NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT CHENNAI

COMPANY APPEAL (AT) (CH) (INS.) NO. 308/2023
(IA Nos. 945 & 946/2023)
(Filed Under Section 61 of the Insolvency and Bankruptcy Code, 2016

(Arising out of the Impugned Order dated 10/08/2023 in I.P. No. 04/2023 and I.A.(IBC)/156/2023 in C.P.(IB) No. 184/7/HDB/2019, passed by the 'Adjudicating Authority', National Company Law Tribunal, Hyderabad Bench – II)

In the matter of:

Devi Trading & Holding Private Limited
A Company having its registered office at
8, Camac Street, Shantiniketan Building,
8th Floor, Suit No. 807, Kolkata, West Bengal – 700017
Represented herein by its
Authorized Signatory Arun Kumar Khandelia **…Appellant**

Versus

1. **Mr. Ravi Shankar Devarakonda**
Resolution Professional of
M/s. Meenakshi Energy Limited
D. No. 8-2-248/1/7/9 & 10/6,
Third Floor -IB, Uma Chambers,
Punjagutta, Hyderabad – 500082. **…Respondent No. 1**

2. **Committee of Creditors of Meenakshi Energy Limited**
Through its lead lender
State Bank of India,
Having its office at Stressed Asset Resolution Group
21st Floor, Maker Tower 'E', Cuffee Parade,
Mumbai – 400005. **…Respondent No. 2**

3. **Vedanta Limited**
Having its registered office at
1st Floor, C – Wing, Unit 103, Corporate Avenue,
Atul Projects, Andheri (East),
Mumbai – 400093, Maharashtra **…Respondent No. 3**

Present :

For Appellant	:	Mr. Dhruba Mukherjee, Senior Advocate, For Mr. Avinash Wadhwani & Mr. Mallikarjun, Advocates
For Respondent No. 1	:	Mr. P.H. Arvindh Pandian, Senior Advocate For Mr. Avinash Krishnan Ravi, Mr. Akhil Nene & Mr. Tushar Nagar, Advocates
For Respondent No. 2	:	Mr. Vivek Reddy, Senior Advocate, For Mr. Madhav Kanoria & Mr. Raunak Dhillon, Advocates
For Respondent No. 3	:	Mr. Gopal Jain, Senior Advocate For Mr. Diwakar Maheswari & Ms. Shreyas Edupuganti, Advocates

J U D G M E N T

(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Aggrieved by the Impugned Order dated 10/08/2023 passed in I.P. No. 04/2023 and IA No.(IBC)/156/2023 in C.P.(IB) No. 184/7/HDB/2019, M/s. Devi Trading & Holding Pvt. Ltd., preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code'), challenging the Resolution Plan as approved by the 'Committee of Creditors' ("CoC") of M/s. Meenakshi Energy Ltd. / the Corporate Debtor, which Plan was approved by the 'Adjudicating Authority', vide the Impugned Order.

2. The Learned Senior Counsel appearing for the Appellant submitted that the Appellant is the Financial Creditor of the Corporate Debtor Company and had

submitted its Claim of Rs. 159,56,12,810/- and the same amount was admitted in full by the Resolution Professional ("RP") and the Appellant was inducted as the Member of the CoC. A perusal of the Resolution Plan submitted by M/s. Vedanta Limited says that Clause 3.5.5 did not propose any distribution mechanism for consideration of the CoC and has delegated the task of proposing the manner of distribution of funds to the CoC and the CoC has acted beyond its jurisdiction by determining the mechanism to be utilised for distribution of funds among the various Stakeholders. The Learned Senior Counsel drew our attention to Clause 3.5.5 which reads as hereunder:

> *"3.5.5 Notwithstanding the above, the Resolution Applicant has agreed that the CoC will decide the manner in which the Total Financial Package (as reduced by the payments proposed under Clause 3.2, 3.3 and 3.4.5 (b)) being offered by the Resolution Applicant to the Financial Creditors will be distributed to the Financial Creditors. All such allocations to the Financial Creditors will be binding on all stakeholders. Further, all distributions to the Dissenting Financial Creditors in this Clause are fair and equitable under Sections 30(2)(b)(ii) and 30(4) of the IBC."*

3. It is submitted that the CoC during its 41st Meeting held on 22/11/2022 deliberated upon the manner of distribution *inter-se* the class of Financial Creditors and the Learned Senior Counsel placed reliance on some of the deliberations made in the said Meeting which are reproduced as hereunder for better understanding of the case.

*"**Discussion on illustrative distribution mechanism***

RP informed that the plans submitted by Vedanta and Jindal, did not mention member wise distribution inter-se the class of financial creditors and have left it open for CoC to decide, whereas the plan submitted by PAL-VMLL has demarcated the distribution to Secured and Unsecured financial creditors. Accordingly, the RP informed that CoC can decide on the distribution methodology either basis ratio of admitted claims or as per Section 53 of IBC which will take into account the value and priority of security interest of each of the creditors and invited views of CoC. It was informed to the CoC that the distribution mechanism is entirely within the domain of the CoC as per Section 30(4) of the Code and as has been held by the Hon'ble Supreme Court in several judgments including Committee of Creditors of Essar Steel India Limited v. Satish Kumar 2 Gupta. Some members enquired about the percentage voting requirement for the distribution mechanism. CAM and JSA clarified that 66% votes are required to approve the said agenda.

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Discussion on matters for voting

Further to the discussion on feasibility and viability, evaluation matrix and RFRP non compliances of the resolution plans, the following items were decided by CoC to be put to vote:

1. *Basis for distribution inter-se the class of financial creditors viz., as per ratio of admitted claims or as per Section 53 of the IBC;*
2. *Approval of RFRP deviations along with the resolution Plan submitted by PAL-VMLL;*
3. *Approval of RFRP deviations along with the resolution Plan submitted by Jindal; and*
4. *Approval of RFRP deviations along with the resolution Plan submitted by Vedanta.*

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> *SBI suggested that the voting window for determining the distribution mechanism (Voting item no. 1) shall be closed prior to the voting on resolution plans (i.e. voting item no 2, 3 and 4). IDBI enquired that since the distribution mechanism is related to the resolution plans, whether the voting window be same for all the items. SBI mentioned that outcome of the distribution mechanism is required to be informed to their competent authorities for their decision on plan approval. Hence, it is suggested to keep them separate. Members deliberated on the same and agreed to keep voting windows separate."*

4. It is submitted that the Learned Adjudicating Authority has erroneously observed that the CoC in its commercial wisdom has decided to distribute the amounts received under the Vedanta Resolution Plan as per Section 53 of the Code and this is a prerogative of the CoC, hence, the CoC has neither acted with any *mala fide* intent nor violated the provisions of the Code. The distribution mechanism adopted by the CoC is entirely within its domain as per Section 30 (4) of the Code and the CoC, therefore opted to distribute the proceeds as per the waterfall mechanism provided under Section 53 of the Code. It is strenuously argued by the Learned Senior Counsel that the CoC has itself proposed and decided the manner of distribution which it has no jurisdiction, since the CoC cannot only 'consider' the distribution mechanism as proposed by the Resolution Applicant and not decide by itself. It is the case of the Appellant that CoC is not empowered to 'propose' and then to 'consider' its own proposal. The Learned Senior Counsel placed reliance on the judgment of the Hon'ble

Apex Court in the matter of ***'Tata Chemicals Ltd. Vs. Commissioner of Customs'*** reported in ***(2015) 11 SCC 628*** wherein it was held as under:

> *"18. The Tribunal's judgment [Commr. of Customs v. Tata Chemicals Ltd., 2004 SCC OnLine Cestat 270] has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the clearing agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of the law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person."*

5. The Learned Senior Counsel strenuously argued that a plain reading of Section 30 (4) of the Code clearly states that the ambit of the CoC is only to 'consider' a Resolution Plan as submitted by the Resolution Applicant and therefore have approved or disapproved the Plan. The words 'the manner of distribution proposed' used in Section 30 (4) of the Code indicate that the manner

of distribution is required to be proposed by the Applicant which shall be 'considered' by the CoC. It is also the case of the Appellant that Regulation 39 (3) of the CIRP Regulations further confines the scope of CoC's power while dealing with the Resolution Plan and as it provides that upon receipt of compliant Resolution Plans from the Resolution Professional under Regulation 39 (2), the CoC is empowered to only

(a) Evaluate the Resolution Plans received under Sub-regulation (2) as per evaluation matrix;

(b) Record its deliberations on the feasibility and viability of each resolution plan; and

(c) Vote on all such Resolution Plans simultaneously.

6. The Learned Counsel placed reliance on the following Judgments in support of his case that the CoC may approve a 'Resolution Plan taking into account different classes of Creditors, different priorities, and values of Security assets of a Secured Creditor: -

- ***K. Sashidhar v. Indian Overseas Bank, [(2019) 12 SCC 150]***
- ***Essar Steel India Ltd Committee of Creditors Vs. Satish Kumar Gupta [(2020) 8 SCC 531]***
- ***Pratap Technocrats (P) Ltd. Vs. Reliance Infratel Ltd. (Monitoring Committee) [(2021) 10 SCC 623]***

- ***Vistra ITCL (India) Ltd. Vs. Torrent Investments Pvt. Ltd. & Ors. [2023 SCC OnLine NCLAT 110]***

- ***Hammond Power Solutions Private Limited Vs. Mr. Sanjit Kumar Nayak and Others. [2020 SCC OnLine NCLAT 199]***

7. Strong reliance was placed on the Judgment of the Hon'ble Supreme Court in the matter of ***'M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder'*** reported in ***[(2023) SCC OnLine SC 574]*** wherein the Hon'ble Apex Court in Paras 183, 189 and 190 has observed as follows:

> *"**183**…The principles underlying the decisions of this Court respecting the commercial wisdom of CoC cannot be over-expanded to brush aside a significant shortcoming in the decision making of CoC when it had not duly taken note of the operation of any provision of law for the time being in force.*
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> ***189**. As noticed hereinbefore, commercial wisdom of CoC is given such a status of primacy that the same is considered rather a matter nonjusticiable in any adjudicatory process, be it by the Adjudicating Authority or even by this Court. However, the commercial wisdom of CoC means a considered decision taken by CoC with reference to the commercial interests and the interest of revival of the corporate debtor and maximization of value of its assets. This wisdom is not a matter of rhetoric but is denoting a well-considered decision by the protagonist of CIRP i.e., CoC. As observed by this Court in K. Sashidhar (supra), the financial creditors forming CoC 'act on the basis of thorough examination of the proposed resolution plan and assessment made by their team*

of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision.' This Court also observed in K. Sashidhar that 'there is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan.' These observations read with the observations in Essar Steel (supra) with reference to the reasons stated in the report of Bankruptcy Law Reforms Committee of November 2015, make it clear that commercial wisdom of CoC is assigned primacy in CIRP for it represents collective business decision, which is arrived at after thorough examination of the proposed resolution plan and assessment made with involvement of experts by the body of persons who are most vitally interested in rapid and efficient decision making. It follows as a necessary corollary that to be worth its name, the commercial wisdom of CoC would come into existence and operation only when all the relevant information is available before it and is duly deliberated upon by all its members, who have direct and substantial interest in the survival of corporate debtor and in the entire CIRP.

***190**. In light of the aforesaid position of law and its operation in relation to the decision-making process of CoC, it needs hardly any emphasis that each and every aspect relating to the resolution plan, and more particularly its financial layout, has to be before the CoC before it could be said to have arrived at a considered decision in its commercial wisdom."*

8. The Resolution Plan which was considered and approved by the CoC was not the Plan submitted by the Resolution Professional ("RP") to the 'Adjudicating Authority' with IA No. 156/2023, but rather a different version of the Resolution Plan which was not before the CoC, but was submitted before the Tribunal in

complete contravention to the duty of the RP under Section 30 (6) of the Code, which provides that 'a Resolution Professional shall submit their Resolution Plan as approved by the CoC to the Adjudicating Authority'. Therefore, when the Section provides that the Resolution Plan should be the same one which the CoC had approved, but the RP had violated its duties in presenting before the 'Adjudicating Authority', with the Resolution Plan which was not presented before the CoC, which means that the Resolution Plan is against the legislative intent. The Plan envisages 'Nil payments to the unsecured Financial Creditors and the CoC has not recorded any reasons as to how such Nil apportionment to the unsecured Financial Creditors is feasible and viable for the Corporate Debtor and adequately balances the interest of all Stakeholders. The Learned Senior Counsel submitted that this Tribunal had earlier in the matter of ***'Hammond Power Vs. Mr. Sanjit Kumar Nayak and Ors.'*** reported in ***[(2020) SCC OnLine NCLAT 199]*** has set aside the Order passed by the 'Adjudicating Authority' approving the Resolution Plan, because the interest of all the Stakeholders was not addressed to.

9. As against this argument, the Learned Counsel appearing for the first Respondent / the Resolution Professional of the Corporate Debtor submitted that the CoC exercising its commercial wisdom had approved Vedanta's Resolution Plan with a majority of 94.96 % and the Appellant with a voting share of 4.22 %, being the dissenting Financial Creditor, has rejected the Vedanta's Resolution

Plan. The Appellant had not objected to the distribution mechanism and methodology which was discussed and deliberated upon by the CoC during the 41st CoC Meeting held on 22nd November 2022, where the CoC had decided to vote on the distribution mechanism. The Distribution as per Section 53 of the Code was approved by a majority of 93.43 % and the Appellant did not object to adopting this distribution. It is submitted that the Resolution Plan has met all the requirements of the Code and the CIRP Regulations. It is also submitted that the 'challenge process' undertaken by the CoC was challenged by a Prospective Resolution Applicant ("PRA") in 'Consortium of Prudent ARC and Vizag Minerals' in the CIRP of the Corporate Debtor, vide IA No. 37/2023, which was dismissed by the 'Adjudicating Authority' on 23/01/2022 and this Order of dismissal was challenged by way of an Appeal before this Tribunal. Vide Order dated 27/06/2023, this Tribunal had also dismissed the PRA's Appeal and held that the CoC has approved the Resolution Plan by a majority of 94.96 % and also does not find any violation of Regulation 39 (1A) of the CIRP Regulations or any other Provisions of the Code. It is the case of the first Respondent that the Plan has attained finality as the Order assailed by way of a Civil Appeal was also dismissed by the Hon'ble Apex Court vide Order dated 25/08/2023. It is submitted that the Resolution Professional has acted as per the provisions of the Code and has not violated any of its duties.

10. The Learned Counsel appearing for the second Respondent / the CoC of the Corporate Debtor Company submitted that the CoC has approved the payments and distribution mechanism under the Resolution Plan in its commercial wisdom and that such a decision is non-justiciable. The Learned Counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of ***'K. Sashidhar Vs. Indian Overseas Bank'*** reported in ***[(2020) 11 SCC 467]*** in support of his submission that the scope of judicial review of the 'Adjudicating Authority' for allowing the Resolution Plan is limited.

11. The CoC in its commercial wisdom has the discretion to decide the payments to various class of Creditors in the Resolution Plan. It is submitted that Clause 3.5.2 of the Resolution Plan proposed cash payments to the dissenting Financial Creditors and as per the provisions of the Code, the amount that is required to be paid to the dissenting Financial Creditors shall be equivalent to the amount payable in accordance with Section 53 (1) of the Code during the Liquidation of the Corporate Debtor.

12. It is submitted that the distribution mechanism under Resolution Plan can be decided by the CoC in its commercial wisdom and allocation of a meagre amount cannot be a ground to question the Resolution Plan and in support of this argument the Learned Counsel placed reliance on the Judgment of this Tribunal in paras 5,6 and 7 of the matter of ***'Pani Logistics Vs. Vikas G. Jain'*** in ***Company Appeal (AT) (Ins.) No. 205/2023***. The voting on the distribution mechanism

concluded on 13th December 2022 and the CoC by a majority of 93.43% voted in favour of the distribution as per Section 53 of the Code. The CoC has also recorded its deliberations on the feasibility and viability of the Resolution Plan. The Learned Counsel submitted that the Resolution Plan of Vedanta was a consolidated Resolution Plan in compliance with the Code and the Regulations and therefore, the improved offer by way of an addendum given by M/s. Vedanta and submitted on 4th January 2023 was approved in the 44th CoC Meeting. It is submitted that the Judgment in the matter of ***'M.K. Rajagopalan Vs. Periasamy Palani Gounder and Ors.'*** reported in ***[(2023) SCC Online 574]*** is not applicable to the facts of this case, as the modified Resolution Plan whereby the allocation for the Unsecured Dissenting Financial Creditors was revised, was not placed before the CoC. In the instant case, the Resolution Professional ("RP") had placed the Addendum Resolution Plan before the CoC which had deliberated on the feasibility and approved the Plan with a majority of 94.96 %.

13. The Learned Counsel appearing for the 3rd Respondent ("SRA") submitted that the SRA has agreed that the CoC would decide the manner in which the total financial packages would be distributed and include Clause 3.5.5 in the Resolution Plan. The said Plan was placed for voting during the 41st Meeting of the CoC held on 22/11/2022 and the basis for distribution *inter se* the class of Financial Creditors namely, as per the ratio of the admitted Claim or as per Section 53 of the Code. The Voting on the said item concluded on 13/12/2022

wherein 93.43 % of CoC has voted to follow the waterfall mechanism contained in Section 53 of the Code. The Appellant was very much present in this Meeting, however, had never raised any objections. There is no infirmity in the approval of the Resolution Plan as Clause 3.2 covers the CIRP Cost, Clause 3.3 deals with the payments for workmen and employees, Clause 3.4 provides for settling all the Claims of the Financial Creditors and Clause 3.5 deals with proposal for dissenting Members of the CoC. Clause 3.6 covers the proposal for Operational Creditors and Statutory Creditors. Clause 3.7 addresses the outstanding online dues and so on complying with all the Provisions of the Code. It is denied that the Resolution Plan submitted before the 'Adjudicating Authority' different from the Resolution Plan which was approved by the CoC. It is contended that the Plan submitted before the 'Adjudicating Authority' is a consolidation of all the proposals communicated by the SRA prior to voting of CoC and the Consolidation was necessary in view of the multiple amendments by way of letters/ e-mails etc. It is submitted that the business plan of a Resolution Plan is formulated with certain assumptions based on economic and financial factors. These assumptions change with time, especially with changes in commodity prices and the actual executed plan may be different from the one mentioned in a Resolution Plan. Therefore, a Business Plan is reviewed more from a lens of execution capability rather than pure numbers. EBIDTA is an inward projection/assumption, reflecting only on the revenue that is expected to be generated by the SRA after taking over and operating the business of the

Corporate Debtor. This projection does not affect or impact the sale consideration as proposed by Respondent No. 3 towards the purchase of the Corporate Debtor.

Evaluation:

14. The brief point that falls for consideration in this Appeal is whether the 'Adjudicating Authority' was justified in approving a Resolution Plan where the manner of distribution was proposed, and decided by the CoC.

15. It is the main case of the Appellant that Clause 3.5.5 of the Resolution Plan, whereby and whereunder the Resolution Applicant has agreed that the CoC will decide the manner in which the total financial package would be distributed to the Financial Creditors, is contrary to Section 30 (2) of the Code. The Learned Counsel for the Appellant strenuously contended that the 'Adjudicating Authority' has erred in holding that the CoC in its commercial wisdom has decided to distribute the amounts received under the Vedanta's Resolution Plan as per Section 53 of the Code and that it was a prerogative of the CoC. It is vehemently contended that the CoC is not empowered to 'propose' and then to 'consider' its own 'proposal'. At this juncture, it is to be examined whether the CoC has acted beyond its jurisdiction and mandate under Section 30 (4) of the Code and Regulation 39 (3) of the CIRP Regulations. The Learned Senior Counsel for the Appellant submitted that the Hon'ble Supreme Court in the matter of ***'Krishna Rai Vs. Benares Hindu University'*** reported in ***[(2022) 8 SCC 713]***

observed that '*if the law requires something to be done in a particular manner, then it must be done in that manner, and if its not done in that manner, then it would have no existence in the eye of law.'*

16. It is not in dispute that the Resolution Plan of Vedanta was approved by the CoC by a majority of 94.96 %. The Hon'ble Supreme Court in a catena of Judgments has held that the 'Adjudicating Authority' and the 'Appellate Tribunal' cannot enter into the merits of a 'Business Decision' of the requisite majority of the CoC, unless it is violative of the provisions of Section 30 (2) of the Code. An approved Resolution Plan cannot be subject to judicial review in terms of carrying out a quantitative analysis qua each Stakeholder. The Hon'ble Supreme Court has observed so in ***'India Resurgence ARC private Limited Vs. Amit Metaliks Limited'*** reported in ***(2021) SCC OnLine SC 409],*** that the commercial wisdom of CoC and the scope of judicial review remains limited within the four corners of Section 30 (2) of the Code for the 'Adjudicating Authority' and Section 30 (2) read with Section 61 (3) for the Appellate Authority. Para 13 of the aforenoted Judgment is of relevance here.

> *"It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in*

the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal."

(Emphasis Supplied)

17. It is the case of the Appellant that the 'Business Decision' of the CoC means a 'considered' decision taken by CoC with reference to the commercial interest and this wisdom is not a matter of rhetoric but denotes only a 'well-considered' decision by the CoC. The Learned Senior Counsel for the Appellant argued that each and every aspect relating to the Resolution Plan and more particularly its financial layout has to be before the CoC before it can 'consider' its decision on its commercial wisdom and therefore, in the facts of this matter as the 'Financial Layout' was not there before the CoC, the CoC could not have filled the lacunae left behind by the Resolution Applicant in its Plan and determine the same itself. So, the point for consideration here is whether the CoC is empowered to decide the distribution methodology. The Hon'ble Supreme Court in the matter of ***'Amit Metaliks' (Supra)*** has held in Para 17 that '*thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest'.* The Hon'ble Apex Court has concluded in Para 22 in ***'Amit Metaliks' (Supra)*** as follows:

> *" It needs hardly any emphasis that if the propositions suggested on behalf of the appellant were to be accepted, the result would be that rather than insolvency resolution and maximisation of the value of assets of the corporate debtor, the processes would lead to more liquidations, with every secured financial creditor opting to stand on dissent. Such a result would be defeating the very purpose envisaged by the Code; and cannot be countenanced. We may profitably refer to the relevant observations in this regard by this Court in Essar Steel as follows:-*
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> > *"85. Indeed, if an "equality for all" approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow." "*

18. It is crystal clear from the aforenoted proposition that the distribution/amount to be paid to different classes or sub-classes of Creditors in accordance with the provisions of the Code essentially lies within the domain of the commercial wisdom of the CoC. Therefore, the question as to whether the proposed Resolution Applicant has suggested the distribution Plan or whether the CoC has proposed and decided the distribution pattern, is of no relevance as far as it is within the four corners of Section 30 (2) of the Code and is supported by the commercial wisdom of the CoC. Needless to add, the CoC in its 41st Meeting

held on 22/11/2022 discussed that the distribution mechanism to be either based on the ratio of admitted Claims or as per Section 53 of the Code, taking into account the value and priority of security interest of each of the Creditors, as provided for under Section 30 (4) of the Code. It is pertinent to note that the Appellant who had been a part of the CoC meetings did not raise any objections regarding the distribution methodology even when the distribution mechanism was voted by a majority of 93.43 %, to be done as per Section 53 of the Code, on 13/12/2022.

19. A deliberated 'Business Decision' of the CoC includes deliberations on the feasibility and viability, the financial and operational aspects of the Corporate Debtor, and therefore, the question of only 'considering' the proposal put forth by the Resolution Applicant cannot be viewed in a 'rigid manner'. The CoC is a pivotal decision-making body which decides all critical decision-making functions regarding Resolution Plans, Liquidation, Management etc., essential to the success of the CIRP. Though the IBC does not have a specific Provision that uses the term 'Business Decision' of the CoC, the Code contains several provisions that detail the powers and functions of the CoC, which encompass various decision-making responsibilities relating to the Insolvency Resolution Process, which definitely includes distribution methodology of the Resolution Plan. To say that only the Resolution Applicant should 'propose' the distribution and the CoC can only 'consider' it, is viewing the 'Business Decision' making

capacity of the CoC in its commercial wisdom, in a very 'narrow compass,' thereby defeating the very scope and objective of the Code.

20. The Judgments relied upon by the Learned Senior Counsel for the Appellant are distinguishable from the facts of this case. In the matter of ***'M.K. Rajagopalan'*** (Supra), there was a non-submission of the revised plan to the CoC for consideration. In the instant case, it was decided in the 44th CoC Meeting, after discussing the revised financial offer of Vedanta and Jindal dated 04/01/2023, to keep the voting lines open on 06/01/2023 and end it by 16/01/2023. The CoC has taken a business decision, keeping in view the mandatory requirements and approved the 'Consolidated Plan of Vedanta' with all the addendums, exercising its discretion and deliberating on the feasibility and viability. This Tribunal is of the earnest view that the Appellant having taken part in these Meetings and not having raised any substantial objections at that point of time, is estopped from questioning the commercial wisdom of the CoC in proposing, considering and approving the distribution methodology of the Resolution Plan.

21. Further, this Tribunal while dismissing the Appeal preferred by *Consortium of Prudent ARC Limited* (the unsuccessful Resolution Applicant) in ***Company Appeal (AT) (CH) (Ins) No. 37/2023***, dated 27/06/2023 challenging the same Resolution Plan submitted by M/s. Vedanta Limited on the ground of violation of Section 39 (1A), has observed that there was no violation of

Regulation 39 (1A) of the CIRP Regulations *or any other provisions of the Code*. The Hon'ble Apex Court in ***Civil Appeal Diary No. 27746/2023*** has dismissed the Appeal. Keeping in view the catena of Judgments of the Hon'ble Apex Court regarding the commercial wisdom of the CoC in approving the Plan and the limited jurisdiction therein, this Tribunal is of the considered view that 'the CoC in its commercial wisdom can propose, consider and decide on the distribution mechanism under the Resolution Plan', as long as it is within the domain of Section 30(2) of the Code.

22. For all the foregoing reasons, this Company Appeal (AT) (CH) (Ins) No. 308/2023 is dismissed, accordingly. No Order as to Costs. All Connected pending Interlocutory Applications, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

N.B. :

This Judgment, is delivered on behalf of the Hon'ble Bench, in terms of Rule 92 of NCLAT Rules, 2016.

16/10/2023
SPR/TM