

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 729 of 2020

[Arising out of Order dated 09.07.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in IA No.222 of 2020 in CP (IB) No.42/CHD/HRY/2017]

IN THE MATTER OF:

Union Bank of India (Erstwhile Corporation Bank)

....Appellant

Vs.

Mr. Dinkar T. Venkatasubramanian & Ors.

...Respondents

For Appellant:

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Alok Kumar, Ms. Somya Yadava, Mr. Divyansh Soni, Mr. Auritro Mukherjee, Advocates.

For Respondents:

Mr. Sumant Batra, Mr. Sanjay Bhatt, Mr. Sarthak Bhandari, Ms. Ayat Khusheed, Advocates for R-1.

Mr. N. Venkatraman, Learned ASG with Mr. Sanjay Kapur, Mr. Surya Prakash, Mr. Arjun Bhatia, Advocates.

J U D G M E N T
(18th December, 2024)

Ashok Bhushan, J.

This Appeal by the Union Bank of India has been filed challenging the order dated 09.07.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in IA No.222 of 2020 filed by the Union Bank of India, which application by the impugned order has been dismissed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The CIRP against the Corporate Debtor- M/s. Amtek Auto Limited commenced by order dated 24.07.2017 passed on an application by Corporation Bank (now Union Bank of India). In the CIRP, public announcement was made on 27.07.2017 in pursuance of which Appellant filed claim for an aggregate amount of Rs.876,42,09,926/-. The claim included an amount of Rs.39,61,54,488/- under Non Fund Based (Letter of Credit/ Bank Guarantee Facility). The Resolution Professional on verification did not admit the claim of Rs.39,61,54,488/- which had not crystallised as on Insolvency Commencement Date. The CoC was constituted in which the Appellant had vote share of 6.64%. The Resolution Professional after commencement of CIRP wrote to the Appellant to continue the Non Fund Based facility on account of business requirement of the corporate debtor to run it as a going concern. The Corporation Bank extended the Non Fund Based Facility to the corporate debtor starting from 24.07.2017 till 24.10.2018. Letter of Credit/ Bank Guarantee issued by Appellant during CIRP period were debited from the account of the corporate debtor.

2.2. A Resolution Plan was submitted by the Respondent Nos.2 and 3. In 30th meeting of the CoC held on 05.02.2020, the Resolution Professional brought into notice of the CoC that the Appellant had affected a recovery of Rs.33.34 Crores. Appellant urge before the members of the CoC that the amount of Rs.33.34 crores be treated as interim finance. The CoC in its deliberations on 30th and 31st meeting of the CoC held on 05.02.2020 and 07.02.2020 decided to deduct the amount of Rs.33.34 Crores from the amount to be paid to the Appellant under the Resolution Plan. The

distribution to various stakeholders including the Financial Creditors was placed by the Resolution Professional before the CoC which was approved by the CoC. The Resolution Plan of Respondent No.2 and 3 came to be approved with vote share of 70.07%. On 20.02.2020, Appellant sent an e-mail to Respondent No.1 objecting to the recovery of Rs.34 Crores. It was stated that the letter of credits availed by the corporate debtor were in the nature of contingent liability and same were paid directly by the corporate debtor to the vendor as and when they become due. After sending the said e-mail, IA No.222 of 2020 was filed by the Appellant before the Adjudicating Authority praying for various directions including direction not to deduct the amount of Rs.34 Crores from the final payment to be made to the Union Bank of India as per the scheme of distribution. The application was opposed by the Resolution Professional. The Adjudicating Authority after hearing the parties held that the CoC having passed the Resolution Plan with requisite majority, Appellant being a dissenting member of the CoC cannot be allowed to challenge the decision of the CoC. It was submitted that the issue was fully deliberated and accepted in the meeting of the CoC and distribution of amount payable to the applicant was approved by the CoC. It was observed that in the CoC meeting held on 05.02.2020 and 07.02.2020, Union Bank of India did not even object to the decision. With the aforesaid observations, the IA was rejected. Aggrieved by the aforesaid order, this Appeal has been filed.

2.3. Appeal came to be decided by the judgment of this Tribunal dated 27.01.2022. The CoC filed an application to recall the above judgment it having been delivered without the CoC, the aggrieved party before the

Tribunal. This Tribunal by order dated 04.10.2023 allowed the IA No.3961 of 2022 filed by the CoC recalling the judgment and order dated 27.01.2022. The CoC was impleaded as party Respondent to the Appeal. Reply has been filed by the Respondent No.4 (CoC). Resolution Professional had already filed a reply to the appeal. Appeal was heard by this Tribunal and judgment was reserved on 09.12.2024.

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel along with Shri Alok Kumar, Learned Counsel for the Appellant, Shri N. Venkatraman, Learned ASG has appeared for the CoC and Shri Sumant Batra, Learned Counsel for the Resolution Professional.

4. Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant submits that the letter of credit which was issued by the Bank were honoured during CIRP period due to the fact that the Resolution Professional had requested the Union Bank of India to continue its Non Fund Based facility to keep the corporate debtor as a going concern. Letter of credits issued by the bank were required to be honoured by the Bank and Appellant has not unduly enriched itself. The Resolution Professional having been regularly giving instructions with respect to debiting of cash credit account of the corporate debtor as and when any LC/BG is presented which arrangement is reflected in the letter issued by the Resolution Professional after commencement of the CIRP. All payments were made directly to the supplier/ vendor/ beneficiary of NCB Facility by debiting the cash credit account of the corporate debtor and there has been no amount which has been credited towards the loan account of the corporate debtor. NFB Facility has been

issued in favour of the beneficiary/vendors for purchase of various types of steels and other alloys. The corporate debtor is liable to pay to the suppliers/beneficiaries during the CIRP period. The same was done by the Appellant by debiting the cash credit account of the corporate debtor as instructed by Respondent No.1. The payments consequently made to such beneficiaries by debiting the corporate debtor's account have been misconceived as recovery towards the dues. The observation of the Adjudicating Authority that the Appellant did not object to the deduction of amount of Rs.34 Crores is incorrect. Appellant immediately sent an e-mail on 20.02.2020 objecting to the decision to deduct Rs.34 Crores from pay out of the Appellant stating that the aforesaid amount was contingent liability and amount has been directly paid to the vendors and suppliers by the Appellant. It is submitted that the decision to deduct Rs.34 Crores amount by the CoC cannot be treated to be in exercise of commercial wisdom of the CoC. Wrongful deduction of the amount of Rs.34 Crores was beyond the jurisdiction of the CoC. Shri Abhijeet Sinha, Learned Senior Counsel referring to the provisions of Section 5(8)(h) submits that the Non Fund Based Facility was a nature of counter indemnity and covered by Section 5(8)(h) and was a financial debt for the money which has been paid by the bank to which no other financial creditor has exposure by such payment and now other financial creditors shall be benefited which is impermissible.

5. Shri N. Venkatraman, Learned Counsel for the CoC submits that the amount Rs.33.34 Crores which has been deducted from the account of the corporate debtor was towards LCs/BGs which relates to pre-CIRP period. For

BGs/ LCs issued pre-CRIP period, Appellant was not entitled to recover any amount directly from the amount deducted by the Appellant, which was thus, amounts to recovery of its dues. It has rightly been decided by the CoC to deduct from the pay out of the Appellant. It is submitted that in the meetings of the CoC held on 05.02.2020 and 07.02.2020, two options were placed. Firstly, to treat the aforesaid amount as interim finance as suggested by the Appellant or to deduct the said amount from the payouts of the Appellant. CoC after due deliberation by majority vote has approved the second option i.e. deduction of the amount from payouts of the Appellant. The Appellant being financial creditor having 6.64% voting share had no right or jurisdiction to challenge the decision of the CoC taken in exercise of commercial wisdom. Dissenting Financial Creditor and all other stakeholders are fully bound by the decision taken by the CoC. During CIRP period, the LCs issued were of Rs.1,49,66,13,386/- and payment debited by Appellant during the CIRP period was Rs.1,83,00,47,429/-. Thus, excess amount of Rs.33,34,34,043/- was deducted by the Appellant which has rightly been directed to be deducted from the payouts of the Appellant since Appellant was not entitled to make that recovery. It is submitted that when only an amount of LCs of Rs.1,49,66,13,386/- has been issued during the CIRP period by the Appellant, it had no jurisdiction to deduct an amount of Rs.1,83,00,47,429/-. It is submitted that the decision taken by the CoC regarding distribution of the amount to different financial creditors is a commercial decision which cannot be challenged by the Appellant. Appellant is bound by the decision of the CoC. By directly affecting the recovery of LCs

which were issued prior to CIRP commencement date, Appellant has enriched itself.

6. Shri Sumant Batra, Learned Counsel appearing for the Resolution Professional submits that two options were placed in the meeting of the CoC dated 07.02.2020. One to treat the amount deducted by Appellant as interim finance as was suggested by the Appellant and second, to deduct the amount from the payout of the Appellant. The Resolution Plan was approved. The Corporation Bank never objected to the distribution till the plan was approved. On 11.02.2020 the plan was approved and for the first time on 20.02.2020 an e-mail was raised by the Appellant. Amount of Rs.34 Crores has never been approved as CIRP costs by the CoC on for interim finance. There has to be approval of the CoC as per Section 28 of the IBC. The CoC did not approve the amount as interim finance and decided to deduct it from payouts of the Appellant. The said decision cannot be allowed to be assailed by the Appellant. Counsel for the Resolution Professional referring to his reply filed in IA No.222 of 2020 submitted that details of amount of LCs issued from July 2017 to October 2018 has been placed before the Adjudicating Authority. From July 2017 to October, 2018, LCs issued during the CIRP period was Rs.1,49,66,13,386/- whereas payment made/ debited by Corporation Bank on account of LCs expiring during CIRP was Rs.1,83,00,47,429/-. It is submitted that the deduction of Rs.33.34 Crores were towards LCs which were issued prior to CIRP period which could not have been directly deducted.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. In IA No.222 of 2020 which was filed by the Appellant, following prayers were made:-

“1. Allow the instant Application filed by the Applicant and direct the IRP to get the Resolution Plan modified so as to comply with Regulation 42 and 44 of the Liquidation Process Regulations, 2016; and

2. Direct the Respondent Resolution Professional to not to deduct the amount of Rs.34 Crore from the final payment to be made to Applicant as per the scheme of distribution of amount under Resolution Plan; and

3. Direct the Respondent Resolution Professional to further include amounts of Rs.6,22,58,072.64/- towards LC payments and Rs.61,39,000/- towards Bank Guarantee (BG) payments in the total admitted claim of Applicant; or

4. To pass such other order or relief be granted as this Hon'ble Tribunal deems fit and proper having regard to the facts and circumstances mentioned in the present Application.”

9. Reply was filed by the Resolution Professional to the IA No.222 of 2020 which reply has been brought on the record by the Resolution Professional as Annexure R1 in the reply filed in this appeal. It is useful to notice the pleadings of the Resolution Professional which was made in the reply filed in IA No.222 of 2020. Details of the claim submitted by the Appellant and claim

which was verified by the Resolution Professional has been mentioned in paragraph 6 of the reply which is as follows:-

“6. It is submitted that pursuant to the Public Announcement made by the Answering Respondent as IRP, the Applicant filed its proof of claim dated 04.08.2017 as on the insolvency commencement date, for an aggregate amount of Rs. 8,76,42,09,926/-. Admittedly in the said claim the Applicant has included an amount of Rs. 39,61,54,488/- account of Non-Fund based Letter of Credit/Bank Guarantee facility (hereinafter, "NFB Facility") which had not crystallised as on the insolvency commencement date. The Answering Respondent on verification and collation of the claim filed by the Applicant in terms of the provisions of the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (hereinafter, the "CIRP Regulations") included an amount of Rs. 8,36,80,55,438/- as Financial Debt of the Applicant while not including uncrystallised amount of Rs. 39,61,54,488/- on account un-invoked/un- devolved Letter of Credit/Bank Guarantee claim. The Applicant was also included as a member of the Committee of Creditors (hereinafter, "CoC") and was assigned voting right for its Financial Debt. It is also pertinent to point out that the Applicant also accepted the same and did not challenge the said action of the Resolution Professional before this Hon'ble Adjudicating Authority for non-admission of said uncrystallised amount. A copy of the proof of claim dated 04.08.2017 filed by the Applicant is already produced on record by the Applicant.”

10. The Resolution Professional has submitted that during the CIRP, it has written to the Appellant to continue the Non Fund Based facility so that corporate debtor may run as a going concern. In the reply, Resolution Professional has given details of recovery of Rs.33.34 Crores along with the monthly details of LCs opened by the Appellant during CIRP period. Paragraph 10 of the reply is as follows:-

“10. The Applicant without responding to the said request or considering the same in an arbitrary manner by misusing its power imposed an auto-debit instructions and started debiting the collection account of the Corporate Debtor maintained by it as Financial Institution for any devolvement of Letter of Credit/Bank Guarantee and made recovery of an aggregate amount of Rs. 33.34 Crores. Monthly details of LCs opened by the Applicant as against deductions for LCs made from the Corporate Debtor during CIRP are annexed herewith and marked as Annexure R-2.”

11. Paragraph 10 of the reply refers to Annexure R2 which is detailed table of LCs opened from 24th July 2017 to 24th October 2018 and further payments debited by Corporation Bank. Annexure R2 to the reply is as follows:-

S. No.	Particulars	INR
1	NET LCs issued during CIRP period # [A]	1,49,66,13,386
2	Payments made/ debited by Corporation Bank on account of LCs expiring during CIRP [B]	1,83,00,47,429

3	<i>Excess amounts debited by Corporation Bank [A-B]</i>	-33,34,34,043
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#Represents the total amounts payable to Corporation Bank on account of LCs opened by Corporation Bank during CIRP starting from 24-Jul-17

S. No.	Month	LCs issued (INR)	LCs Cancelled* (INR)	NET issued CIRC (INR)	LCs during period
1	Jul-17	3,47,82,522	32,25,200	3,15,57,322	
2	Aug-17	18,88,67,838	1,70,12,232	17,18,55,606	
3	Sep-17	12,46,75,988	42,68,670	12,04,07,319	
4	Oct-17	7,95,16,397	12,39,020	7,82,77,377	
5	Nov-17	13,82,13,132	69,77,961	13,12,35,171	
6	Dec-17	13,34,90,426	24,63,162	13,10,27,264	
7	Jan-18	6,49,64,611	62,27,878	5,87,36,733	
8	Feb-18	7,61,18,847	1,35,36,488	6,25,82,359	
9	March-18	8,95,08,900	86,03,983	8,09,04,917	
10	Apr-18	4,16,22,860	84,88,460	3,31,34,400	
11	May-18	11,47,85,748	12,79,510	11,35,06,238	

12	Jun-18	16,17,37,408	1,44,94,815	14,72,42,593
13	Jul-18	6,74,53,864	27,30,901	6,47,22,963
14	Aug-18	11,71,67,007	76,51,376	10,95,15,631
15	Sep-18	11,21,63,819	80,29,257	10,41,34,562
16	Oct-18**	5,97,84,739	20,11,808	5,77,72,931
	Total	1,60,48,54,106	10,82,40,720	1,49,66,13,386

**Amounts in each LC which remained unutilised and were eventually cancelled and no payments were required to be made to Corporation Bank for these amounts*

***No Fresh LC was opened after Oct 24, 2018”*

12. 30th and 31st meetings of the CoC has deliberated and taken decision on the said issue. It is necessary to notice the deliberation in 30th and 31st CoC meetings which minutes have been brought on the record by Respondent No.4 in its reply. In the minutes of the CoC held on 05.02.2020 under the heading ‘discussion on Resolution Plan’. Under the sub-heading ‘LC recovery by Corporation Bank’, following has been deliberated:-

“LC recovery by Corporation Bank

i) The RP brought to the attention of the CoC a matter of recovery pursuant to LCs by Corporation Bank (the Bank) from the corporate debtor during CIRP. The RP stated that

at the commencement of CIRP, the Bank submitted claim of Rs. 876 Cr, however the total claim admitted by was Rs. 837 Cr basis the following conversations and agreements with the Bank. The RP further stated the below sequence of events:

- As on date of initiation of CIRP, the unutilized LCs issued to Steel Suppliers were -Rs. 39 Cr
- During the CIRP, the Bank offered to support the business of the corporate debtor and approved the continuation of these limits in CIRP
- LCs issued prior to CIRP were honoured and paid by the RP during the CIRP, thus Rs. 39 Cr of LCs were kept alive and regularly paid and claims to this effect were accordingly withdrawn by the Bank
- Payment for these LCs due to expire during CIRP were made on such expiry dates only on the premise that such freed limits will be indefinitely made available to AAL to maintain its operations and going concern

j) The Bank sought additional comfort in the resolution plan submitted by LHG, where an additional clause was added, requiring the successful applicant to post closing/implementation of the plan, provide necessary collateral or undertake to make full payments for the expiring LCs on respective expiry dates and the same was inserted.

k) Post the delay of implementation of LHG Resolution Plan the prior agreement to use the LCS continued, however the RP received a letter from the Bank stating

continuation of Non Fund Based limits subject to resolution for NFB limits as proposed by accepted subject ("Continuation of Limits") to covering the limit by the Bank from a Scheduled commercial bank. (24 Oct 2018)

l) Owing to concerns about the going concern of the CD, a reply to the Bank was sent by RP stating the delay in implementation of the Resolution Plan and requesting the bank not to withdraw the NFB limits during this period to support the going concern of the CD. (30 Oct 2018)

m) Around Nov'18 this time the Bank despite the above understanding and communication stopped further LC issuance and started to recover the dues on account of the afore-mentioned LCs despite a contrary confirmation by the Bank's head office in Mangalore. The bank continued debiting outstanding amount of LCs and no fresh LCs were issued to support the Going concern of Corporate Debtor and recovered approximately Rs. 34 cr in LCs from AAL.

n) The RP further stated that Corporation Bank was unduly enriched by the amount of LCs forcefully debited from the Operating Account of the corporate debtor and thus after repeated messages, when the Bank still did not stop the deductions, the he was forced to move the collection account out of Corporation Bank to secure collections.

o) Given the afore-mentioned turn of events, the RP proposed the following options for CoC to approve:

- Option 1: Accord Interim Finance status to the Rs. 34 Cr LC adjusted by Corporation Bank to accord priority to this and thus the LC limits gets*

regularized and Existing Non fund-based limit be made available to the Corporate Debtor/Resolution Applicant on the same terms and conditions as applicable to the facility utilized by the Corporate Debtor during CIRP; The facility to be utilised for purchase of Steel and Scrap

- *Option 2: The amount of Rs. 34 Cr is deducted from the total amount to be distributed to Corporation Bank and made available to the whole CoC in excess of current resolution Proceeds*

p) The RP further pointed out that the corporate debtor had outstanding LCs from Andhra Bank to the tune of Rs. 17 Cr, which were devolved and admitted in claims as they were not able Ban renew the LC.”

13. The aforesaid minutes indicate that two options for CoC were proposed. On 31st CoC meeting held on 07.02.2020, the CoC under the heading ‘LC recovery by Corporation Bank’, it is minuted that Option 1 proposing to be interim finance cannot be approved and Rs. 34 Cr be deducted from the total amount to be distributed to corporation bank and be made available to the entire CoC in excess of the current resolution proceeds. The distribution sheet was also placed before the CoC. The same was discussed and ratified. Relevant part of the 31st CoC meeting dated 07.02.2020 is as follows:-

“LC recovery by Corporation Bank

m) The RP then brought to the attention of the CoC a request by corporation Bank in the matter of recovery of LCs made by them from the corporate debtor during CIRP

as discussed during the last CoC to accord Interim Finance status to the Rs. 34 Cr LC adjusted by them to accord priority to this and thus regularizing the same and Existing Non-fund-based limit can be made available to the Corporate Debtor/RA on the same terms and conditions as applicable to the facility utilized by the Corporate Debtor during CIRP.

n) A representative from Corporation Bank urged to the members of the CoC that since there is no precedent to the manner in which such situations should be dealt with, the LCs so recovered should be accorded the status of interim finance and not reduce if from the share of upfront proceeds due to the them.

o) The RP proposed that the said matter can be put to vote along with resolution plan to chose from the below two alternatives;

- Option 1: Accord interim Finance status to the Rs. 34 Cr LC adjusted by Corporation Bank to accord priority to this and thus the LC limits gets regularized and Existing Non fund-based limit be dame available to the Corporate Debtor/Resolution Applicant on the same terms and conditions as applicable to the facility utilized by the Corporate Debtor during CIRP. The facility to be utilized for purchase of steel and Scrap*
- Option 2: The amount of Rs. 34 Cr is deducted from the total amount to be distributed to Corporation Bank and made available to the whole CoC in excess of current Resolution Proceeds.*

p) Other members of the CoC were of the view that the same cannot be treated like interim finance and should be deducted from the amount to be distributed to Corporation Bank and be made available to the entire CoC in excess of the current resolution proceeds.

q) The RP also presented the distribution sheet to the CoC and the same was discussed and ratified by the CoC.”

14. The above minutes indicate that the CoC approved the Option 2 which was to deduct Rs.34 Crores from the total amount to be distributed to Corporation Bank and Option 1 to treat the same as interim finance was not approved. It is further relevant to notice that the distribution sheet to the CoC was placed and approved. Distribution clearly provided for distribution by deduction of Rs.34 Crores from pay outs of the Appellant.

15. The Resolution Plan came to be approved by the CoC with vote share of 70.07%. As noted above, the appellant has voting share of 6.64% and Appellant voted against the Resolution Plan and thus, was a dissenting financial creditor. The Resolution Plan which is approved in commercial wisdom of the CoC binds all stakeholders including the dissenting financial creditor. The commercial wisdom of the CoC approving the Resolution Plan is binding on all, which is law laid down by the Hon’ble Supreme Court in **“K. Sashidhar vs. Indian Overseas Bank & Ors.- (2019) 12 SCC 150”** and the Hon’ble Supreme Court decision in **“Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors.- (2020) 8 SCC 531”**. Section 30(4) of the IBC provides as follows:-

“30. Submission of resolution plan.

[(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:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section]:

[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the

resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]”

16. One of the subject on which CoC is to approve a Resolution Plan is “the manner of distribution proposed”. As noted above, the manner of distribution which was approved by the CoC in 31st CoC meeting contained an approval of deduction of Rs.33.34 Crores from payout of the Appellant. Appellant-Financial Creditor by IA No.222 of 2020 had challenged in effect the decision of the CoC taken in 31st CoC meeting held on 07.02.2020 approving the distribution and opting for second option i.e. deduction of Rs.34 Crores from payout of the Appellant. Appellant- Dissenting Financial Creditor is fully bound by the decision of the CoC and cannot be allowed to challenge the same.

17. It is also relevant to notice that the Resolution Professional in reply to IA No.222 of 2020 has placed all relevant facts and figures including the net LCs issued during CIRP period from July 2017 to October 2018 which was Rs.1,49,66,13,386/- and from Annexure R2 as extracted above, it is clear that the payments made/ debited by Corporation Bank during the CIRP period was Rs.1,83,00,47,429/-. Thus, it is clear that the excess amount debited by Corporation Bank was Rs.33,34,34,043/-. The facts and figures which were placed by the Resolution Professional are not subject to dispute. It is beyond doubt that the amount debited by Corporation Bank of Rs.33,34,34,043/- was in excess of the amount which relate to LCs issued and honoured during the CIRP period. The Corporation Bank has no

authority to debit the account of the corporate debtor for the aforesaid amount which has rightly been decided by the CoC to be deducted from the payout of Appellant and to be distributed to all members of the CoC.

18. Counsel for the Appellant submits that the amount of LCs covered by Section 5(8)(h) is a financial debt which submission cannot be subject of dispute. Present is a case where question was regarding treatment of amount which was debited in excess by Corporation Bank after commencement of the CIRP period. CoC which was under control of the CIRP in its commercial wisdom has taken decision to deduct the aforesaid amount from payout of the Appellant. We failed to see that on what ground the Appellant can challenge the said decision. It is further relevant to notice that there is no challenge to approval of the Resolution Plan. Resolution Plan approved by the CoC is not under challenge which has become final. Counsel for the Respondent No.4 has also pleaded that the Resolution Plan approved by the CoC was fully implemented on 08.12.2021. It is useful to extract paragraphs 21 and 22 of the reply of Respondent No.4 which is as follows:-

“21. It is relevant to mention here that the Appellant filed present appeal under Section 61 of the Code assailing the impugned order passed by the Ld. NCLT and no interim orders were passed by this Hon'ble Tribunal in the present appeal. Thereafter, on 18.11.2021, this Hon'ble Appellate Tribunal reserved its orders. In the meanwhile, the Hon'ble Supreme Court vide its' judgment and order dated 01.12.2021 in Committee of Creditors of Amtek Auto Limited through Corporation Bank Vs. Dinkar T.

Venkatasubramanian [Civil Appeal No. 6707/2019], directed as follows:

"...Therefore, we direct all the concerned parties to the approved resolution plan and/or connected with implementation of the approved resolution plan including IMC to complete the implementation of the approved resolution plan, within a period of four weeks from today, without fail. It is further directed and it goes without saying that on implementation of the approved resolution plan and even as per the approved resolution plan, an amount of Rs. 500 crores now deposited by DVI-successful resolution applicant be transferred to the respective lenders/financial creditors as per the approved resolution plan and/or as mutually agreed. Any lapse on the part of any of the parties in implementing the approved resolution plan with the time stipulated hereinabove shall be viewed very seriously.

11. With the above observations and directions, the present appeal stands disposed of. Pending applications, if any, also stand disposed of."

True Copy of the judgment and order dated 01.12.2021 passed by the Hon'ble Supreme Court in Civil Appeal 6707 of 2019 is annexed herewith and marked as ANNEXURE R-6.

22. In compliance of the above order passed by the Hon'ble Supreme Court, the Resolution Plan of the Respondent Nos. 2 & 3 came to be fully implemented on 08.12.2021 except for the creation of certain security interests by the Resolution Applicant in lieu of the debentures issued to the erstwhile CoC in terms of the Resolution Plan which also was done on 01.04.2022."

19. It is relevant to notice that by order of the same date 09.07.2020 when IA No.222 of 2020 was decided Resolution Plan was also approved.

20. In view of the foregoing discussions, we are of the view that no grounds have been made out to interfere with the order passed by the Adjudicating Authority rejecting IA No.222 of 2020 filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

New Delhi
Anjali