

National Company Law Appellate Tribunal

Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 1294 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**M/S BALAJI ASSOCIATES
GS-37, Amarjyoti Palace,
Lokmat Sq. Wardha Road,
Nagpur-440012**

...Appellant

Versus

**1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.**

...Respondent No. 1

**2. SAI WARDHA POWER GENERATION LTD.,
'Corporate Debtor', through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.**

...Respondent No. 2

**3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004**

...Respondent No. 3

**4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.**

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1308 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**M/S SHREE PADMALAYA PETROLEUM
AnandwanSquire, Warora District,
Chandrapur**

...Appellant

Versus

1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,
‘Corporate Debtor’, through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1310 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

ZENITH INFRASTRUCTURE
Block No. 7, Co-op Bank Complex,
Warora, Chandrapur, Maharashtra

...Appellant

Versus

1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,
‘Corporate Debtor’, through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH
COMPANY APPEAL (AT) (INSOLVENCY) No. 1311 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company
Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P.
(IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

PEST CONTROL IDEAL
Shop No. 30, 1st Floor, Sai Mangal Karalya,
Wani Bypass Road, Warora

...Appellant

Versus

1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,
‘Corporate Debtor’, through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1312 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

M/S JAI LAHARI INTERPRISES

**Rajendra Prasad Ward,
Behind Jain Sthanak Warora,
Distt: Chandrapur, 442907**

...Appellant

Versus

1. MR. V. VENKATACHALAM

8-2-293/82/A/431/A

**Road No.2, Jubilee Hills,
Hayderabad-500033.**

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,

‘Corporate Debtor’, through

Resolution Professional,

**8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.**

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED

**No.85 Kutchery Road, Mylapore
Chennai – 600004**

...Respondent No. 3

4. KCR ENTERPRISES LLP,

**G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.**

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1313 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**NKS INFRA & CONTRACT
Kilaward, Bhadrawati,
Tah. Bhadrawati,
Chandrapur**

...Appellant

Versus

**1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.**

...Respondent No. 1

**2. SAI WARDHA POWER GENERATION LTD.,
'Corporate Debtor', through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.**

...Respondent No. 2

**3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004**

...Respondent No. 3

**4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.**

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1315 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**M/S ABHIJEET INTELLIGENCE SECURITY
AND
LABOUR SUPPLIERS,
LIC Colony, 56, Parijat Apartment,
Khamla Road, Nagpur**

...Appellant

Versus

1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,
‘Corporate Debtor’, through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1316 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

M/S SCOP INFRASTRUCTURE AND
COMPANY

Near AyyappaMandir,
D.O.C. Road, Tukum,
Chandrapur, Maharashtra

...Appellant

Versus

1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,
‘Corporate Debtor’, through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH
COMPANY APPEAL (AT) (INSOLVENCY) No. 1317 of 2019
(Arising out of Order dated 17th October, 2019 passed by National Company
Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P.
(IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

M/S M.N. PATIL
Uttam Niwas,
Near majore Store Chowk,
Tadoba Road, Durgapur, Chandrapur

...Appellant

Versus

1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,
‘Corporate Debtor’, through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1319 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**M/S PATEL ERECTORS
Opp-Balaji Apartments,
Chhatrapati Nagar,
Tukum, Chandrapur**

...Appellant

Versus

**1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.**

...Respondent No. 1

**2. SAI WARDHA POWER GENERATION LTD.,
'Corporate Debtor', through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.**

...Respondent No. 2

**3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004**

...Respondent No. 3

**4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.**

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1320 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**M/S KRISHNA CONSTRUCTION
Rest House Road, Tilak Ward,
Warora, Chandrapur**

...Appellant

Versus

**1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.**

...Respondent No. 1

**2. SAI WARDHA POWER GENERATION LTD.,
'Corporate Debtor', through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.**

...Respondent No. 2

**3. SRI CITY PRIVATE LIMITED
No.85 Kutcheri Road, Mylapore
Chennai – 600004**

...Respondent No. 3

**4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.**

...Respondent No. 4

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 1321 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**M/S SAIBABA MAHADEV MANDOWKAR
25, SanthTukdoji Complex,
Anandwan Sq. Warora,
Chandrapur 442914**

...Appellant

Versus

**1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.**

...Respondent No. 1

**2. SAI WARDHA POWER GENERATION LTD.,
'Corporate Debtor', through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.**

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH
COMPANY APPEAL (AT) (INSOLVENCY) No. 1322 of 2019

(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

VINOD MANIYAR
Vinayak Layout, Tilak Ward,
Warora, Distt: Chandrapur- 442907

...Appellant

Versus

1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.

...Respondent No. 1

2. SAI WARDHA POWER GENERATION LTD.,
‘Corporate Debtor’, through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.

...Respondent No. 2

3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004

...Respondent No. 3

4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.

...Respondent No. 4

WITH
COMPANY APPEAL (AT) (INSOLVENCY) No. 1323 of 2019
(Arising out of Order dated 17th October, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad, in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018).

IN THE MATTER OF:

**M/s D.R. Engineering Services
Tadoba Road, Tukum, Chandrapur
442401**

...Appellant

Versus

**1. MR. V. VENKATACHALAM
8-2-293/82/A/431/A
Road No.2, Jubilee Hills,
Hayderabad-500033.**

...Respondent No. 1

**2. SAI WARDHA POWER GENERATION LTD.,
'Corporate Debtor', through
Resolution Professional,
8-2-293/82/A/431/A Road No.2,
Jubilee Hills, Hayderabad-500033.**

...Respondent No. 2

**3. SRI CITY PRIVATE LIMITED
No.85 Kutchery Road, Mylapore
Chennai – 600004**

...Respondent No. 3

**4. KCR ENTERPRISES LLP,
G-101 building No. 3 ILABS Center No.18,
Software Units layout, Madhapur,
Hyderabad 500081.**

...Respondent No. 4

For Appellant: Mr. Hrishikesh Chitale, Advocate.

For Respondent: Mr. Akhil Nene, Advocate for RP.

**For Respondent No. 3 Mr. Rohit Rajershi, Mr. Ajit S Ranganatha,
& 4: Mr. Anubhav Seth, Mr. Ankur Kashyap,
 Mr. Aman Bajaj, Advocates for R-3 & R-4.**

J U D G E M E N T

[Per: Shreesha Merla, Member (T)]

1. Challenge in these Appeals under Section 61(3) of the Insolvency and Bankruptcy Code, 2016 (herein referred as 'the Code') is to the Impugned Order dated 17.10.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in I.A. No. 703 of 2019 in C.P. (IB) NO. 275/7/HDB/2018. By the Impugned Order, the Adjudicating Authority has allowed the IA filed by the RP seeking approval of the Resolution Plan; observing that it meets the requirement as referred to in Section 30(2) of the Code.

2. Succinctly put, the facts in brief are that the Adjudicating Authority has admitted CP (IB) No. 275/7/HDB/2018 vide order dated 09.11.2018 filed by Indian Opportunities III Pte Limited and one another and initiated Corporate Insolvency Resolution Process (CIRP) against the 'Corporate Debtor' 'M/s Sai Wardha Power Generation Limited'. Mr. V Venkatachalam was appointed as the Resolution Professional (RP). The RP preferred I.A. No. 703 of 2019 under Section 30 (6) and 31 of the Code r/w Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r/w Rule 11 of NCLT Rules, 2016 seeking a direction from the Adjudicating Authority to approve the Resolution Plan, which was approved by the CoC by 75.91% voting share. After considering the feasibility and viability, the Adjudicating Authority has allowed I.A. No. 703 of 2019. The Resolution Applicant i.e. the Consortium of Sri City Private Limited and KCR Enterprise LLP had taken over the 'Corporate Debtor' Company.

3. Submissions of the Appellant:

- It is submitted by the Ld. Counsel for the Appellant that the Appellant was awarded the work for round the clock field Operation and Maintenance of Electrical Systems of all the Controls and Instrumentation Equipment of the complete plant including all sub systems. A Contract dated 09.10.2015 was executed between the Appellant and the 'Corporate Debtor'. The tenure of the Contract was for a period of 5 years for an amount of Rs. 81,17,73,308/-.
- It is submitted that approximately 105 persons were deployed by the Appellant at the Power Generation Unit of the 'Corporate Debtor' and the entire plant was functioning on the strength of the man power provided by the Appellant; for shortfall of man power heavy penalties was levied under the Contract since the salary due to the employees was not being paid several letters were addressed to the employees.
- The 'Corporate Debtor' proposed a short closure of the Contract as on 30.06.2017 with a mutual agreement. A Reconciliation Meeting was held on 05.07.2017. The Contract was ultimately short closed on 13.07.2017. A final Reconciliation was done upto June 2017 and on 05.07.2019 the full and final payable amount to the Appellant was agreed at Rs. 11.18 Crores. Rs. 1.75 Crores was to be released forthwith by the 'Corporate Debtor' for smooth and peaceful transition and the remaining agreed in trenches.
- After releasing Rs. 50 Lakhs in two trenches, the balance amount was never paid. The Appellant had to pay regularly monthly salaries to their employees including statutory dues such as PF, ESIC, Service

Tax etc. The approved Resolution Plan states that all the dues amounting to Rs. 1.67 Crores pertaining to SWPGL own employees and workmen will be paid in full. However, the plan does not address to the salaries and other dues of the manpower deployed by M/s Balaji Associate and hence, there is clear cut discrimination among the treatment of employees which is unfair and unjustifiable.

- It is submitted that the Appellant was never informed about any of the proceedings being conducted by the Resolution Professional or by the CoC. A copy of the Resolution Plan was also not supplied to the Appellant. The Appellant was denied participation and information about the entire process of the CIRP.
- The Adjudicating Authority failed to appreciate that the Resolution Plan is in contravention of the law time being in force and also failed to appreciate that the plan had discriminated amongst the Financial Creditors and Operational Creditors. There are material irregularities in the exercise of the powers of the RP. The classification of the Appellant as 'Other Operational Creditors' other than employees and workman is illegal and the Adjudicating Authority has erroneously allowed and approved this Resolution Plan which is in contravention of the provisions of the Code.
- It is strenuously argued that such an unfair discrimination made out against the Appellant is totally unjustifiable. The RP admitted a claim of Rs. 5002,48,82,331. The Financial Creditors were paid an amount of Rs. 635,00,00,000 against an admitted claim of Rs. 1844.69 Crores, of which the Operational Creditors were paid only Rs. 5,00,00,000

Crores which is 0.26% of the total amount claimed, as against 10.79% being paid to the Financial Creditors.

- As per Regulation 38, the amount due to Operational Creditors under the Resolution Plan ought to be given priority in payment over Financial Debtors. The Resolution Plan does not include a statement as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the 'Corporate Debtor'.
- The Resolution Applicants lack the requisite qualifications and experience required for running a power plant and hence the Appellant seek to set aside the Impugned Order passed by the Adjudicating Authority.
- Ld. Counsel for the Appellant relied on ratio of the Judgments of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. Vs. Yes Bank Limited and Essar Steel Vs. Satish Kumar Gupta reported at 2019 SCC Online SC 1478 and also in support of his arguments.

4. Submissions of 1st Respondent / Representing 2nd Respondent ('Corporate Debtor'):

- It is submitted that the relationship between the Appellant and the 'Corporate Debtor' was purely contractual and commercial in nature, recorded in executed contracts for the Operation & Maintenance (O&M) of the power plant owned by the 'Corporate Debtor' for 'Supply of Manpower.
- Classification of Appellant as an Operational Creditor on the website of the 'Corporate Debtor' was never objected to by the Appellant.

- The Resolution Plan approved by the CoC is in compliance with the provisions of the Code read with the Rules and Regulations made thereunder; the CoC exercised its commercial wisdom which is non-justiciable as laid down by the Hon'ble Supreme Court in **'K Sashidhar' Vs. 'Indian Overseas Bank & Ors.', 2019 12 SCC 150.**
- The CoC by a majority of 94.29% approved the appointment of Ernst & Young, Duff & Phelps India Pvt. Ltd (Duff & Phelps), as the valuers under Regulation 27 of the CIRP Regulations; the eligibility of the criteria of the Resolution Applicant in terms of Section 29A of the Code was done by Kroll Associates; the Appellant filed an Application under Rule 11 and sought to bring on record extracts of Power Purchase Agreement (PPA) dated February 2, 2020; MERC Order dated January 9, 2019; MERC order dated June 1, 2020, for which Application the RP filed Reply.
- The cause of action for filing the Application has been stated to be the execution of the PPA i.e. on February 2, 2020, but the approval of the Resolution Plan and successful implementation is prior to the execution of the PPA.
- The proceedings before the MERC were pending prior to the initiation of CIRP and the MERC order dated January 9, 2019 led to the crystallization of the PPA, which is the core value of the maximizing factor for the 'Corporate Debtor'.
- It is submitted that the RP whilst discharging his duties acted in accordance with the Code and Rules and Regulations made thereunder and seeks for dismissal of the Appeal with costs.

5. Submissions of the 3rd and 4th Respondents/ the Successful

Resolution Applicants:

- It is submitted that the relationship between the Appellant and the 'Corporate Debtor' was purely contractual and commercial in nature. There was no discrimination made against the Appellant herein. The workman of the Appellants were not the workmen of the 'Corporate Debtor' and there cannot be any parity between them.
- Non-inclusion of unsecured Operational Creditors with claims lesser than 10% of the total admitted claims of the 'Corporate Debtor' was not entitled to attend the meeting of the CoC and would come to know of the Insolvency Process only subsequent to the publication of the 'Notice' for submitting the 'Claims' by the RP.
- The Resolution Applicants are eligible with requisite expertise and are financially fit. They have been evaluated by Kroll Associates and found to be compliant with Section 29A of the Code. The Consortium Members are a part of the 'iLabs Group' which has a long presence in the power sector through its entities Sri Power Pvt. Ltd. Therefore, Sri Power Pvt. Ltd. was an early entrant into India's Solar Power Sector and operates two plants, one at Chittoor and another at Kadiri under Anantapur District.
- The Members of the Consortium have pledged for a total sum of Rs. 1500 Crores which is much higher than the amounts sought to be infused into the 'Corporate Debtor'.
- The PPA dated February 2, 2020 was approved post CIRP.

- The Resolution Plan submitted by the Resolution Applicants was approved by the CoC with 75.91% majority.
- The Claim of the Operational Creditors with contingent claims of Rs. 1506,52,65,296 and other Creditors with contingent claims of Rs. 12,49,72,274 are proposed to be paid 'Nil'. A contingent fund to protect the going concern for all future claims which may arise after a contingent fund comprising the balance amount left over from the Operational Creditor and Other Creditors allocated amount shall be put in an escrow account for a period of 24 months. Any claims which are crystallized in future shall be paid by the escrow account.

Analysis:

6. The brief points which fall for consideration in these Appeals is whether the Adjudicating Authority was justified in approving the Resolution Plan under Section 31 of the Code.

7. It is the main case of the Appellant that the approved Resolution Plan is in contravention of the provisions of any law for the time being in force; that there has been material irregularity in exercise of the powers by the RP; that the debts owed to Operational Creditors of the 'Corporate Debtor' have not been provided for in the Resolution Plan in the manner specified by the Board.

8. It is strenuously contended that the PPA from Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) was signed on 02.07.2020, which issue was taken and discussed in the meeting of the CoC, but neither the CoC nor the RP took any step as mandated under Sections 17, 18, 20 & 25 of the Code, as a result of which, the 'Corporate Debtor' and the

Operational Creditors have suffered a loss of Rs. 500 Crores. The PPA was signed immediately after the Resolution Process i.e. on 02.07.2020, the benefit of which is now being taken by the Resolution Applicants to deceive the Operational Creditors of their dues.

9. It is the case of the Appellant that these Agreements are indispensable assets of the 'Corporate Debtor' which are certain to attract good investment towards the acquisition of the 'Corporate Debtor' through CIRP. However, such facts in spite of being in the knowledge of the IRP, RP and the CoC were not disclosed either in the Information Memorandum or in the Expression of Interest. The non-disclosure has caused an irreparable loss to the Operational Creditors since it has devalued the 'Corporate Debtor' and circumscribed the maximization of the assets of the 'Corporate Debtor', affecting the interests of the Operational Creditors.

10. Ld. Counsel for the Appellant has relied on the Judgment of this Tribunal in **Company Appeal (AT) (Ins) No. 601 of 2020 'Gujarat Urja Vikas Nigam Ltd. Vs. Yes Bank Limited'** which was upheld by the Hon'ble Supreme Court. The Ld. Counsel for the Appellant drew our attention to the relevant paragraph which reads as follows:-

"In view of the foregoing discussion and keeping in view the objective of the Insolvency and Bankruptcy Code, 2016 which relates to maximization of the value of assets for resolution of the corporate person, it stands to reason that the Solar Power Plant i.e. physical assets realizes its full economic value only if it functions in conjunction with the PPA. The steady and assured revenue stream resulting from the existence of the PPA is the sine' qua non for the long term economic and financial viability of the solar power project since it provides comfort and security to the financial creditors who feel encouraged to provide credit for the project. Therefore, the physical entity of

the Solar Power Project working in conjunction with the PPA becomes necessary for maximization of the value of assets. This is especially true since the power producer is willing to generate and supply power and also in a position to do so to the GUVNL. Hence, the termination of PPA does not appear to be justified. The Impugned Order, therefore, suffers from no infirmity and we don't find cogent reasons for accepting the appeal. The appeal is dismissed."

(Emphasis Supplied)

11. The Contention of the Ld. Counsel for the Appellant that PPA was never disclosed by the RP or by the Resolution Applicants and therefore, amounts to material irregularity, cannot be accepted in the light of the fact that the Resolution Plan submitted by the Resolution Applicants was approved by the CoC with 75.91% majority and the Resolution Plan was approved by the Adjudicating Authority vide order dated 17.10.2019. The Appellant filed the PPA executed between the 'Corporate Debtor' and MSIEDCL and also copies of the order passed by MERC on 15.06.2020. At the cost of repetition, the Impugned Order is dated 17.10.2019, whereby and whereunder the Resolution Plan was duly approved by the Adjudicating Authority. The PPA, read together with the MERC are *subsequent* to the Impugned Order passed on 17.10.2019. It is relevant to note that the matter was heard on 25.09.2019, 27.09.2019 and on 01.10.2019 for seeking approval of the Resolution Plan by the Adjudicating Authority. Even at that stage, all these were not brought to the notice of the Adjudicating Authority. Therefore, we are of the earnest view that there is no material irregularity in accordance with Section 61(3)(ii) of the Code.

12. It is seen from the record that the Information Memorandum was provided to the CoC. At no point of time was any objection ever raised that

the Information Memorandum contained inadequate information. There are no substantial grounds stated as to why the CoC would intentionally downgrade the value of the 'Corporate Debtor'.

13. The following table specifies the values arrived at by the two valuers:-

<i>Valuer</i>	<i>Duff & Phelps India Pvt. Ltd.</i>	<i>Ernst & Young Merchant Banking Services Pvt. Ltd.</i>	<i>Average Valuation</i>
<i>Liquidation Value</i>	<i>585.50 Crores</i>	<i>608.50 Crores</i>	<i>597.00 Crores</i>
<i>Fair Value</i>	<i>1,161.00 Crores</i>	<i>1,897.60 Crores</i>	<i>1,529.30 Crores</i>

14. It is the case of the Appellant that there is a difference of approximately Rs. 932 in the Liquidation Value and in the Fair Value and 737 Crores in Fair Values. However, instead of appointing a third valuer, the RP did not take any steps to ensure maximization of the assets of the 'Corporate Debtor'. It is seen from the record that the CoC by a Majority of 94.29% approved the appointment of the aforementioned valuers stipulated under Regulation 27 of the CIRP Regulations.

15. Hence, this Tribunal is of the considered view that there are no substantial grounds to appoint a third valuer and we do not find any irregularity either in the conduct of the RP or in the commercial wisdom regarding distribution of the proceeds of the Resolution Plan.

16. As regarding the Contention of the Appellant in CA (AT) (Ins) No. 1294 of 2019, it is evident from the record that the relationship between the Appellant and the 'Corporate Debtor' was purely contractual in nature as the 'Corporate Debtor' had executed the contracts with the Appellants for the Operation & Maintenance of the power plant which included Supply of

Manpower for the same. The relevant extract of the Contract is reproduced as hereunder:

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KSK
Power from knowledge

Sai Wardha Power Limited
(Formerly known as Wardha Power Company Limited)
CIN No. 2701007132005PL0047617

Works	Regulatory Office
G-2, Vardha Road, Canteen,	0-2-200/02/003115
Nagpur, Nagpur,	Plot No. 22, Jilima Hill,
Chandrapur (Dist.)	Hyderabad - 500033
Madhya Pradesh - 462007	Tel: +91-40-2355922-25
Tel: 07178-265100	Fax: +91-40-23559000
Fax: 07178-265128	

Reference : BA.NPUR/BHMB/4160101/1293

Date : Friday, 09 October 2015

To : M/s Balaji Associates,
38-37, Amarjyoti Palace,
Lokant Sq., Wardha Road,
Nagpur - 440012.
Telefax No: 0712-2460959

Dear Sir,

Kind Attention: Mr Sanjay Chandra- Director

Subject : Letter of Award (LOA) for

a. Round the Clock Field Operation and Maintenance of Electrical systems with all the sub systems / auxiliaries and

b. Round the Clock Maintenance of all the Controls & Instrumentation Equipment, Associated Systems, Associated Auxiliaries except CHP & AHP

of 4 x 135MW at Sai Wardha Power Limited at Warora, Maharashtra

References:

a) Minutes of Meeting (MOM) dated 09th October, 2015.

b) Balaji Associates' e-mail dated 01st October, 2015 regarding submission of revised and final Minimum Manpower chart and Techno commercial offer.

c) Minutes of Meeting (MOM) dated 30th September, 2015.

d) Balaji Associates' e-mail dated 1st September, 2015 regarding submission of final techno commercial offer.

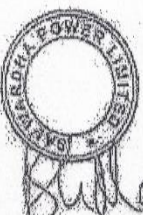
e) SWPL's Letter dated 04th September, 2015 regarding Withdrawing of all deviations and submission of final techno commercial offer.

f) Balaji Associates' e-mail dated 23rd July, 2015 regarding techno-commercial offer, experience profile and O&M capabilities.

g) Balaji Associates' mail dated 02nd July, 2015 regarding their Site Visit to SWPL Plant

h) Minutes of Meeting (MOM) dated 26th June, 2015.

i) SWPL's mail dated 17th June, 2015 regarding Tender documents.



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Page 1 of 14



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115

With reference to the aforesaid references, mails, subsequent clarifications sought and discussions held, we are pleased to issue you this Letter of Award (LOA) for providing Round the Clock Field Operation and Maintenance of Electrical systems with all the sub systems / auxiliaries and Round the Clock Maintenance of all the Controls & Instrumentation Equipment, Associated Systems, Associated Auxiliaries except CHP & AHP of 4 x 135MW at Sai Wardha Power Limited at Warora, Maharashtra (hereinafter referred to as 'Power Plant'/'Site').

For ease of reference, you shall be referred to as "the Contractor" or "Balaji Associates" and Sai Wardha Power Limited shall be referred to as "the Owner" or "SWPL". Both parties individually shall be referred to as "Party" and collectively as "Parties".

The issue of LOA is subject to following terms and conditions:

1) SCOPE OF WORK

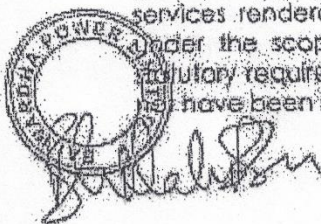
The scope of work ("Scope of Work") shall include but not limited to the scope given as Technical Specifications, Electrical, Control & Instrumentation, associated Minutes of Meetings (MOMs) and Correspondences under Annexures 1,1A,7 and 7A respectively and in compliance with all other Annexures hereto.

The obligations of the Contractor under this LOA shall include single point responsibility for all necessary co-ordination in respect of the Independent services to be performed to ensure the round the Round the Clock Field Operation and Maintenance of Electrical systems with all the sub systems / auxiliaries and Round the Clock Maintenance of all the Controls & Instrumentation Equipment, Associated Systems, Associated Auxiliaries except CHP & AHP of 4 X 135 MW Thermal Power Plant is completed in every respect as contemplated in the Technical specifications, Electrical, Control & Instrumentation, associated Minutes of Meetings (MOMs) and correspondence and all performance guarantees against the Key deliverables (Annexures 2)

No tender conditions shall be deviated except as agreed in referenced documents above and Contractor shall follow the documents, annexures and minutes of meetings, correspondences to execute the LOA/ Contract of Field operation and maintenance of Electrical package and Maintenance of Controls & Instrumentation package.

The Services rendered shall be complete in all respects and in accordance with good industry practices including Miss Outs, even if it is not specifically detailed in the Technical Specifications, Electrical, Control & Instrumentation, associated Minutes of Meetings (MOMs) and Correspondences as detailed in Annexures 1,1A,7 and 7A but required for safe, reliable operations and to meet the agreed Key deliverables (Annexures 2) of this LOA. The Contractor shall not be eligible for any extra payment in respect of any additional services rendered which may be required for safe and reliable operation under the scope of work discussed here or if required under applicable statutory requirements of Competent Authority and Codes though they may not have been specifically mentioned.

Page 2 of 14



116

2) NOTICE TO PROCEED & TENURE OF CONTRACT

The Owner shall issue Notice to proceed to the Contractor under this LOA/ Contract for commencing mobilization/demobilization at the Power Plant. Notice to proceed will be issued within a week from the date of issue of LOA by the Owner for commencement of scenario that is applicable. Should there be ramping up/ramping down in operation, the notice to proceed shall be issued by the Owner for the respective scenario indicating one month for mobilization and two months for demobilization. The scenarios will have meaning as described herein below.

Sl. No	Scenarios and Description
1	Scenario-1 Two Units in Operation
2	Scenario-2 Three Units in Operation
3	Scenario-3 Four Units in Operation

The Tenure of the contract will be 5 (five) years. This LOA/Contract shall take effect from the date of issue of the First Notice to Proceed (NTP) by the Owner.

A familiarization period of 2 (two) months from the date of first NTP will be allowable to the Contractor during which no penalties/bonuses will be applicable. This is explained in the General terms and conditions (GTC) (Annexure 10). This period will be used by the Contractor to develop mutually acceptable formats for various reports (Daily, weekly, monthly, quarterly, annual, safety etc.) on the key deliverables and the performance parameters.

The Owner, upon expiry of contract, has an option to extend the Contract for a further period on the same terms and conditions and the fee for such extended tenure shall be fixed as per mutual discussions.

3) CONTRACT CONSIDERATION

a) The Monthly Basic Operation and Maintenance (O&M) Fee for the entire Scope of Work shall be as follows:

Scenario	Period	Year	Period	No. of Months	Rate Per month	Amount (Per Year)
	Year (1)					
1	2 Units in operation	1	Nov. 2015 ~ Oct 2016	12	₹. 73,82,000	₹. 8,85,84,000
2	3 Units in operation	1	Nov. 2015 ~ Oct 2016	12	₹. 94,08,000	₹. 11,28,96,000
	4 Units in operation	1	Nov. 2015 ~ Oct 2016	12	₹. 1,15,31,000	₹. 13,83,72,000



Page 3 of 14



4) PAYMENT TERMS

Subject to any statutory deductions/ adjustments from the Monthly Fee as per the LOA/Contract, Contractor shall be entitled to receive the Monthly Fee progressively, in the following manner: -

- a) Mobilization advance: Equivalent to 10% of 1st Contractual Year Annual O&M fee of Scenario 3 shall be released to the Contractor against submission of Advance Bank Guarantee (ABG) (Annexure 17) by the contractor for the equivalent amount which shall be interest free. This amount will be recovered in 12 Equal monthly instalments starting from the first monthly RA bill of the contractor.
- b) Payment during Mobilization period of 30 days - The Contractor will be paid on pro-rata basis proportionate to the resources (Manpower, T&P, Consumables etc.) mobilized for the 1st month (mobilization period). This arrangement will continue till the agreed contractual mobilization is achieved completely. The weightages towards the resources and respective pro-rata amounts shall be indicated in the NTP.
- c) 90% of the monthly fee will be released against monthly running invoices subject to compliance as under by submitting the below listed supporting documents duly signed by Plant Heads of the Contractor and SWPL:
 - i. Commercial Invoice in proper format with all required details
 - ii. Monthly reports covering all key deliverables, consumables etc.
 - iii. Key deliverables cited in (Annexures 2) (as applicable) and performance evaluation sheets as per clause 10.
 - iv. All statutory compliance reports and proof of payments towards labour related matters, PF, compliance, WC, policy, vehicle

Page 5 of 14



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(Emphasis Supplied)

17. From the aforementioned 'letter of Award' dated 09/10/2015, between the Appellant/Balaji Associates and the 'Corporate Debtor' it is clearly understand that supply of manpower is a single point responsibility to be adhered to by the Appellant to ensure round the clock maintenance. The 'Payment' term specified in Clause 4 establishes that payments will be made on a monthly basis released as against 'Commercial invoices raised in proper format'. The aforementioned terms and conditions manifest that the contract is commercial in nature and hence we observe that the manpower

supplied on a contractual basis cannot be at parity with the employees of the ‘Corporate Debtor’.

18. It is the main case of the Appellant that they were kept in the dark about CIRP Proceedings. Section 24 of the Code deals with ‘Meeting of Committee of Creditors’ and reads as hereunder:

“24. Meeting of committee of creditors.—

(1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of [committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings: Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) [Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor] who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors: Provided that the fees payable to such

insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.”

(Emphasis Supplied)

19. Subsection (c) of Section 24 provides for the representation of ‘Operational Creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt’. In the instant case, as the ‘Claim’ of the Appellant is lesser than 10% of total admitted claims of the “Corporate Debtor”, we are of the earnest view that the Appellant is not entitled to be present in the meeting of the CoC and would therefore come to know of the Insolvency Process of the ‘Corporate Debtor’ only subsequent to the publication of the ‘Notice’ by the Resolution Professional seeking submission of ‘Claim’.

20. In a catena of Judgments, the Hon’ble Supreme Court has laid down that the commercial wisdom of the CoC is non-justiciable unless it does not comply with the provisions of Section 30(2) of the Code. The Hon’ble Supreme Court in **‘K Sashidhar’ Vs. ‘Indian Overseas Bank & Ors.’**

2019 12 SCC 150 has observed as follows:

*“57. ...Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. **The provisions investing jurisdiction and authority in NCLT or NCLAT as noticed earlier, have not***

made the commercial decision exercised by CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order “approving a resolution plan” under Section 31.

First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers “by the resolution professional” during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds— be it under Section 30(2) or under Section 61(3) of the I&B Code —are regarding testing the validity of the “approved” resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision.”

[emphasis supplied]

21. The Hon’ble Supreme Court in ‘**Ghanashyam Mishra and Sons Private Limited’ Vs. ‘Edelweiss Asset Reconstruction Company Limited Through the Director & Ors.’, (2021) 166 SCL 237 (SC)**, dealing with the issue of commercial wisdom CoC and the jurisdiction of the Tribunal to interfere in the same has observed as follows:-

“150. *It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the Resolution Plan or rejecting the same.*

151. The position is clarified by the following observations in paragraph 59 of the judgment in the case of **K. Sashidhar (supra)**, which reads thus:

“59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors.....”

152. This Court in Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) after reproducing certain paragraphs in K. Sashidhar(supra) observed thus:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar”

153. It can thus be seen, that this Court has clarified, that the limited judicial review, which is available, can in no circumstance trespass upon a business decision arrived at by the majority of CoC.

154. In the case of Maharashtra Seamless Limited (supra), NCLT had approved the plan of Appellant therein with regard to CIRP of United Seamless Tubulaar (P) Ltd. In appeal, NCLAT directed, that the Appellant therein should increase upfront payment to Rs.597.54 crore to the “financial creditors”, “operational creditors” and other creditors by paying an additional amount of Rs. 120.54 crore. NCLAT further directed, that in the event the “resolution

applicant” failed to undertake the payment of additional amount of Rs.120.54 crore in addition to Rs. 477 crore and deposit the said amount in escrow account within 30 days, the order of approval of the ‘Resolution Plan’ was to be treated to be set aside. While allowing the appeal and setting aside the directions of NCLAT, this Court observed thus:

“30. The appellate authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the Resolution Plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a Resolution Plan, the adjudicating authority has to be satisfied that the requirement of subSection (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an adjudicating authority has to be satisfied. That factor is that the Resolution Plan has provisions for its implementation. The scope of interference by the adjudicating authority in limited judicial review has been laid down in Essar Steel [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531], the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the appellate authority ought to have interfered with the order of the adjudicating authority in directing the successful resolution applicant to enhance their fund inflow upfront.”

155. This Court observed, that the Court ought to cede ground to the commercial wisdom of the

creditors rather than assess the Resolution Plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.

156. *It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.”*

(Emphasis Supplied)

22. Keeping in view the ratio of the Hon’ble Supreme Court in ‘**K. Sashidhar**’ (*Supra*) and ‘**Ghanashyam Mishra and Sons Private Limited**’ (*Supra*), this Tribunal is of the considered view that there are no substantial grounds to set the clock back especially in the light of the fact that a Resolution Plan has been implemented two years ago and the change in the management of the “Corporate Debtor” has also been effectuated.

23. It is represented that the Appellants in *Company Appeal (AT) (Insolvency) No. 1309, 1314 & 1318 of 2019*, do not want to pursue the matter.

24. For all the foregoing reasons, this Appeal is dismissed accordingly.
No Order as to costs.

COMPANY APPEAL (AT) (INS) No. 1308/2019

- It is the case of the Appellant is he supplied fuel to the ‘Corporate Debtor’ and their total claim as admitted by the ‘Resolution Professional’ for supply of Diesel is INR 2,61,174.

- It is the case of the Appellant that that they were not kept informed about the CIRP proceedings and came to know about the same only when they were asked to submit the claim by the 'Resolution Professional'.
- The Tribunal is of the considered view that the interest of the Appellant have been considered in the Resolution Plan as per Code and the total debt of the 'Corporate Debtor' cannot be serviced out of the existing assets of the 'Corporate Debtor'. Therefore, the resolution plan proposes to pay out the Appellant the proportionate share of the Appellant in the overall debts of the 'Corporate Debtor', which is a value higher than the amount the Appellant would be entitled to in the event of the liquidation of the company.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)*** this 'Tribunal' is of the considered view that there are no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated.
- For all the above noted reasons, this 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INSOLVENCY) NO.1309 OF 2019

- It is the case of the 'Appellant' that they are engaged in the business of providing skilled and unskilled workers for addressing works like gardening, housekeeping, repair and other miscellaneous work. It is

strenuously argued that the Appellant provided vehicles for the transportation of the staff of the 'Corporate Debtor' alongwith manpower required for transportation of coal etc. It is the case of the Appellant that these workmen were not treated in parity with the workmen of the 'Corporate Debtor' and also that they were not kept informed about the CIRP proceedings and came to know about the same only when they were asked to submit the claim by the 'Resolution Professional'.

- The 'Tribunal' is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the employees of 'Corporate Debtor'. Moreover, it is seen from the record that the 'Resolution Plan' proposes to pay out to the Appellant that proportional share which is a value higher than the amount the Appellant would be entitled to, in the event of liquidation of the company. It is reiterated that as the claim of the Appellant is less than 10% of the admitted claim of the 'Corporate Debtor', as per Section 24(c) of the Code, they cannot participate in the Meeting of the Creditors and hence would come to know about the Insolvency Process only subsequent to the 'Publication of the Notice' issued by the 'Resolution Professional' seeking submission of claim.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of **K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)** this 'Tribunal' is of the considered view that there are no substantial grounds to set the clock

back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated.

- For all the above noted reasons, this 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1310 of 2019

- It is the case of the 'Appellant' that he is a Civil Contractor who executed civil work for the 'Corporate Debtor' in pursuance of the work order issued by the 'Corporate Debtor' from time to time. It is strenuously argued that the 'Resolution Plan' is discriminatory towards the 'Operational Creditor'.
- The contention of the Appellant is that there is discriminatory treatment meted out to the 'Operational Creditor', is untenable as the documentary evidence on record establishes that the 'Financial Creditor' has taken a haircut of almost 90% of their admitted claim, and the Operational Creditors have been treated on a proportionate basis.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of **K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)** this 'Tribunal' is of the considered view that there are no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated.

- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1311 of 2019

- It is the version of the 'Appellant' that he is the service provider of pest control and he was issued 'work order' by the 'Corporate Debtor' and accordingly he provided the relevant services to the 'Corporate Debtor'. The total claims of the Appellant herein is to the tune of Rs.2,06,500/. It is argued that they were not kept informed about the CIRP proceedings against the 'Corporate Debtor' and came to know about the same only when they were asked to submit the claim by the 'Resolution Professional'.
- As the claim of the 'Appellant' is less than 10% of the total admitted claim against the 'Corporate Debtor' as per Section 24(c) of the Code, they cannot be allowed to participate in the COC Meeting. Hence, the knowledge of the proceedings would be only subsequent to the 'notice' issued by the RP seeking submissions of Claims.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)***, this 'Tribunal' is of the considered view that there are no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has also been fully considered.

- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1312 of 2019

- It is the version of the 'Appellant' that it is a company engaged in the services of providing semi-skilled/skilled/unskilled workers round the clock for operations and maintenance of CHP/Boiler and in the electrical field. It is also the case of the Appellant that they are additionally engaged in providing different services like taking of coal, picking of stones from the coal conveyor belt and for all these activities the work order has been issued by the 'Corporate Debtor'.
- It is the case of the Appellant that these workmen were not treated in parity with the workmen of the 'Corporate Debtor' and also that they were not kept informed about the CIRP proceedings and came to know about the same only when they were asked to submit the claim by the 'Resolution Professional'. It is also argued that there is discriminatory treatment to the workmen employed by 'Appellant' and the employees of 'Corporate Debtor'.
- Keeping in view the definition of 'Workmen' under Section 2(s) of the Industrial Disputes Act, 1947, any parity between the employees of the 'Corporate Debtor' and the workmen employed under a 'Contract' providing the aforementioned services cannot be similarly treated.
- The 'Tribunal' is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the

employees of 'Corporate Debtor'. Moreover, it is seen from the record that the 'Resolution Plan' proposes to pay out to the Appellant that proportional share which is a value higher than the amount the Appellant would be entitled to, in the event of liquidation of the company. It is reiterated that as the claim of the Appellant is less than 10% of the admitted claim of the 'Corporate Debtor', as per Section 24(c) of the Code, they cannot participate in the Meeting of the Creditors and hence would come to know about the Insolvency Process only subsequent to the 'Publication of the Notice' issued by the 'Resolution Professional' seeking submission of claim.

- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)*** this 'Tribunal' is of the considered view that there are no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered.
- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1313 of 2019

- It is the case of the 'Appellant' that he is providing the services of transportation of wet ash from silos to private stone quarries as per 'work order' issued by the 'Corporate Debtor'. It is also the case of the Appellant that work awarded to the Appellant by the Corporate Debtor

is an essential work and was conducted on a day to day basis by the Appellant. It is also the case of the Appellant that he is an unsecured Operational Creditor and there was a contractual relationship between the Corporate Debtor and the Appellant.

- This Tribunal is of the earnest view that the Resolution Plan approved by the COC, aims to pay the Appellant proportional share of the total overall operational claim of the 'Corporate Debtor, which is higher than the liquidation value, which the Appellant would be entitled to in the event of the liquidation of the Corporate Debtor. Considering the contractual relationship which is also commercial in nature between the Corporate Debtor and the Appellant, the Appellant cannot claim parity alongwith other workmen of the Corporate Debtor.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction*** (Supra), this 'Tribunal' is of the considered view that there are no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered.
- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1315 of 2019

- It is the case of the 'Appellant' that the Appellant supplied security manpower to the 'Corporate Debtor' and has not been paid the

legitimate dues for the security manpower provided to the 'Corporate Debtor'.

- It is the case of the Appellant that the security manpower happen to be workmen were not treated in parity with the workmen of the 'Corporate Debtor' and also that they were not kept informed about the CIRP proceedings and came to know about the same only when they were asked to submit the claim by the 'Resolution Professional'.
- The 'Tribunal' is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the employees of 'Corporate Debtor'. Moreover, it is seen from the record that the 'Resolution Plan' proposes to pay out to the Appellant that proportional share which is a value higher than the amount the Appellant would be entitled to, in the event of liquidation of the company. It is reiterated that as the claim of the Appellant is less than 10% of the admitted claim of the 'Corporate Debtor', as per Section 24(c) of the Code, they cannot participate in the Meeting of the Creditors and hence would come to know about the Insolvency Process only subsequent to the 'Publication of the Notice' issued by the 'Resolution Professional' seeking submission of claim.
- The Tribunal is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the employees of the 'Corporate Debtor'.

- Keeping in view the ratio of the Hon'ble Apex Court in the case of **K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)** this 'Tribunal' is of the considered view that there are no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered, for all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1316 of 2019

- It is the case of the 'Appellant' that he is providing the services of transportation of fly ash as per 'work order' issued by the 'Corporate Debtor'. It is also the case of the Appellant that work awarded to the Appellant by the Corporate Debtor is an essential work, contractual in nature and was conducted on a day to day basis by the Appellant. It is also the case of the Appellant that he is an unsecured Operational Creditor and there is a contractual relationship between the Corporate Debtor and the Appellant.
- It is the argument of the Appellant that the 'Workmen' doing the work of transportation of fly ash may be treated at par with the workmen of Corporate Debtor and they may be paid full wages.
- The Tribunal is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the employees of the 'Corporate Debtor'

- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)*** this 'Tribunal' is of the considered view that there is no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered.
- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1317 of 2019

- It is the case of the 'Appellant' that he was engaged by the Corporate Debtor to carry out the work with respect to water pipelines Naingaon to New Reservoir Pump House. It is the case of the Appellant that the pay out is higher than the amount the Appellant would have got in the event of liquidation of the Corporate Debtor.
- Considering the contractual relationship which is also commercial in nature between the Corporate Debtor and the Appellant, the Appellant cannot claim parity alongwith other workmen of the Corporate Debtor. This Tribunal is of the earnest view that the Resolution Plan approved by the COC, aims to pay the Appellant proportional share of the total overall operational claim of the 'Corporate Debtor, which is higher

than the liquidation value, which the Appellant would be entitled to in the event of the liquidation of the Corporate Debtor.

- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)*** this 'Tribunal' is of the considered view that no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered.
- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1319 of 2019

- It is the case of the 'Appellant' that he was engaged by the Corporate Debtor to carry out the work with respect to water pipelines Naingaon to New Reservoir Pump House. It is the case of the Appellant that the pay out is higher than the amount the Appellant would have got in the event of liquidation of the Corporate Debtor.
- Considering the contractual relationship which is also commercial in nature between the Corporate Debtor and the Appellant, the Appellant cannot claim parity alongwith other workmen of the Corporate Debtor.
- This Tribunal is of the earnest view that the Resolution Plan approved by the COC, aims to pay the Appellant proportional share of the total overall operational claim of the 'Corporate Debtor, which is higher

than the liquidation value, which the Appellant would be entitled to in the event of the liquidation of the Corporate Debtor.

- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)*** this 'Tribunal' is of the considered view that there is no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered.
- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1320 of 2019

- It is the case of the 'Appellant' that he is a registered government contractor and was engaged by the 'Corporate Debtor' for handling coal from the Coal yards. The Appellant claims parity alongwith the workmen and employees of the Corporate Debtor for payment of full amount as admitted and sought to be paid out to the workmen of the Corporate Debtor.
- Considering the contractual relationship which is also commercial in nature between the Corporate Debtor and the Appellant, the Appellant cannot claim parity alongwith other workmen of the Corporate Debtor.
- This Tribunal is of the earnest view that the Resolution Plan approved by the COC, aims to pay the Appellant proportional share of the total overall operational claim of the 'Corporate Debtor, which is higher

than the liquidation value, which the Appellant would be entitled to in the event of the liquidation of the Corporate Debtor.

- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)*** this 'Tribunal' is of the considered view that there is no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered, for all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1321 of 2019

- It is the case of the 'Appellant' that he is in the business of producing black metal and also has crusher industries and quarries. The Appellant submitted that he also provided other logistics like Hywa trucks, supervisors and drivers to the Corporation Debtor from time to time.
- The Appellant claims parity alongwith the workmen and employees of the Corporate Debtor for payment of full amount as admitted and sought to be paid out to the workmen of the Corporate Debtor.
- The Tribunal is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the employees of the 'Corporate Debtor'.

- Considering the contractual relationship between the Corporate Debtor and the Appellant, the Appellant cannot claim parity alongwith other workmen of the Corporate Debtor.
- This Tribunal is of the earnest view that the Resolution Plan approved by the COC, aims to pay the Appellant proportional share of the total overall operational claim of the 'Corporate Debtor, which is higher than the liquidation value, which the Appellant would be entitled to in the event of the liquidation of the Corporate Debtor.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of ***K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction this 'Tribunal' (Supra)*** is of the considered view that there is no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered, for all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1322 of 2019

- It is the case of the 'Appellant' that the Appellant was engaged in the work of coal handling as per work awarded by the 'Corporate Debtor'. The Appellant argued that he also provided the heavy earth moving equipment to the Corporate Debtor, as per instructions. The Appellant argued that the Appellant is an 'Operational Creditor' and the admitted claim is INR 11,93,648/-. The service provided by the Appellant is of an essential nature.

- The Appellant claims parity alongwith the workmen and employees of the Corporate Debtor for payment of full amount as admitted and sought to be paid out to the workmen of the Corporate Debtor.
- The Tribunal is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the employees of the 'Corporate Debtor'.
- Considering the contractual relationship between the Corporate Debtor and the Appellant, the Appellant cannot claim parity alongwith other workmen of the Corporate Debtor.
- This Tribunal is of the earnest view that the Resolution Plan approved by the COC, aims to pay the Appellant proportional share of the total overall operational claim of the 'Corporate Debtor, which is higher than the liquidation value, which the Appellant would be entitled to in the event of the liquidation of the Corporate Debtor.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of **K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction (Supra)** this 'Tribunal' is of the considered view that there is no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered.
- For all the above noted reasons the 'Appeal' is dismissed. No order as to costs.

COMPANY APPEAL (AT) (INS) No.1323 of 2019

- It is the case of the 'Appellant' that the Appellant was engaged in the service of providing technicians at its Warora Plant for the purpose of meter reading, operation and maintenance break down purposes.
- The Appellant claims parity alongwith the workmen and employees of the Corporate Debtor for payment of full amount as admitted and sought to be paid out to the workmen of the Corporate Debtor.
- The Tribunal is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at par with the employees of the 'Corporate Debtor'.
- Considering the contractual relationship and also commercial in nature between the Corporate Debtor and the Appellant, the Appellant cannot claim parity alongwith other workmen of the Corporate Debtor.
- Keeping in view the ratio of the Hon'ble Apex Court in the case of **K. Sashidhar Vs Indian Overseas Bank and Ghanashyam Mishra Vs Edelweiss Asset Reconstruction** (Supra) this 'Tribunal' is of the considered view that there is no substantial grounds to set the clock back especially in the light of the fact that the 'Resolution Plan' has been implemented two years ago and the change in the Management of the 'Corporate Debtor' has also been effectuated and the interest of the Appellant has been fully considered.

25. For all the above noted reasons all the 'Appeals' are dismissed. No order as to costs.

26. The Registry is directed to upload the Judgement on the website of this Tribunal and send a copy of this Judgement to the Learned Adjudicating Authority (National Company Law Tribunal, Hyderabad) forthwith.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

**NEW DELHI
11th March, 2022**
sc/ha/bm