and 'State Bank of India' has been provided with 100% of their verified claim, the 'Resolution Applicant' ('Rajputana Properties Private Limited') has given lesser percentage to Export-Import Bank of India (72.59%) and State Bank of India-Hong Kong (10%). Discrimination has been made on the ground that some of the 'Financial Creditors' are direct exposure to the 'Corporate Debtor' or some of the 'Financial Creditors' to whom the 'Corporate Debtor' was guarantor. Even the guarantors who are treated to be the 'Financial Creditors', such as 'IDBI Bank Limited (Dubai Branch)', 'Bank of Baroda (London)', 'State Bank of India (Bahrain)', 'Syndicate Bank' have been provided with 100% proposed payment of their verified claim but the 'Export-Import Bank of India' and the 'State Bank of India (Hong Kong)' who are similarly situated have been discriminated....

....

28. Therefore, the Appellant- 'Rajputana Properties Private Limited' cannot take plea that dissenting 'Financial Creditors' can be discriminated on the basis of Regulation 38. At this stage, it is desirable to notice that after the decision of this Appellate Tribunal in "Central Bank of India (Supra)" the Insolvency and Bankruptcy Board of India also amended/repealed the Regulation 38 aforesaid having found it discriminatory.

29. We agree with the submissions made by Mr. Arun Kathpalia, learned Senior Counsel that Section 53, including explanation given therein cannot be relied upon while approving the 'Resolution Plan'. However, that does not mean that a discriminatory plan can be placed and can be got through on one or other ground, which is against the basic object of

maximization of the assets of the 'Corporate Debtor' on one hand and for balancing the stakeholders on the other hand....

....

43. From the two 'Resolution Plans', it will be clear that the 'Rajputana Properties Private Limited' in its 'Resolution Plan' has discriminated some of the 'Financial Creditors' who are equally situated and not balanced the other stakeholders, such as 'Operational Creditors'. Therefore, the Adjudicating Authority has rightly held the 'Resolution Plan' submitted by 'Rajputana Properties Private Limited' to be discriminatory."

46. For the proposition that the similarly situated class cannot be differentiated inter se, the applicant also relied on the Judgment of the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Anr. (MANU/SC/1577/2019)*, wherein the court has observed as below:

"56. By reading paragraph 77 de hors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Paragraph 76 clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, paragraph 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a

prospective resolution Applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors...

....Quite clearly, secured and unsecured financial creditors are differentiated when it comes to amounts to be paid under a resolution plan, together with what dissenting secured or unsecured financial creditors are to be paid. And, most importantly, operational creditors are separately viewed from these secured and unsecured financial creditors in S. No. 5 of paragraph 7 of statutory Form H. Thus, it can be seen that the Code and the Regulations, read as a whole, together with the observations of expert bodies and this Court's judgment, all lead to the conclusion that the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code-to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational."

47. By relying on the above said Judgments the Ld. Counsel for the applicant submits that:
- a) All Secured financial creditors are similarly situated and there can be no further differentiation inter se among them;
 - b) Even if we were to assume that there can be different classes between the category of secured financial creditors, there has to be some basis for such differentiation;
 - c) Simply asserting that securities are different does not satisfy this requirement; and
 - d) It is only logical that in every second case, different secured creditors may hold different types of security *albeit* the value of those security may be similar.
48. The Resolution Professional has submitted that IBL and Religare are not similarly situated financial creditors. While both are secured financial creditors, the value of security held by Religare is comparatively much higher than value of the security held by IBL. The same is evident from the table below which shows that the liquidation value of the securities held by Religare is Rs. 7,90,00,000 which amounts to 55.20% of their admitted debt whereas the liquidation value of the securities held by IBL is Rs. 24,00,000 which amounts to only 3.50% of their admitted debt. The said proposition is evident from the following:

Name of the Financial Creditor	Nature of the security	Amount admitted	Average liquidation value of the securities held	% of the realizable value during liquidation	Amount provided under resolution Plan	% of the amount realized under Resolution Plan
Religare Invest Limited	Secured	14,31,09,835	7,90,00,000	55.20%	8,40,00,000	58.69%
IndusInd Bank Limited	Secured	6,84,87,343	24,00,000	3.50%	25,00,000	3.65%
Aditya Birla Finance Limited	Un-secured	35,42,723	Nil	Nil	5,00,000 (All the unsecured Creditors have to share this amount)	1.44%
Capfloat Financial Services Private Limited	Un-secured	38,96,944				
P.C. Bhatia (HUF)	Un-secured	14,22,693				
Premchand C. Bhatia	Un-secured	1,28,640				
Kunal P. Bhatia	Un-secured	2,98,918				
Shriram City Union Finance Limited	Un-secured	16,59,064				
Sandeep Harsulkar	Un-secured	2,18,60,250				
IDFC First Bank Limited	Un-secured	18,56,713				

49. The Resolution Professional submits that the applicant/IBL proceeds on the incorrect basis that the CoC has discriminated among similarly situated financial creditors i.e. the applicant and R3. However, even though both are secured financial creditors, the value of security held by R3 is comparatively much higher than the value of the security held by the applicant. The average liquidation value of the securities held by the financial creditors, as reported in the valuation report, is taken as the basis for arriving at the distribution figures. It is to be noted that the valuation reports have not been challenged by the applicant till date and hence the applicant is estopped from contending that the valuations are incorrect.

50. The Resolution Professional submits that, R3 is secured against a property located at, Ground Floor, Tej Kiran Co-Operative Housing Society Limited, 2nd Dadisheth X Lane, Chowapaty Bandstand,

Mumbai – 07, and the applicant is secured against hypothecation of current assets consisting of stock of raw materials, work in progress, finished goods, book debts and other movable assets and plants & machinery.

51. The Resolution Professional submits that, the reliance of the applicant on the information memorandum to contend that over Rs. 10 Crores were recoverable, is not correct in view of the fact that the litigation proceedings filed against the Corporate Debtor by R3 and two other operational creditors itself in total amounted to Rs. 12.50 Crores. Therefore, the applicant's contention that over Rs. 10 Crores are recoverable is misconceived and factually incorrect. Further, reliance of applicant on the financial statements for the year ending 31.03.2018 to show trade receivables as Rs. 36 Crores is misconceived as most of the Sundry Debtors are obsolete and time barred and there is no possibility of recovery from them.
52. The Resolution Professional submits that in the 5th CoC meeting held on 31.08.2019 the issue of recovery of debts was discussed, wherein the applicant was present at the said meeting and more particularly when the applicant's representative asked for the details of recovery, it was informed to him that there has been negligible recovery from the debtors and that majority of the cases filed by the Corporate Debtor under Section 138 of the Negotiable Instrument Act, 1881 amounting to 1.70 Crores, were dismissed.
53. The Resolution Professional referring to the table supra submits that the applicant and R3 are not similarly situated as there is vast difference in the liquidation value of the securities held by them. Hence the question of discrimination of similarly situated secured creditors does not arise at all.
54. The Resolution Professional further submits that Section 30(4) of the Code Provides as below:

"...(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take

into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board:..."

55. Relying on the above provision it is submitted that, the CoC while determining or approving the distribution pattern shall also take into account the priority and value of the security interest of a secured creditor. The CoC approved the Resolution Plan with 96.91% of vote share which includes the applicant. However, the distribution pattern has been approved by the CoC with 66.98% of the voting share, barring IndusInd Bank which has not voted in favor of the distribution pattern. The Resolution Professional therefore submits that since the applicant has voted for approval of the Resolution Plan, the applicant cannot challenge the Resolution Plan itself which has been voted by the applicant also.
56. The Resolution Professional further submitted that since the distribution pattern was also approved by the CoC with 66.98% voting share, whereas the minimum requirement for approval is 66%, it has to be construed that the distribution pattern has also been approved by the CoC in its commercial wisdom.
57. The Resolution Professional has relied on the Judgement of Hon'ble NCLAT in the case of, *Darshak Enterprise Pvt. Ltd. and Ors. Vs. Chhaparia Industries Pvt. Ltd. and Ors. (MANU/NL/0088/2018)*, wherein it is held that:
- "6...In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can be decided by the Committee of Creditors based on facts and circumstances of each case..."*
58. The Resolution Professional further relies on the judgment of Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. (MANU/SC/1577/2019)*, to buttress her point that the applicant cannot challenge the approved resolution plan despite the fact that the applicant itself has voted in favor of the Resolution Plan *albeit* not voted in approving the distribution pattern. In the very same

judgement, the Hon'ble Supreme Court has further held that the CoC is sufficiently empowered to decide the manner of distribution of funds proposed in the Resolution Plan, after taking into consideration the security interest of the secured creditor. The Hon'ble Supreme Court has held as follows:

"38.This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.

...

40....Thus, what is left to the majority decision of the Committee of Creditors is the "feasibility and viability" of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution Applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution Applicant with a consequent modification as to distribution of funds, payment being provided to a certain type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution Applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.

...

42....Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).

...

46....Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision

to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.

...

50. The importance of valuing security interests separately from interests of creditors who do not have security is well set out...

...

54. Indeed, if an "equality for all" approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes

...

56.... So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and

accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution Applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.

...

57....Indeed, Regulation 13(1) of the 2016 Regulations mandates that when the resolution professional verifies claims, the security interest of secured creditors is also looked at and gets taken care of....

...

89....We cannot arrive at the conclusion that the acceptance of the resolution plan by the majority of the Committee of Creditors should be set aside on this score, inter alia, for the reason that Shri Sibal assured us that he was not attacking the acceptance of the revised plan but only distribution of amounts payable under the said plan. This being so, it is also not possible to accept the submission of Shri Sibal, that "feasibility and viability" of a resolution plan will not include distribution of the amount of debt under the said plan.... All that was left for distribution by ArcelorMittal was distribution inter se between secured financial creditors which was then done by a majority of 92.24%, as has been seen above based upon the value of their respective security interests....

...

92....Full freedom and discretion has been given, as has been seen hereinabove, to the Committee of Creditors to so classify creditors and to pay secured creditors amounts which can be based upon the value of their security, which they would otherwise be able to realise outside the process of the Code, thereby stymying the corporate resolution process itself.

...

94.The NCLAT judgment which substitutes its wisdom for the commercial wisdom of the Committee of Creditors and which also directs the admission of a number of claims which was done by the resolution applicant, without prejudice to its right to appeal against the aforesaid judgment, must therefore be set aside."

59. The Resolution Professional further relied on the judgement of Hon'ble Supreme Court in *K. Sashidhar v. Indian Overseas Bank & Ors. (MANU/SC/0189/2019)*, for the proposition that Adjudicating Authority is not endowed with the jurisdiction to analyze or evaluate the commercial decision taken by the CoC, as long as the same is in consonance with law. The RP has relied on following

paragraphs of the said judgement, extract of which is reproduced below:

"33.....The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the 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 Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the 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 the 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.

...

35.....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.

...

39. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting

financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors.”

60. On hearing the submissions on either side and on-going through the pleadings the following are the observations of this Bench:

A) Section 30(4) of the Code categorically states that the CoC in its commercial wisdom can decide the distribution pattern of the amount proposed by the Resolution Applicant and such distribution may be on the basis of security interest of the secured creditors. In the case on hand R3's security is an immovable asset where the liquidation value is Rs. 7.9 Crores and the CoC in its commercial wisdom decided to pay the said creditor a sum of Rs. 8.4 Crores. Yes, evidently R3 is getting Rs.50 Lacs more than the liquidation value of the security. The applicant is also getting Rs.1,00,000/- more than the liquidation value of the value of its security interest. However, the security interest held by the applicant is only against the current assets such as stock in trade, work in progress, sundry debtors, plants and machinery whereas the security interest of R3 is in respect of an immoveable asset. Even though the financial statements show the sundry debtors to the extent of Rs. 36 Crores, the realizable value seems to be very low and there is no guarantee that the pending litigations will end up in collection from all the debtors. Further it is submitted that most of the debts were also time barred and majority of the Section 138 proceedings were dismissed. In the given circumstances the apportionment of Rs. 25 lakhs to the applicant cannot be faulted and the commercial wisdom of the CoC cannot be questioned by this Bench.

B) The Judgment in the Essar's case (supra) is a complete answer for all the objections/contentions raised by the Ld. Counsel for the Applicant and the same is summarized below:

- i. The commercial wisdom of the Committee of Creditors will always prevail;
- ii. The feasibility and viability of Resolution Plan takes into account all the aspects of Plan including the manner of distribution among the creditors;

- iii. Judicial review is available only within the four corners of Section 30(2) of the Code;
- iv. The ultimate discretion of what to pay and how much to pay to each sub-class of creditors is with the CoC and the same should reflect maximizing the value of Corporate Debtor;
- v. The feasibility and viability of Resolution Plan will also include the distribution of amount to creditors under the plan and in this case, distribution is also voted by more than 66% and hence distribution cannot be faulted;
- vi. The CoC has the authority to make payment based upon the realizable value of security of each creditor;
- vii. The equality for all approach may not be conducive for successful resolution of the Corporate Debtor.

61. In view of the decision of the Hon'ble Supreme Court in case of *Essar (supra)* the reliance of the Applicant on the judgements in *Binani and Hero Corp (both Supra)* is not helping the Applicant in any way.

62. In view of the above discussion this application is dismissed.

MA 3236/2019:

63. This is an application filed by the applicant/unsecured creditor for the following reliefs:

1. *The Respondent No. 1 and 2 be ordered and directed to provide to the Applicant sharing percentage of its admitted claim at par with the admitted claim of other similar Financial Creditors without any discrimination.*
2. *The Respondent Nos. 1 & 2 be ordered and directed to submit revised Resolution Plan taking into consideration the interest of all stakeholders and provide for distribution of the amount of Resolution Plan without any discrimination or preference and thereby equate it with other similarly situated Financial Creditors;*

3. Any other and Further orders as this Hon'ble Tribunal may deem fit.

64. The Applicant in this application is an unsecured financial creditor of the Corporate Debtor who has to share the sum of Rs. 5 lakhs with all other unsecured financial creditors thereby getting a share of only 1.44% of the admitted claim amount of all unsecured creditors, as per the resolution plan approved by the CoC. In the resolution plan all the unsecured creditors are given the same treatment. The secured financial creditors and unsecured financial creditors may not be treated alike. In our view there is no discriminatory treatment among the unsecured creditors. The law as evolved is discussed above (in MA No. 3197/2019) and the treatment given to the unsecured creditors in the resolution plan is within the parameters of provisions of law and the judicial pronouncements cited above. We do not find any merit in this application. In the light of the above discussion this application is dismissed. No costs.

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V. Nallasenapathy
Member (Technical)

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Suchitra Kanuparthi
Member (Judicial)