

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT III, MUMBAI BENCH**

**I.A 459 of 2022  
In  
CP (IB) 2279 of 2019**

Filed Under Section 60(5) (c) of the Insolvency and Bankruptcy Code, 2016 and in the matter of Sections 25,30(2), 31 and 53 of the Insolvency and bankruptcy Code, 2016 and in the matter of Regulations 27, 35,35-A, 39 of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

*Filed By*

**Deepesh Asnani**

having address at E-2/132  
Arera Colony, Bhopal : 462016

**..... Applicant**

*Versus*

**Mr. Srigini Rajat Naidu,**

**Resolution Professional of M/S Mining and Consultancy Private Limited** having address at Black No. 11 and 12, 1<sup>st</sup> floor, Mount Annexe, Mount Road, Nagpur Maharashtra : 440001

**.....Respondent No. 1**

**Indian Bank (formerly known as Allahabad Bank)**

Through its office at Gadhibag Branch, C.A. Road,  
Nagpur: 440018.

**.....Respondent no. 2**

*In the matter of*

**The Standard Scientific Co,**

**.....Petitioner/ Operational Creditor**

*Versus*

**M.S Mining and Consultancy Private Limited**

**..... Corporate Debtor**

**Order Reserved On:** 05.06.2023

**Order Pronounced On:**30.06.2023

**Coram:**

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

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

**For the Applicant:** Ms. Naira Jejeebhoy a/w Ms. Anushka nagpal i/b Agagma Law Associates, Advocates.

**For the Respondent no. 1:** Mr. Avinash Khanolkar, Advocate.

**For the Respondent no. 2 :** Mr. Saurabh Mandlik i/b Vaishali Bhilare, Advocates.

**Per: Smt. Madhu Sinha, Member (Technical)**

**ORDER**

This Interlocutory Application No. 459 of 2022 ("Asnani IA) has been filed by the Applicant Mr. Deepesh Asnani (hereinafter referred to as "Applicant") under Sections 25, 30(2), 31, 53 and 60(5) of the IBC together with Regulations 27, 35, 35-A and 39 of the 2016 Regulations for opposing/objecting to the Application bearing no. 403 filed by Resolution Professional for approval of Resolution Plan and seeking following reliefs:

- a. That this Hon'ble Tribunal be pleased to allow the Applicant i.e. Mr. Deepesh Asnani to intervene and/or be impleaded as a Respondent in Company Petition (I.B) No. 2279/MB/IB/2019 pursuant to Section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 read along with section 424 of the Companies Act, 2013;

- b. That this Hon'ble Tribunal be pleased to order and declare that the Applicant is entitled to repayment of the entire amount paid to the Company towards share application money pursuant to the Memorandum of Understanding dated 25 March 2017 together with interest thereon at the rate of 12% per annum, and to direct that such payment be made to the Applicant forthwith;
- c. That this Tribunal be pleased to order and declare that the time limit for completion of the insolvency resolution process came to an end on 24 November 2021 and that the Resolution Plan cannot be placed for the approval of this Hon'ble Tribunal by the Resolution Professional;
- d. In the alternative to (c) above, that this Hon'ble Tribunal be pleased to reject the Resolution Plan as it is unfair, inequitable, contrary to law and fails to meet the requirements under Section 30(2) of the Code;
- e. In the alternative to (c) above, that this Hon'ble Tribunal be pleased to order and direct that the consideration of the Resolution Plan for the Corporate Debtor be deferred till after the adjudication of the applications filed by the Interim Resolution Professional and Resolution Professional under Section 66 of the Code and any other similar applications under Chapter III of the Code;
- f. Pending hearing and final determination of this Application, the hearing and determination of the application by the Resolution Professional for approval of the Resolution Plan be deferred;
- g. Pending hearing and final determination of this Application, this Hon'ble Tribunal be pleased to order and direct the Resolution Professional and/or the Corporate Debtor, as the case may be, to procure and provide to the

Applicant the valuation report for the assets of the Corporate Debtor Company along with the documents provided by the Corporate Debtor for the preparation of such report;

h. Pending hearing and final determination of this Application, this Hon'ble Tribunal be pleased to implead the present Applicant in the applications filed by the Interim Resolution Professional and the Resolution Professional respectively under Section 66 of the Code so that the Applicant may be heard at the time of determination thereof;

i. Pending hearing and final determination of this Application, this Hon'ble Tribunal be pleased to direct the Resolution professional and/or the Corporate Debtor, as the case may be, to supply copies of the record of the proceedings in the Company Petition (I.B) No. 2279 of 2019 to the Applicant;

j. Pending hearing and final determinations of this Application, this Hon'ble be pleased to order and direct that the amount due and payable to the Applicant be deposited before this Hon'ble Tribunal as and by way of security for the claims of the Applicant;

k. For ad-interim reliefs in terms of the above;

l. Any other reliefs this Hon'ble Tribunal deems fit in the interest of justice, equity and good conscience;

m. Provide for the costs of making this application.

**A. Brief Submissions On Behalf Of The Applicant:**

1. The Applicant states that he is a member of the Committee of Creditors ("CoC") having 24.44% voting share. Further, the Applicant states that the

Resolution plan does not comply with the provisions of the IBC. The grounds are mentioned as follows:

- i. The Applicant states that the proposed distribution under the Resolution Plan contravenes the provisions of applicable law which require that the amounts paid by the Applicant to the Corporate Debtor, being impressed with a trust, do not form part of the general assets of the Corporate Debtor and are liable to be returned (with interest) without any impairment and before any payments can be made to the creditors of the Company in insolvency or liquidation proceedings;
- ii. The Applicant states that the Committee of Creditors ("COC") and the Resolution Professional has purported to approve the Resolution Plan on 29th November 2021 after the period for completion of Corporate Insolvency Resolution Process permitted by the this Tribunal under Section 12 of the Code stood expired on 24 November 2021.
- iii. The Applicant states that the Resolution Plan contravenes Section 53 of the Code and the Companies Act, 2013 for the reason that the assets of the Corporate Debtor are in fact, capable of being realised in sufficient funds to permit the payment in full of the dues of the Applicant. The Company's factory and leased land alone is valued at around Rs. 10.72 crores while the claims admitted by the RP are cumulatively an amount of Rs. 10.82 crores.
- iv. Further, the Applicant states that, no valuation report has been obtained in relation to the Corporate Debtor's assets (and none has been shared with the COC) and the liquidation value of the Corporate Debtor's assets

has not been ascertained as required under the Code (and admitted in the Resolution Plan) and Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- v. The Applicant states that the Corporate Debtor has undertaken several fraudulent, wrongful, preferential and undervalued transactions, including with related parties, which are required to be avoided pursuant to the applicable provisions of Chapter III of the Code. In the present case, the Resolution Plan fails to take into account the assets of the Corporate Debtor which have been subject to fraudulent, wrongful, preferential and undervalued transactions, and have been highlighted in the transaction audit report and are the subject matter of pending applications before this Tribunal.
- vi. The Resolution Plan provides for an unfair and inequitable distribution, contrary to the requirements of the Code, in as much as it provides for almost the entire amount proposed to be brought in by the Resolution Applicant to be allocated to one creditor - Indian Bank (formerly, Allahabad Bank) without any justifiable reason - to the detriment of the other creditors and stakeholders of the Corporate Debtor.
- vii. The Corporate Insolvency Resolution Process has been conducted by the RP in contravention of the provisions of the Code and in breach of the principles of natural justice, including by refusing to disclose information concerning the Corporate Debtor and the corporate insolvency resolution process to the Applicant (to which the Applicant is entitled in law).

- viii. Further, the Applicant states that he had invested a sum of Rs. 1,10,15,355/- in the Corporate Debtor under a Memorandum of Understanding dated 25 March 2017 (hereinafter referred to as "MOU") entered into between the Corporate Debtor Company and the Applicant (among others). Under the said MOU, the Corporate Debtor was to issue and allot equity shares aggregating to 33% of its issued and paid up equity share capital to the Applicant in lieu of the monies contributed by the Applicant. Though the Applicant paid share application money of Rs. 1,10,15,355/- between 27th March and 6 April 2017, the Corporate Debtor did not issue shares to the Applicant as per the MOU and applicable legal requirements pursuant to which, inter alia, application money is liable to be returned by a company. The said money paid by Applicant was entrusted to the Corporate Debtor for a specific purpose viz. allotment of shares entrusted with a trust pursuant to which the Applicant is entitled to receive refund of the entire Share Application Money prior to the distribution of any assets to the Company's creditors, whether pursuant to the Resolution Plan or in liquidation.
- ix. The Corporate Debtor also wrongfully cancelled the MOU on or around 12th April 2017. In the circumstances, and in accordance with settled law, all amounts paid by the Applicant were liable to be returned by the Corporate Debtor (along with accrued interest). The Corporate Debtor was under an obligation to return the money with interest at the rate of 12% per annum, and to this end, the Directors of the Corporate Debtor not only issued a Cheque (bearing number 188540 dated 7 July 2018 and drawn on IndusInd Bank) in favour of the Applicant and his father for an

amount of Rs. 1,55,00,000 (Rupees one crore and fifty five lakhs only), being the share application money along with accrued interest as at such time, but also executed Promissory Note in their favour. The cheque however bounced and appropriate proceedings under Section 138 of the Negotiable Instruments Act, 1881, were filed and are pending against the Directors of the Corporate Debtor.

- x. Thereafter, vide an application filed by an Operational Creditor viz. The Standard Scientific Co., against the Corporate Debtor, the Corporate Insolvency Resolution Process against the Corporate Debtor commenced vide this Hon 'ble Tribunal's order dated 17 March 2020. The Applicant notified the RP of his claim of Rs. 2,02,77,000 (Rupees two crores two lakhs and seventy seven thousand) with further interest at the rate of 12% per annum until repayment is effected.
- xi. However, pursuant to the corporate insolvency resolution process, the Resolution Plan was presented for approval before this Hon'ble Tribunal. The Resolution Plan proposes, to pay only a sum Rs.5,00,000 (Rupees five lakhs only) to the Applicant in lieu of the entire sum due and payable by the Company to the Applicant viz. Rs. 2,02.77.000/- (Rupees two crores two lakhs and seventy seven thousand). The proposed Resolution Plan is contrary to settled law including the Companies Act (and analogous principles) and the law 31(2) of the Code as laid down by the Courts in India), for which it is liable to be rejected under the Section.
- xii. The Applicant states that the Resolution Professional has failed to consider the Applicant as a "Secured Financial Creditor" and discriminated against the Applicant by treating the dues owed by the Company to the Applicant

as an unsecured financial debt and proposing discriminatory, grossly unfair and inequitable payment of only Rs.5,00,000/-against the Applicant's dues of over Rs. 2,02,77,000/-.

- xiii. Without prejudice to the above, the Resolution Plan is even otherwise liable to be rejected as defective, contrary to the requirements of law, grossly unfair and inequitable and incapable of being effectively implemented, for the following reasons:
- a. The Resolution Plan has been prepared and approved by a majority of COC without a valuation report and without any determination of the fair and liquidation value of the assets of the Corporate Debtor, which is patently in violation of the requirements of the Code and applicable law as explained in the present application.
  - b. The transaction audit report dated 14 September 2021 finds that value of one asset of the Corporate Debtor alone is approximately of Rs. 10.72 crores and the claims admitted by the Resolution Professional are Rs 10,82,58,492/-The Resolution Plan proposes a payment of only Rs. 3.42 crores which is almost entirely proposed to be allocated to payment of Indian Bank's dues which is grossly unfair and inequitable and proceeds on the basis that Liquidation value is insufficient to pay secured creditors, even though no such determination has been made in accordance with the applicable provisions of the Code.
  - c. The RP has neither sought to avoid the wrongful transactions entered into by the Directors in suspension nor to recover the funds and assets

of the Corporate Debtor that have been diverted to other entities belonging to them. The Resolution Plan therefore does not reflect the true financial position of the Company and does not properly account for and incorporate the assets of the Company. The alleged shortfall in assets of the Company on the basis of which the Resolution Plan proceeds is artificial and has been engineered by the Company, its directors and promoters and their related parties to prejudice the Company's creditors and stakeholders.

- xiv. In light of the above, the Applicant is constrained to file the present application to oppose the Resolution Plan and to intervene and/or be joined as a party to the present proceedings, inter alia, so as to ensure that all relevant facts are placed before this Hon'ble Tribunal, to ensure necessary and proper steps are taken in the corporate insolvency resolution process and that the creditors and stakeholders of the Corporate Debtor (i.e., the Company) are not defrauded by the conduct of the Company, its promoters and directors, the RP and Indian Bank in misleading this Hon'ble Tribunal as to the exercise of its jurisdiction under the Code.

**B. Brief Submissions on Behalf of Respondent no. 1**

- i. The Respondent no.1 has filed a detailed reply dated 21.02.2023 by opposing all the contentions and allegations made in the Application against the Respondent no 1. The Respondent no. 1 states that the Application and further Additional Affidavit filed in the Application dated

04.05.2022 (collectively referred as the Application) is not maintainable against the R1 being defective on multiple counts.

- ii. The Respondent no 1 states that admittedly the Applicant had advanced amount for purchase of Equity Shares in the Corporate Debtor; the Corporate Debtor did not make any Private Placement Offer as mandated by the provisions of S. 42 (3) of the Companies Act, 2013. Merely a Memorandum of Understanding dated 25.03.20217 (hereinafter referred as the MoU) entered between the Corporate Debtor and the Applicant. Basis this MoU, the Applicant advanced an amount to the Corporate Debtor towards the purchase of Shares. The Respondent no 1 states that this MoU is nothing but a contract which is having effect of simple sale and purchase.
- iii. The Respondent no 1 further states that the statutory period of CIRP as enshrined Us. 12 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the Code) of 270 days ended on 29.10.2021. Thereafter, the Respondent no 1 made an Application to this Bench for additional time via IA 2542 / 2021. The said IA got listed before this Bench for the first time on 29.10.2021 wherein this Bench orally directed the Applicant to continue the CIRP till the next date of hearing i.e. 24.11.2021. A copy of the Bench's Order is annexed herewith as Annexure 1. On 24.11.2021 the matter could not be heard by the Bench's due to time constraint, pursuant to which, the Bench orally extended the earlier directions till the next date of hearing i.e. 06.01.2022. A copy of the Order is annexed herewith as Annexure 2. It is to be noted that the IA 2542 / 2021 was very much kept alive by this Hon'ble Bench.

Therefore, the Respondent no 1 kept carrying the CIRP further and the voting over the Resolution Plan completed on 29.11.2022. Therefore, the Respondent no 1 states that the Resolution Professional duly carried the CIRP and got voting over the Resolution Plan in the stipulated time of the CIRP with the permissions of this Hon'ble Bench. The IA 2542 / 2021 was very much alive till 24.03.2022 and was disposed of by this Hon'ble Bench on 24.03.2022 while noting that the Resolution Plan is already placed for adjudication.

- iv. With respect to the Valuation Report the Respondent no 1 states that he had asked the Applicant to submit an undertaking regarding non-misuse of the valuation report. However, till date that undertaking has not been furnished by the Applicant hence the valuation report could not be shared with the Applicant.
- v. The Respondent no 1 with respect to the PUFEE transactions states that the Respondent no. 1 has already filed an Interlocutory Application no 60 of 2022 under the provisions of S. 66 of the Code. Further, this Bench was also pleased to issue notices to the Respondents in the said IA on 24.03.2022. Therefore, the averments of the Applicant in that regard also do not have any standings and the Application fails at this juncture also.
- vi. The Respondent states that the Applicant is an Un-secured Financial Creditor of the Corporate Debtor and till date of filing this Application the Applicant has not challenged its classification. Further, it may be noted that the Liquidation value payable to the Applicant is less what is offered to the Applicant via the Resolution Plan and therefore the proposed Resolution Plan is compliant to the provisions of the Code specifically to

the S. 30 (2) (b). Accordingly, the Respondent no. 2 (Indian Bank) claim for Rs. 6.62 Crores was verified by the IRP and collated on the basis of documents submitted by the Respondent no 2 along-with its claim and accordingly voting percentage in the CoC was granted to the Respondent no 2. The Respondent no 1 states that till the filing of Additional Affidavit to the Application, and during the whole process of CIRP the Applicant did not raise any objections about the admission of claim of the Respondent no. 2.

vii. Further, as far the averments regarding changes made in the Resolution Plan are concerned, it is stated and submitted that the only change that was made was regarding treatment to the Application for avoidance of transactions. The said change was recommended by the CoC in its last meeting held on 22. 11.2021. It is pertinent to note that the Applicant remained absent from the said meeting. Furthermore, the said change only talks about future of IA 60 / 2022 in case the Resolution Plan stood approved prior to adjudication of IA 60 / 2022. By adding that treatment, there is no prejudice caused to the Applicant. The said provision will benefit the Applicant as it authorizes R1 authorized to continue the IA 60 / 2022 even after approval of the Resolution Plan and the proceeds received, if any, will be distributed amongst the CoC members at pro- rata basis.

viii. Further, as far as the averments regarding the applicability of Regulation 39 (1A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons Regulations, 2016 are concerned it is stated and submitted that the addition made to the

Resolution Plan is nowhere modifies the Resolution Plan in its modalities. Therefore, the said Addition may not be treated as modification and therefore the provisions Regulation 39 (IA) does not attract.

- ix. Further, the Applicant is averring that the proposed Resolution Plan is not in conformity with the provisions of S. 30 (2) (b) wherein it is provided that the Resolution Plan shall also provide treatment to the Dissenting Financial Creditor. However, it is noteworthy that the Applicant has chosen not to participate in the voting over the Resolution Plan and remained abstained. Therefore, the Applicant cannot be treated as Dissenting Financial Creditor qua the proposed Resolution Plan who do not cast their vote either way.

### **C. Brief Submissions on Behalf of the Respondent no 2**

- i. The Respondent no. 2 has filed the reply dated 21.02.2023 opposing the contentions raised by the Applicant. The Respondent No. 2 states that he is a Financial Creditor of M. S. Mining and Consultancy Pvt. Ltd. (" Corporate Debtor") . Further, the Respondent no. 2 states that there are only two financial creditors to the Corporate Debtor viz. the Applicant and the Respondent No. 2. The Respondent No. 2 holds 76.44% and the Applicant holds 23.44% voting interest in the Committee of Creditors and therefore the majority voting rights are with Respondent No. 2.
- ii. The Respondent no 2 states that the Applicant by these two IA's viz. IA No. 852 of 2022 and IA No. 459 of 2022, is challenging the Actions

of the Resolution Professional and the same does not pertain to this Respondent no 2. Further, the Resolution Professional has rightly classified the Applicant as an unsecured creditor as the Applicant does not have any security, securing his claim.

- iii. The Respondent no 2 with respect to the sale of the Company's asset states that the secured asset viz. the registered office of the Corporate Debtor was sold by the Respondent under SARFAESI, in a public auction, after following the due process of law. The Applicant does not have any locus to challenge the SARFAESI action taken by the Respondent and that the Applicant ought to have approached the appropriate forum challenging the action under SARFAESI Act.
- iv. Further, the Respondent no 2 states that the resolution plan was rightly approved, and the Applicant has no locus to challenge the same. This act of Applicant is clearly abuse of process of law. The Applicant has wrongly filed the above IA.

### **OBSERVATIONS AND FINDINGS**

- 1. Heard the Counsel appearing for the Applicant and Counsel appearing for the Respondent no. 1 and 2 and perused the documents, written submissions available on record. Before going into the merits, it is appropriate to mention here that this Application is filed the Applicant herein who is a dissenting Unsecured Financial Creditor having a 24.44% of voting and who abstained from voting on the day of approving the Resolution Plan during the 10<sup>th</sup> CoC meeting.

Let us deal with the objections of the Applicant as follows:

- 2.** The first contention raised by the Applicant is that the Applicant had invested an amount of Rs. 1,10,15,355/- under a Memorandum of Understanding dated 25.03.2017 for which the Corporate Debtor was to purportedly issue and allot equity shares aggregating to 33% of its issued and paid up equity share capital. Advancing the contention, the Applicant has contended that the Corporate Debtor had wrongfully cancelled the MOU on or around 12th April 2017. Countering the above argument, the Respondent No. 1 has denied the objection of the Applicant that the amount owed by the Corporate Debtor was the amount held in trust with the Corporate Debtor for purchase of Equity Shares in the Corporate Debtor; the Corporate Debtor did not make an invitation as mandated by the provisions of S. 42 (3) of the Companies Act, 2013. It is pertinent to mention the provisions of the S. 42 (3) of the Companies Act, 2013 which provides that any Company who wishes to make an offer for issuance and subscription of shares shall make such offer in prescribed format as given under the Companies Act, 2013 read with applicable Rules thereto. However, in the present case the same has not been done and merely a Memorandum of Understanding dated 25.03.20217 (hereinafter referred as the MoU) has been entered between the Corporate Debtor and the Applicant and based on this MoU the Applicant advanced an amount to the Corporate Debtor towards the purchase of Shares. The Corporate Debtor never made an Offer U/s. 42 (3) of the Companies Act,

2013. Therefore, the offer for issuance of shares was not made pursuant to the provisions of applicable law and the amount received towards the purchase of share through a MoU is nothing but a contract which is having effect of simple sale and purchase.

- 3.** The Second contention of the Applicant is that the Approval of Resolution Plan is done beyond Statutory Limit of the CIRP Process. It is observed that after the statutory period for CIRP as enshrined U/s. 12 of the Insolvency and Bankruptcy Code, 2016 of 270 days ended on 29.10.2021, the Respondent no 1 time and again have pleaded extensions and necessary additional time vide Interlocutory Application bearing no. 2542 of 2021. Further, the said IA got listed before this Bench for the first time on 29.10.2021 and was posted to 24.11.2021. Further, on 24.11.2021 the matter could not be heard by the Hon'ble Bench amid the time constraint however, at the time of rising the Hon'ble Bench the Learned Counsel for the Resolution Professional mentioned the matter wherein the Hon'ble Bench orally extended the earlier directions till the next date of hearing i.e. 06.01.2022. The copy of the Order is annexed to the reply It is to be noted that the IA 2542 / 2021 was very much kept alive by this Bench. The Respondent no.1 accordingly kept carrying the CIRP further and the voting over the Resolution Plan completed on 29.11.2022. Therefore, it is observed that timely extensions were duly pleaded by the Respondent no 1, until the approval of the Resolution Plan.
- 4.** With respect to the disclosure of the valuation report, the Respondent no. 1 contended that Applicant did not provide the Confidentiality Undertaking for the Valuation Report and hence the valuation report was not shared with the Applicant. The contention raised with respect to positioning of the Applicant

as "Unsecured Creditor" as unfair and wrong cannot be availed by the Applicant as the Applicant raised no objections in this regard till the approval of the plan. It is clear from the actions of the Applicant that no appropriate steps or objections if any were taken during the proceedings which shows an afterthought motive of the Applicant.

5. Based on the above facts circumstances, it is clear that the Applicant abstained from voting but participated in the Resolution Process. The Applicant was fully aware of the developments from Resolution Process up to the approval of the Resolution Plan by the COC until placing the plan before the Adjudicating Authority, but never raised any objection. Furthermore, the Respondent no. 1 has contended that the Applicant is not entitled for any relief and has placed his reliance on the Law laid down by the Hon'ble Supreme Court in (1994) 1 S.C.C. Page 1, wherein it is observed that;

*"One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient liver to retained the illegal gains indefinitely. We have no hesitation to say that a person, who's Case is based on false hood, has no right to approach the Court. He can be summarily thrown out at any stage of litigation."*

6. It is observed that in the present case, the Resolution Plan has been approved by 76.56% of voting shares by the COC members which fulfills the statutory obligation laid by the Section 30 sub-section (4) which is reproduced as under:

*[(4) The committee of creditors may approve a resolution plan by a vote of not less than 66 [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may consider the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board*

Taking the above provision into concern, it is necessary to advert to the law laid down by the Hon'ble Supreme Court in the case of **Pratap Technocrats (P.) Ltd.** wherein Hon'ble Supreme Court while analysing the scope of Section 31 considering the earlier judgment of the Hon'ble Supreme Court passed in the case of ***K. Shashidhar v. Indian Overseas Bank***, reiterated the principle of law *that neither the Adjudicating Authority (NCLT) nor the Appellate Authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the Committee of Creditors.* Therefore, CoC's commercial or business decisions are not open to judicial review by the Adjudicating Authority or the Appellate Authority. The Hon'ble Supreme Court has further placed reliance on the earlier judgment of the three-judge bench in the case

of **Essar Steel India Limited** and observed that there is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such committee must reflect the fact that it has taken into account maximising the value of the assets of the Corporate Debtor and the fact that it has adequately balance the interests of all the stakeholders including Operational Creditors.

7. Therefore, with respect to the decision taken by the Committee of Creditors by approving the Resolution Plan in its commercial wisdom with more than sixty-six percent, this Adjudicating Authority has a limited power of judicial review available to adjudicate the decision of the COC members or to intervene the commercial wisdom.
8. As a consequence, keeping the aforesaid facts in mind, the Bench is of the considered opinion that there are no reasons or grounds made out for interference/intervention in the Resolution Plan and therefore this Application is devoid of merit, hence dismissed. No order as to Costs.

SD/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

//RENUKA//LRA//

SD/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**