NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-III

I.A. NO. 3521 OF 2022
IN
C.P./IB/4190/MB/2018

Filed by

Fervent Securities Private Limited

Through its director, Mr. Morarji Savla,

102, first floor, plot-374 Nebesa co-op, housing society ltd., Telang Road, Nr. Post Office King's circle Matunga, Mumbai **...Applicant**

Vs.

1. Mr. Rajendra Kumar Girdhar
   (Resolution Professional for Mayur Pankh Properties Private Limited)
2. ICICI Prudential Real Estate AIF I
3. ICICI Prudential Asset Management Company (AMC)
4. IDBI trusteeship services limited
5. Consortium of Yuva Business Partners LLP and Gupta Steel Corporate Pvt. Ltd.

.....**Respondents**

Order Reserved on: 03.02.2023

Order Pronounced on: 17.05.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant: Mr. Rajan Agarwal, Advocate

For the Resolution Professional: Sr. Adv. Chetan Kapadia i/b SSB Legal a/w Mr. Rajendra Kumar Girdhar

Per: Madhu Sinha, Member (Technical)

ORDER

1. This Interlocutory Application is filed by the Applicant, Fervent Securities Private Limited praying the following reliefs:
    i. *Allow the present application and reject the Resolution Plan of Yura Business Partners LLP for not being feasible and viable and violative of the provisions of the code and CIRP Regulations;*
    ii. *As a consequences of prayer in (i), direct the COC to reconsider the Resolution Plan of the Consortium of the Applicant on merits and*
    iii. *Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. Brief submissions of the applicant are as follows:
    i. The applicant has preferred the captioned application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with Rule 11 of the NCLT Rules, 2016 read with relevant provisions of the Insolvency and Bankruptcy Board of India, Regulations, 2016.
    ii. The secured creditors with voting share of 94.51% in the Committee of Creditors have approved the Resolution Plan by Consortium of Yura Business Partners LLP and Gupta Steel Corporation in the 13th Meeting of Committee of Creditors without considering the feasibility and viability of the said resolution plan and without application of mind.
    iii. In the present application, the applicant depicts how Yura's Resolution Plan suffers from several legal infirmities and fails to comply with the provisions envisaged under Section 30 of IBC, 2016 and Regulation 38 of CIRP Regulations,

2016 which mandates that the Resolution Plan shall demonstrate that the resolution plan is feasible and viable.

iv. The present Application is being filed by the applicant challenging the decision of the COC to approve the resolution plan submitted by consortium of Yura Business Partners LLP and Gupta Steel, as the plan is not feasible and viable and in compliance with the provisions of the code and CIRP Regulations. Hence this application.

3. The Respondent No.1, Rajendra Kumar Girdhar filed a detailed affidavit in reply opposing the above application. The brief submissions of the Respondent No.1 are as follows:

i. ICICI Prudential Real Estate AIF I, the Petitioner in the Company Petition No. 4190/I&B/MB of 2018 ('**ICICI'**) had filed an application u/s 7 of IBC to initiate corporate insolvency resolution process (**CIRP**) with regard to the Corporate Debtor which was admitted by the by Hon'ble National Company Law Tribunal, Mumbai Bench ('**NCLT Mumbai Bench**') vide order dated 18.12.2018. Thereafter, the Respondent No.1 was appointed as a resolution professional of the Corporate Debtor.

ii. It is pertinent to note that Transaction Audit report was circulated to the COC. The report revealed that shortly before the admission of the above Company Petition No. 4190/I&B/MB of 2018 and appointment of Resolution Professional on 18.12.2018, the Corporate Debtor entered into certain option agreements dated 15.12.2018 ('Option Agreement-1'), 17.12.2018 ('Option Agreement-2') and 17.12.2018 ('Option Agreement-3') (collectively referred to as the 'Option Agreements') with Pray Projects Private Limited, the Applicant and Sulabh Resources Private Limited respectively.

iii. The company petition filed against the Corporate Debtor was admitted on 18.12.2018 and the Option Agreement between the Applicant and the Corporate Debtor was conveniently executed a day prior i. e. on 17.12.2018.

iv. The amount of Rs. 1,00,00,000/- was transferred by the Applicant to the Corporate Debtor on 17.12.2018 granting an irrevocable right (but not the obligation) to purchase specified area in the project developed by the Corporate Debtor within 90 days from the date of receipt of the full occupation certificate by the Corporate Debtor for the project.

v. It is pertinent to mention that on the same day i.e. 17.12.2018, the Corporate Debtor transferred the aforesaid amount of Rs. 1,00,00,000/- to the account of Sunshine Tracon Private Limited ("**STPL**") which is a related party of the Corporate Debtor as defined under Section 5(24) of the IBC and as indicated in the balance sheet of the Corporate Debtor for the year ending on 31.03.2018.

vi. The total consideration under the Option Agreement – 2 was Rs. 17,50,00,000/- wherein the price per sq. ft. was fixed at Rs. 26,923/- per sq. ft. which is way below the market rate for any property in that area which itself makes it an undervalued transaction under Section 45 of IBC.

vii. Therefore, Respondent No.1 preferred an Interlocutory Application No. 3155 of 2019 seeking declaration of transaction between the Applicant and the Corporate Debtor under the Option Agreement – 2 to be contrary to the provisions of section 43, 45,66 of Insolvency and Bankruptcy Code, 2016.

viii. In furtherance the same, the NCLT Mumbai Bench has ordered the following –

12. In view of the above, the Bench Ordered the following –

(i) the claim lodged by Respondent 1, 2 and 3 against the Corporate Debtor emanates from fraudulent transaction u/s 66 of the Code and also hit by undervalued transaction and therefore is not binding on the Corporate Debtor.

Respondent No. 2 referred to in the aforesaid order is the Applicant in the present case. The NCLT Mumbai Bench has also made the following observation:

'The bench finds that these transactions are fraudulent for following reasons:

a) The timing of these Agreements is a suspect as all three Agreements were entered between 15.12.2018 and 17.12.2018 i.e within less than one week before the order of the CIRP of the Corporate Debtor. CIRP of the Corporate Debtor had commenced vide Order of NCLT dated 18.12.2018. The Bench is of the view that these transactions were planned to create hindrance in the CIRP by attempting to create third party rights.

(b) Further, the Bench also notes that the money received under all three Agreements was immediately routed to the related parties of the Corporate Debtor, i.e., Respondent No.4 and 5 and no money was retained or utilized by the Corporate Debtor.

ix. Thus, the transaction between the Applicant and the Corporate Debtor is declared a fraudulent and an undervalued transaction and in such a transaction, Corporate Debtor was used as conduit to transfer money to a related party. Thus, it will not be out of place to mention that the Corporate Debtor is in fact trying to regain control of itself through the Applicant and Applicant is merely acting as a puppet which is clearly not in the best interest of the COC and the creditors of the Corporate Debtor. Despite the above, the resolution plan submitted by the Applicant was considered and rejected by the COC. Therefore, the present Application is nothing but an attempt to derail the CIRP process considering the Applicant was unsuccessful in having its Resolution Plan accepted.

x. On 18.07.2022, resolution plans from both the resolution applicants i.e. Fervent Securities Pvt Ltd (in consortium with Appex Tradelink Pvt. Ltd) ('**Fervent's Resolution Plan'**) and Yura Business Partners LLP (in consortium with Gupta Steel Corporation Pvt Ltd) ('**Yura's Resolution Plan**') were received in sealed envelopes being the last date of receipt of Resolution Plans. On 20.07.2022, meeting was held wherein resolution plans were unsealed in presence of COC members holding more than 51 % voting share in the meeting held via video conference for consideration of CoC.

xi. The 13th CoC meeting was held on 26.07.2022 and continued on 29.07.2022 wherein Respondent No.1 invited the representative of the both the Resolution Applicant i.e. Fervent Securities Pvt Ltd in consortium with Appex Tradelink Pvt. Ltd and Yura Business Partners LLP in consortium with Gupta Steel Corporation Pvt. Ltd. at different time slots to present their plans and answer the queries of the CoC members and Respondent No. 1. Certain suggestions made by the COC members and Respondent No. 1 were accepted by both the resolution applicants, and the modified resolution plans were submitted by both the resolution applicants on 02.08.2022.

xii. At the 13th COC meeting further continued on 03.08.2022, the Respondent No.1 re-confirmed to the CoC that both the Resolution Applicants were eligible to submit their respective Resolution Plans for the Corporate Debtor as per Section 29A of the IBC. Further, the Respondent No.1apprised the members of the CoC that as per Regulation 39(2) of the CIRP Regulations, Fervent's Resolution Plan and Yura's Resolution Plan complied as per the IBC read with the requisite CIRP Regulations and the same can be put for voting of the CoC members. The Respondent No.1 thereafter apprised the members of the CoC that as per Regulation 39(3) of the CIRP Regulations, the COC shall (i) evaluate the resolution plans received as per the evaluation matrix; (ii) record its deliberations on the feasibility and viability of each resolution plan and (iii) vote on all the resolution plans simultaneously. The assessment of evaluation on the Quantitative & Qualitative Parameters of the resolution plans by the COC members are provided in the minutes of the 13th COC meeting and for sake of brevity, are not reproduced herein.

xiii. Subsequently, in accordance with Regulation 25(5) of the CIRP Regulations, voting on the resolution plans was put through electronic voting systems and the voting period started on 05.08.2022 at 7:00 p.m. and ended on 09.08.2022 at 11:00 a.m.

xiv. On 09.08.2022, the Yura's Resolution Plan has been approved by 94.51 % voting share in the 13th meeting of the committee of creditors of the Corporate Debtor (CoC) held on 03.08.2022 whereas Fervent's Resolution Plan only received

0.35% votes, followed by the electronic voting ('E- voting') which started on 05.08.2022 at 7:00 p.m. and concluded on 09.08.2022 at 11:00 a.m. Thus, COC has approved the Yura's Resolution Plan in its commercial wisdom.

xv. The Respondent No.1 relied the Hon'ble Supreme Court in *K. Sashidhar vs. Indian Overseas Bank & Ors* (2019) 12 SCC 150 and several other cases has held that if the CoC has approved the Resolution Plan by the requisite percent of voting share, then as per Section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). Subsequently, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC complies with the requirement of Section 30(2) of the Code. The jurisdiction and authority of this Hon'ble Tribunal is 'no more no less' and is further circumscribed by Section 31 and is limited to the scrutiny of the Resolution Plan as approved. Even this scrutiny is extremely narrow and limited to the matters specified in Section 30(2) of the Code when the Resolution Plan does not conform to the stated requirements.

xvi. The respondent No.1 further submits that the object for the implementation of Code was to revive the Corporate Debtor as a going concern and liquidation was to be the last resort. The Hon'ble Supreme Court in the case of ***Swiss Ribbons Pvt. Ltd. vs Union of India [(2019) 4 SCC 17]*** held that the main purpose of IBC is revival of the corporate debtor and not liquidation.

xvii. Therefore, it is submitted that keeping in view the object of the Code, and the judgement of the Hon'ble Supreme Court in the case of ***Kalpraj Dharamshi,*** this Hon'ble Tribunal must cede ground to the commercial wisdom of the CoC which have approved the Resolution Plan for the Corporate Debtor rather than assess / review the Resolution Plan on the basis of quantitative analysis. The legislative scheme of the IBC Code is unambiguous and unequivocal which is that the commercial wisdom of the CoC ought not to be interfered with excepting the limited scope as provided under Sections 30 and 31 of the Code.

xviii. Therefore, the Applicant has come before this Hon'ble Tribunal with the captioned Application challenging the Resolution Plan approved by the CoC with an intent to scuttle the CIRP process and force the Corporate Debtor to be liquidated. In light of the aforementioned, the Application preferred by the Applicant deserves to be rejected with costs.

FINDINGS

4. Heard the learned counsel of both the sides and perused the record.
5. After hearing the submissions of both sides and upon perusing the material available on record, this Bench observed the issues which need to be answered are as follows:
   i. *Whether the claim lodged by the Applicant (Fervent) emanates from the transaction between the Applicant (Fervent) and the Corporate Debtor which is declared as fraudulent and an undervalued transaction or not?*
   ii. *Whether the Resolution Plan submitted by Yura has been approved by COC in its commercial wisdom is feasible and viable or not?*
   iii. *Whether the Allegations of the Applicant (Fervent) with respect to height permission is viable or not?*
   iv. *Whether the Yura's Resolution Plan clearly specify the sources of funds for implementation or not?*

6. This Bench is of the view that the above raised issues by the Applicant are only on flimsy grounds. Let's detail with every issue one by one.

a. **Whether the claim lodged by the Applicant (Fervent) emanates from the transaction between the Applicant (Fervent) and the Corporate Debtor which is declared as fraudulent and an undervalued transaction or not?**

7. It is submitted by that the Corporate Debtor went into CIRP via order date 18.12.2018. Thereafter, the Respondent No.1 was appointed as a resolution professional of the Corporate Debtor.

8. The Respondent No 1 engaged the services of M/s Sharma Goel & Co. LLP to conduct the transaction audit of the Corporate Debtor. It is pertinent to note that Transaction Audit report was circulated to the COC. The report revealed that shortly before the admission of the above Company Petition No. 4190/I&B/MB of 2018 and appointment of Resolution Professional on 18.12.2018, the Corporate Debtor entered into purported option agreements dated 15.12.2018 ('Option Agreement-1'), 17.12.2018 ('Option Agreement-2') and 17.12.2018 ('Option Agreement-3') (collectively referred to as the 'Option Agreements') with Pray Projects Private Limited, the Applicant (Fervent) and Sulabh Resources Private Limited respectively.

9. The company petition filed against the Corporate Debtor was admitted on 18 December 2018 and the Option Agreement between the Applicant (Fervent) and the Corporate Debtor was conveniently executed a day prior i. e. on 17.12.2018.

10. The amount of Rs. 1,00,00,000/- was transferred by the Applicant (Fervent) to the Corporate Debtor on 17.12.2018 granting an irrevocable right (but not the obligation) to purchase specified area in the project developed by the Corporate Debtor

within 90 days from the date of receipt of the full occupation certificate by the Corporate Debtor for the project.

11. It is pertinent to mention that on the same day i.e., 17.12.2018, the Corporate Debtor transferred the aforesaid amount of Rs. 1,00,00,000/- to the account of Sunshine Tracon Private Limited ("STPL") which is a related party of the Corporate Debtor as defined under Section 5(24) of the IBC and as indicated in the balance sheet of the Corporate Debtor for the year ending on 31.03.2018.

12. The total consideration under the Option Agreement – 2 was Rs. 17,50,00,000/- wherein the price per sq. ft. was fixed at Rs. 26,923/- per sq. ft. which is way below the market rate for any property in that area which itself makes it an undervalued transaction under Section 45 of IBC.

13. Therefore, Respondent No.1 preferred an Interlocutory Application No. 3155 of 2019 seeking declaration of transaction between the Applicant (Fervent) and the Corporate Debtor under the Option Agreement – 2 to be contrary to the provisions of section 43, 45, 66 of Insolvency and Bankruptcy Code, 2016. In furtherance the same, the NCLT Mumbai Bench has ordered the following –

> *12. In view of the above, the Bench orders the following –*
>
> *(i) The claim lodged by Respondent 1, 2 and 3 against the Corporate Debtor emanates from fraudulent transaction u/s 66 of the Code and also hit by undervalued transaction and therefore is not binding on the Corporate Debtor.*

Respondent No. 2 referred to in the aforesaid order is the Applicant (Fervent) in the present case. The NCLT Mumbai Bench has also made the following observation:

'The bench finds that these transactions are fraudulent for the following reasons:

a) The timing of these Agreements is a suspect as all three Agreements were entered between 15.12.2018 and 17.12.2018 i.e within less than one week before the order of the CIRP of the Corporate Debtor. The CIRP of the Corporate Debtor had commenced vide Order of NCLT dated 18.12.2018. The Bench is of the view that these transactions were planned to create hindrance in the CIRP by attempting to create third party rights.

(b) Further, the Bench also notes that the money received under all three Agreements was immediately routed to the related parties of the Corporate Debtor, i.e., Respondent No.4 and 5 and no money was retained or utilized by the Corporate Debtor.

14. Thus, the transaction between the Applicant (Fervent) and the Corporate Debtor was declared as fraudulent and undervalued transaction and the financial claim lodged by the Applicant (Fervent) which, was bonafidely accepted by Respondent No. 1, was set aside. Thus, it will not be out of place to mention that the Corporate Debtor is in fact trying to regain control of itself through the Applicant (Fervent) and Applicant (Fervent) is merely acting as a puppet which is clearly not in the best interest of the COC and the creditors of the Corporate Debtor. Despite the above, the resolution plan submitted by the Applicant (Fervent) was considered and rejected by the COC. It is no surprise that the resolution plan submitted by the Applicant (Fervent) managed to garner only 0.35% votes in its favour. Therefore, the present Application is nothing but an attempt to derail the CIRP process considering the Applicant (Fervent) was unsuccessful in having its Resolution Plan accepted.

b. <u>Whether the Resolution Plan submitted by Yura has been approved by COC in its commercial wisdom is feasiable and viable or not?</u>

15. On 18.07.2022, resolution plans from both the resolution applicants i.e. Fervent Securities Pvt Ltd (in consortium with Appex Tradelink Pvt. Ltd) ('Fervent's Resolution Plan') and Yura Business Partners LLP (in consortium with Gupta Steel Corporation Pvt Ltd) ('Yura's Resolution Plan') were received in sealed envelopes being the last date of receipt of Resolution Plans. On 20.07.2022, meeting was held wherein resolution plans were unsealed in presence of COC members holding more than 51 % voting share in the meeting held via video conference for consideration of CoC.

16. The 13th CoC meeting was held on 26.07.2022 and continued on 29.07.2022 wherein Respondent No.1 invited the representative of the both the Resolution Applicant (Fervent) i.e. Fervent Securities Pvt Ltd (in consortium with Appex Tradelink Pvt. Ltd) and Yura Business Partners LLP (in consortium with Gupta Steel Corporation Pvt. Ltd.) at different time slots to present their plans and answer the queries of the CoC members and Respondent No.1. Certain suggestions made by the COC members and Respondent No.1 were accepted by both the resolution applicants, and the modified resolution plans were submitted by both the resolution applicants on 02.08.2022.

17. At the 13^{th} COC meeting further continued on 03.08.2022, the Respondent No.1 re-confirmed to the CoC that both the Resolution Applicants were eligible to submit their respective Resolution Plans for the Corporate Debtor as per Section 29A of the IBC. Further, the Respondent No. 1 apprised the members of the CoC that as per Regulation 39(2) of the CIRP Regulations, Fervent's Resolution Plan and Yura's Resolution Plan were in

compliance as per the IBC read with the requisite CIRP Regulations and the same can be put for voting of the CoC members. The Respondent No. 1 thereafter apprised the members of the CoC that as per Regulation 39(3) of the CIRP Regulations, the COC shall (i) evaluate the resolution plans received as per the evaluation matrix; (ii) record its deliberations on the feasibility and viability of each resolution plan and (iii) vote on all the resolution plans simultaneously. The assessment of evaluation on the Quantitative & Qualitative Parameters of the resolution plans by the COC members are provided in the minutes of the 13th COC meeting and for sake of brevity, are not reproduced herein.

18. Subsequently, in accordance with Regulation 25(5) of the CIRP Regulations, voting on the resolution plans was put through electronic voting systems and the voting period started on 05.08.2022 at 7:00 p.m. and ended on 09.08.2022 at 11:00 a.m.

19. On 09.08.2022, the Yura's Resolution Plan has been approved by 94.51 % voting share in the 13th meeting of the committee of creditors of the Corporate Debtor (CoC) held on 03.08.2022 whereas Fervent's Resolution Plan only received 0.35% votes, followed by the electronic voting ('E- voting') which started on 05.08.2022 at 7:00 p.m. and concluded on 09.08.2022 at 11:00 a.m. Thus COC has approved the Yura's Resolution Plan in its commercial wisdom.

20. The Hon'ble Supreme Court in *K. Sashidhar vs. Indian Overseas Bank & Ors (2019) 12 SCC 150* and several other cases has held that if the CoC has approved the Resolution Plan by the requisite percent of voting share, then as per Section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). Subsequently, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC complies with the

requirement of Section 30(2) of the Code. The jurisdiction and authority of this Hon'ble Tribunal is 'no more no less' and is further circumscribed by Section 31 and is limited to the scrutiny of the Resolution Plan as approved. Even this scrutiny is extremely narrow and limited to the matters specified in Section 30(2) of the Code when the Resolution Plan does not conform to the stated requirements.

21. The Hon'ble Supreme Court in ***Kalpraj Dharamshi vs. Kotak Investment Advisors Ltd. (2021) 10 SCC 401*** has held that:-

…157. After considering the judgment of this Court in ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] and the relevant provisions of the I&B Code, this Court further observed in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] thus : (K. Sashidhar case [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , SCC p. 183, para 52)

"52. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which,

initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. 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. They 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. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

158. This Court has held, that it is not open to the adjudicating authority or appellate authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, 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. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It has been held, that the opinion *expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority and that the decision of CoC's "commercial wisdom" is made non-justiciable.*

22. The Respondent further submit that this Tribunal being the adjudicating authority has limited jurisdiction to review the commercial wisdom of the CoC and certainly not on specious grounds as raised by the Applicant (Fervent) in the captioned application. Therefore, the limited judicial review, which is available with this Hon'ble Tribunal, can in no circumstance trespass upon a business decision arrived at by the majority of CoC that too by such an overwhelming majority.

23. The Respondent further submit that the object for the implementation of Code was to revive the Corporate Debtor as a going concern and liquidation was to be the last resort. The Hon'ble Supreme Court in the case of ***Swiss Ribbons Pvt. Ltd. vs Union of India [(2019) 4 SCC 17]*** held that the main purpose of IBC is revival of the corporate debtor and not liquidation. The relevant extract of the judgement is reproduced below as follows:

*"**It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors**. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. **Thus, the resolution***

process is not adversarial to the corporate debtor but, in fact, protective of its interests."

24. Therefore, it is submitted that keeping in view the object of the Code, and the judgement of the Hon'ble Supreme Court in the case of ***Kalpraj Dharamshi***, this Hon'ble Tribunal must cede ground to the commercial wisdom of the CoC which have approved the Resolution Plan for the Corporate Debtor rather than assess / review the Resolution Plan on the basis of quantitative analysis. The legislative scheme of the IBC Code is unambiguous and unequivocal which is that the commercial wisdom of the CoC ought not to be interfered with excepting the limited scope as provided under Sections 30 and 31 of the Code.

c. Whether the Allegations of the Applicant (Fervent) with respect to height permission is viable or not?

25. The Bench understands from the submissions made by RP that Yura's Resolution Plan is in no way contingent or dependent upon the receipt of approval for construction beyond height of 15.24 meters from the Ministry of defense in terms of Gazette Notification SRO 150 dated 19.06.1976 (height approval).

26. The RP also submitted that several buildings in the vicinity of the signal transmitting station have been constructed after the Gazette notification SRO 150 of 19.06.1976 was issued and have consumed height in excess of 15.24 meters. In any case, the matter in the Hon'ble Bombay High Court is sub-judice and pending adjudication therefore the Applicant (Fervent)'s allegation that no approval can be obtained is incorrect and without any basis.

27. Moreover, the Hon'ble Bombay High Court's order dated 13.10.2014 cited by the Applicant (Fervent) only states that the Corporate Debtor would have to obtain permission from the

Ministry of Defense before undertaking construction beyond 15.24 meters but does not absolutely bar the Corporate Debtor from undertaking such construction upto 15.24 meters. Similarly, the affidavit dated 05.04.2019 filed by the Ministry of Defense states that NOC would be required for construction beyond 15.24 meters and not that such construction cannot be undertaken at all the relevant area.

28. This Bench also notes that the aforesaid height issue was discussed amongst the COC members during the 13th COC meeting held on 03.08.2022. The COC has approved Yura's Resolution Plan in its commercial wisdom and therefore such decision cannot be challenged by the Applicant (Fervent) before this Hon'ble Tribunal. It is pertinent to note that on the issue of construction beyond 15.24 meters, Clause 6.3.8 of Yura's resolution plan specifically states that the Resolution Applicant shall pursue the writ petition filed before the Hon'ble Bombay High Court.

d. <u>Whether the Yura's Resolution Plan clearly specify the sources of funds for implementation or not?</u>

29. Clause 4.1.1 of Yura's Resolution Plan provides for sources of funds and states that the Resolution Applicant will bring in funds upto the limit of Rs. 21 Crores on need basis to meet the working capital requirements of the Corporate Debtor. Further, (as per clause 3.9.3) the Resolution Applicant is permitted under the plan to raise money from banks and financial institutions and create charge over the assets of the Corporate Debtor, subject to the consent of the secured financial creditors. The receivable of the project will be used to fund the remaining costs of the Project. The specific projections for the working capital, loans, total project cost etc. have been provided by the Resolution Applicant in the

financial plan annexed to the Resolution Plan. Therefore, Yura's Resolution Plan adequately clarifies the sources of funds for the Project and for its implementation.

30. After hearing both the sides, this Bench is of the opinion that the issues raised by the Applicant can be interpreted as a malice practice by an unsuccessful RA to delay the execution of the Resolution Plan which is passed by the CoC with requisite percentage well above the legislative requirement stated under the Code.

31. Further, as per the numerous judgements given by the Hon'ble Apex Court this Tribunal has a very limited role to interfere with the commercial wisdom of the CoC. The Bench also states that just for the dissatisfaction of the Applicant the whole process of CIRP of a Corporate Debtor cannot be stayed.

32. Keeping the above submissions of both the sides in mind this Bench did not find any merit in the above Application filed by the Applicant and the same is deserves to be rejected. Accordingly, the Interlocutory Application **3521/2022 is rejected and disposed of**.

Sd/-	Sd/-
MADHU SINHA Member (Technical)	H. V. SUBBA RAO Member (Judicial)