



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-II  
KOLKATA

I.A. (IBC) 1748(KB) of 2025

And

I.A. (IBC) 1858(KB) of 2025

And

I.A. (IBC) (Plan) 28(KB) of 2025

IN

C.P. (IB) 254(KB) of 2019

IN THE MATTER OF:

UCO BANK

... Financial Creditor

Versus

KAIZEN POWER LTD.

... Corporate Debtor

And

I.A. (IBC) 1748(KB) of 2025 & I.A. (IBC) 1858(KB) of 2025

An application under section 30(2), 31 & 60(5) of the  
Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the  
National Company Law Tribunal Rules, 2016;

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I.A. (IBC) 1748(KB) of 2025  
And  
I.A. (IBC) 1858(KB) of 2025  
And  
I.A. (IBC) (Plan) 28(KB) of 2025  
In  
C.P. (IB) 254(KB) of 2019

IN THE MATTER OF:

Shri Munnan Jaiswal & Ors., Suspended  
Director of the Corporate Debtor.

... Applicant

Versus

Shri Santanu T Ray, RP

... Respondent No. 1

And

M/S J. KUMAR DEVELOPERS LIMITED, SRA

... Respondent No. 2

And

ANDHRA PRADESH INDUSTRIAL INFRASTRUCTURE  
CORPORATION (APIIC)

... Respondent No. 3

And

I.A. (IBC) (Plan) 28(KB) of 2025

*An application under Section 30(6) and 31(1) of the Insolvency and  
Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency  
Regulations Process of Corporate Persons) Regulations, 2016 for  
approval of the Resolution Plan.*

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MR. SANTANU T RAY (Resolution Professional)

... Applicant

VERSUS

J KUMAR DEVELOPERS LIMITED

(Successful Resolution Applicant)

... Respondent

Coram:

Shri Labh Singh : Member (Judicial)  
Ms. Rekha Kantilal Shah : Member (Technical)

Appearances (via hybrid mode)-:

**For the Resolution Professional**

- i. Ms. Mamta Binani, Adv.
- ii. Ms. Urmila Chakroborty, Adv.
- iii. Mr. Arun Gupta, Adv.
- iv. Mr. S. Ray, RP

**For the SRA, R2 in 1748/2025**

- i. Mr. Nakul Mohta, Adv.
- ii. Mr. S. Chakraborty, Adv.
- iii. Ms. Surabhi Agarwawl, Adv.
- iv. Mr. Devensh Jain, Adv.

**For Applicant in IA 1748/2025**

- i. Mr. Saurav Jain, Adv.

**For Applicant in IA 1858/2025**

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- i. Mr.Souritro Ganguly, Adv.
- ii. Mr.Saurav Jain, Adv.

**For SRA**

- i. Mr.Sarangam Chakraborty, Adv.
- ii. Mr.Nakul Mohta, Adv.
- iii. Ms.Surabhi Agarwal,Adv.

**Date of Pronouncement:- 12.02.2026**

**ORDER**

**Per: Rekha Kantilal Shah, Member (Technical)**

**1. I.A. (IBC) 1748(KB) of 2025**

1.1 The instant application has been preferred by Mr. Munnan Jaiswal, one of the directors of the suspended Board of Directors (hereinafter referred to as "SBoD") of the Corporate Debtor, M/s Kaizen Power Limited (hereinafter referred to as "CD"), praying for the following reliefs:-

- a. Allow the present Application/ objections of the Applicant to the proposed Resolution Plan of the Respondent No. 2; and/or
- b. Reject the Application bearing I.A. No. 28 of 2025 seeking approval of the Resolution Plan of the Respondent No. 2; and/or
- c. Reject the Resolution Plan submitted by Respondent No. 2 in its present form; and/or
- d. Direct the Respondent No.1 to forthwith issue a fresh Form-G in accordance with the CIRP Regulations, 2016 and to commence the process of inviting Expression of

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Interest in a fair, transparent and compliant manner;  
and/or

- e. Direct Respondent No. 1 to keep the suspended Board of Directors of the Corporate Debtor duly informed of all future steps, compliances, meetings and undertaken in the CIRP; and/or actions
- f. Pass such other order(s) as this Ld. Adjudicating Authority may deem fit and proper in the facts and circumstances of the case, including costs.

**2. I.A. (IBC) 1858(KB) of 2025**

2.1 The instant application has been preferred by Mr. Bishal Jaiswal, one of the directors of the suspended Board of Directors (hereinafter referred to as "SBoD") of the Corporate Debtor, M/s Kaizen Power Limited (hereinafter referred to as "CD"), praying for the following reliefs:-

- a. Allow the present Application/ objections of the Applicant to the proposed Resolution Plan of the Respondent No. 2; and/or
- b. Reject the Application bearing I.A. No. 28 of 2025 seeking approval of the Resolution Plan of the Respondent No. 2; and/or
- c. Reject the Resolution Plan submitted by Respondent No. 2 in its present form; and/or
- d. Direct the Respondent No.1 to forthwith issue a fresh Form-G in accordance with the CIRP Regulations, 2016 and to commence the process of inviting Expression of Interest in a fair, transparent and compliant manner; and/or
- e. Direct Respondent No. 1 to keep the suspended Board of Directors of the Corporate Debtor duly informed of all

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future steps, compliances, meetings and undertaken in the CIRP; and/or actions

- f. Pass such other order(s) as this Ld. Adjudicating Authority may deem fit and proper in the facts and circumstances of the case, including costs.

**3. I.A. (IBC) (Plan) 28(KB) of 2025**

3.1 The instant application has been preferred praying for following relief-:

- a. To grant approval/sanction of the Resolution Plan of J Kumar Developers Limited (annexed at Annexure-A/42 of this Application) under section 31(1) of the Insolvency and Bankruptcy Code, 2016, which is duly compliant with Section 30(2) of the Insolvency and Bankruptcy Code, 2016 and which has been approved by the Committee of Creditors in its commercial wisdom in terms of Section 30(4) of the Insolvency and Bankruptcy Code, 2016;
- b. To declare the Resolution Applicant J Kumar Developers Limited as the Successful Resolution Applicant of Kaizen Power Limited, and to relieve the Applicant Mr. Santanu T Ray from the office of the Resolution Professional of Kaizen Power Limited.
- c. To declare the Approved Resolution Plan of J Kumar Developers Limited (annexed at Annexure-A/42 of this Application) to be binding upon all stakeholders including the Corporate Debtor, its creditors, members and guarantors;
- d. To provide for the waivers, reliefs and concessions as sought under the Resolution Plan, more particularly reiterated in section 7 and 9 of the said Resolution Plan.

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- e. To end the moratorium of the Corporate Debtor Kaizen Power Limited under section 14 of the Insolvency and Bankruptcy Code, 2016, which was imposed with the admission of the petition.
- f. To pass any other/further order(s) as deemed fit by this Hon'ble Adjudicating Authority in the facts and circumstances of this case.

#### 4. Background of the Case

- 4.1 The Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide an order of this Tribunal dated 13<sup>th</sup> December, 2019<sup>1</sup> and Mr. Santanu T Ray, the respondent no.1 herein was appointed as the Interim Resolution Professional (hereinafter referred to as the "IRP").
- 4.2 The Respondent no. 1 Upon intimation of his appointment as the IRP published Form A on 27<sup>th</sup> December, 2019 inviting claims from creditors, in Financial Express (English Newspaper) and Ekdin (Bengali Newspaper).
- 4.3 Pursuant to the public announcement, the respondent no. 1 verified the claims received, and constituted the Committee of Creditors (hereinafter referred to as the "CoC"). The composition of the CoC was as follows:-

Sr. No.	Particulars	Claim Amount	Admitted Amount	Voting Share
1	Uco Bank	3,86,26,62,923	3,86,26,62,923	83.58%
2	Punjab National Bank (E-Oriental	75,84,52,344	75,84,52,344	16.42%

<sup>1</sup> Annexure A/1 of the Plan Approval Application .

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	Bank of Commerce)			
Total		4,62,11,15,267	4,62,11,15,267	100%

- 4.4 In the 1<sup>st</sup> CoC meeting<sup>2</sup>, the respondent no.1, then acting as the IRP was appointed as the Resolution Professional (hereinafter referred to as the “RP”) by the CoC.
- 4.5 During the course of the CIRP, Mr. Vidyasagar Prasad, a member of the SBoD, preferred an appeal before the Hon’ble NCLAT challenging the order dated 13<sup>th</sup> December, 2019 passed by this Tribunal initiating CIRP against the CD. The Hon’ble NCLAT vide its interim order dated 7<sup>th</sup> February, 2020<sup>3</sup> directed the RP not to constitute the CoC if the same had not yet been constituted, and in case the CoC had been constituted it was directed that the CoC would not approve any Resolution Plan.
- 4.6 Thereafter, the Hon’ble NCLAT vide its order dated 4<sup>th</sup> October, 2021<sup>4</sup> dismissed the appeal filed by Mr. Vidyasagar Prasad and the interim order dated 7<sup>th</sup> February, 2020 stood vacated by virtue of dismissal of the appeal.
- 4.7 Subsequently, in pursuance of approval of the CoC, the first Form G was published, on 29<sup>th</sup> December, 2021<sup>5</sup> inviting expression of interest (hereinafter referred to “EOI”) from Prospective Resolution Applicants. However, no EOIs were received by the Respondent no. 1/RP in respect of resolution of the CD.
- 4.8 Thereafter, at the 7th meeting of the CoC<sup>6</sup>, a resolution to initiate liquidation of the Corporate Debtor was passed with an

<sup>2</sup> Annexure A/5 of the Plan Approval Application

<sup>3</sup> Annexure A/12 of the Plan Approval Application .

<sup>4</sup> Annexure A/16

<sup>5</sup> Annexure A/20.

<sup>6</sup> Annexure A/21.

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approval of 83.58% voting share. Pursuant to the resolution passed by the CoC, the Respondent no. 1/RP filed an application for initiation of liquidation against the CD before this Tribunal on 25<sup>th</sup> February 2022.

- 4.9 Subsequent to filing of the application for liquidation of the CD, the Respondent no. 1 came to learn that Suspended Director had filed an appeal against the order of the Hon'ble NCLAT dated 04<sup>th</sup> October 2021 before the Hon'ble Supreme Court and that the Hon'ble Apex Court had stayed the proceedings before this Tribunal vide an order<sup>7</sup> dated 04<sup>th</sup> March, 2022.
- 4.10 Thereafter, vide an order dated 22<sup>nd</sup> October, 2024, the Hon'ble Supreme Court dismissed the appeal filed by the Suspended Director and the order initiating the CIRP of the Corporate Debtor attained finality.
- 4.11 Pursuant to the order dated 22<sup>nd</sup> October, 2024, of the Hon'ble Supreme Court, the respondent no. 1/RP, convened the 9<sup>th</sup> Meeting of the CoC<sup>8</sup>, and a unanimous resolution was passed by the CoC to withdraw the liquidation application filed before this Tribunal.
5. Fact in a nutshell of I.A. (IBC) (Plan) 28(KB) of 2025:-
- 5.1 A fresh Form G<sup>9</sup> was published on 24<sup>th</sup> March, 2025 inviting EOIs from Prospective Resolution Applicants. Pursuant to publication of Form G, EOIs were received from three PRAs, and the provisional list and the final list were prepared accordingly.
- 5.2 Thereafter, the Respondent no. 1/RP, duly issued Request for Resolution Plan and Evaluation Matrix to the eligible PRAs on

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<sup>7</sup> Annexure A/22.

<sup>8</sup> Annexure A/25.

<sup>9</sup> Annexure A/28

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23<sup>rd</sup> April, 2025 and simultaneously also issued the Information Memorandum on the same date.

- 5.3 Resolution Professional received two Resolution Plans, one from J Kumar Developers Limited and the other from North East Infrastructure Private Limited, within 23<sup>rd</sup> May, 2025, being the last date for submission of Resolution Plans. The said Resolution Plans were opened and discussed at the 14<sup>th</sup> Meeting of the CoC<sup>10</sup> convened on 27<sup>th</sup> May, 2025.
- 5.4 Subsequently in the 15<sup>th</sup>, 16<sup>th</sup> and the 17<sup>th</sup> meeting of the CoC the Resolution Plans were discussed in detail, and negotiations took place between the members of the CoC and the PRAs regarding the resolution plans and the final resolution plans submitted by the PRAs pursuant to negotiations were put to vote on 05<sup>th</sup> August, 2025.
- 5.5 The voting regarding the Resolution Plan was required to be conducted between 05<sup>th</sup> August, 2025 (11:30 A.M.) and 11<sup>th</sup> August, 2025 (07:00 P.M.). However, as the decision regarding the resolution plans were pending with the higher authorities of the CoC members, the voting period was extended from time to time and the voting finally concluded on 15<sup>th</sup> September, 2025. The CoC with 100% voting share unanimously accorded their approval to the resolution plan submitted by J Kumar Developers Ltd.
- 5.6 Pursuant to approval of the CoC, the letter of intent was issued to Successful Resolution Applicant (hereinafter referred to as "SRA")- J Kumar Developers Ltd. on 15<sup>th</sup> September, 2025 and the SRA submitted the Performance Security of Rs. 5,00,00,000/- .

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<sup>10</sup> Annexure A/33

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5.7 Subsequently, RP has filed this Interlocutory Application, being I.A.(I.B.C.)(Plan) No. 28 (KB) of 2025, seeking approval of the Resolution Plan as approved by the Committee of Creditors, from this Tribunal.

**6. Submissions of the Applicant/Petitioner in I.A. (IBC) 1748(KB) of 2025 & I.A. (IBC) 1858(KB) of 2025**

6.1 It has been submitted by the Applicant that the RP failed to issue notices of the CoC meetings or share the agendas thereof with the SBoD of the CD, and further failed to provide the Applicant with a copy of the Resolution Plan or the application filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016.

6.2 It is submitted that the Applicant, being a member of the SBoD and also a director of Abhijeet Ventures Limited (hereinafter referred to as "AVL"), an entity which had extended corporate guarantees to the CD, was entitled to notice of and participation in CoC meetings under Section 24(3) of the IB Code, 2016. Approval of the Resolution Plan without notice of the CoC meetings to the Applicant and without the participation of the Applicant, despite the Applicant being vitally interested therein, is contended to be contrary to the IB Code and Regulations, violative of principles of natural justice, and causing irreparable prejudice to the CD and the Applicant. In this regard, the applicant has placed reliance on *Vijay Kumar Jain v. Standard Chartered Bank*, (2019) 20 SCC 455 (Paragraphs 19.3 to 22), *GLAS Trust Co. LLC v. BYJU Raveendran*, (2025) 3 SCC 625 (Paragraphs 42 and 72 to 76), *Kalyani Transco v. Bhushan Power & Steel Ltd.*, 2025 SCC OnLine SC 2093 (Paragraphs 6 and 53 to 63).

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6.3 It has further been submitted that the Resolution Plan submitted by Respondent No. 2 has been modified multiple times in violation of Regulation 39(1A) of the CIRP Regulations, which permits modification of a resolution plan by the RP, only once, if envisaged in the RfRP.

6.4 As per the Applicant, the first modification occurred pursuant to discussions in the 15th CoC Meeting<sup>11</sup>, when amounts were earmarked for the Operational Creditor and APIIC. The second modification occurred pursuant to the 16th CoC Meeting<sup>12</sup> when, upon being informed that the Performance Bank Guarantee could not be utilised towards the Plan amount, the SRA assured changes to the Plan and a further modification is evidenced by removal of Chapter VII of the Resolution Plan, excerpts of which were reproduced in the 17th CoC Meeting<sup>13</sup>, from the final Plan submitted on 04th August, 2025. Accordingly, it is submitted that the Resolution Plan was modified multiple times in impermissible violation of the Regulations.

6.5 It is submitted that in the 17th CoC Meeting dated 29th July, 2025, the CoC informed the SRA to provide at least Rs. 32 Crores to the Financial Creditors considering the liquidation value, as the offer was below such value, whereupon the SRA confirmed submission of an improvised plan within "a day or two". This forms the basis of the following submissions:

6.5.1. Firstly, the aforesaid amounts to an indirect disclosure of liquidation value to the Prospective Resolution Applicant. It has been submitted by the Applicant that

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<sup>11</sup>Annexure 1 to the Rejoinder filed by the Applicant.

<sup>12</sup>Annexure 12 to the Petition

<sup>13</sup>Annexure 13 to the Petition

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such disclosure of the Liquidation Value is strictly prohibited under Regulation 35(2) of the CIRP regulations.

6.5.2. Secondly, the fact that the SRA had confirmed to submit an improvised resolution plan, would further substantiate that the resolution plan after its submission had been modified more than once in violation of Regulation 39(1A).

6.5.3. Thirdly, that the improvised Resolution Plan submitted on 04th August, 2025 was put to e-voting on 05th August, 2025 without deliberation on the revised resolution plans, thereby vitiating the CoC's decision-making process and reflecting mechanical approval of the Resolution Plan.

6.6 It has further been submitted that the Resolution Plan seeks reliefs which are ultra vires the IB Code and contractually impermissible, in as much as it provides for conversion of leasehold land of the CD into freehold or perpetual lease by APIIC, which is impermissible under the lease deed<sup>14</sup>. It is submitted that the SRA can acquire no better rights than those of the CD. In this regard, reliance has been placed on the judgment of the Hon'ble NCLAT in *Eastern Estates v. Amit Pareek, Resolution Professional of National Plywood Industries Ltd., Company Appeal (AT) (Ins.) No. 274 of 2025* (Para 5-7) and on *Maharashtra Industrial Development Corporation v. Shantanu T. Ray, Resolution Professional & Anr., Company Appeal (AT) (Ins.) No. 1004 of 2021* (Para 31 & 32).

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<sup>14</sup> Annexure 14

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- 6.7 It is submitted that the lease deed permits use of the land only for manufacturing, processing or assembling of goods for export and incidental activities<sup>15</sup>, while expressly prohibiting any other use, whereas the Resolution Plan proposes conversion of the subject land into a private industrial park, in clear violation of the lease terms.
- 6.8 It has further been submitted that the contention of SRA that the land is proposed to be used for establishing other factories is impermissible in law, as the land forms part of a Special Economic Zone. Utilisation of SEZ land is governed by a distinct statutory regime under the SEZ Act, 2005, and the rules framed thereunder, and any change in the nature or purpose of use is subject to strict statutory approvals and compliance, which cannot be undertaken at the unilateral discretion of the Resolution Applicant. Thus, the resolution plan is not liable to be approved.
- 6.9 It has also been submitted that the Plan Approval Application is defective as the Income Tax Department and APIIC, despite being necessary and proper parties in respect of reliefs sought against them, have not been impleaded.
- 6.10 The Applicant has further objected to appropriation of recoveries from applications under Sections 43, 45, 49, 50 and 66 of the Code, contending that vesting such recoveries solely in the SRA, with the CoC having no right or interest therein, is impermissible under the IB Code.
- 6.11 It has been submitted that Respondent No. 1 failed to comply with Regulation 6A of the CIRP Regulations, which mandates communication of the public announcement to all creditors as

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<sup>15</sup> Clause 2(n), Annexure 14

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per as per the last available books of account of the CD, and that the Respondents cannot derive benefit from such non-compliance.

6.12 It is further submitted that the contention of Respondent No. 2 regarding payment over and above Rs. 32 Crores to APIIC is contrary to the Resolution Plan, which caps the total payout at Rs. 32,42,99,107/-, with Rs. 32 Crores payable to Financial Creditors, and does not specify any amount payable to APIIC, rendering the alleged payment vague, unsupported and unsustainable.

6.13 It is submitted that the assertions regarding the feasibility, viability, and funding of the Resolution Plan submitted by Respondent No. 2 are purely formulaic. The stated sources of funds, namely "own sources/borrowed funds"<sup>16</sup> through nominees or SPVs, are merely recited without any binding sanction letters, executed escrow arrangements, conditions precedent, or enforceable contractual commitments, which is not in consonance with Section 30(4) of the IB Code.

6.14 Accordingly, it is submitted that the Resolution Plan suffers from material irregularities and non-compliances, violates Section 30(2)(e) of the IB Code, and is liable to be rejected under Section 31(2) of the Code.

## **7. Submissions made by the Respondent no. 1/RP**

7.1 With respect to non-circulation of notices and minutes of CoC meetings, the RP has submitted that notices of the 1st to 8th CoC meetings were duly served upon the SBoD, and despite such notice, only the 3rd meeting was attended by Mr. Bishal Jaiswal,

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<sup>16</sup> Clause 8.3 of the Resolution Plan.

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one of the suspended directors. At the same time, the directors were actively pursuing litigation before the Hon'ble NCLAT and the Hon'ble Supreme Court against the CIRP of the CD. It is further submitted that the SBoD were well aware of developments, as the application under Section 19(2) of the IB Code was listed before this Tribunal and attended by their advocates. However, despite knowledge of the CoC meetings, the SBoD consciously chose not to participate.

- 7.2 It is further submitted that despite notice of the 22nd and 23rd CoC meetings, none of the SBoD attended the same, and the minutes of the said meetings were duly shared with them. As such, the RP submits that the Applicant's grievance is not bona fide and that the present application has been filed with the intent of derailing and impeding the CIRP of the CD.
- 7.3 With regard to alleged non-circulation of notices, minutes and CIRP documents, the RP has submitted that any such lapse was inadvertent and unintentional, and not with an intent to exclude the Applicant or the SBoD. It is further submitted that the lapse stood cured as all relevant notices, minutes and documents were furnished to the Applicant and the SBoD on 11th November, 2025, and no prejudice has been caused.
- 7.4 The counsel for the RP has also sought to distinguish *Vijay Kumar Jain* (supra) on the same grounds as advanced by the SRA, submitting that the said decision pertained to an erstwhile director who had repeatedly sought participation in CoC meetings, which is not the case in the present application.
- 7.5 With respect to alleged multiple modifications of the Resolution Plan in violation of Regulation 39(1A) of the CIRP Regulations, it is submitted that there is no such violation, as although negotiations took place between the SRA and the CoC to improve

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the financial proposal, the Resolution Plan submitted on 23rd May, 2025 was modified only once, culminating in the final plan dated 04th August, 2025.

- 7.6 Regarding the objection on disclosure of liquidation value, it is submitted that the liquidation value was not disclosed to any prospective resolution applicant, and that the benchmark amount of Rs. 32 Crores was only an indicative value proposed by the CoC to secure a higher plan value. It is further submitted that the allegation is unsubstantiated by any evidence.
- 7.7 With respect to the allegation of preferential treatment to the SRA, the RP has submitted that no such preference was granted and that both plans received were placed before the CoC in a transparent and fair manner.
- 7.8 It is further submitted that the reliefs and concessions sought in the Resolution Plan regarding conversion of leasehold land into freehold/perpetual lease are not mandatory for implementation of the Plan and are subject to approval by this Tribunal or other competent authorities, and non-grant thereof would not affect implementation, as the Resolution Plan dated 04th August, 2025 is unconditional<sup>17</sup>.
- 7.9 With respect to non-impleadment of the Income Tax Department and APIIC, it is submitted that both authorities were duly intimated on 12.11.2025 regarding filing of I.A. 28 (KB) of 2025, and APIIC has appeared and filed its objections before this Tribunal.
- 7.10 Reliance has been placed on *Anand Kariwala v. Partha Pratim Ghosh, RP & Anr.* (I.A (IB) No. 20/KB/2021 in CP (IB) No. 533/KB/2018), wherein Bench I of this Tribunal dismissed a

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<sup>17</sup> Relevant paragraphs- 4.6.3., 4.6.2, 4.5.1.-4.5.7. (P. 725-728 of IA 28 of 2025)

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similar application filed by suspended directors alleging non-receipt of CoC notices, observing as follows:-

*“6.8 Hence, when a Resolution Plan has been submitted to revive the Corporate Debtor as a going concern and is in compliance of the Code, there is no reason to reject the same, and certainly it cannot be done on the basis of a perceived grievance by a member of the Suspended Board who has not taken any positive steps to participate in the meeting of the CoC”.*<sup>18</sup>

- 7.11 It is submitted that the Resolution Plan of Respondent No. 2 has been approved by the CoC with 100% voting share following transparent deliberations, fair commercial negotiations and full disclosure, and that the Plan is unconditional, feasible and viable, with all procedural requirements duly complied with.
- 7.12 It is further submitted that the Applicant's objections disclose no material irregularity, no prejudice has been caused to the Applicant, and the CIRP has instead suffered due to persistent non-cooperation by the Applicant, while the reliefs and concessions sought are merely facilitative and do not affect enforceability.
- 7.13 With reference to the Applicant's challenge to the financial strength of the SRA, it is submitted that a Certified Net-Worth Certificate has been placed on record demonstrating capability to implement the Plan, on the basis of which the CoC approved the same. Pursuant to directions of this Tribunal, requisite funding arrangements, Section 29A eligibility of incoming directors, and related details were placed before the CoC in its

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<sup>18</sup> Annexure-G of Reply, Pg No. 69-78

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22nd meeting<sup>19</sup>, and a comfort letter<sup>20</sup> dated 18.11.2025 issued by HDFC Bank Ltd. has also been furnished.

7.14 The RP has further relied upon *K. Sashidhar v. Indian Overseas Bank* (2019 12 SCC 150) and *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta* (2019 SCC OnLine SC 1478), wherein the Hon'ble Supreme Court has held that the Adjudicating Authority cannot interfere with the commercial wisdom of the CoC except in cases of violation of Section 30(2) of the Code.

7.15 Accordingly, the RP has prayed for dismissal of the present application with costs and for approval of the Resolution Plan submitted by the SRA.

#### **8. Submissions made by the Successful Resolution Applicant/Respondent no.2**

8.1 Per contra, the SRA has submitted that the Resolution Plan is unconditional, legally compliant and commercially feasible, and does not seek any relief beyond the jurisdiction or inherent powers of this Tribunal. Reliance has been placed on Form H, which according to the SRA conclusively demonstrates compliance with Section 30(2) of the Code.

8.2 It has further been submitted that the SBoD and the erstwhile management have no vested right to object to or seek rejection of a Resolution Plan approved by the CoC. Reliance has been placed on *Praful Satra v. Vaishali Patrikar*, 2025 SCC OnLine NCLAT 1473 (Para 72), *Ramesh Kesavan v. C.A. Jaisin Jose*, C.A. 4419 of 2025 and *Ramesh Kesavan v. C.A. Jaisin Jose*, 2024 SCC OnLine NCLAT 56 (Paras 10-12).

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<sup>19</sup> Annexure D to the Reply filed by the RP.

<sup>20</sup> Annexure E to the Reply filed by the RP.

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- 8.3 With regard to the Applicant's locus as a director of AVL, a Corporate Guarantor of the CD, it has been submitted that AVL is a separate juristic person and, in the absence of any application filed by AVL itself, the Applicant in his personal capacity cannot maintain the present application on its behalf.
- 8.4 The SRA has submitted that reliance on *Vijay Kumar Jain* (supra) is misplaced, as in the said case, as in that case the suspended Director was vigilant since inception of the CIRP and had filed an application to participate in CoC meetings much before approval of the Plan by the CoC, which is not the position in the captioned proceedings. It is further submitted that the said judgment does not lay down that a Resolution Plan approved by 100% of the CoC can be rejected solely on the ground of non-participation of the SBoD.
- 8.5 As per the SRA, in the instant case the SBoD were involved in litigations concerning the present CIRP before the Hon'ble NCLAT and the Hon'ble Apex Court, however, despite being well aware of the CoC meetings, they did not take any initiative to participate therein. It is further submitted that although the RP gave notice of the 1st to 8th CoC meetings to the SBoD, they participated in only one meeting, and despite notice of the 22nd and 23rd CoC meetings, none of the suspended directors of the CD attended. As such, the counsel for the SRA submits that the suspended directors did not take any initiative to participate at an early stage and are now raising objections after approval of the Resolution Plan by the CoC with the malafide intention of delaying and derailing the CIRP, and that the applicant, having taken no initiative despite knowledge of the CIRP, publication of Form G and CoC meetings, cannot now be permitted to raise

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objections after approval of the Resolution Plan by the CoC due to waiver and acquiescence.

8.6 With respect to objections concerning APIIC's rights, it has been submitted that APIIC was duly intimated of I.A. 28 of 2025 filed by the RP and has not raised any objections. Accordingly, the Applicant lacks locus to agitate issues pertaining to APIIC.

8.7 It is further submitted that the leasehold land is already subject to litigation before the Hon'ble XXIV Addl. Chief Judge-cum-Commercial Court, City Civil Court at Hyderabad, as APIIC had issued a show cause notice dated 03rd April, 2019 proposing cancellation of the lease, pursuant to which an application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed and an ad interim injunction was granted restraining APIIC from acting upon the said notice. Post commencement of the CIRP of the CD, the said proceedings have been adjourned *sine die*. It is further submitted by the SRA that the objections regarding inclusion of the leasehold land as assets of the CD are unsustainable, placing reliance on *New OkhLa Industrial Development Authority v. Amit Agarwal*, 2022 SCC OnLine NCLAT 4784 (Paras 16-20), *Shristi Infrastructure Development Corpn. Ltd. v. Avishek Gupta*, 2024 SCC OnLine NCLAT 450 (Paras 17-22) and *Victory Iron Works Jitendra Lohia*, C.A. 1743 of 2021 (Paras 35-37).

8.8 It has been submitted that despite APIIC not filing any claim, the SRA has extended treatment to APIIC under the Resolution Plan at par with secured financial creditors. Clause 4.5.5 of the Plan merely requests APIIC to consider conversion of leasehold rights into a perpetual lease or freehold in accordance with law and does not render the Plan conditional. It is further

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submitted that the Resolution Plan is not solely dependent on the leasehold land, as the CD also owns freehold land.

8.9 With respect to allegations of vagueness and unviability of payouts, it has been submitted that the financial proposal and outlays are clearly detailed in Section 4 of the Resolution Plan.

8.10 It has been contended that APIIC has not filed any claim in the CIRP and, in view of *Ghanashyam Mishra v. Edelweiss Asset Reconstruction Company*, (2021) 9 SCC 657, any such claim stands extinguished post-approval. It is submitted that clauses 4.5.3 to 4.5.7 of the Plan merely propose an offer to APIIC, and even if not accepted, the Plan remains valid as the leasehold rights continue to subsist.

8.11 The SRA has submitted that this Tribunal may approve the Resolution Plan while directing the CD to pursue reliefs and concessions before the appropriate authorities, including APIIC, in accordance with law. Reliance has been placed on *Worldfa Exports (P) Ltd. v. Vivek Raheja*, 2024 SCC OnLine NCLAT 632 (Paragraphs 5-8), *S.S. Natural Resources Pvt. Ltd. v. Ramsarup Industries Ltd.*, CA (AT) (Ins) 995 of 2019, Judgment dated 04.03.2021 (Paragraphs 33-34), *Shristi Infrastructure Development Corpn. Ltd. v. Avishek Gupta*, 2024 SCC OnLine NCLAT 451 (Paragraphs 10-12) and *Santanu Brahma, Resolution Professional*, C.P. (IB) No. 1518 (KB) 2020, Order dated 27.03.2025 (Paragraphs 13-15).

8.12 It has been submitted that objections regarding non-impleadment of the Income Tax Department and APIIC are factually incorrect, as the Resolution Plan itself contemplates such impleadment. Further, pursuant to leave granted by this Tribunal, intimation

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along with extracts of the Resolution Plan were furnished to both authorities on 12.11.2025.

8.13 With regard to the Applicant's objection concerning multiple modifications of the Resolution Plan in alleged violation of Regulation 39(1A) of the CIRP Regulations, it is submitted that the Plan submitted by the SRA was modified only once. It is further submitted by the SRA that Regulation 39(1A) merely restricts the RP from permitting multiple modifications of the Resolution Plan and does not fetter the power of the CoC to negotiate and seek revisions during the course of commercial negotiations. In this regard, the SRA has placed reliance on *Vistra ITCL (India) Ltd. v. Torrent Investments Pvt. Ltd., 2023 SCC OnLine NCLAT 110 (Paragraphs 50-53) and Sagar Stone Industries v. Sajjan Kumar Dokania and Ors. 2025 SCC OnLine NCLAT 629 (Paragraph 7)*.

8.14 With respect to objections that the revised plan was not considered by the CoC, it has been submitted that the final Resolution Plan was submitted on 04.08.2025 after incorporating inputs from the 17th CoC meeting dated 29.07.2025, and thereafter approved by 100% of the CoC through e-voting conducted between 05.08.2025 and 15.09.2025. It is submitted that the minutes and voting results conclusively establish due consideration.

8.15 With respect to avoidance transactions, reliance has been placed on *Piramal Capital & Housing Finance Ltd. v. 63 Moon Technologies Ltd., 2025 SCC OnLine 690 (Paras 81-82)*, recognising the competence of the CoC to take commercial decisions regarding allocation of proceeds.

8.16 Accordingly, the SRA has submitted that the application is devoid of merit, not maintainable and deserves dismissal, and that the

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Resolution Plan approved by the CoC merits approval by this Tribunal.

**9. Submissions made by APIIC/Respondent No. 3**

- 9.1 At the outset, Respondent No. 3/APIIC has submitted that it supports the contentions raised by the Applicant against the Resolution Plan approved by the CoC.
- 9.2 It is submitted that APIIC is the absolute owner of the subject land, which continues to vest with it, the land having been allotted to the CD only on an "as is where is" basis under a registered lease deed dated 25.10.2010. Owing to the failure of the CD to commence operations as contemplated under the allotment and lease deed, APIIC issued a show cause notice dated 03.04.2019.
- 9.3 Thereafter, the CD filed a Civil Original Petition on 02.05.2019 before the Court of the XXIV Additional Chief Judge-cum-Commercial Court, Hyderabad, under Section 9 of the Arbitration and Conciliation Act, 1996, and obtained an interim order dated 03.05.2019 staying the show cause notice. It is submitted that the said COP was ultimately disposed of on 04.03.2025.
- 9.4 Further, an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 was filed by M/s Kaizen Power Ltd. before the Hon'ble High Court for the State of Telangana, pursuant to which Hon'ble Justice Madan B. Lokur (Retd.) was appointed as sole Arbitrator by order dated 20.01.2020. The arbitral proceedings have since been adjourned sine die due to the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.

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It is further submitted that despite initiation of CIRP and appointment of the RP, APIIC, being the sole and absolute owner of the land, was not issued any notice or afforded an opportunity to file objections.

9.5 It is submitted that the land was allotted only on leasehold basis for a limited period of 33 years and that, in view of non-implementation of lease conditions, issuance of the show cause notice prior to commencement of CIRP, vacation of interim protection in the COP proceedings, and absence of any subsisting contractual or leasehold right, the subject land cannot form part of the CIRP estate.

9.6 It is contended that the Resolution Plan proceeds on an erroneous assumption that leasehold rights in respect of the APIIC land subsist and are capable of being dealt with under the insolvency process. Consequently, the land cannot be treated as an asset of the CD, and any Resolution Plan seeking to include or deal with the said land is contrary to law, violative of Section 30(2)(e) of the Code, and liable to be rejected. Reliance is placed on *A.A. Estates Private Limited v. Kher Nagar Sukhsadan Co-operative Housing Society Ltd.*, (2025) 2025 INSC 1366, wherein the Hon'ble Supreme Court held that terminated contractual or development rights prior to commencement of CIRP do not constitute assets of the CD and cannot be revived through the insolvency process.

9.7 It is further submitted that Respondent No. 2/SRA itself contemplated the necessity of impleading APIIC in its Resolution Plan, as noted by Respondent No. 1. However, despite such stipulation, the RP failed to implead APIIC or furnish it with the complete Resolution Plan, thereby depriving it of an

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opportunity of hearing and constituting a serious procedural lapse and violation of principles of natural justice.

9.8 It is submitted that the Resolution Plan cannot be permitted to affect APIIC's rights over its land and shall not bind APIIC. Further, the Resolution Plan cannot replace APIIC's rights or amount to novation of contract under the Indian Contract Act, 1872 or the Transfer of Property Act, 1882.

9.9 It is further submitted that *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Ltd.* (supra) is inapplicable, as the principle therein pertains to extinguishment of claims only after approval of a resolution plan under Section 31 of the Code by the Adjudicating Authority. Since the Resolution Plan in the present case is under challenge, the judgment is distinguishable and does not sanction the creation, revival, or extinguishment of proprietary rights in land, nor permit overriding ownership rights of third-party statutory authorities.

#### 10. Rejoinder of the Applicant

10.1 The Applicant has filed rejoinders to the affidavits filed by Respondent No. 1/RP and Respondent No. 2/SRA.

10.2 With respect to the challenge to the Applicant's locus, it is submitted that the Applicant's standing emanates directly from the statute by virtue of his position as a suspended director of the Corporate Debtor and not from the approval of the Resolution Plan by the CoC. It is further submitted that the Resolution Plan exposes AVL to continuing and unquantified obligations under subsisting corporate guarantees, resulting in

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serious civil consequences, thereby giving the Applicant a distinct and legitimate stake in the outcome of the proceedings.

- 10.3 As regards the allegation that the Applicant did not attend the 1st to 8th CoC Meetings despite notice, it is submitted that Mr. Bishal Jaiswal, a suspended director of the CD, attended the said meetings as a representative of the SBoD, and therefore no adverse inference can be drawn against the Applicant. It is further submitted that the said contention is an attempt by the RP to cover up its failure to serve the Applicant with the minutes of the 9th to 21st CoC Meetings. By not issuing notices and supplying agendas and minutes, the RP has effectively deprived the SBoD of its valuable right to submit a proposal under Section 12A of the IB Code.
- 10.4 It is submitted that the belated supply of documents to the SBoD on 11th November, 2025, i.e., after approval of the Resolution Plan by the CoC, does not cure the illegality committed by the RP in violation of Section 24(3) of the IB Code. Acceptance of the RP's submissions would render the ratio in *Vijay Kumar Jain (Supra)* meaningless and permit exclusion of the SBoD from crucial stages of CIRP, which can later be sought to be remedied by delayed disclosure.
- 10.5 The submission that liquidation value was not disclosed to Respondent No. 2/SRA has been denied by the applicant as being contrary to the minutes of the 15th and 17th CoC Meetings and is nothing but an afterthought.
- 10.6 The reliance placed on *Anand Kariwala v. Partha Pratim Ghosh, R.P. & Anr. (Supra)* is distinguishable on facts, as in that case the suspended director had been duly served with CoC minutes

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but chose not to participate, an issue not adjudicated by the  
Ld. Adjudicating Authority.

- 10.7 It is further submitted that the Resolution Plan of SRA is liable to be rejected for failure to disclose any concrete or identifiable source of funds. Clause 3 of the Plan makes vague references to “own sources” and “borrowed funds from nominees, associates, affiliates, or strategic/investment partners” without disclosing their identity, financial capacity, or Section 29A compliance, thereby creating a risk of impermissible backdoor entry of ineligible entities.
- 10.8 It is submitted that Respondent No. 2/SRA has stated during hearings that it is still in the process of obtaining special resolutions under Section 186 of the Companies Act, 2013, from such entities, which demonstrates lack of financial capacity at the time of submission and approval of the Resolution Plan and renders the Plan contingent upon resolutions that may not be passed.
- 10.9 The lack of financial capacity is further evident from Respondent No. 2’s balance sheet for FY 2023-24<sup>21</sup> showing negative net current assets of approximately Rs. 40 Crores and negative operational cash flows for consecutive years. It has also failed to file its balance sheet for FY 2024-25 despite lapse of the statutory period as per its master data<sup>22</sup>. The alleged reserves and surplus of approximately Rs. 17 Crores relied upon for eligibility are therefore questionable, rendering the Plan unviable and non-compliant with the Code.

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<sup>21</sup> Annexure 2 to the Rejoinder.

<sup>22</sup> Annexure 3 to the Rejoinder.

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10.10 It is submitted that the contention of Respondent No. 2 that it is paying amounts over and above Rs. 32 Crores to Respondent No. 3 is contrary to the Resolution Plan placed for approval. It is contended that the Plan expressly caps the total payout at Rs. 32,42,99,107/-, with Rs. 32,00,00,000/- payable to Financial Creditors, and does not stipulate any specific amount payable to Respondent No. 3 (APIIC). And that the alleged payment is vague, unsupported by the Resolution Plan, and renders the Plan unviable and unsustainable.

#### 11. Findings and Analysis:-

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##### 11.1 Locus of the Applicant (Suspended Director)

At the outset, this Tribunal considers the objection as to the locus of the Applicant, being a member of the suspended Board of Directors of the Corporate Debtor.

We have considered the judgments relied upon by Respondent No. 2 to contend that the Suspended Board of Directors has no locus in the CIRP proceedings. Respondent No. 2 has placed reliance upon *Praful Satra v. Vaishali Patrikar*, *Ramesh Kesavan v. C.A. Jaisim Jose*, and *U.P. State Jal Nigam v. Jaswant Singh*.

At the outset, it is noted that in all the aforesaid judgments, the issue before the respective fora was with respect to the locus or participation of the Suspended Board of Directors after commencement of CIRP. However, none of the said decisions pertain to a factual situation where the Suspended Board of Directors was admittedly not called or

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permitted to attend the meeting of the Committee of Creditors, as is the case in the present matter.

In *Praful Satra v. Vaishali Patrikar* (Company Appeal (AT) (Insolvency) No. 151 of 2020, decided by the Hon'ble NCLAT), as well as in *Ramesh Kesavan v. C.A. Jaisim Jose* (Company Appeal (AT) (Insolvency) No. 82 of 2020, Hon'ble NCLAT), the challenge was not founded on the non-issuance of notice of CoC meetings to the Suspended Board of Directors. Similarly, *U.P. State Jal Nigam v. Jaswant Singh*, (2006) 11 SCC 464, deals with principles of locus standi in service jurisprudence and does not arise out of the Insolvency and Bankruptcy Code, 2016, nor does it consider the statutory scheme governing participation of the Suspended Board during CIRP.

Accordingly, the reliance placed on the aforesaid judgments is distinguishable on facts and does not address the specific grievance raised in the present case, namely, non-calling of the Suspended Board of Directors to the 9th till 21st meetings of the CoC, not sharing the resolution plan and other important documents, particularly when the feasibility and viability of the Resolution Plan, as modified, were required to be deliberated upon.

It is settled that upon commencement of CIRP, the powers of the Board of Directors stand suspended and vest in the Interim Resolution Professional/Resolution Professional under Section 17 of the Code. However, Section 24(3)(b) of the IBC expressly recognises the right of the suspended directors to receive notice of meetings of the Committee of Creditors and to participate therein, albeit without voting rights.

While the Applicant cannot substitute the commercial wisdom of the CoC or seek rejection of a Resolution Plan merely on

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merits, he is not denied the right to raise objections alleging procedural irregularities, violation of statutory provisions, or breach of principles of natural justice. Therefore, the application cannot be rejected at the threshold solely on the ground of locus, though the scope of interference by this Tribunal remains circumscribed by Sections 30 and 31 of the Code.

**11.2 Non-issuance of Notices and Alleged Violation of Section 24(3)**

- i. In the absence of demonstrated prejudice or denial of a substantive right affecting the outcome of the CIRP, the alleged procedural lapse does not warrant rejection of the Resolution Plan but it's a material irregularity as same as in the case of Hon'ble NCLAT in Amit Suresh Bhatnagar v. Bhuvan Madan (RP), (2021) ibclaw.in 187 NCLAT

*"31. Counsel for the Respondent (RP) unable to convince us as to why the RP has not provided the copy of Resolution Plans, not served the notice for 9th CoC meeting and has given less than 24 hours' notice for 10th, 11th CoC meeting and as to why refused to provide link of VC to Appellant for 10th CoC meeting. The RP has not furnished any explanation as to why notice has not been served on the other ex-director i.e. Sumit Suresh Bhatnagar, thus, the RP has contravened the mandatory provisions provided in Section 24 (3) (b) of the I&B Code and Regulations 19 (1), 21(3)(iii) and 23 of the IBBI Regulations.*

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32. We are of the considered view that without affording opportunity to the ex-directors of the Corporate Debtor 9th, 10th and 11th CoC meetings were convened and Resolution of Liquidation of Corporate Debtor has been passed. Which is in contravention to Section 24 (3) (b) of I&B Code and Regulations 19(1), 21 (3) (iii) and 23 of the IBBI Regulations. Thus, the RP has failed to perform the duties of Resolution Professional as provided under Section 25 of the I&B Code.

33. With the aforesaid, it is apparent that there has been material irregularity in exercising of powers by the RP during the Corporate Insolvency Resolution Period. Therefore, the Impugned order as well as the Resolution Passed in 9th, 10th and 11th CoC meetings are not sustainable in Law. Hence, they are hereby set aside.”

- ii. The Applicant has alleged that notices, agendas, and minutes of several CoC meetings were not circulated to the suspended Board of Directors, thereby violating Section 24(3) of the Code and the principles laid down in *Vijay Kumar Jain v. Standard Chartered Bank*.

We would like to refer to the Judgment of Hon'ble Supreme Court in the case of *Vijay Kumar Jain Vs. Standard Chartered Bank and Ors* (2019) 20 SCC 455, which is relied upon by the applicant. In which Hon'ble Supreme Court held that:

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*"15. The statutory scheme of the Code, insofar as the former members of the Board of Directors are concerned, is as follows: A committee of creditors is first constituted under Section 21 consisting only of all the financial creditors of the corporate debtor. Under Section 24, all meetings of this committee are to be conducted by the resolution professional who, however, does not happen to be part of this committee. Section 24(3)(b) is important in that, the resolution professional has to give notice of each and every meeting of the committee of creditors, inter alia, to members of the suspended Board of Directors. Like operational creditors who may attend and participate in such meetings, provided the aggregate dues owing to them are not less than ten per cent of the total debt, both such operational creditors and erstwhile members of the Board of Directors have no vote. Section 25(2)(f) and (i) are also important in that, once the resolution professional convenes meetings of the committee of creditors, he is to present all resolution plans at these meetings. Under Section 30, the resolution professional shall examine each resolution plan received by him in which he must confirm, inter alia, that such plan provides for the repayment of the debts of operational creditors which shall not be less than the amount to be paid to them in the event of liquidation of the corporate debtor. This plan is then submitted*

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*to the Adjudicating Authority if it is approved by the requisite majority of the committee of creditors. The Adjudicating Authority under Section 31(1), if satisfied that the plan passes muster, shall then, by order, approve such plan, which shall be binding on all stakeholders involved in the resolution plan, including guarantors.*

*16. This statutory scheme, therefore, makes it clear that though the erstwhile Board of Directors are not members of the committee of creditors, yet, they have a right to participate in each and every meeting held by the committee of creditors, and also have a right to discuss along with members of the committee of creditors all resolution plans that are presented at such meetings under Section 25(2)(i)..."*

- iii. Hon'ble Supreme Court held that under Section 24 of IBC, all meetings of CoC are to be conducted by the RP who, however, does not happen to be part of this committee. Section 24(3)(b) is important in that, the RP has to give notice of each and every meeting of the Committee of Creditors, inter alia to members of the suspended board of directors.
- iv. In the present case, the RP was required to give notice of each and every meeting of CoC to the Ex-directors. There is nothing on record to show that RP has served notice of meetings of CoC on Ex-director. The RP has not offered any explanation as

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to why the notice has not been served to the Ex-director of Corporate Debtor.

- v. Thus, the RP has contravened the Section 24(3) which provides that the RP must serve notice of every CoC meeting to specific parties, including members of the CoC, suspended board members, and, significantly, operational creditors (OCs) whose aggregate dues exceed 10% of the total debt.
- vi. Admittedly, the RP has not provided the copy of the Resolution Plan along with complete disclosures/records pertaining to the revived CIRP, including without limitation: the Information Memorandum (with addenda), all Form-G publications and EOI records (including provisional/final PRA lists), the RFRP and Evaluation Matrix (with all clarifications/corrigenda), all CoC notices, agendas and minutes post 22.10.2024, to the Applicant, pursuant to which the Resolution Professional undertook to provide all relevant documents to the Applicant in accordance with law within one day. The said undertaking was noted in the Order dated 11th November, 2025. The documents were provided to the SBoD as recorded in the Order dated 19th November, 2025 passed by this Tribunal in I.A.(I.B.) No. 1677/KB/2025.
- vii. We are of the considered view that without affording opportunity to the Ex-director of the Corporate Debtor to participate in the CoC meetings and not sharing documents pertaining to the CIRP such as resolution plan etc., are clear contravention to

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Section 24(3)(b) of IBC and Regulations 19(1), 21(3)(iii) of the IBBI Regulations. Thus, the RP has failed to perform the duties of Resolution Professional as provided under section 25 of IBC.

- viii. With the aforesaid, it is apparent that there has been material irregularity in exercising of powers by the RP as he violated Regulation 15 of Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016 during the Corporate Insolvency Resolution Period. Therefore, this Adjudicating Authority deems fit to refer the matter to the Insolvency and Bankruptcy Board of India (IBBI) for examination and necessary action in accordance with law.

**11.3 Conduct of SBOD-:**

- i. The Applicant was aware of the CIRP proceedings, CoC constitution, and Form G publication, yet did not take timely steps to seek participation or raise objections prior to approval of the Resolution Plan.

**a. Implication of "Doctrine of Laches" on the Applicant-:**

From the material placed on record, it emerges that notices of the initial CoC meetings were served upon the SBoD and that one suspended director participated in an 3rd CoC meeting. It is also evident that the suspended directors were actively pursuing litigation before the Hon'ble NCLAT and the Hon'ble Supreme Court during the subsistence of the CIRP, seeking cancellation of the CIRP admission order dated 13th December, 2019 passed

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by this Bench. However, both the Hon'ble NCLAT and the Hon'ble Supreme Court upheld the CIRP admission order passed by this Bench. Further, the Resolution Professional has candidly admitted that non-circulation of certain documents was inadvertent and that all relevant documents were subsequently furnished to the SBoD as per the direction given by this Tribunal, noted vide order dated 19th November, 2025 in I.A.(I.B.)1677/KB/2025.

In the facts of the present case, this Tribunal finds that the Applicant was aware of the CIRP proceedings, CoC constitution, and Form G publication, yet did not take timely steps to seek participation or raise objections prior to approval of the Resolution Plan. CIRP is a time bound process therefore the doctrine of "vigilantibus non dormientibus jura subveniunt" apply to the fact of the case as notice from 9th till 21st meetings of the CoC was not conveyed upon SBOD yet they approach this Tribunal when the Resolution Plan was approved by CoC, failed to raise I.A. timely. The timeline of the I.A. are as follows-:

The Resolution Plan in I.A. (IBC) (PLAN) /28 (KB) /2025 was filed before this Bench on 25.09.2025.

Subsequently, on 06.11.2025, I.A. (I.B.) 1677/KB/2025 was filed seeking directions for supply of the Resolution Plan along with other relevant documents. Vide order dated 19.11.2025, this Tribunal noted that the required documents had already been supplied as prayed for in the said I.A., and accordingly, the application was disposed of.

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On 18.11.2025, the SBoD filed I.A. (I.B.) 1748/KB/2025 raising objections to the Resolution Plan. Another application, being I.A. (I.B.) 1858/KB/2025, seeking similar reliefs, was also filed by the SBoD. Both the said applications are being dealt with hereinabove in the present order.

**11.4 Alleged Multiple Modifications of the Resolution Plan (Regulation 39(1A))**

The Applicant has contended that the Resolution Plan was modified multiple times in violation of Regulation 39(1A) of the CIRP Regulations. The record, however, indicates that while several rounds of commercial negotiations took place between the CoC and the prospective resolution applicants, the Resolution Plan was formally revised and submitted in its final form only once, i.e., on 04.08.2025. It is well-settled that a Committee of Creditors is not precluded from seeking multiple revisions or engaging in negotiations with Resolution Applicants before actual voting on a Resolution Plan. In *Vistra ITCL (India) Ltd. v. Torrent Investments Pvt. Ltd. & Ors*<sup>23</sup>, the National Company Law Appellate Tribunal observed that Regulation 39(1A) of the CIRP Regulations, 2016—while restricting the Resolution Professional from allowing more than one modification under the statutory mechanism—does not foreclose or prohibit the CoC from negotiating or calling for revised bids even after completion of the challenge mechanism, and that the CoC retains the power to engage in

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<sup>23</sup> (2023) ibclaw.in 161 NCLAT

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extended challenge or further negotiations in exercise of its commercial wisdom.

Similarly, in Sagar Stone Industries v. Sajjan Kumar Dokania and Ors<sup>24</sup>., the Tribunal clarified that Regulation 39(1A) binds only the Resolution Professional and not the CoC, which has an unfettered right to ask for revisions or negotiate with Resolution Applicants once or more before approval.

Accordingly, the fact that the CoC may request one or more revisions of a Resolution Plan, or run multiple rounds of negotiation or challenge in furtherance of value maximisation and feasibility, is inherent in the CoC's deliberative process and does not, in itself, vitiate the approval process so long as the statutory timelines and procedural requirements are adhered to.

Regulation 39(1A) restricts the Resolution Professional from permitting multiple formal modifications but does not fetter the commercial negotiations or deliberations undertaken by the CoC in exercise of its commercial wisdom. Negotiations aimed at value maximisation cannot be equated with impermissible modifications. Accordingly, this Tribunal finds no violation of Regulation 39(1A).

#### **11.5 Commercial Wisdom of the CoC and Approval of the Plan**

The Resolution Plan has been approved by the Committee of Creditors with 100% voting share after multiple rounds of deliberation and negotiations. The Hon'ble Supreme Court

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<sup>24</sup> (2025) ibclaw.in 225 NCLAT

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in K. Sashidhar v. Indian Overseas Bank<sup>25</sup> and Essar Steel India Ltd. v. Satish Kumar Gupta<sup>26</sup> has unequivocally held that the Adjudicating Authority cannot sit in appeal over the commercial wisdom of the CoC and can interfere only on limited grounds specified under Section 30(2) of the Code.

#### 11.6 Treatment of Leasehold Land and APIIC's Objections

- a. APIIC has contended that the leasehold rights stood terminated prior to commencement of CIRP and, therefore, the land cannot form part of the CIRP estate. This Tribunal notes that the issue of subsistence or termination of leasehold rights is already subject matter of arbitral proceedings and related litigation. Further, the Resolution Plan does not seek to unilaterally extinguish or override APIIC's ownership rights but merely proposes facilitative reliefs subject to approval by competent authorities.

Respondent No. 2 has relied upon the judgments in New Okhla Industrial Development Authority v. Mr. Amit Agarwal RP of Boulevard Projects Pvt. Ltd<sup>27</sup>., Shristi Infrastructure Development Corporation Ltd. v. Avishek Gupta RP<sup>28</sup>, and Victory Iron Works Ltd. v. Jitendra Lohia (RP) and Ors<sup>29</sup>., to contend that leasehold rights constitute intangible assets of the Corporate Debtor.

There is no quarrel with the legal proposition laid down in the aforesaid judgments that leasehold rights, where

<sup>25</sup> (2018) ibclaw.in 64 NCLAT

<sup>26</sup> (2019) ibclaw.in 07 SC

<sup>27</sup> (2022) ibclaw.in 869 NCLAT

<sup>28</sup> (2024) ibclaw.in 31 NCLT

<sup>29</sup> (2025) ibclaw.in 22 NCLT

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undisputed and subsisting, may constitute assets of the Corporate Debtor for the purposes of the Insolvency and Bankruptcy Code, 2016. However, the said judgments were rendered in factual situations where the nature, existence, or ownership of leasehold rights was not subject to adjudication in parallel proceedings.

In the present case, it is an admitted position that the leasehold rights claimed by the Corporate Debtor are **sub judice** and are subject to arbitration proceedings. This Adjudicating Authority is not called upon, to determine the question as to who holds valid rights over the leasehold land.

More importantly, the Resolution Plan under consideration is not contingent upon the confirmation or crystallisation of leasehold rights in favour of the Corporate Debtor. The feasibility and viability of the Resolution Plan have not been predicated on the outcome of the arbitral proceedings or on any definitive finding regarding ownership or continuance of leasehold rights.

Accordingly, the reliance placed by Respondent No. 2 on *New Okhla Industrial Development Authority v. Amit Agarwal* (Company Appeal (AT) (Insolvency) No. 1189 of 2019), *Shristi Infrastructure Development Corporation Ltd. v. Avishek Gupta* (Company Appeal (AT) (Insolvency) No. 414 of 2019), and *Victory Iron Works v. Jitendra Lohia* (Company Appeal (AT) (Insolvency) No. 1036 of 2019) is **misplaced and distinguishable on facts**, as the present issue does not concern the classification of leasehold rights as assets, but rather proceeds on the footing that such rights

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are disputed and do not form the foundation of the Resolution Plan.

It is well settled that a Resolution Plan cannot create or extinguish proprietary rights of third parties. The plan, as placed on record, is not contingent upon conversion of leasehold rights and remains capable of implementation even in the absence of such conversion.

The clauses related to relief with regard to APIIC before amendment in Resolution Plan was as follows-:

*"7.7 That, in view of the failure of Andhra Pradesh Industrial Infrastructure Corporation Limited ("APIIC") to submit its claims during the Corporate Insolvency Resolution Process, all claims, demands, or liabilities of any nature whatsoever-whether arising from lease rentals, interest, penalties, charges, or otherwise-that may be asserted by APIIC shall stand irrevocably waived, discharged and extinguished. Upon approval of this Resolution Plan by the Hon'ble Adjudicating Authority, no such claims shall survive or be enforceable against the Corporate Debtor, the Resolution Applicant, or any of its nominees, including any special purpose vehicle (SPV) established for the implementation of the Resolution Plan. In this regard, the Resolution Applicant places its reliance on Ghanashyam Mishra & Sons v. Edelweiss ARC, (2021) 9 SCC 657 - wherein the Hon'ble Supreme Court categorically held that upon approval of a resolution plan under Section 31(1) of the IBC, all claims of creditors, including statutory authorities such as the Income Tax Department, stand extinguished*

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and such authorities cannot raise claims post-approval.

7.8 That appropriate directions be issued to APIIC to favourably consider the renewal and regularization of the leasehold rights in respect of the subject land measuring 153 acres situated within the Achutapuram SEZ, in favour of the Resolution Applicant or its designated Special Purpose Vehicle (SPV). Further, APIIC be directed to consider and process the conversion of the said leasehold interest into a perpetual lease or absolute freehold title, for industrial purposes (in lieu of SEZ use), in accordance with the applicable legal provisions and policy frameworks, within a period of 90 (ninety) days from the date of approval of the Resolution Plan by the Hon'ble Adjudicating Authority.

7.9 That, in view of the cancellation of Kaizen's SEZ status under Rule 19(5) of the SEZ Rules, 2006, pursuant to the delisting order dated 20.10.2023 issued by the Development Commissioner, APSEZ and considering that Kaizen has not availed any SEZ-related incentives or exemptions, the subject land is now fully eligible for development under the Andhra Pradesh Private Industrial Parks Policy, 2025 read with Andhra Pradesh Policy for Establishment of Private Industrial Parks with 'Plug and Play' Industrial Infrastructure (4.0), 2024-2029, issued by the Government vide G.O. Ms. No. 67, dated 26.10.2024 and the subsequent issuance of the Operational Guidelines vide G.O. Ms. No. 31, dated

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09.03.2025. Accordingly, it is respectfully prayed that directions be issued to APIIC to facilitate the conversion of the land use to that of a Private Industrial Park, in accordance with Government Order No. G.O. Ms. No. 31 dated 09.03.2025 and to permit the subdivision, sale, or lease of the said land to Micro, Small and Medium Enterprises (MSMES) and other industrial entities primarily those engaged in pharmaceutical and allied sectors, in alignment with the objectives and provisions of the said policy."

- b. The discussions recorded in the 17th CoC meeting in paragraphs 7.7 to 7.9 were integral to the financial proposal and formed part of the reliefs and concessions sought by the Resolution Applicant i.e., the Respondent No. 2, the final Resolution Plan placed before this Ld. Adjudicating Authority and voted upon by the CoC omits these very reliefs from the dedicated "Reliefs and Concessions" section. Instead, these substantive prayers have been cleverly embedded within the "Treatment and Settlement of Claims" at Clauses 4.5.5 and 4.5.6 in the negotiated plan, thereby concealing their true nature and avoiding scrutiny.
- c. On the 17<sup>th</sup> CoC Meeting dated 29th July, 2025, the CoC informed the SRA to provide at least Rs. 32 Crores to the Financial Creditors, whereupon the SRA confirmed submission of an improvised plan within "a day or two". Post which Modified Resolution Plan was submitted by PRA on 04<sup>th</sup> August, 2025 and voting started on 5<sup>th</sup> August, 2025 without any deliberation on commercial negotiations, in clauses related to APIIC or anything else.

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**11.7 Funding, Feasibility and Viability of the Resolution Plan**

The Applicant has questioned the financial capacity of the SRA and the certainty of funding in exercise of its commercial wisdom. The adequacy of funding arrangements and assessment of feasibility lie primarily within the domain of the CoC.

In 16th CoC meeting, the Resolution Plan of both the PRA was put for discussion where a representative from PNB raised a query stating that since the plan submitted by NEIPL appears to be conditional in nature and therefore non-compliant, can such a plan be placed before the members for voting.

Mr. Sanjeev Narula, representative of J Kumar Developers, was called into the meeting. Regarding the implementation timeline of the plan, Mr. Narula assured that they would consider a period between 30 to 60 days. Additionally, with respect to the financials of the plan, he mentioned that a portion has been earmarked for Operational Creditors, over and above the proposed plan amount approximately 6.7% of the claims filed by the Income Tax Department. Since, they also intend to implead APIIC into the plan, they have proposed an allocation for APIIC, even though no claim has been submitted by APIIC, which is within the domain of SRA to offer to any critical party, if deems to do so, and that is not against the provisions of the Code.

It was clarified to the PRA that since APIIC has not filed any claim, it would be difficult for the RP to make APIIC a party to the resolution plan application. Therefore, it would be the responsibility of the Resolution Applicant to do so. The PRA took note of this.

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In the 17th Meeting a modified plan was put for vote. The SRA has placed on record a Certified Net-Worth Certificate, which demonstrates its financial strength and capability to implement the Resolution Plan. It is on this basis that the Committee of Creditors, in the exercise of its commercial wisdom, approved the Resolution Plan. It is further submitted that, pursuant to the directions of this Adjudicating Authority, the Respondent No. 2 is in the process of placing on record the requisite funding arrangements by way of an affidavit before this Tribunal. In compliance with the directions of this Adjudicating Authority, this aspect, along with the details and Section 29A eligibility of the incoming Directors, was placed before the Committee of Creditors in its 22nd meeting, wherein the CoC deliberated upon and took note of the same. Further, the Respondent No. 2 has also furnished a comfort letter dated 18.11.2025 issued by HDFC Bank Ltd. Now, let us examine Section 30(2) with regard to *feasibility and viability*. Section 30(2) of the Code provides for grounds on which a Resolution Plan can be sent back to CoC by the Adjudicating Authority.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

*“Section 30-: Submission of resolution plan.*

*... (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -*

*... (f) conforms to such other requirements as may be specified by the Board.”*

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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY  
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*“Regulation 39-: Approval of resolution plan.*

*..... (3) The committee shall-*

- a. evaluate the resolution plans received under sub-regulation (2) [which comply with the requirements of the Code and regulations made thereunder,] 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.”*

Section 30(2)(f) of the Code obligates the Resolution Professional to ensure that a resolution plan complies with *such other requirements as may be specified by the Board and Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016* has laid down the following requirement-:

Regulation 39(3)(b) of the CIRP Regulations mandates that, while considering resolution plans, the CoC shall evaluate the feasibility and viability of each plan. The Regulation further presupposes that such consideration forms part of the deliberative process of the CoC and is duly reflected in the record of proceedings.

*This Tribunal further observes that there is irregularity in the process of approval by CoC and filing before Adjudicating Authority. The reliance placed upon*

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*"47. .... 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.*

*47.1. 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.*

*49. We would hasten to observe that the requirement of CIRP Regulations, particularly of placing the resolution plan in its final form before the CoC, has to be scrupulously complied with. No alteration or modification in the process could be countenanced. We say so for the specific reason concerning Law that if the process as adopted in the present matter is approved, the very scheme of the Code and CIRP regulations would be left open-ended and would be capable of inviting arbitrariness at any level. The minor procedural aspects which we have held to be not of material bearing hereinbefore and this aspect*

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*pertaining to approval of financial resolution plan by CoC stand at entirely different footing. The irregularity in the process of approval by CoC and filing before Adjudicating Authority are not the matters of such formal nature that deviation in that regard could be ignored or condoned. As stated above, when commercial wisdom of CoC is assigned primacy, it presupposes a considered decision on the resolution plan in its final form.”*

#### **11.8 Overall Conclusion on the Applicant's Objections**

Upon consideration of the pleadings, documents, and settled legal position, this Tribunal is of the view that the failure of the Resolution Professional to invite the Suspended Board of Directors (SBoD) amounts to a material procedural contravention which can't be overlooked, the fact that the SBoD did not raise such objection at the relevant stage also cannot be completely overlooked. We find it fit to refer the matter to the Insolvency and Bankruptcy Board of India (IBBI) for examination and necessary action in accordance with law.

Further, upon a conjoint reading of the provisions cited hereinabove and the reliance placed on various judicial precedents, this Tribunal is of the considered view that the feasibility and viability of the Resolution Plan, as negotiated, were not deliberated upon by the CoC after such negotiation and prior to voting on the Resolution Plan. This Tribunal, vide Order dated 11<sup>th</sup> November, 2025, directed the Resolution Professional to file a supplementary affidavit clarifying the manner in which the

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infusion of funds would be made under the plan, along with a break-up of own source of funds and the external source of funds. This Tribunal further directed to take up the same with the CoC and file the minutes thereof as a supplementary affidavit. Thereafter, Respondent No. 2 obtained a comfort letter dated 18th November, 2025 issued by HDFC Bank Limited after filing of the application for approval of the Resolution Plan.

All of these discussion have arisen post voting on the Resolution Plan.

The Applicant has questioned the financial strength and capability of the SRA to implement the Resolution Plan on the ground of the poor net worth of the SRA. However, the CoC, without deliberating upon the net-worth certificate, comfort letter, and the financial disclosures with regard to Debt and Equity infusion by SRA, approved the Resolution Plan.

Therefore, in order to confirm the feasibility and viability of the Resolution Plan, deliberation on the issues listed herein, as well as on the changes with regard to the clauses relating to APIIC in the Resolution Plan, is required.

Accordingly, we finds it to be a fit case for deliberation by the CoC which is to be recorded in the minutes of the CoC meeting, post which voting on the Resolution Plan, is required to be undertaken.

Therefore, without vitiating the entire process, and in order to permit the SBoD to attend the discussion on the

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feasibility and viability of the Resolution Plan, we deem it appropriate to remand the Resolution Plan for reconsideration and voting in a meeting of the CoC.

RP is hereby directed to convene the CoC meeting as per the relevant provisions of the Code, within fifteen days from the date of this Order, and to file the minutes of such CoC meeting along with the voting results within three days thereafter.

- 11.9 Registry is hereby directed to share this order with IBBI and place the compliance report on 18.02.2026.
- 11.10 The instant I.A. (IBC) 1748(KB) of 2025 & I.A. (IBC) 1858(KB) of 2025 is dismissed in terms of the above.
- 11.11 I.A. (IBC) (Plan) 28(KB) of 2025 is hereby remand back to CoC for compliance stated above.
- 11.12 List the matter for further consideration on 11.03.2026.
- 11.13 The Registry is directed to send copies of the Order forthwith to all the parties and their representative for information and for taking necessary steps.
- 11.14 Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Rekha Kantilal Shah  
Member (Technical)

Labh Singh  
Member (Judicial)

Order signed on the 12<sup>th</sup> day of February 2026.

RSM(LRA) / HT(LRA)