IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

IA No.253/2023 IN CP (IB) NO.342/ALD/2018

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016)

In the matter of:

Pradeep Kumar Bishnoi & Ors

………… Applicants

Versus

Mr. Vivek Raheja & Anr. ……Respondents

In the matter of

Bank of Baroda …… Financial Creditor

Versus

Baghauli Sugar & Distillery Limited ……. Corporate Debtor

Order pronounced on 24th November, 2023

Coram:

Mr. Praveen Gupta.	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Anand Chibbar, Sr. Adv. assisted by Sh. Pratik Kumar & Sh. Aditya Singh, Advs.	:	For the Applicant in IA No.253/2023
Sh. Punit Bali Sr. Adv. Assisted by Sh. Karan Gandhi alongwith Sh. Shivam Gautam, Advs.	:	For the Respondent in IA No.253/2023

-Sd- -Sd-

Sh. Abhinendra Maheshwari, Adv. : *For the CoC*

ORDER

Facts of the application

1. The present application dated 21.05.2023 has been filed on 23.05.2023 U/s 60(5) of the Code on behalf of the Suspended Management of the Corporate Debtor i.e. Baghauli Sugar and Distillery Limited (put under Corporate Insolvency Resolution Plan – hereinafter referred as "**CIRP**" vide order dated 07.02.2020) challenging the validity and legality of the minutes of 33rd and 34th meeting of the Committee of Creditor (hereinafter referred as "**CoC**") of the Corporate Debtor held on 21.04.2023 and 12.05.2023 respectively. The prayer sought in the application is as under :-

1. *Pass an Order whereby holding the 33rd and 34th Meeting of Committee of Creditors of Baghauli Sugar and Distillery Limited, held on 21.04.2023 and 12.05.2023 as arbitrary and illegal;*
2. *Pass an Order directing the Committee of Creditors to hold a meeting and consider the One Time Settlement Proposal of Applicant (s), before taking any final decision or approving any Resolution Plan submitted by the Resolution Applicants;*

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3. *Pass such further Order (s) as this Hon'b1e Tribunal may deem fit, just and proper, in the interest of Natural Justice and Equity.*

Averments of the Applicant

2. The copies of the aforesaid meetings of the CoC have been annexed as **Annexure No.1** with the present application. The facts and circumstances as stated in the present application are that this Tribunal vide order dated 07.02.2020 has initiated the CIRP against the Corporate Debtor namely M/s Baghauli Sugar and Distillery Limited, and thereafter, the OTS proposals were submitted by the Applicant in order to settle the entire outstanding dues of the Financial Creditors and the said OTS was considered by the CoC in its meeting held on 20.02.2021, which was however rejected by the CoC.

3. Shorn of further details, the Applicant filed an IA No.49/2021 bringing on record the order dated 21.11.2013 passed by the Hon'ble Supreme Court in Contempt Petition (C) No.412/2012 in Civil Appeal No.9813/2011 titled as *SEBI v/s Sahara India Corporation Limited & ors.* It is stated that the Hon'ble Supreme Court directed the Sahara Group of

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Companies not to part with any movable and immovable properties until further order. The order dated 21.11.2013 passed by the Hon'ble Supreme Court has been annexed as **Annexure No.2** with the present application, which reads as under :-

> *"...we direct that the Sahara Group of Companies shall not part with any movable and immovable properties until further order..."*

4. It is thus averred by the Applicant that by virtue of the order dated 21.11.2013 passed by the Hon'ble Supreme Court, there is an embargo put on all companies belonging to Sahara Group and the Corporate Debtor is also a company of Sahara Group, and therefore, he is seeking to modify the order dated 07.02.2020 passed by this Tribunal in CP (IB) No.342/ALD/2018 to the extent that the same is brought in consonance with the order passed by the Hon'ble Supreme Court on 21.11.2013. The prayer made in IA No.49/2021 as reproduced in the present application also is as under :-

> *"...b). Modify the order dated 7.2.2020 passed by this Hon'ble Tribunal in CP No.342/ALD/2018 to the extent that the same is brought in consonance with the order passed by the Hon'ble Supreme Court vide*

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an Order dated 21.11.2013 in Contempt Petition (C) 412/ 2012 in Civil Appeal No. 9813 of 2011 by directing the Financial Creditor Bank of Baroda to move appropriate application before the Hon'ble Supreme Court of India seeking permission to initiate the insolvency proceedings against the corporate debtor..."

5. This Tribunal while considering the IA No.49/2021 granted liberty to the Suspended Management to give a revised OTS proposal for its fresh consideration by the CoC. The operative part of the order dated 27.08.2021 is as under :-

> *"...28. After hearing the Ld. Counsels for the parties, this Tribunal is of the opinion that it is open for the Suspended Management to give a revised OTS proposal for fresh consideration before the CoC as per law, if the so desire as has also been indicated by the learned counsel for the RP or in the alternative, the Suspended Management may also file an application for clarification / modification of the order passed by the Hon'ble Apex Court bringing full facts on record and get the said order modified / clarified by the Hon'ble Apex Court..."*
>
> *29. Further the CoC or the RP if they as are advised may also seek clarification from the Hon'ble Apex Court with regard to the continuance of the Corporate Insolvency Resolution Process against the corporate debtor whether the same is in consonance of the orders of Hon'ble Apex Court dated 21.11.2013.*

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6. Accordingly, the Suspended Management submitted a fresh proposal for OTS in terms of its letter dated 30.11.2021 for an amount of Rs.101 Crores, in which an amount of Rs.11 Crore was to be paid as an upfront payment within 30 days from the date of approval of OTS and the remaining amount of Rs.90 Crore was to be paid in sixty equal installments along with applicable rate of interest.

7. It is further averred in the application that the communication was sent by the Bank of Baroda vide letter bearing No.BR/SAMDEL/2021-22 dated 31.12.2021 to the Applicant that their OTS proposal was discussed among the lenders, and it was observed that "*the fresh OTS offer is very low, upfront is quite less, period of payment is very high and there is no clarity on cash flow.*" It is alleged by the Applicant that the fresh OTS was not considered by the CoC and it was a unilateral decision taken by the Bank of Baroda and Suspended Management/Applicant(s) were not even given an opportunity to explain or address the concerns of any of the lenders and only a one liner unilateral decision was intimated by Bank of Baroda (Financial Creditor) to the Suspended

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Management/Applicant(s) vide their dated 31.12.2021 which in view of Applicant(s) is contrary and in direct violation of the Order dated 27.08.2021 of this tribunal. It is further averred that after receiving the communication from the Bank of Baroda, the Applicant addressed vide its communication dated 05.01.2022 requesting all the members of the CoC to arrange a Joint Lenders Meeting for consideration of OTS proposal and in this context another communication letter dated 06.08.2022 was also sent to all the members of the CoC to discuss the OTS proposal submitted by the Suspended Management. Meanwhile, the Resolution Professional (hereinafter referred as "***RP***") filed an IA No.127/2022 for initiating liquidation of the Corporate Debtor, wherein the average liquidation value of the Corporate Debtor was evaluated at Rs.71.50 Crore, which was much less than the amount which was offered by the Applicant by way of their OTS proposal.

8. However, the Suspended Management/Applicant(s) vide its letter dated 19.12.2022 and E-mail dated 21,12,2022 further gave another OTS proposal by increasing the same to an

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amount of Rs.110 Crores with an upfront payment of Rs.11 Crore within 90 days from the date of approval of OTS and thereafter remaining amount of Rs.99 Crore to be paid in 33 equal monthly installments along with applicable rate of interest. Thereafter, on the insistence of the Applicant, a Joint Lenders Meeting was held on 29.12.2022 through audio conferencing, wherein certain suggestions were made by the members of the CoC with respect to the aforesaid OTS proposal, and accordingly the Applicant submitted a revised OTS proposal for settlement of entire dues of the Corporate Debtor vide its letter dated 21.02.2023, wherein it was stipulated that M/s India Housing will pay a total sum of Rs.110 Crores, with an upfront payment of 10% i.e. Rs.11 Crore within 90 days and remaining amount of Rs.99 Crores in 30 equal monthly installments along with applicable rate of interest.

9. Receiving no response, the Applicant even submitted another letter dated 05.04.2023 for revising the OTS proposal to Rs.115 Crores instead of the earlier proposal of Rs.110 Crores. It is alleged that without giving any formal reply to

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supra OTS Proposal and without even contemplating upon any of the OTS Proposal(s) submitted by the Suspended Management/Applicant(s) in compliance of supra Order dated 27.08.2021, in any of the meetings of COC, in the 33rd and 34th meeting of CoC of Baghauli Sugar and Distillery Limited, the RP conducted the voting for approval of the Resolution Plan and the CoC approved the Resolution Plan of M/s Dalmia Sugar and Industries Limited. The said meetings were held on 21.04.2023 and 12.05.2023 respectively.

10. In view of the aforesaid meetings of the CoC for approving the Resolution Plan of the M/s Dalmia Sugar and Industries Limited, the present application has been filed for setting aside the decision taken by the CoC in its 33rd and 34th meeting held on the aforesaid dates and further seeking directions for the CoC to hold a meeting and consider the OTS proposal of the Applicant.

Affidavit of Resolution Professional

11. The RP has filed an affidavit vide diary no.1560 dated 30.05.2023 *interalia* stating that the CoC has approved the

Resolution Plan by 100% voting in their meeting held on 21.04.2023 and the e-voting which was concluded on 11.05.2023 and I.A No.243/2023 has also been filed before this Tribunal for seeking approval of Resolution Plan which has already been approved by the CoC in the aforesaid meetings. It has also been stated in the affidavit that the contents of the application in I.A No.253/2023 are misleading since the averments in relation to the Corporate Debtor being associated with the Sahara Group and contents of the order dated 21.11.2013 passed by the Hon'ble Supreme Court were also taken into consideration by this Tribunal at the time of admission of the Corporate Debtor vide order dated 07.02.2020. Further, the Suspended Board is erroneously relying on the directions issued by this Tribunal on 27.08.2021, as in para 28 it has been observed by this Tribunal that, it is open for the Suspended Management to give a revised OTS proposal for fresh consideration before the CoC. It is further averred in the affidavit that this Tribunal vide its order dated 27.08.2021 has also observed that the Suspended Management may move an appropriate application before the Hon'ble Supreme Court for clarification/ modification of the order passed by the Hon'ble Supreme Court on 21.11.2013. The Suspended Board neither challenged the order dated 07.02.2020, whereby the CIRP was triggered, before the Appellate Authority nor moved an application before the Hon'ble Supreme Court for seeking any clarification in terms of the order dated 27.08.2021 subsequently passed by this Tribunal. It is also further stated that the embargo put vide order dated 21.11.2013 by the Hon'ble Supreme Court cannot be placed upon the Banks who are recovering the public money through Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, but it was only in the context of directing the Sahara Group of Companies not to deal with the assets on their own. It is further stated that the Suspended Board submitted the OTS proposal thrice including revision in offer, but all such proposals of the OTS were duly rejected by the CoC acting through its lead bank i.e. Bank of Baroda. Even the latest offer for OTS dated 05.04.2023, which was submitted by the Suspended Board with the Bank of Baroda

-Sd- -Sd-

being the lead Banker, was also rejected for being lesser than the value now achieved by way of Resolution Plan and a copy of the said rejection letter dated 22.05.2023 issued by the Bank of Baroda on behalf of the secured creditors to the Suspended Board has also been attached along with the affidavit.

12. It is also further stated that even if the offer made by the Suspended Board under the OTS is to be considered at this stage, the same fails when compared to the Resolution Plan submitted by Dalmia Sugar, which has offered the payments of Rs.140 Crores to the creditors within 60 days of approval of Plan, and also commits to revive the Corporate Debtor with a further infusion of estimated cost of more than 230 crores in capex/ working capital.

13. The OTS dated 05.04.2023 was also further discussed in the 35th meeting of the CoC, which has again been rejected. It is further submitted that the commercial wisdom of the CoC is to be regarded while deciding upon the Resolution Plan.

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Reply of Resolution Professional

14. The reply has also been filed on behalf of the RP vide diary no.1789 dated 07.07.2023.

15. In the reply, apart from raising objection with regard to the application not being properly signed by the Authorized Representative, it has however been stated on merits that the Applicant has been attending all the CoC meetings after submission of the OTS proposal, and the present application is only intended to cause delay to the approval of the Resolution Plan, which has been approved by 100% voting of CoC members.

16. It is also further stated in the reply that the Hon'ble Supreme Court in the matter of '***The Bijnor Urban Cooperative Bank vs Meenal Agarwal'*** vide judgment dated 15.12.2021 while dealing with the similar proposition where the borrowers were trying to exert the OTS submitted by them as a vested right on raising various grounds, observed as under :-

> *9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given*

-Sd- -Sd-

case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

17. It is further submitted in reply that the order dated 21.11.2013 passed by the Hon'ble Supreme Court in contempt proceeding initiated by SEBI against the contemnor i.e. Sahara India Real Estate Corporation Limited & Ors. was passed to curtail the contemnors from parting away with the

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assets of the Sahara Group and not for any other purpose. Further, the Hon'ble Supreme Court in *Contempt Petition (C) No.412/2012 in Civil Appeal No.9813/2011 titled as 'SEBI v/s Sahara India Corporation Limited'*, vide its order dated 11.07.2016 has already allowed the disposal of certain assets of the Sahara Group.

18. It is further reiterated by the RP that the directions given in order dated 27.08.2021 by this Tribunal was for consideration of the fresh proposal and the Suspended Management was advised to seek clarification from the Hon'ble Supreme Court with respect to order dated 21.11.2013 passed by the Hon'ble Supreme Court. It is also further submitted that there is no basis in the merits of the present application as the Resolution Plan, which has been approved by the CoC proposing 140 Crores to be paid to the creditors apart from infusing another 230 Crores in order to ensure that the Corporate Debtor continues as a going concern.

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19. It is also asserted in the reply that the Hon'ble Apex Court and other forums have time and again decided that the commercial wisdom of the CoC while deciding upon the resolution plan cannot be interfered into by the Adjudicating Authority. In this regard decisions of Hon'ble Apex Court in certain cases have been referred viz: ***Ghanshyam Mishra vs Edelweiss Asset Reconstruction Company Limited (Civil Appeal no. 8129 of 2019 dated 13.04.2021), K Sashidhar vs. Indian Overseas Bank (2019) SCC150 Maharashtra Seamless Limited vs Padmanabhan Venkatesh & Others (Civil Appeal No. 4242 of 2019) and Jaypee Kensington Boulevard vs NBCC(India) Ltd. & Ors(Civil Appeal Nos. 3395 of 2020) , Kalpraj Dharamshi vs. Kotak Investment Advisories Ltd.(Civil Appeal Nos. 2943-2944 of 2021).*** By referring to all these decisions, it has been contended by the RP in the reply that the Commercial wisdom of CoC is paramount and it should not be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code, 2016. After relying on the above judicial pronouncements and explaining all the

-Sd- -Sd-

facts of the matter, it has been prayed in the reply of the RP that the present Application filed by the Suspended Management being IA 253/2023 deserves to be dismissed.

Reply & Affidavit by the CoC

20. Almost identical affidavit/ reply has been filed by the CoC as that of the RP against the present IA No.253/2023 filed by the Applicant.

Rejoinder by Applicant(s) during hearing

21. During the hearing of the matter, the above counter to application submitted in the above replies filed by both respondents were rebutted by the Sr Counsel appearing on behalf of the applicants by referring to order dated 21.11.2013 passed by the Hon'ble Supreme Court in a contempt petition and subsequent many orders passed thereafter by the Hon'ble Supreme Court dealing with the permission sought by the Sahara Group for disposal of their properties from time to time and it has been tried to show that without seeking permission of the Hon'ble Supreme Court, no property can be disposed off by the Sahara Group

-Sd- -Sd-

of companies due to embargo put vide order dated 21.11.2013. The order dated 27.08.2021 passed by this tribunal has also been referred to in which direction to COC was issued for considering the OTS proposal of the suspended management and also seeking clarification from the Hon'ble Supreme Court as regards the sale of the Corporate Debtor under CIRP in view of the order dated 21.11.2013 of the Hon'ble Supreme Court. It is alleged that the OTS proposal of applicants/suspended management was rejected by Bank of Baroda unilaterally as being Lead Bank of all financial creditor banks without the same being considered by the COC and also, no clarification with regard to sale of the Corporate Debtor under CIRP has been sought by the COC from Hon'ble Supreme Court. Therefore, Ld. Sr Counsel of the applicants argued to setting aside the 33rd and 34th meeting of the CoC, whereby the Resolution Plan of Dalmia Sugar and Industries Limited has been considered and approved and with further prayer that another opportunity to the applicants/suspended management may be given to file revised OTS for consideration of COC.

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Findings & Order

22. We have considered the rival submissions and have also perused the record.

23. The present application has been filed only with the limited prayer of setting aside the 33rd and 34th meeting of the CoC, whereby the Resolution Plan of Dalmia Sugar and Industries Limited has been approved and with further prayer to consider the OTS of the Suspended Management. It is evident from the perusal of the record that the OTS proposal submitted by the Suspended Management has been time and again considered by the CoC through its lead banker as well as by the CoC itself. The same has been rejected on the ground of not being a competent OTS particularly in the light of the fact that the period of the payment was normally high i.e. the payment was to be made for 90% of the OTS, in 33 equal monthly installments. The revised OTS was submitted by increasing the partial amount to be paid and reducing the equal monthly installments to 30. Another revision took place in the OTS, whereby enhancing the amount of OTS to Rs.115

-Sd- -Sd-

Crore and the equated monthly installments also were reduced to 25 after payment of 10% i.e. 15 Crore within 90 days from the date of approval of the OTS. Meanwhile the CoC has also considered the Resolution Plan submitted by the M/s Dalmia Sugar and Industries Limited for an amount of Rs.140 Crores to be paid to the Financial Creditors within 90 days from the date of the approval of the Plan and by also infusing another about Rs. 230 Crores by way of capital for revival of the plant of the Corporate Debtor. The OTS proposal was even considered in the 35th CoC meeting held on 24.05.2023, which has been rejected by the CoC. It is worth pointing out that in the 35th CoC meeting vide item no.6, the application filed by the Suspended Board of Directors was discussed in the said meeting and the minutes of the meeting with respect to the 35th meeting of the CoC of Baghauli Sugar and Distillery Limited (Corporate Debtor) held on 24.05.2023 is reproduced hereunder :-

> Item 6
> *The Chairman apprised the members about the advance service received for interlocutory application filed by Suspended Board of*

-Sd- -Sd-

Directors with Hon'ble NCLT, Allahabad Bench on 21.05.2023.
The matter was likely to be listed on 25th May, 2023 or 26th May 2023, pursuant to mentioning by Applicant's Counsel.

The main prayer of the IA read as follows:

1. Pass an Order whereby holding the 33d and 34 Meeting of Committee of Creditors of Baghauli Sugar and Distillery Limited, held on 21.04.2023 and 12.05.2023 as arbitrary and illegal

2. Pass an Order directing the Committee of Creditors to hold a meeting and consider the One Time Settlement Proposal of Applicant(s), before taking any final decision or approving any Resolution Plan submitted by the Resolution Applicants

The Chairman also presented the OTS proposal received from Suspended Board of Directors dated 05.04.2023 and reply given by BoB dated 22.05.2023 (on behalf of CoC) rejecting the said OTS proposal in-line with the outcome of the joint lenders meeting held on 21.04.2023 at 3:00 PM.

The representative of Bank of Baroda on behalf of other Financial Creditor apprised the RP that the communication dated 05.04.2023 was discussed on 21.04.2023 at 3:00 PM in the Joint Lenders' Meeting held between PNB, BOI, UBI and BoB. However, the JLM was not attended by IFCI due to pre-occupation. There was a detailed discussion on the OTS and it was observed that that they have received

-Sd- -Sd-

Resolution Plans which was having much more value within shorter time period. Further, the OTS had various issues like source of funds was not clear, cash flow was not clear and payment time was of 28 months. The going concern aspect of CD was also not taken care in the OTS. Further, the OTS was for financial creditors only and did not include any provisions for Operational Creditors or CIRP cost incurred so far.

Considering these facts, the OTS was rejected by the Financial Creditors and BOB issued the rejection letter to suspended Board. Thus, the deliberations and decision for rejection on OTS was considered before the plan were put to vote by RP in the 33rd CoC meeting held on 21.04.2023 at 4:00 PM.

The CoC members affirmed the decision of rejection of OTS proposal in the 35th CoC meeting as well on the same grounds communicated in writing to suspended directors vide letter dated 22.05.2023.

VOTE OF THANKS

Since there was no other matter therefore, the meeting was concluded with a vote of thanks by chairman.

24. It is contended by the applicant(s) that after receiving no response from the CoC on their OTS proposal, applicant(s) vide letter dated 19.12.2022 and email dated 21.12.2022

-Sd- -Sd-

gave another OTS proposal for a sum of Rs.110 crores with upfront payment of Rs. 11 crores within 90 days from the date of approval of OTS and remaining amount of Rs. 99 crores to be paid in 33 equal installments with applicable rate of interest. Applicant also contends that on the aforesaid OTS proposal, no reply was received from the CoC as this proposal was not discussed in the meetings of CoC held post passing of order dated 17.08.2021 which is evident from the Minutes of Meetings annexed as **Annexure-9 Colly** with the Application.

25. Another contention raised by the applicant(s) is that vide an email dated 05.04.2023, applicant(s) submitted another OTS proposal of Rs. 115 crores with upfront payment of Rs. 15 crores within 90 days from the date of approval of the OTS and reaming amount of Rs. 100 crores to be paid in 25 equal monthly installments. The COC members did not deliberate upon and proceeded with voting on the Resolution Plan of M/s Dalmia Sugar and Industries Limited.

26. While countering these contentions of the Applicants, Respondents submitted that Bank of Baroda scheduled a

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Joint Lenders Meeting on 02.03.2023 at 3:00pm for deliberations upon the OTS Proposal submitted by the Applicants which was also attended by Mr. P.K Vishnoi, one of the director of Suspended Management. Further, another Joint Lenders Meeting was scheduled on 21.04.2023 at 4:00pm wherein OTS proposal of Rs. 115 crores was discussed wherein it was found inadequate due to lack of clarity on cash flow. Moreover, the bids received from the Resolutions Applicants outdo the OTS Proposal by huge margin. This is evident from the email dated 21.04.2023 and minutes of meeting dated 21.04.2023. Further, respondents vide letter dated 22.05.2023 informed the applicants about the said rejection of OTS Proposal. Therefore, the plea taken by the Applicants that their OTS Proposals was never discussed by the COC in their meetings does not hold true in the light of the aforesaid submissions.

27. We are conscious of the fact that while considering the OTS proposal of the Resolution Plan submitted by any of the Resolution Applicants, the commercial wisdom of the CoC has to prevail. It may be worthwhile to further note that the

-Sd- -Sd-

CoC comprises of prominent Financial Creditors including the Banking Institutions, which are as under :-

1) *Bank of Baroda,*

2) *Bank of India,*

3) *Punjab National Bank,*

4) *Union Bank of India*

5) *IFCI Limited acting on behalf of Govt. of India*

The Hon'ble Courts in plethora of judgments have upheld the decision taken by the CoC and the commercial wisdom applied by it while considering the OTS and/ or considering the Resolution Plan. *The Hon'ble Supreme Court in matters of* ***Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors (2019), K. Sashidhar v. Indian Overseas Bank (2019), Ashish Saraf v. Bhuvan Madan (2021), Vallal RCK v M/s Siva Industries & Anr. (2022) and Ngaitlang Dhar versus Panna Pragati Infrastructure Private Limited & ors- Civil Appeal Nos. 3665-3666 of 2020*** has held that commercial wisdom of the committee of creditors cannot be challenged. The Hon'ble

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NCLAT in the matter of ***Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd. & Ors. [2020] ibclaw.in 133*** decision of the Committee of Creditors recommending liquidation of the Corporate Debtor after proper evaluation of the assets and liabilities of Corporate Debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the Committee of Creditors which is not amenable to judicial review.

28. Coming back to the order dated 07.02.2020 passed by this Tribunal and the subsequent order dated 27.08.2021 passed by this Tribunal in the face of the order dated 21.11.2013 passed by the Hon'ble Supreme Court, it is worthwhile to notice that the order dated 27.08.2021 came to be passed in IA No.49/2021 filed by the Suspended Management seeking modification of the order dated 11.11.2020 passed by this Tribunal in connected IA Nos.116/2020, 136/2020, 161/2020, 213/2020, 252/2020 & 253/2020.

29. This Tribunal vide its order dated 27.08.2021 has mentioned about the background facts that Corporate Debtor is one of

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the Sahara Group of Companies as the entire shareholding of the Corporate Debtor was transferred to Sahara Prime City Limited and to substantiate this, an affidavit dated 22.02.2019 was filed by the Corporate Debtor before this Tribunal, thereby attaching the NOCs for changing in the management and ownership of M/s Baghauli Sugar and Distillery Limited to Sahara Group and even the Financial Creditors by its letter dated 31.03.2012 had granted NOC for the same.

30. This Tribunal vide order dated 27.08.2021 considered the averments made by the Ld. Counsel for the Suspended Management that the petition filed U/s 7 is not maintainable as the same is in the teeth of the order of the Hon'ble Supreme Court dated 21.11.2013 passed in Contempt Petition (C) No.412 of 2012 in Civil Appeal No.9813/2011 titled as SEBI v/s Sahara India Limited Corporation and others, wherein the Hon'ble Supreme Court directed that no Sahara Group of companies shall part with any movable and immovable properties until further orders. In para 18 of the said judgment dated 27.08.2021 of this Tribunal again noted that

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while taking cognizance of the arguments that the entire shareholding of the Corporate Debtor was transferred to M/s Sahara Prime City Limited on 01.10.2012, and the Corporate Debtor became a wholly owned subsidiary company of the Sahara Group and the balance sheets of the Corporate Debtor have been brought on record for the relevant financial years reflecting the said change in the ownership of the company. And therefore, the Corporate Debtor is wholly owned subsidiary of M/s Sahara Prime City Limited since 01.10.2012 i.e. even prior to passing of the restrained order by the Hon'ble Supreme Court on 21.11.2013.

31. After considering the contentions of the parties, this Tribunal passed the order dated 27.08.2021. The relevant part of which is as under :-

> *28. After hearing the Ld. Counsels for the parties, this Tribunal is of the opinion that it is open for the Suspended management to give a revised OTS proposal for fresh consideration before the CoC as per law, if they so desire as has also been indicated by the learned counsel for the RP or in the alternative, the Suspended Management may also*

-Sd- -Sd-

file an application for clarification/ modification of the order passed by the Hon'ble Apex Court bringing full facts on record and get the said order modified/ clarified by the Hon'ble Apex Court.

29. Further the CoC or the RP if they as are advised may also seek clarification from the Hon'ble Apex Court with regard to the continuance of the Corporate Insolvency Resolution Process against the Corporate Debtor whether the same is in consonance of the orders of Hon'ble Apex Court dated 21.11.2013.

30. With the aforesaid directions, the present applications stands disposed of.

32. As has already been discussed earlier in compliance of the order dated 27.08.2021, the Suspended Management had already submitted its revised OTS, which though was rejected by the lead banker acting on behalf of CoC and the Resolution Plan was approved in the 33rd and 34th meeting of the CoC. Even further revision of the OTS was considered by the CoC in its 35th meeting held on 24.05.2023, which has also been rejected. However, the observations of this Tribunal with regard to the Suspended Management to file an application

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for clarification/ modification of the order passed by the Hon'ble Apex Court or by the CoC or the RP if they are so advised for seeking such clarification has not been complied with by any of the parties. Since the challenge by the Applicant/ Suspended Management to the 33rd and 34th meeting of the CoC is laid also on the ground of the embargo being created by the order dated 21.11.2013 passed by the Hon'ble Supreme Court and the decision of the CoC taken in its 33rd and 34th meeting pertain to the approval of the Resolution Plan, the impact of the order dated 21.11.2013 passed by the Hon'ble Supreme Court on the approval of the Resolution Plan has been dealt with separately in our order relating to IA No.243/2023 as well as the objections filed by the Suspended Management vide IA No.434/2023.

33. The order passed in the present IA No.253/2023 deciding the prayer and the relief sought by the Applicant reproduced in the beginning of this order be therefore read along with the order passed in aforementioned IA No.243/2023 filed by the Resolution Professional as well as IA No.434/2023 filed by the Suspended Management.

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34. In view of our foregoing discussions, we find that the resolution has been passed by the CoC in the 33rd and 34th meeting held on 21st April, 2023 and 12th May, 2023 thereby approving the Resolution Plan. The OTS has been considered by the Lead Bankers and by the CoC from time to time and ultimately vide Resolution passed by the CoC in the 35th meeting held on 24th May, 2023, the plan has been approved. The OTS proposal submitted by the Suspended Management did not find merit repeatedly in view of a very large spread of payment terms and very less amount of upfront payment as against much competent terms proposed by the Resolution Applicant in the plan.

35. It is again worthwhile to notice that the commercial wisdom of the CoC with regard to consideration of the plan submitted by the Resolution Applicant and consideration of the OTS proposal filed by the Suspended Management is to prevail. This becomes all the more relevant in the context of the fact that the CoC comprises of large financial institutions including banking institutions and therefore such a commercial wisdom should not be allowed to be pervaded

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except for good and sufficient reasons.

36. In the present case, no such grounds are made out by the Suspended Management warranting interference in the Resolution passed by the CoC based upon its commercial wisdom in the best interest of the Corporate Debtor for maximization of value of assets and to make it to continue as a going concern by approval of the plan submitted by the Successful Resolution Applicant. We are thus not inclined to accept in the present application and the same is therefore hereby dismissed.

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(Ashish Verma)
Member (Technical)

(Praveen Gupta)
Member (Judicial)

Dated: 24.11.2023