NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 1527 of 2023
& IA No.5383 of 2023

[Arising out of order dated 10.08.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench (Court-III) in IA No.2414 of 2022 in CP (IB) No.292(ND)/2021]

IN THE MATTER OF:

Punjab National Bank
Plot No.4, Sector - 10,
Dwarka, New Delhi ...Appellant

Versus

Sandwoods Infratech Projects (P) Ltd.
Through Shri Ravinder Kumar Goel,
Resolution Professional,
1108, Arunachal Building,
Barakhamba Road, New Delhi – 110001 ...Respondent No.1

M/s Balaji Durobuild (P) Ltd.
4735, 4th Floor, Plot -3,
Prakashdeep Building, Ansari Road,
Daryaganj, New Delhi – 110002 ...Respondent No.2

Shri Ravinder Kumar Goel,
Insolvency Professional,
Flat No.211, Platinum Tower, Peer Muchalla,
Dhakoli, Sahibzada Ajit Singh Nagar,
Punjab – 160104 ...Respondent No.3

Present:

Appellant: Advocate S.S. Lingwal

Respondents:

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 ("**IBC**" in short) by the Appellant arises out of the Order dated 10.08.2023 (hereinafter referred to as "**Impugned Order**") passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench (Court-III) in IA No. 2414 of 2022 in CP (IB) No.292(ND)/2021. By the impugned order, the Adjudicating Authority allowed IA No. 2414 of 2022 filed by the Resolution Professional and approved the resolution plan of the Corporate Debtor contained therein as submitted by D. Konda (hereinafter referred to as the "**DK**"). Aggrieved by the impugned order, the present appeal has been filed by Punjab National Bank-the Appellant.

2. The salient facts of the case which are necessary to be noticed for deciding the matter are as follows: -

- The Corporate Debtor-M/s Sandwoods Infratech Projects (P) Ltd. came under Corporate Insolvency Resolution Process ("**CIRP**" in short) on 25.10.2021.
- The Committee of Creditors ("**CoC**" in short) was constituted with homebuyers as Financial Creditor in class with 71.75% vote share; State Bank of India(SBI) with 10.45% vote share and the present Appellant-Punjab National Bank(PNB) with 17.80% vote share.
- The 3rd meeting of the CoC held on 01.01.2022 approved the publication of Form G, Information Memorandum ("**IM**" in short), eligibility criteria and performance security of resolution applicant as well as the evaluation matrix.

- The Resolution Professional (hereinafter referred to as "**RP**") published Form G and Expression of Interest ("**EoI**" in short) were invited.
- 5 EoIs were received with eligibility documents. The CoC in the 4th meeting held on 17.03.2022 extended the last date of submission of resolution plan to 27.03.2022.
- On account of the extension of last date for submission of the resolution plan, the RP submitted an application seeking extension of CIRP period for 90 days which was allowed by the Adjudicating Authority on 24.05.2022.
- DK submitted resolution plan on 12.03.2022. The Appellant in the 6th CoC meeting held on 04.05.2022 sought more time for analysing the resolution plan and requested for deferment of voting thereon. This request was not acceded to by the CoC and the plan was decided to be put to voting as per the notice of the meeting.
- The resolution plan of DK was approved by the CoC with 71.75% vote share.
- The Appellant had filed IA 2304/2022 before the Adjudicating Authority seeking recall of the result of the e-voting on the resolution plan, inter-alia, on the ground that DK had modified the resolution plan which therefore required fresh consideration. This IA was dismissed by the Adjudicating Authority on 12.07.2023.
- The application filed by the RP vide IA No. 2414/2022 seeking approval of the resolution plan submitted by DK was approved by the Adjudicating Authority on 10.08.2023. Aggrieved by this impugned order, the Appellant has come up in appeal.

3. The Learned Counsel for the Appellant while making his submissions has contended that the resolution plan submitted by the DK was modified during the 15 days period provided for analysing the resolution plan by CoC members. In view of the fact that resolution plan had been modified by DK, the Appellant had requested the RP to provide more time to analyse the plan afresh in the light of the amended facts and figures. However, this request had not been acceded to by the RP who went ahead for discussion and approval of the resolution plan by the CoC on 04.05.2022. It is the contention of the Appellant that they had sought information from the RP on the resolution plan vide emails dated 02.05.2022 and 04.05.2022 including transaction audit report, valuation reports and financials of the resolution applicant and that similar information was also sought by the other Financial Creditor namely, SBI. In the absence of the availability of the above information, proper deliberations by SBI and PNB on the resolution was not possible. The RP and the Authorized Representative of the homebuyers did not cooperate and proceeded with the voting of the resolution plan without providing the documents sought by the Financial Creditors. It has also been contended that the RP did not carry out a proper and due diligence of the resolution applicant including certificate of eligibility under Section 29A of the IBC. Thus, the RP conducted the proceedings in an arbitrary manner in violation of the principles of natural justice causing great prejudice to the interests of the two Financial Creditors.

4. Since the resolution plan was approved by the CoC in an arbitrary manner, it was submitted that the Appellant had filed IA No.2304 before the Adjudicating Authority seeking recall of the voting on the resolution plan. This

was however dismissed on 12.07.2023 by the Adjudicating Authority without due consideration of the issues and objections raised therein and soon thereafter the resolution plan was approved by the Adjudicating Authority on 10.08.2023 in IA No.2414 of 2023 filed by the RP even though it was violative of Section 30(2) of the IBC. Advancing their cause further, it has been pointed out that Clause 6.5(ii) and (vii) of the resolution plan provided that all securities for any debt due to the secured creditors shall stand unconditionally released and transferred in favour of the Corporate Debtor, which would adversely affect the recovery proceedings from the guarantors and collateral securities of third parties thereby making the resolution plan arbitrary. It has also been submitted that approval of the resolution plan in the present form and its implementation would result into stripping of valuable security interests and release of personal and corporate guarantors which would be highly inequitable. It has also been contended that assignment of securities of the Appellant is contrary to the provisions of Section 128 of the Contract Act, 1872 thereby making the resolution plan non-compliant to the provisions of Section 30(2)(e) of the IBC.

5. We have duly considered the arguments advanced by the Learned Counsel for the Appellant and perused the records carefully.

6. It is the case of the Appellant that it received an intimation vide email from the RP on 21.04.2022 that the SRA had modified his plan. Since the plan has been modified while it was still in the consideration stage, the Appellant was of the view that the resolution plan required to be freshly considered in the light of amended facts and figures. However, without being given an opportunity to consider the amended resolution plan, the RP sent a

notice on 29.04.2022 intimating that 6th CoC meeting will be convened on 04.05.2022 to inter-alia discuss and approve the resolution plan presented before CoC by RP. Prior to the holding of the 6th CoC meeting, the Appellant sought information from the RP on 02.05.2022 and 04.05.2022 which remained un-responded. The RP thereafter sent an email on 06.05.2022 conveying the minutes of the 6th CoC meeting and decision to put the agenda of approval of the resolution plan for e-voting on 09.05.2022. The RP and the Authorized Representative were adamant about proceeding with the voting without providing the relevant documents to the Appellants and thereby conducted the CIRP proceedings in an arbitrary manner causing detriment to the interests of the Appellant. The Appellant has submitted that it has also been aggrieved by the fact that the Adjudicating Authority did not agree to recall the decision of the e-voting in spite of these glaring infirmities by dismissing IA No. 2304/2022 and approving the resolution plan filed by the RP vide IA 2414 of 2022.

7. At this juncture, it may be pertinent to note that the main ground on which the Appellant had sought extended time period to examine the plan submitted by DK was the email of 21.04.2022 from the RP to all the CoC members intimating that DK had sent an email on 20.04.2022 conveying that they had inadvertently missed out to add in the plan that an amount of Rs.80,000/- would be reduced from the Basic Selling Price ("**BSP**" in short) and that wooden flooring in master bedroom would now be excluded from the list of items to be delivered. The said email has been placed at page 99 of the Appeal Paper Book ("**APB**" in short). The other ground cited for seeking more time to examine the plan is that the Appellant had sought additional information from the RP relating to transaction audit report, valuation reports

and financials of the resolution applicant vide their emails dated 02.05.2022 and 04.05.2022 which were however not provided.

8. At this stage, we may go through the proceedings of the 6th CoC meeting to find out whether the request of the Appellant for additional information and extended time period to examine the resolution plan was duly deliberated upon by the CoC in the exercise of its commercial wisdom. The minutes of the proceedings of the 6th CoC meeting held on 04.05.2022 in respect of Item no. 2 captioned "*To discuss and approve the resolution plan presented before CoC by Resolution Professional*" is to the effect: -

> *"…. In response of this, the Resolution applicant submitted that this project has been delayed for about 5 years and during this period there has been substantial increase in cost of various materials. Inspite of this the resolution applicant in the plan has proposed to complete the project without any cost escalation. When the applicant is not considering any cost escalation in construction material, we cannot agree to demand of homebuyers for increasing deductible amount to Rs.2,00,000/- and instead only Rs.80,000/- will be deducted from the BSP.*
>
> *The Resolution professional stated that he has already presented the Final resolution plan in the 5th CoC meeting, which was held on 13.04.2022, During this meeting member PNB has specifically requested for minimum 15 days' time for analysing the plan. Already 20 days have lapsed since the last meeting on 13.04.2022 during which all member banks should have taken due sanctions from their authorities and now they cannot request for further time for study of the plan, Moreover the agenda of this meeting which clearly incorporates agenda voting on this Resolution plan was circulated on 29.04.2022 i.e. 5 days earlier. There was sufficient time for member banks to discuss and take mandate from their authorities. The RP also informed the members that as per IBBI*

circular dated 10.08.2018, it has been clarified that the representative of the member's attending the CoC should have clear authority and mandate to decide and vote upon the agenda items during the meeting and shall not defer the decisions for want of any internal approval.

The Resolution applicant also stated that the resolution plan submitted by them is final and he is not willing to make any further modification as suggested by any member and members may vote on this plan only.

The Authorised Representative of the Homebuyers strongly objected to any request for deferring voting on the plan. He vehemently argued that homebuyers whom he is representing have already suffered immensely due to long delay in completion of the projects and now all homebuyers during their meetings and various communications want earliest completion of the projects so that their hard earned money invested in their flats is fructified. For them delay of each day is costing them financially and emotionally. He also emphasized that when the plan is final with no further modification by the Resolution Applicant, there is no reason to defer the voting on the plan.

After considering the request of majority members i.e. homebuyers holding 71.75% voting share, the resolution professional informed the members that the voting on the plan will be conducted as per the notice of the meeting. However, to give more time to the members banks, the voting for financial creditors (other than homebuyers) will be kept for 72 hours instead of 24 hours."

(Emphasis supplied)

9. It is now pertinent to examine whether the Adjudicating Authority went into the details of the deliberations of the 6th CoC meeting to find out whether there was sufficient substance in the plea of the Appellant in IA 2304 of 2022 to seek more time to consider the resolution plan. While looking at the order

of the Adjudicating Authority dated 12.07.2023, we find that the Adjudicating Authority has dwelt upon these issues at great length. Besides noting the stringent time-lines of CIRP as laid down in IBC, the Adjudicating Authority also noted that the home-buyers being financial creditors in class who are in a majority in the CoC did not want any further delay in consideration of the plan, having already suffered immensely. In this backdrop, Adjudicating Authority accordingly came to the conclusion that the RP did not commit any irregularity in conducting the evoting for approval of the resolution plan by the CoC.

10. The relevant excerpts of the order of the Adjudicating Authority in IA 2304 of 2022 is as reproduced below: -

> *"5. The Applicant in the said 6th CoC Meeting requested the Resolution Professional for 15 days more time to analyze the Resolution Plan. However, the Resolution Professional as well as the Authorized Representative of the Home Buyers objected to grant of time to the applicant and the Resolution Professional vide Email dated 09.05.2022 sent a notice for e-voting on the agenda for the 6th CoC Meeting which included the agenda for approval/disapproval of the Resolution Plan. As per the notice, the e-voting lines were supposed to be open from 08.05.2022 to 11.05.2022 till 04.00 pm. The Applicant again requested the Resolution Professional vide Email dated 10.05.2022 to defer the e-voting by 15 days and also to furnish the necessary documents. Vide Email dated 11.05.2022, the Resolution Professional informed the Applicant that the voting has been concluded at 03.45 pm instead of 04.00 pm.*
>
> *6. The Applicant has therefore filed the present application seeking to recall the results of the e-voting on the Resolution Plan which was conducted on 11.05.2022 and to direct the Resolution Professional to conduct the CoC Meeting afresh.*

7. The Respondent-Resolution Professional filed a reply to the present application denying the allegations made by the Applicant Bank. The Respondent has broadly submitted that the Authorized Representative of the Home Buyers who constituted the majority (71.75 %) of the CoC Members strongly objected to deferring the voting on the plan for the reason that the Home Buyers have suffered immensely due to the long delay in completion of the projects and their hard-earned money invested by them is struck. It is also submitted that the plan submitted for e-voting was final and there was no modification done by the Resolution Applicant. It is submitted that the Resolution Professional has followed the instructions of the majority stakeholders i.e. the Home Buyers holding 71.75% voting share and allowed the voting on the Resolution Plan. The Applicant Bank holding a minority share i.e. 17.80% in CoC is trying to derail the CIRP and trying to put undue pressure on the Resolution Professional by adopting unfair means.

9. The sole controversy in this matter is only with regard to the fact that the Applicant Bank was not afforded time to examine the plan and also that the Applicant was not provided with the relevant documents sought for by it. The Resolution Professional in its reply has specifically denied the allegations and has submitted that there was no modification in the resolution Plan and further, he has followed instructions of the Home Buyers who have majority voting rights and as per the provisions of the IBC, 2016, he has proceeded to conduct the 6h CoC meeting and held the e-voting in which the Resolution Plan has been approved by the majority CoC Members.

10. Therefore, the Resolution Professional has not committed any irregularity or illegality in conducting the CoC Meeting for approval of the Resolution Plan.

11. We find force in the arguments advanced by the Ld. Counsel appearing for the Resolution Professional and we are of the

considered view that the RP has not committed any illegality in conducting the e-voting keeping in view the fact that the proceedings under the IBC, 2016 are time bound and the Home-Buyers have suffered immensely."

(Emphasis supplied)

11. From the material on record, we are inclined to agree with the Adjudicating Authority that there was no modification in the resolution plan of DK except on the BSP issue and exclusion of wooden flooring in the Master bedroom and this modification was communicated to all CoC members well before the 6th CoC meeting. In any case, both these modifications, at best, would have had a direct bearing on the interests of the home-buyers and not of the Appellant. Further we notice that resolution applicant categorically submitted that their plan is final and members may vote on that plan only. The RP infact allowed more time to the Financial Creditors other than the Home-buyers for voting by keeping it open for them for 72 hours instead of 24 hours. In this backdrop, we do not find that the RP committed any error in concluding that the Appellant had failed to substantiate that there was sufficient ground for claiming additional time to study the modified plan.

12. Now coming to the additional information sought by the Appellant, we notice that the 6th CoC proceedings as placed at pages 121-131 of the APB records clearly that all these details were already available with the CoC members. The CoC proceedings record that resolution applicant has claimed that as per process memorandum, they have submitted net worth certificate to show their financials. It also notes that they had also communicated fair and liquidation value of the assets of the Corporate Debtor. Further the proceedings also record clearly that RP stated that the transaction auditor in

his report has not reported any transaction falling under the ambit of Sections 43, 45, 50 and 66 of IBC. It has also noted that the additional information sought by the Appellant was already available since the 5th CoC meeting and that 20 days having lapsed since then, the Appellant cannot request for further time to study the plan. The RP has shown due compliance to the provisions of the IBC and the procedural requirements to be followed in the conduct of CIRP. To our mind, present is not a case where the Appellant has been able to successfully point out any breach of procedure or manifest error in the conduct of the CIRP proceedings which deserve rolling back of the e-voting results.

13. It is an undisputed fact that the RP had presented the resolution plan before the CoC which in turn approved the same with 71.75% vote strength. PNB/Appellant holding 17.80% vote share had abstained while SBI holding 10.45% vote share had not approved the resolution plan. Since the resolution plan had obtained the requisite vote strength of 71.75% which exceeded the threshold of 66% therefore passed the muster, as per material placed before us, the RP filed IA 2414 of 2022 before the Adjudicating Authority seeking approval of the resolution plan.

14. The Adjudicating Authority vide the impugned order had thereafter approved the resolution plan. Perusal of the impugned order shows that while approving the plan, Adjudicating Authority noticed that DK had submitted an affidavit of eligibility under Section 29A of the IBC. It is also noticed that the DK has proposed to complete both the housing projects at Mohali and Kasauli within 9 months from the date of approval of the resolution plan by the Adjudicating Authority. It is also noticed that the DK had provided that both

the projects would be completed out of the amount receivable from all homebuyers and from sale proceeds of unsold flats of the project without any cost escalation. The Adjudicating Authority has also noticed that the resolution plan conforms to Section 30(2) of the IBC besides providing for implementation and supervision of the said plan. It has also found the resolution plan to be compliant to Regulation 37 and 38 of CIRP Regulations. Hence, after noting the limited scope of the Adjudicating Authority to interfere with the resolution plan once it has been approved by the CoC, the Adjudicating Authority held that it cannot venture into examining the commercial aspects of the decisions taken by the CoC. Finding no impediments, the Adjudicating Authority approved the resolution plan.

15. However, aggrieved by the impugned order approving the resolution plan, one of the principal grounds raised by the Appellant for assailing the impugned order is that the plan allows assignment of securities of the Appellant which is against the provisions of law and contrary to Section 128 of the Indian Contract Act, 1872. It has been vehemently contended by the Appellant that this clause in the resolution plan would adversely affect the recovery proceedings from the guarantors and collateral securities of third parties particularly since the payment under the plan does not liquidate the dues of the Appellant. The resolution plan should have restricted to the assets of the Corporate Debtor and not extended to the property of the guarantors. Submissions has been made that when the Appellant is unable to recover the loan amount from the principal borrower, the Appellant has every right to proceed against the guarantors to recover the remaining loan amount. In the present case, in the guise of resolution plan, the rights of the Appellant to proceed against the guarantors has been stripped off.

16. Moreover, it is the case of the Appellant that releasing of third party guarantees and collaterals and allowing the transfer of such guarantees by way of an assignment is not only arbitrary but falls beyond the domain of commercial wisdom of the CoC. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of ***State Bank of India v. Ramakrishnan & Anr. 2018 (17) SCC 394*** and ***Lalit Kumar Jain v. Union of India 2021 (9) SCC 321*** stating that Financial Creditors can independently proceed against the corporate and personal guarantors in spite of pending CIRP proceeding against the principal debtor. It was also pointed out that since CIRP was initiated against the Corporate Debtor, the moratorium was imposed against the Corporate Debtor and not against the guarantors. Hence, CIRP against the Corporate Debtor cannot be treated as resolution process against the guarantors. It was also pressed strongly that the resolution plan being arbitrary deserves to be quashed.

17. At the outset, we need to first notice Clause 6.5 of the resolution plan which deals with the assignment of securities in the present resolution plan, which is the bone of contention. We find that Clause 6.5 (c)(ii) and (vii) of the resolution plan provides as follows: -

> *(ii) That all securities (primary/ secondary/ collateral) for any debt due to the secured Creditors, including the securities listed below, shall stand unconditionally released and transferred in favour of the Corporate Debtor. The Secured Creditors shall not be entitled to exercise any security interest with respect the securities for any debt of the Corporate Debtor, whether or not such securities expressly identified or provided for in this Resolution Plan by the Resolution Applicant. All encumbrances, charges, lien, hypothecation or mortgage created for any debt, whether of*

Corporate Debtor or any other person on the following securities shall stand vacated and securities shall stand transferred in the name of Corporate Debtor. Any positive action required to be taken by any security holder for release of the security from encumbrances; charges, lien, hypothecation or mortgage shall be taken, unconditionally by the creditor within 30 days of the approval of the plan by the adjudicating Authority (NCLT).

(vii) Upon the approval of the resolution plan all the secured creditors shall be deemed to have executed an undertaking in favour of the Resolution Applicant to the effect that any recoveries made in respect of any debt of the Corporate Debtor, in addition to the amount proposed to be paid in this resolution plan shall be refunded/paid to the Resolution Applicant. All liabilities and obligations in relation to any security, guarantee, letter of credit, letter of undertaking, letter of comfort, letter of awareness, pledge, charge, encumbrance, hypothecation or collateral provided by the guarantors in connection with any financial debt or any other debt or obligation of any third party, at any time prior to the Approval date, shall stand permanently extinguished on the approval of the resolution plan by the NCLT."

18. Coming to the question of tenability of including the assignment of securities in the resolution plan, in this context, we need to first have an overview of the statutory construct of the IBC and the relevant CIRP Regulations framed thereunder before we dwell upon the facts of the present case. It is well settled that after moratorium is declared under Section 14 of the IBC, there arises prohibition on enforcement of any security interest created by the Corporate Debtor in respect of its property. The objective behind this is that unless prohibition is imposed, all the assets of the Corporate Debtor shall not be available for revival and for maximization of the value of the assets of the Corporate Debtor. Regulation 37 of the CIRP

regulations dealing with "Resolution Plan" is also particularly relevant having been framed to provide for measures, as may be necessary, for CIRP of the Corporate Debtor for maximization of the value of its assets. This Regulation and its underlying spirit has been analysed and dissected by this Tribunal in the matter of ***Edelweiss Asset Reconstruction Company Ltd. v. Mr. Anuj Jain, Resolution Professional of Ballarpur Industries Ltd*** in ***CA (AT) (Ins.) No.517 & 518 of 2023*** ("***Edelweiss***" in short) which is to the effect:

> *"20. We may also notice, at this stage, the provisions of Regulation 37 of the CIRP Regulation, 2016, which provides as follows:*
>
> > *"37. Resolution plan. – A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following:-*
> >
> > *(a) transfer of all or part of the assets of the corporate debtor to one or more persons;*
> >
> > *(b) sale of all or part of the assets whether subject to any security interest or not;*
> >
> > *[(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;]*
> >
> > *(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;*
> >
> > *[(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;]*
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> > *(d) satisfaction or modification of any security interest;*
> >
> > *(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;*
> >
> > *(f) reduction in the amount payable to the creditors;*
> >
> > *(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;*

(h) amendment of the constitutional documents of the corporate debtor;

(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities.]

[(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.]"

21. The regulations are framed under Section 240 of the Code which are consistent with the Code to carry out the provisions of the Code. Regulation 37, thus, is provision of the Code which is consistent to the Code and to carry out the provision of the Code. Regulation 37 Sub-clause (b) indicate that resolution plan shall provide for sale of all or part of the assets whether subject to any security interest or not. The use of expression 'subject to any security interest or not' makes it clear that the assets of the Corporate Debtor can be dealt with in the resolution plan whether it is subject to any security interest or not. The existence of security interest in assets of Corporate Debtor does not preclude the assets to be dealt with or sold in the resolution plan. The argument of the Appellant that security interest contained by the Appellant in the asset of the Corporate Debtor cannot be dealt with in the plan is clearly contrary to the scheme delineated under Regulation 37. Further, Sub-clause (d) permit the resolution plan to contain provision for satisfaction or modification of any security interest. Thus, as per scheme of Regulation 37, security interest in assets of the Corporate Debtor can be dealt with, modified, satisfied and

there is no exclusion to the resolution plan with regard to dealing of the security interest."

(Emphasis supplied)

19. Thus, the scheme as delineated by Regulation 37 of CIRP Regulations fully supports the view that if a claim is filed by a Financial Creditor and the claims of the Financial Creditor is part of the CIRP process, their security interest can very well be dealt with in the resolution plan. Amplifying this concept further, this Tribunal has held in a recent judgement in the matter of ***ICICI Bank Ltd v BKM Industries Ltd & Or*** in ***CA(AT)(Ins)No.405 of 2023*** ("***ICICI Bank***" in short) that reference to the value of its security interest by a dissenting Financial Creditor neither carries any meaning nor any substance as the entitlement of the dissenting financial creditor is specified in Section 30(2)(b) of the IBC. The relevant paragraphs of this judgement are as reproduced below:

> "18. Now we come to the judgment of the Hon'ble Supreme Court in India Resurgence Arc. Pvt. Ltd. Vs. M/s. Amit Metaliks Ltd. & Anr. In paragraph 3 of the judgment, facts were noticed, which is to the following effect:
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> *"3. When the resolution plan submitted by the respondent No. 1 was taken up for consideration by the CoC, the appellant expressed reservations on the share being proposed, particularly with reference to the value of the security interest held by it; and chose to remain a dissentient financial creditor. The dissention on the part of the appellant and response thereto by the resolution professional as also by other members of CoC was noted in the 14th meeting of CoC dated 31.07.2020 in the following words : -*
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> *"Representative from Religare Finvest/India Resurgence ARC, Mr. Shakti inquired about the lower share they are getting as per Resolution Plan whereas the security interest held by them is far more. He also raised question about the fair market value and liquidation value of the CD. On this the RP informed him that the valuation exercise has been done by registered valuers of IBBI who were*

appointed by the erstwhile IRP and he do not find any inconsistency in the same. Other members also agreed on the same. Mr. Shakti then raised the point that in the present scenario it will be better for them if the company goes into Liquidation and they will realize their security interest by exercising option u/s 52(1)(b). The RP then replied that Liquidation option may be beneficial to one creditor but is definitely detrimental to other secured lenders who are having majority stake of around 96%. Further the RP also said that the objective of IBC is resolution and revival of a distressed company and is not a recovery procedure.""

19. The Hon'ble Supreme Court after hearing the parties and referring to the provisions of Section 30 of the IBC, laid down following in paragraph 13, 14, 16 and 17:

"13. 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.

14. The provisions of amended sub-section (4) of Section 30 of the Code, on which excessive reliance is placed on behalf of the appellant, in our view, do not make out any case for interference with the resolution plan at the instance of the appellant. The purport and effect of the amendment to sub- section (4) of Section 30 of the Code, by way of sub-clause (b) of Section 6 of the Amending Act of 2019, was also explained by this Court in Essar Steel (supra), as duly taken note of by the Appellate Authority (vide the extraction hereinbefore).The NCLAT was, therefore, right in observing that such amendment to sub-section (4) of Section 30 only amplified the considerations for the Committee of Creditors while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

16. The repeated submissions on behalf of the appellant with reference to the value of its security interest neither carry any meaning nor any substance. What the dissenting financial creditor is entitled to is specified in the later part of sub- section (2)(b) of Section 30 of the Code and the same has been explained by this Court in Essar Steel as under:-

> *"128. When it comes to the validity of the substitution of Section 30(2)(b) by Section 6 of the Amending Act of 2019, it is clear that the substituted Section 30(2)(b) gives operational creditors something more than was given earlier as it is the higher of the figures mentioned in sub-clauses (i) and (ii) of sub-clause (b) that is now to be paid as a minimum amount to operational creditors. The same goes for the latter part of sub-clause (b) which refers to dissentient financial creditors. Ms. Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of clause (b), and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. As a matter of fact, pre- amendment, secured financial creditors may cramdown unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid the minimum amount mentioned in sub-section (2). Ms. Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(b) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and subclasses of creditors in accordance with the provisions of the Code and the Regulations made thereunder."*

17. 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."

20. The issue raised in the Appeal, is fully covered by the judgment of the Hon'ble Supreme Court. The Hon'ble Supreme Court in India Resurgence ARC Private Ltd. (supra) also referred to its earlier judgment in Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. while coming to the conclusion."

20. From the ratio laid down by this Tribunal in ***Edelweiss*** supra and ***ICICI Bank*** supra, it is amply clear that the statutory construct of the IBC read with Regulation 37 of CIRP Regulations provides an enabling framework for CoC to exercise its commercial wisdom to approve a resolution plan of any Corporate Debtor which provides that all securities for any debt due to the secured creditors can be unconditionally released and transferred in favour of the Corporate Debtor. Hence, Clause 6.5(ii) and (vii) of the present resolution plan does not suffer from any infirmity or arbitrariness for having provided for assignment of securities of the Appellant nor can it be found to be non-compliant to the provisions of Section 30(2)(e) of the IBC. Merely raising the pretext that such assignment would adversely affect the recovery proceedings from the guarantors and collateral securities of third parties thereby making it inequitable for the Appellant/Financial Creditor lacks substance. The reference made by the Appellant to the judgements of the Hon'ble Apex Court in the ***State Bank of India v. Ramakrishnan & Anr. and Lalit Kumar Jain v. Union of India*** matter is distinguishable as when those judgements were passed, provisions of Part-III of the IBC was not yet notified and was not applicable to Personal Guarantors of the Corporate Debtor.

21. It needs no emphasis that unwarranted delays in resolution lead to depletion in the value of the assets of the Corporate Debtor. This is neither in the interest of CIRP nor in the interest of the Corporate Debtor. In the present case, extension of CIRP was already granted by the Adjudicating Authority on 24.05.2022 on the expiry of 180 days. The maximization of the value of the Corporate Debtor is admittedly an object of the CIRP and the said maximization has to be achieved within the timeline provided in the scheme. Thus, when a resolution plan is approved by the CoC with more than 66% vote share and submitted before the Adjudicating Authority for approval, it follows therefore that this process cannot be allowed to be frustrated on flimsy grounds. Hence, further delay in CIRP cannot be countenanced. The RP and the CoC cannot be faulted for disallowing further time to the Appellant to study the resolution plan of DK. The Adjudicating Authority has further noted that the provisions of the IBC as contained in Sections 30 and 31 of the IBC have been complied with and the mandatory contents of the resolution plan in terms of Regulations 38 and 39 of the CIRP Regulations have been duly ensured by the CoC while approving the resolution plan. The Adjudicating Authority has rightly observed that the approval of the resolution plan by the CoC has to be respected and cannot be interfered with in the exercise of judicial review by the Adjudicating Authority in terms of judgements of the Hon'ble Supreme Court in the matters of ***K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150*** and ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531***. We agree that the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the CoC unless it is found not to conform to Section 30(2)

of the IBC. We therefore find no error in the decision of the Adjudicating Authority to approve the resolution plan.

22. In conclusion, we do not find any error in the impugned order passed by the Adjudicating Authority in allowing IA No. 2414 and approving the resolution plan. There is no merit in the Appeal. The Appeal is dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 03.01.2024

PKM