

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM NO. 302 - 304

ITEM No.302 - IA/722(AHM)2022 in CP(IB) 459 of 2019

Orders under Section 33 of IBC

IN THE MATTER OF:

George Samuel RP for Accent Packaging Pvt Ltd

.....Applicant

ITEM No.303 - IA/588(AHM)2022 in CP(IB) 459 of 2019

Orders under Section 21(2) & 60(5) of IBC, 2016 r/w rule 11 of NCLT, 2016

IN THE MATTER OF:

Kunal Dilip Patel

.....Applicant

V/s

George Samuel RP for
Accent Packaging Pvt Ltd & Anr.

.....Respondent

ITEM No.304 - IA/787(AHM)2022 in CP(IB) 459 of 2019

Orders under Section 60(5) of IBC, 2016 r/w rule 11 of NCLT, 2016

IN THE MATTER OF:

Kunal Dilip Patel

.....Applicant

V/s

George Samuel RP for
Accent Packaging Pvt Ltd & Anr.

.....Respondent

Order delivered on: 21/12/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

COMMON ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open Court, vide separate sheet.

-Sd-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD**

I.A. No. 722 of 2022, I.A. No. 588 of 2022 and I.A. No.787
of 2022 in CP(IB) No. 459 of 2019

In the matter of Accent Packaging Pvt. Ltd.

IA/722(AHM)2022 in CP(IB) No. 459 of 2019

*(Filed under Sec. 33 of the Insolvency and Bankruptcy
Code, 2016)*

George Samuel
Resolution Professional of
Accent Packaging Private Limited
110, Atria B, Sargasan Circle,
Gandhinagar-382421.

....Applicant

Along with

IA/588(AHM)2022 in CP(IB) No. 459 of 2019

*(Filed under Sec. 21(2) and 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of National
Company Law Tribunal Rules, 2016)*

Kunal Dilip Patel
Promoter & Suspended Director of
Corporate Debtor

Jayshree Villa, Deep Complex,
B Everest Garden, Naroli Road,
Silvassa Dadra & Nagar Haveli- 396230

....Applicant

Vs.

1. **George Samuel**
Resolution Professional of
Accent Packaging Private Limited
110, Atria B, Sargasan Circle,
Gandhinagar-382421.
2. **Rathod Investments and Holdings**
Private Limited
207 Centre Point, Opp. Avabai,
High School Valsad,
Gujarat-396001

....**Respondents**

Along with

IA/787(AHM)2022 in CP(IB) No. 459 of 2019
(Filed under Sec. 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of National Company Law
Tribunal Rules, 2016)

Kunal Dilip Patel
Promoter & Suspended Director of
Corporate Debtor

Jayshree Villa, Deep Complex,
B Everest Garden, Naroli Road,
Silvassa Dadra & Nagar Haveli- 396230

....**Applicant**

Vs.

1. **George Samuel**
Resolution Professional of
Accent Packaging Private Limited
110, Atria B, Sargasan Circle,
Gandhinagar-382421.

2. HDB Financial Services Limited

Radhika, 2nd Floor, Law Garden
Road, Navrangpura,
Ahmedabad-380009

....Respondents

Order pronounced on: 21.12.2023

Coram:

**SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance:

For the Applicant/RP : Mr. Arjun Sheth, Adv. a/w Mr.
Rajiv Chawla, Adv.
: Mr. George Samuel, RP
: Mr. Shamik Bhatt, Adv.
For the Respondent : Mr. Jaimin Dave, Adv. a/w Ms.
Hirva Dave, Adv (in
IA/787/2022)
: Mr. Atul Sharma, Adv. a/w. Mr.
Vikram Choudhary, Adv. (in
IA/580/2022 & IA/588/2022
for R-2) (in IA/652/2022 for R-4)
For the Promoter : Mr. Kunal Patel, Party in Person

COMMON ORDER

A. IA 722 of 2022

1. IA 722 of 2022 is an application filed by the resolution professional of the corporate data under section 33 of IBC 2016, seeking the following prayers:-

- a. Pass appropriate order under section 33 of the IBC, 2016 for requiring the corporate debtor, Ascent Packaging Private Limited to be liquidated in the manner as laid down in the Code.
 - b. Pass appropriate order appointing the applicant as the liquidator of the corporate debtor, Ascent Packaging Private Limited.
 - c. Pass appropriate order to direct COC members to pay the outstanding CIRP cost incurred by the applicant.
 - d. Such other and further relief (s) as may deem fit in the interest of justice.
2. It is submitted that application under section 7 was admitted by this Tribunal wide order dated 31 2022 in C P 459 of 2019. Applicant herein was appointed as the resolution professional. The order was amended on 3.1.2022.
3. Public announcement was made on 8 January 2022 subsequent to which claims were received by the RP and Committee of Creditors (COC) was formed.

4. List of constituents of committee of creator is provided under para six. It is seen that the committee of creditors comprised of 13 persons, there are two secured financial creators and rest of the 11 creditors are unsecured creditors.
5. It is stated that the applicant took possession of the assets of the corporate debtor on 10th and 11 January, 2022 and a record note was prepared by the RP which was duly signed by the two directors of the suspended board of the corporate debtor. A copy of the note is annexed as Annexure C.
6. It is stated that the statutory auditors, transaction auditors and valuers were appointed by the RP in consultation with the committee of creditors.
7. Form G was published by the RP on 17 March 2022. Pursuant to the public announcement two expression of interest were received.

8. One of the resolution applicants was Rathod Investment and Holdings Private Ltd (RIHPL) and the other resolution applicant was one Mr. Kunal D Patel who happens to be the one of the suspended directors of the of the corporate debtor.
9. COC has laid down criteria of net worth of rupees five crore and EMD of Rs. 25 lakh. In view of the eligibility criteria as laid down by COC, the suspended director was not qualified as a PRA.
10. Thus, there was only one resolution plan which was given by Rathod Investment and Holdings Private Limited jointly with Mr Ajay Kumar G Shah before the last date of submission of resolution plan.
11. The applicant placed the resolution plan received before the COC in its fifth meeting held on 3 June, 2022. PRA thereafter sought further time to place the revise plan. However, no revised resolution was received.

12. Sixth meeting of the COC was held on 10 June 2022, where in one of the majority stakeholders of the COC stated that the current plan is offering too low as consideration and COC agreed to give some more time for revision of the plan.
13. COC thereafter approved resolution with 87.73% majority to seek extension of CIRP period and RP filed IA 450 of 2022 which was allowed by order dated 29 June 2022.
14. Seventh meeting of COC was held on 7 July, 2022 where in the applicant apprised the COC that he has not received any resolution plan from the promoters. Mr. Kunal Patel requested COC to give further time till 13 July 2022 for submitting the resolution plan. COC and its wisdom extended time for submission of the plan to 13 July, 2022.
15. 8th COC meeting was held on 20 July, 2022, the applicant apprised the COC that he has since received the resolution plan from the promoters. The COC discussed the plans

and allowed the PRA's to submit revised plans by 31 July 2022.

16. Considering that two resolution plans were on table, COC decided to extend the CIRP period by another 60 days. Thereafter, the applicant filed I/A No. 657 of 2022, which was allowed by order date, 3 August 2022 by this authority. As such the CIRP period of the corporate debtor was extended till 1 September, 2022.
17. In the COC meeting held on 12 August 2022, the feasibility and viability of the resolution plans were discussed in depth and the resolution applicants committed improvements on the plans and they were allowed time till 17 August 2022 to do so.
18. 10th COC meeting was held on 17 August 2022. The two resolution plans along with their addendums were placed before the COC. Since the addendum were placed only on 17/08/2022, the COC asked the RP to provide a final

report on both the plans which was submitted by the RP on 18/08/2022.

19. RP has put the two resolution plans along with resolution seeking liquidation of the corporate debtor to vote. On request of the COC, voting portal was to remain open till 26 August, 2022. On request of one of the financial creditors, the voting portal was kept open till 31 August, 2022.
20. Meanwhile on 30 August, 2022, RP received one mail from SIDBI (one of the financial creditors) asking certain clarification on the resolution plan submitted by Mr. Kunal Patel. The said queries were replied by Mr. Kunal Patel vide email dated 31 August, 2022. The voting on the resolution plan was extended till 6 PM on 31 August 2022 and was further extended till 6:15 PM on 31 August, 2022 due to technical issues.
21. The results of the six resolutions put to vote are tabulated here in below :-

Sl. No. of Resolution	Resolution	Result in favour
1	To approve/ratify the CIRP costs of Rs. 33,31,563/- till 01/09/2022	87.518%
2	To approve the IRP costs for the periods after the period of CIRP on 01.09.2022 till final order by the Adjudicating Authority	87.518%
3	To approve resolution plan A from Rathod Investments & Holdings P. Ltd. & Mr. Ajay Shah	38.831%
4	To approve resolution plan B form the promoters Mr. Kunal Patel and Mr. Shirish Patel	48.687
5	To approve liquidation and appoint the RP as liquidator	59.132%
6	To decide on the fee of the Liquidator	59.132%

22. It is stated by RP that save and except the resolutions to approve the CIRP cost, none of the resolutions were approved by the COC.

23. It is stated that since none of the resolutions approving the plan or seeking the liquidation of the corporate debtor

were approved by COC, and as the CIRP period of the corporate debtor ended on 1st September 2022, the RP was constrained to file the present application under section 33 of the code seeking liquidation of the corporate debtor.

24. Reply on behalf of the suspended management was filed under diary no. 1822 dated 19.12.2022 which was affirmed by one Mr. Kunal Patel. The Respondent has opposed the liquidation application stating that the plan submitted by the suspended board received assenting votes of 48.687% and locus of one of the members of COC was challenged under IA 588 of 2022 filed by suspended management.

25. It is stated that commercial wisdom of COC has been given paramount importance, however in the present case due to conflict of interest of RIHPL, the decisions of the COC are vitiated and that the resolution plan of the suspended management to be dealt independently and without

influence of RIHPL. Respondent seeks rejection of the present IA.

B. IA 588 of 2022

26. IA 588 of 2022 is an application filed by one Mr Kunal Patel, physical copy received on 4th July, 2022, seeking the following relief's:-

- a. the Honourable Tribunal may kindly issue directions to the Resolution Professional (RP) to re-constitute the present Committee of Creditor (COC) as per section 21 of IB Code, 2016 by removing RIHPL, there from and invalidate all the resolutions passed by the COC at its meeting after the inclusion of RIHPL.
- b. the Honourable Tribunal may kindly issue directions prohibiting the RP from further allowing RIHPL to participate and vote in the meeting of the COC.
- c. the Honourable Tribunal may kindly issue directions prohibiting the RP from allowing RIHPL to participate in vote for the agenda, if it relates to the question of permitting the promoters of the corporate debtor to submit its resolution plan as MSME promoter and to also disallow RIHPL from participating and voting during the agenda of consideration and approval of

the resolution plan of the promoters of the corporate debtor.

d. Pass such other orders and to give such directions, as the honourable Tribunal may deem just and proper, considering the circumstances of the present case, objective of the code and best interest of all the stake holders of the corporate debtor.

27. From the application, it is seen that the applicant is one of the suspended directors of the corporate debtor. Respondent number one is the resolution professional of the corporate debtor appointed by this Tribunal. Respondent number two is one Rathod Investment and Holdings Private Limited who is one of the participants to the committee of creditors of the corporate debtor.

28. It is the case of the applicant herein that respondent number two that is Rathod Investments and Holdings Private Ltd has shown business interest to the board of directors of the corporate debtor at pre-admission stage of the company petition being C P 459 of 2019, later on the

said investor backed out from its commitment and the Corporate Debtor was admitted to CIRP.

29. It is submitted that immediately before admission of SIDBI application, another application was filed by the respondent number two under section 7 of the Code, however, upon admission of the present CP, the said application became infructuous.
30. It is stated by the applicant herein that RIHPL being business associate of the corporate debtor should not have been included in the COC.
31. It is alleged by the applicant herein that RHPL was to hold 51% equity shares of the corporate debtor and was to nominate two directors on the board and that pending the execution of shareholder agreement the said RIHPL used to supervise, control, monitor, direct and regulate the business operation operations, including the manufacturing activities, cash flow, management,

management, planning and policy, making decisions and restructuring of the corporate debtor.

32. It is stated that corporate data never owed any financial debt to RIHPL. However, it is admitted by the applicant herein that RIHPL indeed has made certain investments in the corporate debtor before the commencement of CIRP.
33. It is stated that the board of directors of the corporate debtor were made accountable and answerable to the shadow directors nominated by RIHPL, and that the board of directors were accustomed to act in accordance to the advice, directly under instructions of RIHPL and that RIHPL through its shadow directors were involved in the day-to-day operation operations of the corporate debtor.
34. It is stated by the applicant that the form C filed by the RIHPL was filed without any loan agreement which is one of the fundamental documents to establish any financial debt.

35. It is stated that no further evidence was called upon the said form C, by RP, from RIHPL or the suspended board and that the said form C and claim of RBL was wrongly admitted by the RP. It is stated that in absence of any loan agreement, RP could never have established any time value of money for the financial debt.
36. It is stated that RP has overlooked the board resolutions of the corporate debtor wherein acceptance of an investment from RBL were discussed.
37. The applicant thereafter has placed reliance upon the books of accounts of the corporate debtor and one **unexecuted** MOU between the parties, direction issued by RIHPL to replace the statutory auditors of the corporate debtor, appointment of company secretary etc.
38. It is stated that RIHPL were having access to all the financial, operational, accounting, and information pertaining to the ongoing legal matter of the Corporate

Debtor were knowing the various Login ID's and Passwords pertaining to GST, Income Tax, MCA etc.

39. It is stated that the MIS reports etc. of the Corporate Debtor were shared with RIHPL.
40. It is stated that without referring to any financial contract, the RP has accepted the total claim of Rs. 4.93 Crores of RIHPL together with an interest at the rate of 6% calculated as Rs. 46,24,819/- and has assigned 39.08% voting share in the COC.
41. It is stated that the books of accounts of the Corporate Debtor clearly reflects that the inflow and outflow of funds are in the nature of running account, indicating that the debit and credit balances lack any commercial effect of borrowing.
42. The Applicant stated that in their view the said RIHPL is a related party as defined under Section 5 (24) (h, m, i) of the IB Code, 2016.

43. It is stated that presence of the said RIHPL in the COC is causing serious harm to the interest of the Promoters of the Corporate Debtor, and hence the Applicant seeks the prayers as mentioned above.
44. This Tribunal vide order dated 15.11.2022, dismissed and disposed off the present application. The said order was impugned by the Applicants before Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 03 of 2023. Hon'ble NCLAT vide order dated 25.05.2023 **set aside the order of this Tribunal dated 15.11.2022 with direction to consider the present application along with the IA No. 722 of 2022 and that any resolution taken by the COC before it is reconstituted, if any, shall have no consequence on its earlier resolutions.**
45. Reply was filed by Respondent No. 1. (R-1), RP of the Corporate Debtor under Diary No. 4857 dated 5.9.2022. It is stated that RIHPL had submitted claim for Rs. 6,09,12,047/- on 4.2.2022. After seeking clarifications

from the claimant, upon verification of the books of accounts, Balance Sheet of Corporate Debtor for the years ended 31/03/2020 and 31/03/2021 which reflect the balance of RIHPL under the head of Inter Corporate Loan under Long Term Borrowings, RP admitted the claim as financial debt after allowing interest @ 6% in accordance with regulation 14 (1) of CIRP Regulations, 2016. RP admitted a sum of Rs. 4,93,50,000/- as principal amount and Rs. 46,24,819/- as interest.

46. As regards related party, it is stated that RP received legal opinion based on which in view of the RP, the claimant was not a related party.

47. RP seeks dismissal of the present application.

48. Rathod Investments Pvt. Ltd. (R-2) filed its reply under diary no. 5988 dated 15.11.2022. The reply is affirmed by the Chief Financial Officer of R-2. It is stated that the application is mala fide and sole intention of the applicant is to restrain R-2 from submitting the resolution plan for

the Corporate Debtor. It is stated that COC in its wisdom has rejected both the plans and pursuant to such rejection RP has already filed IA 722 of 2022 seeking liquidation of the Corporate Debtor.

49. It is further stated that in order to help the corporate debtor a short term unsecured loan was given by R-2 to Corporate Debtor with sole intent to pay the outstanding liability of SIDBI. Such loan was supported through Board Resolution dated 16.08.2020 by way of unsecured loan/equity investment. A total amount of Rs. 5,36,50,000/- was disbursed and a sum of Rs. 43,00,000/- was repaid, hence the total outstanding principal amount is Rs. 4,93,50,000/-. The Corporate Debtor has sent email dated 4.6.2021 along with the ledger statement wherein the said amount is acknowledged as loan.

50. The Balance Sheet of the Corporate Debtor for the Financial Years ending 31.3.2020 and 31.3.2021

acknowledge the amount as Inter Corporate Loan under Long Term Borrowings, the extract of which is attached at Annexure-5.

51. R-2 thereafter relied judgment of Hon'ble Supreme Court in the matter of Orator Marketing Private Limited vs M/s. Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021 more particularly para 23 which is reproduced below :-

“Furthermore, sub-clause (a) to (i) of sub-section 8 of Section 5 of the IBC are apparently illustrative and not exhaustive. Legislature has the power to define a word in a statute. Such definition may either be restrictive or be extensive. Where the word is defined to include something, the definition is prima facie extensive.”

52. R-2 submits that it is not a related party of the Corporate Debtor and has made extensive submissions in this regard which we are not discussing here for the sake of brevity. R-2 seeks dismissal of the present application.

C. IA 787 of 2022

53. The application has also been filed on 20.09.2022 by Mr. Kunal Dilip Patel, Promoter and Suspended Director of the Corporate Debtor seeking the following reliefs :-

- a. The Hon. Tribunal may kindly issue directions to the Resolution Professional to consider the claim of the HDB as the secured creditor only for an amount of Rs. 29,99,262/- and to reclassify the claim of the HDB as the unsecured creditor for the remaining part of its admitted claim and accordingly to direct the RP to make the appropriate changes and corrections with regard to the status of the HDB in the Information Memorandum (IM).
- b. And pass such orders and to give such directions as the Hon. Tribunal may deem just and proper considering the circumstances of the present case, objective of the Code and best interest of all the stakeholders of the Corporate Debtor.

54. The applicant has made the Resolution Professional as Respondent No. 1 (R-1) and HDB Financial Services Limited as Respondent No. 2 (R-2).

55. It is submitted that R-2 has filed a total claim of Rs. 3,46,14,431/- during CIRP of the Corporate Debtor before R-1. Out of the said amount a sum of Rs. 1,45,18,222/- was admitted by R-1 as Secured Financial Debt.
56. It is the contention of the Applicant that the amount of claim of R-2 is under dispute before the Hon. DRT II, Mumbai in SA 132 of 2021. RP ignoring the fact has admitted the claim. The matter is also pending before the Chief Judicial Magistrate at Silvassa against R-2 on the grounds of fabrication of documents, signatures in loan documents etc. The copy of case status summary is annexed at Annexure-3. MCA charge is for Rs. 29,99,262/-.
57. In response R-1 – RP has filed reply under diary no. 6393 dated 13.12.2022. It is stated that RP after receipt of claim, asked for clarifications from R-2 and only after being satisfied by way of reply and after going through the balance sheet of the corporate debtor and mortgage deeds

admitted the claim to the extent of Rs. 1,45,18,222/-. It is stated that CERSAI registration of charge is available.

58. It is stated by R-1 that claim was rightly admitted by the RP.

59. HDB Financial Services Ltd. – R-2 herein has filed reply under diary no. D623. R-2 challenges the locus of the applicant herein to file the present application being one of the suspended directors.

60. R-2 further states that the audited balance sheet of the Corporate Debtor for the year ended 31.3.2020, which is signed by the Applicant herein, acknowledges the answering respondent as Secured for an amount of Rs. 1,39,72,942/-, the auditor has given his report and classified the loan as secured. As regards averments of S. 77 of Companies Act, 2013, it is stated that the Corporate Debtor is in CIRP and not in liquidation.

61. This Tribunal vide order dated 29.11.2023 directed RP to file additional affidavit along with audited balance sheet of 31.3.2020 with audit report and also to inform the status of the Corporate Debtor as to when it ceased to be a going concern.
62. The additional affidavit was filed under diary no. 5014 and was taken on record on 12.12.2023. RP has filed audited balance sheet of the Corporate Debtor as on 31.3.2020 and 31.3.2021 with audit report. It is also stated in the additional affidavit that on 10.01.2022 and 11.01.2022 when he took charge of the Corporate Debtor he was informed that the factory of Corporate Debtor has stopped working due to working capital shortage.
63. We have heard the various counsels for the Applicants and Respondents in these matters and perused the records.
64. A perusal of the balance sheet of the Corporate Debtor reveals that HDB Financial Services Ltd has been classified as secured financial creditor in both the years

i.e. 31.3.2021 and 31.3.2020 under Note No. 3 on page no. 38 (for FY 2021).

65. On the same page No. 38, the Note -3 Long Term Borrowings an amount of Rs. 4,93,50,000/- appears as Inter Corporate Loan. It is confirmed by the Applicant and Respondents in IA 588 of 2022 that this amount pertains to RIHPL.

66. On Page No. 37, the position of Shareholding of the Corporate Debtor is placed. The issued, subscribed and fully paid up capital is described as Equity Shares of Rs. 10 each with voting rights for Rs. 21,50,000/-. These shares are held by Mr. Kunal Dilip Patel to the extent of 49.98% and by Mr. Shrish Pravinbhai Patel to the extent of 49.98%. As such it is clear to us that RIHPL was not holding any equity shares of the Corporate Debtor as on 31.3.2020 or on 31.3.2021.

67. It is pertinent to note that the audited financial statements as produced before us under the said Additional Affidavit

were signed by Applicant in IA 588 of 2022. The said applicant was present during the hearing on 12.12.2023 and confirmed to us that they are his signatures.

68. Any applicant before us cannot approbate and reprobate in the same breath. On the one hand the applicant in IA 787 and IA 588 all of 2022, is seeking prayers as stated above and on the other hand acknowledging the debt as secured/unsecured loans in the books of accounts of the Corporate Debtor specially in the audited accounts of 31.3.2020 and 31.3.2021.

69. As regards the pleadings of the Applicant in IA 588 of 2022 that RIHPL controlled the CD, we are of the view that no nominees of RIHPL were on board of the CD. The board of the CD was independent. As regards control on the business, only bald pleadings have been made which are not supported by evidence. So as to MIS reports and financial data sharing, we are of the view that the suspended board shared the same willingly, and may be

due to any understanding between the two parties as per terms of the loan/borrowing. The contentions have no force.

70. The arguments advanced in IA 588 of 2022 are for reconstitution of COC and in IA 787 of 2022 for reclassification of the status of claimants. COC in the matter was formed much prior and only when the time came to take a decision on the resolution plans of the Corporate Debtor, these IA's were filed, though being suspended director they were attending the COC meeting first of which was held on 2.2.2022. In our view the present applications were filed belatedly and the only reasons to us appears to be to delay the inevitable.

71. Accordingly, we hold that the RP has correctly constituted the COC and no interference is warranted in the matter, we hereby dismiss IA 787 of 2022 and IA 588 of 2022.

72. The last date of CIRP as per the Form H filed by the RP on 30.10.2023 was 01.09.2022, thereafter no application was

filed by RP seeking any extension of the CIRP period. The factory of the Corporate Debtor stopped functioning much before IRP took charge in January, 2022. No CIRP period is remaining un-exhausted on the date when RP has filed application seeking liquidation of the Corporate Debtor. COC has given a fractured mandate on the various resolutions as recorded in Para 21 of this order, however no resolution seeking approval of the resolution plan was approved and no resolution seeking liquidation of the Corporate Debtor was approved by the COC.

73. At this stage we are also guided by the order of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 03 of 2023 wherein Hon'ble NCLAT vide order dated 25.05.2023 has ordered this Tribunal "***to consider the present application along with the IA No. 722 of 2022 and that any resolution taken by the COC before it is reconstituted, if any, shall have no consequence on its earlier resolutions.***"

74. We reproduce **Section 33 of the Code : Initiation of liquidation.**

*“33. (1) Where the Adjudicating Authority, -
(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall-(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
(ii) issue a public announcement stating that the corporate debtor is in liquidation; and
(iii) require such order to be sent to the authority with which the corporate debtor is registered.”*

75. In Judgment of the Hon’ble Supreme Court of India, in Arun Kumar Jagatramka v. Jindal Steel and Power Limited & Anr., (vide Civil Appeal No. 9664 of 2019 with Writ Petition (C) No. 269 of 2020 and Civil Appeal No. 2719 of 2020 dated 15.03.2021), reported in SCC (2021) 7 SCC 474, at Spl. Pg.: 533, wherein, at Paragraph 95, it is observed as under:

95. “At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the

judicial intervention of NCLAT in Y Shivram Prasad [Y. Shivram Prasad v. S. Dhanapal, 2019 SCC OnLine NCLAT 172]. Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.”

(emphasis supplied)

76. At this stage we are guided by the judgment of Hon’ble Supreme Court in the matter of Civil Appeal No.10673 of 2018 in the matter of K. Shashidhar VS Indian Overseas Bank & Ors. We reproduce excerpts of para 61 and 62 of the said judgment below :-

“61. Assuming that this provision was applicable to the cases on hand, nonrecording of reasons for approving or rejecting the resolution plan by the concerned financial

creditor during the voting in the meeting of CoC, would not render the final collective decision of CoC nullity per se. Concededly, if the objection to the resolution plan is on account of infraction of ground(s) specified in Sections 30(2) and 61(3), that must be specifically and expressly raised at the relevant time. For, the approval of the resolution plan by the CoC can be challenged on those grounds. However, if the opposition to the proposed **resolution plan is purely a commercial or business decision, the same, being nonjusticiable, is not open to challenge before the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT).** If so, nonrecording of any reason for taking such commercial decision will be of no avail.

In the present case, admittedly, the dissenting financial creditors have rejected the resolution plan in exercise of business/commercial decision and not because of noncompliance of the grounds specified in Section 30(2) or

Section 61(3), as such. Resultantly, the amended regulation pressed into service, will be of no avail.

62 “In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. **In the meeting of CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, nonrecording of reasons would not per se vitiate the collective decision of the financial creditors.** The

legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.” (emphasis supplied)

77. In our view CIRP period of the corporate debtor has ended without any resolution plan getting approved as such order under Section 33 (1) need to be passed by this authority.
78. As a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33 (2) of IBC, 2016. As COC has not approved the name of Liquidator, we hereby appoint **Mr. Sanjay B. Shah** (IBBI/IPA-001/IP-P02672/2022-2023/14110), from the panel of RP's as suggested by IBBI for the period 01/07/2023 to 31/12/2023, as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions:-

- i. The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date.
- ii. The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- iii. The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

- iv. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- v. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- vi. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- vii. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

- viii. The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- ix. The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- x. As COC has passed resolution under Regulations 39 (B), (C) and BA, Liquidator is directed to take effective steps in this regard.

79. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

80. With the above directions we dispose off the IA's being **IA 722 of 2022, IA 787 of 2022** and **IA 588 of 2022**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)