NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 814 of 2020

[Arising out of Order dated 08.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court 1 in IA 439 of 2020 in IA 476 of 2018 in CP (IB) 14/7/NCLT/AHM/2018]

In the matter of:

Committee of Creditors of Wind World (India) Ltd. Through State Bank of India having its office at The Arcade, 2nd Floor, World Trade Centre Complex, Cuffe Parade, Mumbai Maharashtra 400005 **....Appellant**

Vs.

1. **Suraksha Asset Reconstruction Limited (formerly known as Suraksha Asset Reconstruction Private Limited), having its registered office at Naman Midtown, 'A' Wing, 20th Floor, Senapati Bapat Marg, Prabhadevi, Mumbai- 400013** **....Respondent No.1**

2. **Lakshdeep Investment and Finance Private Limited Having its registered office at 3, Narayan Building, 23 L.N. Road, Dadar (East), Mumbai- 400013** **....Respondent No.2**

3. **Suraksha Reality Limited, Having its registered office at 3, Narayan Building, 23 L.N. Road, Dadar (East), Mumbai- 400013** **....Respondent No.3**

4. **Mr. Shailen Shah, Resolution Professional for Wind World India Limited, 5th Floor, Lodha Excelus, Apollo Mills Compound, N M Joshi Marg, Mahalaxmi, Mumbai, Maharashtra, 400011** **....Respondent No.4**

For Appellant: **Mr. Arun Kathpalia, Senior Advocate with Mr. Siddhant Kant, Ms. Charu Bansal, Mr. Prabh Simran Kaur, Mr. Anoop Rawat and Ms. Diksha Gupta, Advocates.**

For Respondents: **Mr. Abhinav Vashisht, Senior Advocate with Mr. Chitranshul A. Sinha, Ms. Priya Singh, Mr. Jaskaran Singh Bhatia, Advocates for R1-3**
Mr. Sumant Batra, Mr. Sanjeev Sambasivan, Ms. Neha Naik, Advocates for R4

Company Appeal (AT) (Insolvency) No. 826 of 2020

[Arising out of Order dated 08.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court 1 in IA 439 of 2020 in IA 476 of 2018 in CP (IB) 14/7/NCLT/AHM/2018]

In the matter of:

Shailen Shah, Resolution Professional of Wind World (India) Ltd.
Having office at:
5th Floor, Lodha Excelus, Apollo Mills Compound, N M Joshi Marg, Mumbai, Maharashtra, 400011 **....Appellant**
Vs.

1. **Suraksha Asset Reconstruction Limited (formerly known as Suraksha Asset Reconstruction Private Limited),**
   Having its registered office at:
   Naman Midtown, 'A' Wing, 20th Floor, Senapati Bapat Marg, Prabhadevi, **....Respondent No.1**
   Mumbai- 400013

2. **Lakshdeep Investment and Finance Private Limited**
   Having its registered office at:
   3, Narayan Building, 23 L.N. Road,
   Dadar (East), Mumbai- 400014 **....Respondent No.2**

3. **Suraksha Reality Limited,**
   Having its registered office at:
   3, Narayan Building, 23, L.N. Road,
   Dadar (East), Mumbai- 400014 **....Respondent No.3**
   (Jointly known as "Suraksha Consortium")

4. **Committee of Creditors of Wind World (India) Ltd.**
   Through State Bank of India (SBI)
   Having its office at:

2nd Floor, World Trade Centre Complex, Cuffe Parade, Mumbai Maharashtra 400005 **....Respondent No.4**

For Appellant: **Mr. Sumant Batra, Mr. Sanjeev Sambasivan, Ms. Neha Naik, Advocates.**

For Respondents: **Mr. Abhinav Vashisht, Senior Advocate with Mr. Chitranshul A. Sinha, Ms. Priya Singh, Mr. Jaskaran Singh Bhatia, Advocates for R1-3**

Mr. Arun Kathpalia, Senior Advocate with Mr. Siddhant Kant, Ms. Charu Bansal, Mr. Prabh Simran Kaur, Mr. Anoop Rawat and Ms. Diksha Gupta, Advocates for R4.

Company Appeal (AT) (Insolvency) No. 913 of 2020

[Arising out of Order dated 08.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court 1 in IA 439 of 2020 in IA 476 of 2018 in CP (IB) 14/7/NCLT/AHM/2018]

In the matter of:

1. **Suraksha Asset Reconstruction Limited (formerly known as Suraksha Asset Reconstruction Private Limited), Naman Midtown, 'A' Wing, 20th Floor, Senapati Bapat Marg, Prabhadevi, Mumbai- 400013** **....Appellant No.1**

2. **Lakshdeep Investment and Finance Private Limited 3, Narayan Building, 23 L.N. Road, Dadar (East), Mumbai- 400013** **....Appellant No.2**

3. **Suraksha Reality Limited, 3, Narayan Building, 23, L.N. Road, Dadar (East), Mumbai- 400013** **....Appellant No.3**

Vs.

1. **Mr. Shailen Shah,**
   Resolution Professional,
   Wind World (India) Limited,
   5th Floor, Lodha Excelus,
   Apollo Mills Compound, N M Joshi Marg,
   Mahalaxmi, Mumbai- 400011 **....Respondent No.1**

2. **Committee of Creditors,**
   Wind World (India) Ltd.
   Through the Resolution Professional
   5th Floor, Lodha Excelus,
   Apollo Mills Compound, N M Joshi Marg,
   Mahalaxmi, Mumbai- 400011. **....Respondent No.2**

For Appellants:	**Mr. Abhinav Vashisht, Senior Advocate with Mr. Chitranshul A. Sinha, Ms. Priya Singh, Mr. Jaskaran Singh Bhatia, Advocates**
For Respondents:	**Mr. Sumant Batra, Mr. Sanjeev Sambasivan, Ms. Neha Naik, Advocates for R1.**
	Mr. Arun Kathpalia, Senior Advocate with Mr. Siddhant Kant, Ms. Charu Bansal, Mr. Prabh Simran Kaur, Mr. Anoop Rawat and Ms. Diksha Gupta, Advocates for R2.

J U D G M E N T
(20th September, 2021)

A.I.S. Cheema, J.

These three Appeals are arising out of the same impugned order passed in IA 439 of 2020 in IA 476 of 2018 in CP (IB) 14/7/NCLT/AHM/2018 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court-1.

2. Briefly put what has happened is that in the Corporate Insolvency Resolution Process ("CIRP" for short) relating to Corporate Debtor- 'Wind World (India) Ltd.' after the Resolution Plan was approved by the Committee of Creditors ("CoC" for short) and was placed before the Adjudicating Authority for approval under Section 30/31 of the Insolvency and Bankruptcy Code, 2016 ("IBC" for short), the Successful Resolution Applicant ("SRA" for short) comprising of (i) 'Suraksha Asset Reconstruction Limited', (ii) 'Lakshdeep Investment and Finance Private Limited' and (iii) 'Suraksha Reality Limited' filed Application to the Adjudicating Authority to withdraw the Resolution Plan post approval by the CoC. The Adjudicating Authority granted Application permitting the SRA to withdraw the Resolution Plan and also directed the Resolution Professional- Mr. Shailen Shah to return the performance security given by the Resolution Applicant by way of Bank Guarantee. The concerned directions in para 75 of the impugned order may be reproduced, which reads as under:-

> *"75. In view of the above discussion, we order as under:*
>
> *(i) The Resolution Applicant is granted permission to withdraw its Resolution Plan.*
>
> *(ii) Resolution Professional is directed to return the performance security of Rs.75 Crores given by the Resolution Applicant by way of Bank guarantee within ten working days from the date of this order.*
>
> *(iii) Resolution Professional is directed to modify the terms and conditions of process document and is allowed to seek other Resolution Plan(s) and finalize the same within a period of 15 days from the date of this order in conformity with the*

provisions of IBC, 2016 and CIRP Regulations and Indian Contract Act, 1872. Thereafter, CIRP should be completed within a further period of 75 days.

(iv) In case, no Resolution Plan is received or Resolution Plan, if any, received but it is not approved by CoC within such period of 90 days, the Resolution Professional is directed to file an application for the liquidation of the Corporate Debtor in terms of provisions of Section 33 of IBC, 2016 before this Authority.

(v) Thus, this application stands disposed of in terms indicated above."

3. Aggrieved by such directions, the CoC has filed Company Appeal (AT) (Insolvency) No. 814 of 2020 raising legal questions as under:-

"i. Whether a resolution applicant can seek withdrawal of resolution plan post approval of the same by the COC?

ii. Whether once resolution plan has been approved by the COC, the jurisdiction of the Ld. Adjudicating Authority is limited to either approval or rejection of the resolution plan?

iii. Whether the Adjudicating Authority in approving or rejecting a Resolution Plan under Section 31 of the Code can go beyond the parameters/requirements prescribed under Section 30(2) of the Code.

iv. Whether a resolution applicant can unilaterally seek to withdraw an approved Resolution Plan under Section 60(5) of the Code?

v. Whether the process note as mandated under Section 25(2)(h) of the Code and its terms and conditions become binding on the resolution Applicant once the resolution applicant

participates in a corporate insolvency resolution process?"

4. The prayer of CoC in the Appeal is:-

"21. ***RELIEF SOUGHT***

In view of the facts and circumstances of the Appeal, the Appellant prays for the following relief(s):-

(a) Allow the present appeal and set aside the Order dated 8 September 2020 of the National Company Law Tribunal, Ahmedabad Bench in I.A. No. 439 of 2020 in I.A. No. 476 of 2018 in C.P.(IB) No. 14 of 2018;

(b) Direct the Ld. Adjudicating Authority to decide on I.A. No. 476 of 2018 in C.P. (IB) No. 14 of 2018 in accordance with Section 30/31 of the Code.

(c) Pass any other order which this Hon'ble Tribunal may deem fit in eyes of equity, justice and good conscience."

5. Against the same impugned order, the Resolution Professional has filed Company Appeal (AT) (Insolvency) No. 826 of 2020. The Resolution Professional is also seeking setting aside of impugned order and seeking modification of the directions (ii) and (iii) (supra).

6. The SRA comprising of the three entities mentioned above has filed Company Appeal (AT) (Insolvency) No. 913 of 2020 claiming setting aside of observations of the Adjudicating Authority in Para 58 of the impugned order where the SRA made submissions pertaining to business losses and misstatements made by the Resolution Professional and loss of O&M business. Para 58 of the impugned order reads as under:-

"58. The Resolution Applicant has pointed out that there were serious adverse impacts due to delay and for which he has relied on various facts such as cancelling of O&M Contracts and uncertainty regarding renewal of O&M contract, substantial portion of other income in the cash flow meaning thereby that business was not generating cash from basic operations and erosion in the value of assets. The Resolution Applicant has also claimed that claims towards workmen were to be settled as per clause 6 of part II of Resolution Plan as in relation to the workers had Daman Unit which was to be closed completely but still the same had not been closed and due to this additional liability of Rs.40 Crores till date had arisen which may further increase and it would be a grave injustice to the Resolution Applicant, if Resolution Applicant is forced to take this liability. This plea of the Resolution Applicant has remained uncontroverted or undisputed. We are of the considered view that except this plea of additional liability towards workmen there is no merit in the claims of the Resolution Applicant as regard to commercial/ business prospects in view of clause 2 of the disclaimer section as well as Clause 1.12.1 of the process document. We also do not find any merit in the contentions of the Resolution Applicant that there were mis-statements as regard to cancellation of O&M contracts to the extent of 174 MW as the same was available in VDR/website access of which, as per the relevant provisions of process document i.e. clause 1.17.14, was available to the Resolution Applicant and, in fact, that process/facility had been accessed to before submitting the Resolution Plan. As regard to the contention of the CoC/RP that they had approved the Resolution Plan which envisaged 80% (eighty per cent) hair-cut, the Resolution Applicant has submitted that Resolution Plan submitted by such applicants was twice the liquidation value, hence, fact of such hair-cut cannot go against the Resolution Applicant for withdrawal of such application. Be that as it may, we are of the view that this fact, as such, have got no relevance for determination of the issue of withdrawal because it is not the claim of the CoC that Resolution Applicant had made a wrong bargain, hence, it was seeking an exit opportunity nor such a case has been made out."

7. The material facts appearing from record relating to the matter now need to be referred. The Corporate Debtor was admitted into CIRP by the Adjudicating Authority on 20.02.2018. The Resolution Professional took necessary steps in terms of provisions of IBC and the CIRP was conducted. The initial period of 180 under the provisions of IBC was extended by 90 days on 01.08.2018. The SRA firstly filed plan on 20.08.2018 which was subsequently revised and final plan along with addendum was submitted on 13.11.2018. The Resolution Plan was approved by 69.87 per cent of voting share by CoC on 16.11.2018 one day before expiry of 270 days. The Resolution Professional filed IA 476 of 2018 on 18.11.2018 for approval of the Resolution Plan. The SRA had submitted performance Bank guarantee for a sum of Rs. 75 Crores on 26.11.2018 (which has been kept alive and valid by judicial orders).

8. The impugned order shows that the SRA filed chart of dates and events of entire CIRP claiming that due to various applications filed time got consumed in completion of pleadings in various litigations and the application for approval of the Resolution Plan could not be heard. The various incidents relating to litigations were argued before the Adjudicating Authority and the SRA claimed before the Adjudicating Authority that even if the plan is approved, the same may not attain finality in the next one or two years. The SRA claimed before the Adjudicating Authority that the Adjudicating Authority had vide order dated 03.12.2019 directed CoC to revisit the Resolution Plan in

the light of judgment of the Hon'ble Supreme Court in the matter of ***"Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors."*** [Civil Appeal No. 8766-67 of 2019] and CoC had in meeting dated 23.12.2019 approved the plan by a majority of votes of 93.63 per cent. The SRA claimed that the Suspended Management was agitating relying on Section 29A of the IBC and that due to Pandemic situation, the matter was not listed. Based on such facts, the SRA claimed that more than 600 days had lapsed and the Resolution Plan has lost its relevance. It is claimed that speed and timeliness were corner-stones of the scheme of IBC and Section 12 of the IBC has now prescribed 330 days as the time for Resolution. For such and other arguments of SRA as recorded by the Adjudicating Authority, SRA sought to withdraw from the Resolution Plan. One of the claims was that information relating to termination of O&M contracts to the extent of 174MW had not been included in the Information Memorandum and that it was subsequently uploaded on the website and so it was mis-statement of facts.

9. The Adjudicating Authority extensively recorded the arguments placed before it by the SRA.

10. The Resolution Professional was also heard who informed the Adjudicating Authority that Section 31 is self-contained provision regarding acceptance of the Resolution Plan and Section 60(5) (c) of the IBC could not be relied on. The Resolution Professional claimed before the Adjudicating

Authority that the delay in approval of the Resolution Plan was causing loss to the members of the CoC to the extent of 140 Crores. The various arguments raised by Resolution Professional have also been referred by the Adjudicating Authority.

11. The Adjudicating Authority in para 15 of the impugned order referred to the ground of delay in approval of the Resolution Plan raised by the SRA and referred to the scheme of IBC and judgment of the Hon'ble Supreme Court in the matter of ***"Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta"*** and in para 22 of the judgement raised a question that if the approval doesn't come within a reasonable time which is essentially a matter of fact, then, can a Resolution Applicant claim that it is not bound by such Resolution Plan and, if it is so claimed, whether the Adjudicating Authority has got the requisite jurisdiction and power to dispose of such application for the purpose. The Adjudicating Authority then went into provisions of Section 60 of the IBC and relying on the same held in para 23 of the impugned order as under:-

> *"23. In this regard, we are of the view that as far as jurisdiction of NCLT as Adjudicating Authority u/s 31 of IBC, 2016 is concerned there cannot be any dispute that when a plan is approved by CoC and such plan is submitted by Resolution Professional before the Adjudicating Authority u/s 30(6) for its approval, the Adjudicating Authority is obliged either to approve or reject this plan, if such plan complies or does not comply with provisions of Section 30(2) of IBC, 2016, as the case may be. Admittedly, in this application, we are not concerned with the approval of a Resolution Plan on an application filed by Resolution Professional which has been approved by COC but we are concerned*

with the application filed by the Resolution Applicant for withdrawal of plan post CoC's approval. Therefore, in our humble view, provisions of Section 31 are not at all attracted in this situation. Having said so, now, we have to look whether there is any bar, express or implied, in the IBC, 2016 or Regulations made there-under to refuse such withdrawal so that our jobs become easy and there is no need to go to Section 60(5)(c) or IBC, 2016. The RP and CoC have not been able to bring to our notice any express or implied provision which prohibits the withdrawal of Resolution Plan approved by CoC and their contentions are based solely on the provisions of Section 30 and 31 of IBC, 2016 which we have found to be inapplicable in the context of present application."

12. Thus, the Adjudicating Authority rode over provisions of Sections 30 and 31 of the IBC and proceeded under Section 60 of the IBC and concluded that it has jurisdiction under Section 60(5)(c) of the IBC and for reasons recorded and also observations made in para 58 (reproduced supra) went on to pass the operative order in the impugned order which we have reproduced earlier.

13. We have heard Counsel for both side extensively. Various arguments are being made by both the sides. A brief reference needs to be made.

14. The CoC is arguing that there is no provision under the IBC to allow withdrawal of a Resolution Plan. Reference has been made to Section 30 of the IBC in this context and it is argued that the Code does not envisage a withdrawal of a Resolution Plan post mutual negotiations and agreement between the Resolution Applicants and the CoC. It is argued that when the SRA submitted the approved Resolution Plan it was extensively negotiated and

considered by the CoC on parameters of feasibility and viability and it was approved by 93.63% of the members of the CoC. According to the CoC, it creates a binding contract between the SRA and CoC and after approval by CoC withdrawal of SRA is not contemplated. This is because of the provisions and scheme of the Code and that principles of predictability and finality of processes require that withdrawal cannot be allowed. It is argued that in the absence of provisions, withdrawal could not have been allowed by the Adjudicating Authority. It is also argued that the Adjudicating Authority erroneously passed the impugned order. The powers of the Adjudicating Authority under Section 31 are circumscribed by Section 30(2) of the Code. The Adjudicating Authority under Section 31 can either approve the Resolution Plan or reject the same on any of the grounds mentioned in Section 30(2) (a) to (f). It has no jurisdiction to entertain any such application from SRA to withdraw from the Resolution Plan. The CoC is relying on judgments of the Hon'ble Supreme Court in the matters of ***"Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors."*** [Civil Appeal No. 8766-67 of 2019] and ***"K. Sashidhar vs. Indian Overseas Bank and Ors" [MANU/SC/0189/2019]***. It is argued that Section 60(5) could not have been relied on to grant application when there are specific provisions in the form of Sections 30 and 31 of the IBC. It is also argued that the grounds raised for withdrawal from the Resolution Plan were no grounds on the basis of which the Resolution Plan could be allowed to be withdrawn. It is argued that once the Resolution Professional has filed

the application before the Adjudicating Authority for approval of the Resolution Plan, if for any reason it is not approved within reasonable time, such protracting of the matter before the Adjudicating Authority could not be ground for permitting withdrawal of the Resolution Plan. It is also argued that the apprehension created by the SRA that there was change of circumstances of the Corporate Debtor with regard to deterioration of the business and assets of the Corporate Debtor has no basis and such grounds also could not be raised for claiming withdrawal from the Resolution Plan. The CoC has argued that the process document itself unequivocally provided that all the Resolution Applicants were required to conduct their own due diligence through *inter alia* site visits and independent assessment to ascertain the accurate information in relation to the business of the Corporate Debtor before submission of a Resolution Plan. The Counsel for the CoC referred to the Process Document in this context. The CoC has argued that the SRA has conducted its due diligence and site visits and there was no denial of access of any information and thus the grounds raised that there was deterioration of business and there was misinformation of assets of the Corporate Debtor was wrong. The CoC has further argued that SRA reconfirmed the plan in December, 2019 and there was no material adverse or damaging changes in the Corporate Debtor from December, 2019 till the application for withdrawal was filed. The Application is just an afterthought. The SRA had in rejoinder before the Adjudicating Authority stated that they have renewed the Bank Guarantee on 19.05.2020

in hope that the approved Resolution Plan would get approval of the Adjudicating Authority. Thus, even till May, 2020, the SRA had no grievance.

15. For such reasons, the CoC claims that the Appeal should be allowed and the impugned order should be set aside and the Adjudicating Authority should take a decision on the approved Resolution Plan in terms of Section 31 of the IBC.

16. The Resolution Professional has raised similar grounds like the CoC to claim that the impugned order deserves to be set aside. The Resolution Professional has justified the Information Memorandum issued and the various steps required to be taken by him which according to the Resolution Professional were taken on time and expeditiously and it is claimed that SRA was now finding fault only because it wanted to back out from the Resolution Plan which was approved.

17. Against the above, the Counsel for SRA has justified the impugned order except for the challenge which SRA has raised in its Appeal- Company Appeal (AT) (Insolvency) No. 913 of 2020 with regard to portion of Para 58 of the impugned order. Counsel for SRA has argued that there was concealment and misrepresentations regarding status of active O&M Contracts. It is argued that the SRA misrepresented that the Corporate Debtor had 4870 Mega Watts contracts as on 06.04.2018 in the Information Memorandum, knowing very well that 174 MW of O&M contracts were already withdrawn/ terminated by customers prior to CIRP. The SRA has argued that it became aware of the

termination of 174 MW contracts from the reply of the Resolution Professional when it was filed before the Adjudicating Authority. The Counsel has further argued claiming that there is deterioration of services rendered by the Corporate Debtor and termination of contracts because of the management of the Corporate Debtor by the Resolution Professional in the course of CIRP. It is also argued that in the 14th CoC meeting held on 23.12.2019, the Appellants were allowed only a short duration to discuss their eligibility and all material discussions were taken in their absence. That, no opportunity was provided to SRA to withdraw the Resolution Plan. The argument is that the Resolution Plan had become unviable on account of delay in its approval and termination of contracts by the customers of the Corporate Debtor.

18. The argument of the SRA with regard to Para 58 is that the Adjudicating Authority wrongly did not accept the submissions of the SRA that there was misstatement as regards cancellation of O&M Contracts to the extent of 174 MW. The Counsel for Resolution Professional has countered the SRA with regard to para 58 and argued that information regarding cancellation of O&M contracts to the extent of 174 MW was available in VDR/website access of which, as per the relevant provisions of process document, was available to the Resolution Applicant. It is argued that the Adjudicating Authority has made observations in this regard. However, it is added that the Adjudicating Authority wrongly observed that the plea raised by SRA with regard to O&M Contracts remained uncontroverted and undisputed on the part of the Resolution Applicant. The Counsel for Resolution Professional has referred to

Reply of Resolution Professional which was filed before the Adjudicating Authority controverting allegations made by the SRA on this count.

19. The Counsel for parties have made extensive arguments on above basis. However, in the present matter, we do not need to extensively refer or reproduce those arguments as grounds raised in these Appeals, specially by the CoC which we have reproduced above in Company Appeal (AT) (Insolvency) No. 814 of 2020 are squarely covered and get answered in judgment in the matter of ***"Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Anr."*** [2021 SCC OnLine SC 707].

20. In the matter of '*Ebix Singapore'*, the NCLT had allowed the Third Withdrawal Application filed by Ebix under Section 60(5) of the IBC to withdraw its Resolution Plan submitted for Educomp. While reversing that order, this Tribunal – NCLAT had held that the application to withdraw from the Resolution Plan could not have been allowed as (i) it was barred by *res judicata*; and (ii) NCLT does not have jurisdiction to permit such a withdrawal. The correctness of the view of this Appellate Tribunal came for determination in Appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court heard the rival contentions of the parties and in Para 110 of the judgment proceeded to examine the *raison d'etre* of the IBC before analytical interpretation. For the purpose, Hon'ble Supreme Court observed that the aims and objects of the legislation were required to be considered and that the IBC was introduced as a water-shed moment for

insolvency law in India which consolidated processes under several disparate statutes including SICA, SARFAESI, etc. The Hon'ble Supreme Court then proceeded to refer to UNCITRAL Guide before analysing the framework of the statute. Reference was made to UNCITRAL Guide and BLRC Report. Then it was observed in Para 116 of the judgment as follows:-

> *"**116.** Any claim seeking an exercise of the Adjudicating Authority's residuary powers under Section 60(5)(c) of the IBC, the NCLT's inherent powers under Rule 11 of the NCLT Rules 2016 or even the powers of this Court under Article 142 of the Constitution must be closely scrutinized for broader compliance with the insolvency framework and its underlying objective. The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC. Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed by the IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a Corporate Debtor."*

21. The Hon'ble Supreme Court proceeded to consider Nature of the Resolution Plan and in Para 117 of the judgment mentioned that before adverting to whether withdrawals or modifications by successful Resolution Applicants are permissible under the IBC Hon'ble Supreme Court referred to the definition of Resolution Plan and Resolution Applicant. Then the Hon'ble Supreme Court has extensively referred to how IBC provided for a

road map for the entire CIRP in Chapter II of Part II. It is held that the process is tightly regulated to include, inter alia, timelines of the CIRP specified by Section 12, duties of the RP to provide adequate information to propose a Resolution Plan in Section 29 and restrictions on who can be a Resolution Applicant in Section 29A. Section 30 of IBC has then be reproduced by the Hon'ble Supreme Court. The Hon'ble Supreme Court has considered the various provisions and looked into the statutory framework governing the CIRP. In Para 147, Hon'ble Supreme Court referred to judgment in the matter of *'Essar Steel'* as follows:-

> *"**147.** The decision in Essar Steel (supra) while reiterating the rationale of the IBC for ensuring timely resolution of stressed assets as a key factor, had to defer to the principles of actus curiae neminem gravabit, i.e., no person should suffer because of the fault of the court or the delay in the procedure. In spite of this Court's precedents which otherwise strike down provisions which interfere with a litigant's fundamental right to non-arbitrary treatment under Article 14 by mandatory conclusion of proceedings without providing for any exceptions, this Court refused to strike down the second proviso to Section 12(3) in its entirety. It noted that the previous statutory experiments for insolvency had failed because of delay as a result of extended legal proceedings and chose to only strike down the word 'mandatorily', keeping the rest of the provision intact. Therefore, the law as it stands, mandates the conclusion of the CIRP - including time taken in legal proceedings, within 330 days with a short extension to be granted only in exceptional cases."*

Then the Hon'ble Supreme Court referred to the warning noted by the Hon'ble Supreme Court in the matter of *'Essar Steel'* in Para 127 of the said judgment.

22. In para 164 of the judgment in the matter of *'Ebix Singapore'* (Supra), Hon'ble Supreme Court has referred to Section 12 of IBC which stipulates the timeline within which the CIRP is to be completed. Regulation 40A of the CIRP Regulations provides a detailed model timeline for CIRP which accounts for all the procedural eventualities that are permitted by the statute and the Regulations. Para 164 has then reproduced Regulation 40A of CIRP Regulations. Further, Para 166 is as follows:-

> *"**166.** This Court should proceed with caution in introducing any element in the insolvency process that may lead to unpredictability, delay and complexity not contemplated by the legislature. With this birds'-eye view of the framework of insolvency through the CIRP, we proceed to answer the question of law raised in this judgment - whether a Resolution Applicant is entitled to withdraw or modify its Resolution Plan, once it has been submitted by the Resolution Professional to the Adjudicating Authority and before it is approved by the latter under Section 31(1) of the IBC."*

23. In the present matter Para 168 of the judgment is material, which reads as follows:-

> *"**168.** Since the aim of the statute is to preserve the interests of the corporate debtor and the CoC, it was recognized that settlements between the corporate debtor and the CoC may be in the best interests of all stakeholders since insolvency is averted. Two decisions of two judge Benches of this Court, in Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP[99] and Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem[100], (prior to the insertion of Section 12A which enabled withdrawal of the CIRP on account of settlement between the parties), had refused to effectuate this remedy by exercising inherent powers*

*of the Adjudicating Authority under Rule 11 of the NCLT Rules 2016 or the power of parties to make applications to the Adjudicating Authority under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. In Uttara Foods (supra) this Court had granted a one-time relief under Article 142 of the Constitution since all the parties were present before it and had presented it with signed consent terms. This course of action, in refraining from the exercise of inherent powers to effect procedures and remedies that were not specifically envisaged by the statute, was explicitly affirmed by the Insolvency Law Committee Report dated March 2018[101] which proceeded to suggest amendments to the IBC and recommended a ninety per cent voting threshold by the CoC for withdrawals of a CIRP and a specific amendment to Rule 8 of the then existing CIRP Rules to enable parties to file such applications. This report led to the insertion of Section 12A which vested the CoC with the power to withdraw the CIRP or vote on such withdrawal, if sought by the Corporate Debtor. This provision was introduced with retrospective effect on 6 June 2018. Significantly, no such exit routes have been contemplated for the Resolution Applicant. It is relevant to note that the newly inserted and then unamended Regulation 30A (w.e.f. 4 July 2018) of the CIRP Regulations stipulated that withdrawal under Section 12A can be allowed through submitting an application to the IRP or RP (as the case maybe) **before** the invitation for EOI is issued to the public. The CoC was to consider the application within seven days of its constitution and an approval for such application required approval of the ninety per cent of the voting share of the CoC. However, on 14 December 2018, a two judge Bench of this Court, held in Brilliant Alloys (P) Ltd. v. S Rajagopal[102] that Regulation 30A is directory, and not mandatory in nature since Section 12A of the IBC does not stipulate a deadline by which a withdrawal from the CIRP can be made. Thus, in exceptional cases withdrawals from the CIRP under Section 12A of IBC could be permitted even after the invitation of EOI has been issued. Regulation 30A of the CIRP Regulations was then amended by the IBBI (Insolvency Resolution Process for Corporate*

Persons) (Second Amendment) Regulations 2019, w.e.f. 25 July 2019 to reiterate the decision of this Court. The newly amended provision allows for withdrawals even after the invitation for expression of interest has been issued, provided that the applicant states the reasons justifying such withdrawal. Similarly, on 25 January 2019, a two judge Bench of this Court in Swiss Ribbons (supra) interpreted the true import of Section 12A and clarified that if the CoC is not yet constituted, a party can approach the Adjudicating Authority, which may in exercise of its inherent powers under Rule 11 of the NCLT Rules 2016, allow or reject an application for withdrawal or settlement. On 25 July 2019, the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019 amended Regulation 30A in terms of this decision in interpreting Section 12A and now specifically provides the procedure under the IBC that relates to affecting a withdrawal under Section 12A before the constitution of the CoC. The applicant submits an application for withdrawal through the IRP, directly before the Adjudicating Authority, since the CoC is not yet constituted to consider such an application. To ensure that the process for withdrawal is timely and efficient, the present Regulation 30A provides that the IRP shall submit an application for withdrawal of the CIRP prior to the constitution of the CoC to the Adjudicating Authority on behalf of the applicant within three days of the receipt. Alternatively, if the application for withdrawal is made after the constitution of the CoC, such application will be considered by the CoC within seven days of its receipt. If the CoC approves such an application with ninety per cent voting share, it is to be submitted to the Adjudicating Authority within three days of approval. Further, the application for withdrawal has to be accompanied by a bank guarantee towards estimated expenses relating to costs of the IRP (in case of a withdrawal prior to constitution of the CoC) or insolvency resolution process costs (where withdrawal is after constitution of the CoC). It is clear that withdrawal of the CIRP is allowed only if it upholds the interests of the CoC, is time-bound, and takes into consideration how the expenses relating to the insolvency process up to

withdrawal shall be borne. Thus, even the exit under Section 12A of the CoC, which is not available to the Resolution Applicant, is regulated by procedural provisions indicating that the legislature has applied its mind to the timelines and costs involved in the CIRP. Pertinently, the regulations do not provide for any costs that are payable to the prospective Resolution Applicants or a successful Resolution Applicant, who must have incurred a significant expense in participating in the process. This Court, in Maharashtra Seamless (supra) had denied relief to a Resolution Applicant who had sought to invoke Section 12A to resile from its Resolution Plan. The nature of the statute indicates the clarity of its purpose - primacy of the interests of the creditors who are seeking to cut their losses through a CIRP. Traditional models and understandings of equity or fairness that seek reliefs which are misaligned with the goals of the statute and upset the economic coordination envisaged between the parties, cannot be read into the statute through judicial interpretation. While parties have the freedom to negotiate certain commercial terms of the Resolution Plan to gain wide support, their ability to negotiate is circumscribed by the governing statute. A court cannot interpret the negotiated arrangements that are represented in the Resolution Plan in a manner that hampers the objectives of the IBC which is a speedy, predictable and timely resolution. The Resolution Applicant is deemed to be aware of the IBC and its mechanisms before it steps into the fray and consents to be bound by its underlying objectives. A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. It cannot demand vesting of certain powers and rights which have been conspicuously omitted by the legislature under the statute, in furtherance of the policy objectives of the IBC. A court may not be able to lay down such detailed guidance on how a mechanism for withdrawal, if any, may be provided to a successful Resolution Applicant without disturbing the statutory timelines and adequately evaluating the

interests of creditors and other stakeholders, which is ultimately a matter of legislative policy. In Essar Steel (supra), a three judge Bench of this Court, affirmed a two judge Bench decision in K Sashidhar[103] (supra), prohibiting the Adjudicating Authority from second-guessing the commercial wisdom of the parties or directing unilateral modification to the Resolution Plans[104]. These are binding precedents. Absent a clear legislative provision, this court will not, by a process of interpretation, confer on the Adjudicating Authority a power to direct an unwilling CoC to re-negotiate a submitted Resolution Plan or agree to its withdrawal, at the behest of the Resolution Applicant. The Adjudicating Authority can only direct the CoC to re-consider certain elements of the Resolution Plan to ensure compliance under Section 30(2) of the IBC, before exercising its powers of approval or rejection, as the case may be, under Section 31[105]. In Government of Andhra Pradesh v. P Laxmi Devi[106], while determining the constitutionality of a statute, this Court observed that it should be wary of transgressing into the domain of the legislature, especially in matters relating to economic and regulatory legislation. This Court observed:

> *"80. As regards economic and other regulatory legislation judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of the statute because the court does not consist of economic or administrative experts.* ***It has no expertise in these matters, and in this age of specialisation when policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the executive or legislative (sic legislature) and try to enforce its own views and perceptions."***
>
> *(**emphasis supplied**)"*

[emphasis supplied]

24. In Para 170 of the judgment it has been held as under:-

> *"**170.** The IBC is silent on whether a successful Resolution Applicant can withdraw its Resolution Plan. However, the statutory framework laid down under the IBC and the CIRP Regulations provide a step-by-step procedure which is to be followed from the initiation of CIRP to the approval by the Adjudicating Authority. Regulation 40A describes a model-timeline for the CIRP that accounts for every eventuality that may arise between the commencement of the CIRP and approval of the Resolution Plan by the Adjudicating Authority, including the different stages for pressing a withdrawal of the CIRP under Section 12A. Even a modification to the RFRP is envisaged by the CIRP Rules and is subject to a timeline. The absence of any exit routes being stipulated under the statute for a successful Resolution Applicant is indicative of the IBC's proscription of any attempts at withdrawal at its behest. The rule of casus omissus is an established rule of interpretation, which provides that an omission in a statute cannot be supplied by judicial construction. Justice GP Singh in his authoritative treatise, Principles of Statutory Interpretation[107], defines the rule of casus omissus as:*
>
> *"**It is an application of the same principle that a matter which should have been, but has not been provided for in a statute cannot be supplied by courts, as to do so will be legislation and not construction.** But there is no presumption that a casus omissus exists and language permitting the court should avoid creating a casus omissus where there is none."*
>
> *(**emphasis supplied**)"*
>
> *[emphasis supplied]*

25. Then material is Para 172, which reads as follows:-

> *"**172.** In the wake of the COVID-19 pandemic, several Resolution Plans remained pending before Adjudicating Authorities due to the lockdown and significant barriers to securing a hearing. An Ordinance was swiftly promulgated on 5 June 2020 which imposed a temporary suspension of initiation of CIRP under Sections 7, 9 and 10 of the IBC for defaults arising for six months from 25 March 2020 (extendable by one year). This was followed by an amendment through the IBC (Second Amendment) Act 2020 on 23 September 2020 which provided for a carve-out for the purpose of defaults arising during the suspended period. The delays on account of the lockdown were also mitigated by the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations 2020, which inserted Regulation 40C on 20 April 2020, with effect from 29 March 2020, and excluded such delays for the purposes of adherence to the otherwise strict timeline. Recently, the IBC (Amendment) Ordinance 2021 was promulgated with effect from 04 April 2021 providing certain directions to preserve businesses of MSMEs and a fast-track insolvency process. There has been a clamor on behalf of successful Resolution Applicants who no longer wish to abide by the terms of their submitted Resolution Plans that are pending approval under Section 31, on account of the economic slowdown that impacted every business in the country. However, no legislative relief for enabling withdrawals or renegotiations has been provided, in the last eighteen months. In the absence of any provision under the IBC allowing for withdrawal of the Resolution Plan by a successful Resolution Applicant, vesting the Resolution Applicant with such a relief through a process of judicial interpretation would be impermissible. Such a judicial exercise would bring in the evils which the IBC sought to obviate through the back-door."*
>
> *[emphasis supplied]*

26. In the conclusion drawn by the Hon'ble Supreme Court it has been observed in Para 246 as follows:-

> *"**246.** In the present framework, even if an impermissible understanding of equity is imported through the route of residual powers or the terms of the Resolution Plan are interpreted in a manner that enables the appellants' desired course of action, it is wholly unclear on whether a withdrawal of a CoC-approved Resolution Plan at a later stage of the process would result in the Adjudicating Authority directing mandatory liquidation of the Corporate Debtor. Pertinently, this direction has been otherwise provided in Section 33(1)(b) of the IBC when an Adjudicating Authority rejects a Resolution Plan under Section 31. In this context, we hold that the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority. A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations. In the case of Kundan Care, since both, the Resolution Applicant and the CoC, have requested for modification of the Resolution Plan because of the uncertainty over the PPA, cleared by the ruling of this Court in Gujarat Urja (supra), a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2."*
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> *[emphasis supplied]*

27. For such reasons and conclusion, the Hon'ble Supreme Court has laid down law as above and in the Appeal before Hon'ble Supreme Court the Appeal of Ebix and Seroco came to be dismissed. The above judgment clearly applies to the facts of the present matter. It is quite clear that the

SRA could not have been allowed to withdraw the Resolution Plan after it had been approved by the CoC. The Adjudicating Authority had no jurisdiction to rely on residuary powers of Section 60(5)(c) to entertain the application of SRA. The grounds raised by SRA of delay also are clearly untenable. As observed by the Hon'ble Supreme Court in Para 168 of the judgment the Resolution Applicant is deemed to be aware of the IBC and its mechanisms. The Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analysed the risks in the business of the Corporate Debtor and submitted a considered proposal. After the plan has been approved, the SRA could not be heard making the complaints regarding incomplete information (which here is even otherwise not established) to withdraw from the Resolution Plan. The grievance appears to be made just to raise a petit ground.

28. The judgment in the matter of *'Ebix Singapore'* has been passed by the Hon'ble Supreme Court on 13th September, 2021, after the arguments in these Appeals were over. The Hon'ble Supreme Court has taken conspectus of the complete law on the subject and although the Learned Counsel for parties have made various submissions whether or not the power under Section 60 of IBC could have been exercised; whether or not the SRA had a good ground to withdraw; whether or not there was mis-information in Information Memorandum, we need not go into these details

to burden this judgment with those details as the law is now clear on the issues as involved in the present Appeals.

29. For the above reasons, we pass the following orders:-

I. Company Appeal (AT) (Insolvency) No. 814 of 2020 and Company Appeal (AT) (Insolvency) No. 826 of 2020 are allowed. The impugned order is quashed and set aside.

II. Company Appeal (AT) (Insolvency) No. 913 of 2020 filed by the Successful Resolution Applicant is dismissed.

III. The matter is remitted back to the Adjudicating Authority. Adjudicating Authority is directed to consider I.A. No. 476/2018 in C.P. (IB) No. 14/2018 filed by the Resolution Professional under Section 30/31 of IBC urgently and decide the same within one month.

IV. When Company Appeal (AT) (Insolvency) No. 814 of 2020 and Company Appeal (AT) (Insolvency) No. 826 of 2020 were filed, on 21st September, 2020, the impugned direction in paragraph 75(ii) of Impugned Order were put on hold. During the pendency of these Appeals, the Successful Resolution Applicant was time to time directed to keep the Performance Bank Guarantee alive and the concerned Bank was also directed to be informed. On 26th August, 2021, while reserving

these matters for judgment, we had directed that the Successful Resolution Applicant and Bank concerned will keep the Performance Bank Guarantee alive till and subject to the decision of these Appeals.

Now while disposing these Appeals, we direct that the Successful Resolution Applicant and Bank concerned will keep the Performance Bank Guarantee alive till and subject to decision of the Adjudicating Authority of I.A. No. 476/2018 (referred above) under Section 31 of IBC.

30. Appeals are disposed off accordingly. No orders as to costs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Anjali/g