

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 3879/2022

In

C.P. No. (IB) 2510/MB/C-III/2019

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016
Filed by

National Steel and Agro Industries Limited

Through Mr. Dushyant C. Dave, the Resolution Professional
Having his office at: 1101, Dalamal Tower, B Wing,
Nariman Point, Mumbai
Maharashtra- 400021

...Applicant

Vs.

1. Mr. Navin Khandelwal

(IBBI/IPA-001/IP-P00703/2017-2018/11/11301)
Resolution Professional of Shimita Trading Pvt Ltd
Having its registered office at:
Room No-1-2, Kapadia Chambers,
51 Bharuch Street Masjid Bunder (E)
Mumbai- 400009, Maharashtra

...Respondent No.1

2. M/s. Radhekripa Developers Pvt Ltd.

Having its registered office at:
C2/401, Paras Urban Park,
Bawadia Kala, E 8 Extension,
Bhopal, Madhya Pradesh- 462039

...Respondent No.2

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IN THE MATTER OF

National Steel and Agro Industries Limited.

... Operational Creditor

Vs

Shimita Trading Private Limited

...Corporate Debtor

Order pronounced on: 22nd December 2023

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Applicant: Nandita B. a/w Adv. Gaurav Jain, Adv.
Dhrupad Vaghani,

For the Respondent: Counsel for the Respondent is present but
did not sign the attendance sheet

Per: Shri Charanjeet Singh Gulati, Member (Technical)

ORDER

1. The above I.A. is filed by M/s. National Steel and Agro Industries Limited under section 60(5) of the Insolvency and Bankruptcy

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Code, 2016 (“the Code”) read with Rule 11 of the National Company Law Tribunal Rules 2016, seeking following reliefs:

- a. *allow this Application;*
- b. *That the Resolution Plan approved by the CoC be rejected and fresh resolution plans may be invited for the Corporate Debtor,*
- c. *That this Tribunal may investigate on the said Transaction and direct the Respondent No. 1 to take steps to determine if the said Transaction is an avoidance transaction;*
- d. *That this Tribunal may direct Insolvency and Bankruptcy Board of India to initiate investigation on the conduct and performance of the Respondent as the resolution professional of the Corporate Debtor during CIRP of the Corporate Debtor;*
- e. *During the pendency of the Application, the Hon'ble Tribunal may be pleased to stay Interlocutory Application No. 1703 of 2022 i.e., an application filed by the Respondent No. 1 for approval of the resolution plan; and*
- f. *Pass such order(s) and/or direction (s) in the interest of the justice which this Tribunal deems fit.*

2. **Submissions of the Applicant, in brief:**

- 2.1 The Corporate Debtor, M/s Shimita Trading Private Limited, was admitted into Corporate Insolvency Resolution Process (CIRP) pursuant to Tribunal’s Order dated 10.12.2023 in Company Petition No. 2510 of 2019 filed by the National Steel and Agro Industries Limited (Operational Creditor/ Applicant herein)

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under section 9 of the Insolvency and Bankruptcy Code, 2016, Pursuant to the said order, Mr. Navin Khandelwal (Resolution Professional / Respondent No. 1), having registration No: IBBI/IPA-001/IPP00703/2017-18/11301 was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor.

2.2 The Respondent No. 1 issued a Public Announcement dated 30.12.2019 informing the initiation of the CIRP of the Corporate Debtor and invited claims from the creditors of the Corporate Debtor. Accordingly, the Applicant, on 10.01.2022, filed its claim for an amount of Rs. 21,34,46,914/- under Form B of the CIRP Regulations.

2.3 The Corporate Debtor has only one financial creditor i.e. Sagar Deposits and Advances Limited and one Operational Creditor, i.e. National Steel and Agro Industries Limited (Applicant) having more than 10% share in the total debt. In view thereof, the Committee of Creditors ('CoC') constituted by the Respondent No. 1 consisted of the sole financial creditor having 100% voting in the CoC and the Applicant, who is the only Operational Creditor having more than 10% of total debt with no voting rights. The Committee of Creditors (CoC) was formed as under:

Category of Creditor	Name of Creditor	Amount Admitted	% share in Total Claimed Amount	Voting Percentage
Secured Financial Creditor (Other than financial)	Sagar Deposits and Advances Limited	10,00,000/-	0.73	100%

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creditors belonging to any class of creditors)				
Operational Creditors (Other than Workmen and Employees and Government Dues)	National Steel and Agro Industries Limited	13,14,80,928/-	95.64	NA

- 2.4 In the 1st CoC meeting, it was resolved to confirm the Respondent No. 1 as the Resolution Professional ("RP") of the Corporate Debtor. In the 3rd CoC meeting held on 07.03.2022, the CoC resolved to invite Expression of Interest ('EoI') from the Prospective Resolution Applicants ('PRAs') and accordingly the Respondent No. 1 published Form G on 10.03.2022.
- 2.5 During the 4th CoC meeting held on 05.04.2022, the Respondent No. 1 informed the CoC members that, pursuant to the publication of Form G, total 2 (two) applicants namely, M/s Anand Vihar Relaity Private Limited and Radhekripa Developers Private Limited, the Respondent No. 2 herein, had submitted their EoI. Accordingly, the provisional list of PRAs was as follows:

Sr. No.	Name Of The Prospective Resolution Applicants (PRAs)
1.	M/s Anand Vihar Reality Private Limited
2.	M/s Radhekripa Developers Private Limited

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2.6 The Respondent No. 1 in the 5th CoC meeting informed that he had received one Resolution Plan from Radhekripa Developers Private Limited (Respondent No. 2) whereas the 2nd PRA, Anand Vihar Reality Pvt Ltd did not submit the resolution plan. In the 7th CoC meeting held on 12.08.2022, it was informed that a Revised Resolution Plan submitted on 05.08.2022 by Respondent No. 2 was to be treated as final resolution plan from their side. A summary of the resolution plan submitted by the Respondent No.2 is as under:

Name of the PRA: Radhekripa Developers Private Limited

Date of submission of resolution plan: 05.08.2022

Amount payable towards CIRP expenses: Rs. 10,00,000

Amount payable towards Financial Creditors: Rs. 30,00,000

Amount payable towards Operational Creditors: Rs. 30,00,000

Total amount of resolution plan: Rs. 70,00,000

2.7 In the 8th CoC meeting held on 26.08.2022, the Respondent No. 1 informed that the revised Resolution Plan was in compliance with the provisions of the Code and the Regulations thereunder. Accordingly, the revised Resolution Plan submitted by the Respondent No.2 was put to vote before the CoC. In the 9th meeting held on 08.09.2022, CoC resolved to unanimously approve the Resolution Plan submitted by the Respondent No. 2.

2.8 The Resolution Plan provides for Rs.30,00,000/- (Rupees Thirty Lakhs Only) to the Applicant against the admitted claim of Rs.

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13,14,80,928 (Rupees Thirteen Crores Fourteen Lakhs Eighty Thousand Nine Hundred and Twenty Right Only), which is 2.28%.

- 2.9 The Applicant being the Operational Creditor owed 95.89% of the total debt and is receiving only 2.28% of the total admitted amount whereas the Financial Creditor who owes 0.73% of the total debt of the Corporate Debtor is receiving 100% of the total amount admitted.
- 2.10 The applicant referring to Regulation 38 (1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 ("CIRP Regulations"), submits that a resolution plan must provide for payment to operational creditors in priority over the financial creditors and that as per Explanation 1 to Section 30(2) of the Code, it mandatorily requires that the distribution in accordance with the provisions of Section 30(2) of the Code shall be fair and equitable to such creditors.
- 2.11 Further relying on judgement of Hon'ble Supreme Court in the matter of **Swiss Ribbons Private Limited v. Union of India (2019) 4 SCC**, the applicant submits that the Preamble of Code itself speak of maximisation of the value of assets of corporate debtors and balancing of the interests of all stakeholders. Further placing reliance on the judgement of Hon'ble Supreme Court in case of **Essar Steel vs Satish Kumar Gupta** the applicant submits that the decision of the CoC must reflect that it has taken into account maximising the value of the assets of the Corporate

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Debtor and the fact that it has adequately balanced the interest of all the stakeholders.

- 2.12 In view thereof, the applicant submits that the Resolution Plan approved by the CoC does not fulfill the mandatory contents of a Resolution Plan which are more particularly provided in Section 30(2) of the code and thus the said Resolution Plan is in violative of Section 30(2) of the Code.
- 2.13 The Applicant submits that the Corporate Debtor had no borrowings until prior to 10 days before the admission order and the Corporate Debtor with mala fide intentions to circumvent the provisions of the Code, had availed certain credit facilities from SDAL against a charge on the movable property (not being pledge, Stock/ inventory, Cash & Bank Balances & other receivables) of the Corporate Debtor on 01.12.2022 ('said Transaction') and that by virtue of the said transaction, SDAL has been inducted as a member of the CoC and is the only member of CoC with voting rights. It is stated that despite such facts the RP denied any avoidance transaction which raises concern regarding the entire CIRP of the Corporate Debtor and the Respondent No. 1.
- 2.14 The applicant also filed an additional affidavit submitting that the Transaction of taking credit from SDAL qualifies to be a fraudulent transaction under Section 66 of the Code and that RP has colluded with SDAL and the erstwhile promoters of the Corporate Debtor and has permitted SDAL to usurp the entire 100% voting share in the CoC for a meagre price of INR

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10,00,000/- (Rupees Ten Lakhs Only) and failed to perform his duties under the Code and the Regulations thereunder.

2.15 Applicant also states that it was the duty of Respondent No.1 to declare the said Transaction as fraudulent and disqualify SDAL from the CoC and to appoint the Applicant as the sole member of the CoC as per Regulation 16 of CIRP Regulations. Therefore, the Resolution Plan approved by the CoC that was wrongfully constituted, is illegal and ought not to be approved.

3. **Submissions of the Respondent, in brief:**

3.1 Narrating the factual background of the case, the RP/Respondent No. 1 submits that claims were invited, the list of Creditors was prepared and CoC was constituted. The status of the List of Claims pertaining to the Corporate Debtor is as under: -

Sr. No.	Creditor	Amount Admitted
1.	Financial Creditors	60,00,000
2.	Operational Creditor	13,14,80,928
	Total	13,74,80,928

3.2 The admitted claim of the Applicant was more than 10% of the debt of the Corporate Debtor, and hence, as per the requirement of Section 24(3)(c) & 24(4) of IBC, the Applicant was given a seat in all the meetings of CoC. Also, on 10.03.2022 Form-G was published inviting EoI from the PRAs. Pursuant to Form-G, the RP received EoI from M/s Anand Vihar Realty Private Limited and M/s Radhekripa Developers Private Limited (Respondent No.2).

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The Respondent No.2 submitted the Resolution Plan within the due date for submission of Resolution Plan. Whereas, no Resolution Plan was submitted by Anand Vihar Realty Private Limited.

- 3.3 The CoC upon discussion and deliberation with the Respondent No. 2 asked to revise the Resolution Plan submitted and RP informed on 7th CoC meeting held on 12.08.2022 that Respondents No. 2 has submitted its revised Resolution Plan on 05.08.2022. The revised Resolution Plan dated 05.08.2022, in brief provides for:

Particular	Amount
Amount reserved towards CIRP cost	Rs. 10,00,000
Amount Payable to Financial Creditors	Rs. 30,00,000
Amount Payable to Operational Creditors	Rs. 30,00,000
Total Amount	Rs. 70,00,000

- 3.4 In the 8th meeting of the CoC convened on 28.08.2022, Respondent No.1 had placed the Resolution Plan submitted by the Respondent No.2 before the CoC for approval and the CoC decided to put up the Resolution Plan dated 05.08.2022 for e-voting for the period starting from 29.08.2022 to 30.08.2022. Further as per e-voting conducted from 29.08.2022 to

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30.08.2022, the Resolution Plan dated 05.08.2022 ("Successful Resolution Plan") submitted by Radhekripa Developers Private Limited ("Successful Resolution Applicant") was voted in affirmative with 100% voting percentage.

- 3.5 The Respondent herein/RP has filed an application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("Code") bearing No. 2729 of 2022 before this Tribunal for seeking approval of Resolution Plan submitted by Respondent No.2 which was approved by CoC. The said application is pending adjudication before this Tribunal.
- 3.6 The RP submits that the approved Resolution Plan proposes for a payment of Rs. 30,00,000 (Rupees Thirty Lakhs Only) to the Applicant out of the admitted claim of Rs. 13,14,80,928. It is pertinent to mention that the Liquidation value of the Corporate Debtor arrived by the Registered Valuers is Rs. 43,71,303/-, which is lower than the total admitted claims made against the Corporate Debtor towards the financial creditors and CIRP Costs. In light of the waterfall mechanism set out in Section 53 of the Code, the amount to be paid to Applicant Creditor in the event of liquidation of the Corporate Debtor would be NIL, whereas under the approved Resolution Plan, the Successful Resolution Applicant has proposed a payment of Rs. 30,00,000 (Rupees Thirty Lakhs Only) towards the dues of Operational Creditors.
- 3.7 The Resolution Professional submits that the Resolution Plan is in compliance with the provisions of the Code and has taken into account the interest of all the stakeholders including the

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Applicant who would be getting "NIL" payment in case the amount was distributed as per the waterfall mechanism. The contention of the Applicant that the Plan is not fair and equitable is baseless and without any evidence.

- 3.8 In respect of the contention of the Applicant that financial Creditor has neglected its interest by approving the Resolution Plan and that prejudice is caused to the Applicant, the RP placed reliance on the decision of Hon'ble Supreme Court in the case of ***Essar Steel India Limited v. Satish Kumar Gupta Civil Appeal No 8766 of 2019*** and submitted that the distribution lies within the domain of CoC and CoC is free to decide upon the distribution.
- 3.9 In regard to the Applicant's contention that Plan fails to provide the priority in payment to Operational Creditors, the RP submits that the same is false and referring to clause 3.11 of the Plan it is submitted that the compliance of Section 30(2)(b) of the Code and Regulation 38(1)(a) regarding the priority payments has been made which is further emphasized therein.
- 3.10 RP also submits that Plan is in Compliance with the provisions of Section 30(2) of the Code and the Regulations, and he has also attached Compliance Certificate in Form-H along with the Application filed for approval of Resolution Plan before this Tribunal.
- 3.11 In regard to the Applicant's contention that Plan is in violation of Regulation 38(1A) of the CIRP Regulation 2016, the RP submits

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that the Plan is in compliance with the provisions of the Code and the distribution is in accordance with the Code and that the Plan has taken into account the interest of all the stakeholders including the Applicant who would be getting "NIL" payment in case the amount was distributed as per the waterfall mechanism.

- 3.12 In regard to Applicant's contention that the Respondent No. 1 has failed to Comply with the duties, the RP submits that the same is just an afterthought as the Applicant was present in the CoC meetings, in which the Financial Creditor was also present as a CoC member.
- 3.13 The RP also submits that he has performed his duties under the Code in letter and spirit and this application deserves to be dismissed.

FINDINGS/OBSERVATIONS

4. Heard the counsels for the parties and perused the records. In this case, in due compliance with the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and the applicable Regulations of the Insolvency and Bankruptcy Board of India (IBBI), claims were invited after the Corporate debtor was admitted into Corporate Insolvency Resolution Process (CIRP) vide Order dated 10.12.2023 passed by this Adjudicating Authority in Company Petition No. 2510 of 2019. After invitation of claims, the Committee of Creditors (CoC) was formed in compliance with Regulations. Thereafter, Expressions of Interests (EoI) were invited and two Prospective Resolution Applicants

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(PRAs) filed their EoIs. Eventually, one PRA submitted its Resolution Plan and subsequently filed its revised Resolution Plan. The revised Resolution Plan being in compliance with the Code and Regulations of IBBI was approved by the CoC. The said Resolution Plan approved by the CoC is pending before this Tribunal for approval.

5. It is the contention of the Applicant that the proposed distribution of money receivable under the Resolution Plan is not fair and equitable. In this regard reference is made to the decision in case of **India Resurgence Arc Pvt. Ltd. vs. Amit Metaliks Ltd & Anr. [Company Appeal (AT) (Ins) No. 1061 of 2020]** wherein the Hon'ble NCLAT, New Delhi Bench, noted that:

“7. It abundantly clear that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors. Such considerations, being relevant only for purposes for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61(3) of I&B Code. While it is true that prior to amendment of Section 30(4) the Committee of Creditors was not required to consider the value of security interest obtaining in favour of a Secured Creditor while arriving at a decision in regard to feasibility and viability of a Resolution Plan, legislature brought in the amendment to amplify the scope of considerations which may be taken into consideration by the Committee of Creditors while exercising their commercial wisdom in taking the business decision to approve or reject the Resolution Plan. Such consideration is only aimed at arming the Committee of Creditors with more teeth so as to

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take an informed decision in regard to viability and feasibility of a Resolution Plan, fairness of distribution amongst similarly situated creditors being the bottom-line. However, such business decision taken in exercise of commercial wisdom of Committee of creditors would not warrant judicial intervention unless creditors belonging to a class being similarly situated are not given a fair and equitable treatment.”

[Bold for Emphasis]

6. It is pertinent to mention here that an appeal was filed challenging the Hon’ble NCLAT’s Order in the **India Resurgence Case** (supra) which was dismissed by the Hon’ble Supreme Court. In this context, the observations of Hon’ble Supreme Court are worth mentioning:

“11. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.

12. ... the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.”

[Bold for Emphasis]

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7. It can be seen from the above that the Hon'ble Supreme Court as well as the Hon'ble NCLAT have categorically held that distribution lies within the domain of the Committee of Creditors (CoC) which is free to decide upon the distribution and that business decision taken in exercise of commercial wisdom of CoC would not warrant judicial intervention unless creditors belonging to same class being similarly situated are not given a fair and equitable treatment. In the present case, there are no two creditors belonging to a class, being either present or not given fair and equitable treatment. The Applicant is an Operational Creditor while the other Creditor is a Financial Creditor and there is no dispute regarding such categorization. Therefore, merely stating that the Applicant's interest is neglected, and prejudice is caused, is not enough unless substantive proof of such prejudice is given.
8. The Applicant contends that the Plan fails to provide priority in payment to Operational Creditors. In this regard, it is relevant to mention Clause 3.11 of the Plan wherein it is stated as under:

“3.11 GOVERNING LAW

The Resolution Plan has been drawn in compliance with the provisions of Section 30 and 31 of the Code read with Regulation 37,38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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- ***Provides for repayment to Operational Creditors in the manner provided by the CIRP Regulations and the Code which is significantly greater than the amount to be paid to the Operational Creditors in the event of the Liquidation.”***

9. It is clear that the Resolution Plan proposes payment in accordance with the Code and Regulations made thereunder which is evident from the wordings of Clause 3.11 of the Plan reproduced above. Further, it is pertinent to mention that the compliance of Section 30(2)(b) of the Code and Regulation 38(1)(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations) regarding the priority payments has been further emphasized in Clause 3.13 of the Resolution Plan. Clause 3.13 clearly states that the Resolution Plan provides for repayment of debts of operational creditors in such manner as may be specified by the Board and also that the Plan complies with the provision that the amount payable to the operational creditors under the Resolution Plan shall be given priority in payment over the financial creditors. Hence, it is evident that the Resolution Plan provides for payment to the Operational Creditors in compliance with Sections 30(2)(b) of the IBC and Regulation 38(1)(a) of the Regulations.
10. The Resolution Professional has also attached Compliance Certificate in Form-H along with the Application filed for approval of Resolution Plan before this Tribunal. The Applicant has not placed on record anything to show as to how the Plan is illegal

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and why the same could not be placed before the CoC and approved by the CoC.

11. The Applicant contends that the Plan is in violation of Regulation 38(1A) of the said IBBI Regulations, 2016 which states that Resolution Plan to include a statement how it dealt with the interest of all the stakeholders. Clause 3.13 (point no. 21) of the Plan states as under:

“The estimated outstanding dues of the Unsecured Financial Creditors are approx. Rs. 60,00,000 which is proposed to be at a consideration of Rs. 30,00,000 (50% of outstanding claim of Unsecured Creditors). The payment of entire crystallized amounts to the original unsecured financial creditors is proposed within a period of 3 months from the date of approval of Resolution Plan by the NCLT.

Other stakeholders are proposed to be settled/paid as under:

- 1. Operational Creditors (trade payable Rs. 13,14,80,928 (Rupees Ten Crore Fourteen Lakh Eight Thousand Nine Hundred Twenty-Eight Rupees 30,00,000 (2.28% of operational Creditors) in full and final settlement, within 3 months of approval of resolution plan by the NCLT. Balance amount is proposed to be waived.*
- 2. There are no outstanding admitted claims of workmen/employees’ dues as per details available in IM.*
- 3. There are no outstanding admitted claims of workmen/employees’ dues as per details available in IM.*
- 4. According to the IM provided by the RP, no claims received from the shareholders of the CD. Hence no payment is proposed towards them.”*

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12. In view of above, it cannot be said that the Plan is not in compliance with the provisions of the Code and that the distribution is not in accordance with the Code, as it has taken into account the interest of all the stakeholders including the Applicant who would be getting 'Nil' payment in case the amount was to be distributed as per the waterfall mechanism under section 53 of the Code.

13. In regard to the contention of the Applicant that the RP has failed to Comply with his duties, it is noted that the Applicant was present in the CoC meetings, in which the said Financial Creditor was also present as a CoC member. After the issuance of Public Announcement on 30.12.2021, the RP received a claim dated 07.01.2022 from the Financial Creditor of the Corporate Debtor. The Financial Creditor is a Non-Banking Financial Company (NBFC) registered with the Reserve Bank of India (RBI). The RP collated the said claim and prepared the List of Creditors, formed CoC, conducted their meetings, invited expressions of interests and further acted in accordance with intent of the Code. The applicant has not made out any case or pointed out any specific non-compliance or violation of applicable provisions of the Code and the Regulations by the RP. Therefore, it cannot be said that the RP had failed to carry out his duties as per the Code.

14. The Applicant contends that plan is not in Compliance with Section 30(2) of the Code as same being not fair and equitable to the Applicant being an Operational Creditor who is getting 2.28% of its debt. In this regard, it is relevant to reproduce Section 30(2)(b) of the Code:

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“Section 30

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

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.”

15. In this case and as submitted by the RP, the proposed distribution is not in anyways contradictory to the provisions of the Code. Further, a case being made out by the Applicant that the distribution is not fair and equitable, simply for the reason that the applicant is to get 2.28% of his debt, would not in anyway suggest that the same is not fair and equitable especially when the total amount under the proposed Plan itself is 5.09% of the total outstanding amount payable to the Creditors and if

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the cost of CIRP is excluded, amount is further reduced to 4.36% of the total outstanding debt value.

16. The Applicant averred that the transaction of Rs. 10,00,000 from the Financial Creditor is deemed to be a fraudulent transaction under Section 66 of the Code and therefore, the Financial Creditor shall be disqualified and that the Applicant shall be appointed as the sole member of the CoC. We are unable to accept this submission of the Applicant as no substantial evidence is placed before the Tribunal to support the case. Further, as can be seen from the Resolution plan, the total admitted amount in case of Financial Creditors is Rs. 60,00,000 out of which Rs. 10,00,000 is secured financial debt while Rs. 50,00,000 is unsecured financial debt. In the Resolution Plan, it is proposed that the secured debt will be paid in full i.e. Rs. 10,00,000 and as regards the unsecured financial debt of Rs.50,00,000, a payment of Rs. 20,00,000 is proposed. Thus, we find no substance in this contention of the Applicant.
17. Moreover, we are of considered view that in the event of the Resolution Plan being rejected on the above grounds of the Applicant, the other option left is Liquidation of the Corporate Debtor. The estimated Liquidation value is Rs. 43,71,303 which is lesser than the amount proposed in the Resolution Plan. In any case, it is certain that the amount which the Applicant who is an Operational Creditor would be getting in case of liquidation of Corporate Debtor, is 'Nil'. Moreover, the primary focus of the Code is resolution and continuation of the Corporate Debtor as

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a going concern and not corporate death by way of liquidation. Thus, we see no reasons as to why the said Resolution Plan has to be rejected.

18. However, we are also inclined to consider the judgments cited by the Applicant for completion of the case. The Applicant has relied on the judgments of Hon'ble Supreme Court passed in **Swiss Ribbons Private Limited vs. Union of India (2019) 4 SCC** and **Essar Steel vs. Satish Kumar Gupta** to substantiate its averments.
19. In **Swiss Ribbons** (supra), the Applicant relied on the observations of the Hon'ble Supreme Court wherein it emphasised on balancing the interests of all stakeholders and also on maximisation of value of assets. In this regard, we would like to also refer to the following observations of the Hon'ble Supreme Court:

“44. Since the financial creditors are in the business of money lending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor. Even at the time of granting loans, these banks and financial institutions undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. Since this detailed study has already been undertaken before sanctioning a loan, and since financial creditors have trained employees to assess viability and feasibility, they are in a good position to evaluate the contents of a resolution plan. On the other hand, operational creditors, who provide goods and services, are involved only in recovering amounts that are paid for such goods and

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services, and are typically unable to assess viability and feasibility of business.

46. ... It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value.”

(Emphasis Provided)

20. We have also considered the paragraph quoted by the Applicant from the judgment in **Essar Steel** (supra). We note that, in the extract submitted by the Applicant itself, the Hon’ble Supreme Court had clearly demarcated the jurisdiction of this Tribunal while examining a Resolution Plan. Relevant portion is reproduced below:

“46. ... 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 balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of

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its assets; and that the interests of all stakeholders including operational creditors has been taken care of.”
(Emphasis Provided)

21. We would further like to refer to some observations of the Hon’ble Supreme Court, other than those mentioned above, in **Essar Steel** (supra):

“44. The minimum value that is required to be paid to operational creditors under a resolution plan is set out under Section 30(2)(b) of the Code as being the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53.

***46. ... If nothing is to be paid to operational creditors, the minimum, being liquidation value - which in most cases would amount to nil after secured creditors have been paid - would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern.** Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors.”*

(Emphasis Provided)

22. The above observations clearly establish the well-reasoned position of the financial creditors as against the operational creditors as members of CoC with voting rights. Further, it is also stated that a resolution plan shall not be considered fit unless the operational creditor is paid an amount which is not less than the liquidation value, which is not the issue in the present

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matter. Thus, we are satisfied that the interests of all the stakeholders are considered in the Resolution Plan and that there is no dispute as to the approval of the Resolution Plan by the CoC.

23. In view of the facts and circumstances of the case and the discussions made above, the contentions and submission of the Applicant are not found to be acceptable. Therefore, the prayers sought in the present application are **rejected** and the Application is accordingly **dismissed as disposed of**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)
---Rajeev---

Sd/-

Lakshmi Gurung
Member (Judicial)