NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 922 of 2024

[Arising out of order dated 05.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court – II), in I.A. No. 1394 of 2023 in C.P. (IB) No.38 of 2020]

IN THE MATTER OF:

M/s. Sumeet Industries Ltd.,
Through its Resolution Professional,
Mr. Satyendra Prasad Khorania,
Having its office at: 402, O.K. Plus,
DP Metro, Opp. Metro Pillar No. 94,
New Sanganer Road,
Jaipur – 302019. **...Appellant**

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Amol Vyas, Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 838 of 2024

[Arising out of order dated 05.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court – II), in I.A. No. 1394 of 2023 in C.P. (IB) No.38 of 2020]

IN THE MATTER OF:

1. M/s. Eagle Fashions Pvt. Ltd.
Through Mr. Radhey Shyam Jaju
201, Orleaans Building,
Sosyo Circle, UM Road, Surat - 395007 **...Appellant No. 1**

2. Eagle Fibres Ltd.
Through Mr. Radhey Shyam Jaju
201, Orleaans Building,
Sosyo Circle, UM Road, Surat - 395007 **...Appellant No. 2**

3. Eagle Synthetic Pvt. Ltd.
Through Mr. Radhey Shyam Jaju
201, Orleaans Building,
Sosyo Circle, UM Road, Surat - 395007 **...Appellant No. 3**

4. Padmini Polytex Pvt. Ltd.

Through Mr. Radhey Shyam Jaju
Office No. 514, Luxuria Business Hub,
Near Dumas Resort, Dumas Road,
Surat - 395007 **...Appellant No. 4**

5. Eagle Sizers
Through Mr. Radhey Shyam Jaju
201, Orleaans Building,
Sosyo Circle, UM Road, Surat - 395007 **...Appellant No. 5**

6. JPB Fibres
Through Mr. Radhey Shyam Jaju
201, Orleaans Building,
Sosyo Circle, UM Road, Surat - 395007 **...Appellant No. 6**

Versus

1. M/s. Sumeet Industries Ltd.
Through its Resolution Professional,
Mr. Satyendra Prasad Khorania,
Office at 402, O.K. Plus, DP Metro,
Opp. Metro Pillar No. 94,
New Sanganer Road, Jaipur-302019 **...Respondent**

Present:

For Appellants : Mr. Krishnendu Datta, Sr. Advocate with Mr. Vivek Malik and Mr. Vivek Sinha, Advocates.

For Respondent :

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed against the same order of the Adjudicating Authority dated 05.04.2024 passed in I.A. No. 1394/2023 in C.P. (IB) No. 38/2020, by which order Adjudicating Authority has rejected the I.A. 1394/2023 filed by the Resolution Professional (RP) for approval of the Resolution Plan submitted by M/s. Eagle Fashions Private Ltd & Anr. Both the RP and Successful Resolution Applicant (SRA) aggrieved by rejection of the Resolution Plan has come up in these appeals.

2. Brief facts giving rise to these appeals are:

i. On an application filed by the IDBI bank under Section 7, Corporate Insolvency Resolution Process (CIRP) commenced against the Corporate Debtor, Sumeet Industries Ltd. by order dated 20.12.2022.

ii. On 04.03.2023, Interim Resolution Professional (IRP) was replaced and Mr. Satyendra Prasad Khorania was appointed as a RP.

iii. Registered valuers were appointed in Second Committee of Creditors (CoC) Meeting

iv. Form G was issued and thereafter Request for Resolution Plan (RFRP) and evaluation matrix was issued, in response to the RFRP, 5 Resolution Plans were received.

v. The CoC considered the Resolution Plan received in the CIRP of the Corporate Debtor and the CoC in its commercial wisdom approved the Resolution Plan submitted by M/s. Eagle Fashions Private Limited & Ors. with 74.90% voting shares.

vi. Letter of Intent (LoI) was issued on 20.11.2023 by the RP to SRA who unconditionally accepted the LoI.

vii. RP filed an IA under Section 30(6) read with Section 31 being I.A. No. 1394/2023 seeking approval of the Resolution Plan submitted by SRA.

3. Application came to be listed before the Adjudicating Authority on several dates. Adjudicating Authority reserved the order on 11.03.2024 and by impugned order dated 05.04.2024, rejected the application filed by the RP, aggrieved by which order, these appeals have been filed.

4. Learned Counsel for the RP challenging the impugned order submits that the Adjudicating Authority while rejecting the Resolution Plan has

observed that RP has not submitted copy of Information Memorandum, RFRP, Valuation Report, receipt of Performance Security and Minutes of the 8th Meeting of the CoC. Whereas in hearing no query or any documents were asked for from the RP. It is submitted that in event Adjudicating Authority had given an opportunity, RP could have submitted all the necessary documents for consideration of the Resolution Plan and rejecting the Resolution Plan on the ground that RP has not submitted, the aforesaid documents was not appropriate.

5. It is further submitted that Adjudicating Authority has also made the observation that claim of Statutory Authorities has not been accepted by the RP, whereas decision of RP not to accept the claim of the Statutory Authority was never challenged. The observation of the Adjudicating Authority that liquidation is better option cannot be ground for rejecting the Resolution Plan. All the Resolution Applicants were subjected to Swiss Challenge Method to determine the maximum value of the Corporate Debtor. Resolution Applicants were also given opportunity to revise their Resolution Plans.

6. Learned Counsel for the SRA also submitted that SRA was fully eligible under Section 29-A and observation in the order that it has not been disclosed the dealing of the SRA with Corporate Debtor is not correct.

7. The Adjudicating Authority in Paragraph 20 has noted the following which led to the rejection of application. Para 20 of the order is as follows:

> *"20. We have heard the learned counsel for the applicant/RP and perused the material available on record. It is noted that :*
>
> *a) The RP filed the Compliance Certificate in "Form-H" attached with the Application and as per Form-H, the fair value and liquidation value of the Corporate Debtor is Rs. 448.785 crores and Rs.315.756 crores*

respectively. This is far higher than the Resolution Plan Value.

b) There has been a Swiss Challenge Method followed to select the highest bidder, however, a pending IA filed by one of the Resolution Applicants reveals that the present applicant has been approved at a later stage after declaring the Highest 1 Bidder i.e. M/s C H Gajera. While his plan was rejected at a later stage merits of this application, particularly when it was far lower than the Fair Value and Liquidation Value were not assessed by the CoC. The COC did not approve an RFRP with a floor price keeping in mind the realizable value as per valuation as the bid price where far lower than the estimated fair and liquidation values. Even if there was a Swiss auction the realization through the plans submitted is considered to be way far from the probable realization of the assets of the entity.

c) The RP has not submitted a copy of the RFRP and the Information Memorandum to further verify the facts and it is also observed that the original applicant's financial creditor for initiating the CIRP had dissented from the approval of the Resolution Plan and the reasons for dissent, if any have not been recorded.

d) An opportunity to submit a revised bid was not given to the H1 Bidder, but it is stated to have been a conditional Resolution Plan regarding non - the inclusion of the CIRP cost in the Plan itself. Similarly, from the documents submitted it is not clear whether the Successful Resolution Applicant has had any dealings with the CD in the past as the eligibility criteria under Sec 29 A has not been submitted (copy) to this tribunal. The Resolution Professional has however submitted an affidavit of compliance.

e) The RP has not submitted a copy of the two valuations done. When the Resolution Plans were far below the liquidation value/fair value the COC even though had in its commercial wisdom approved the plan with a 74.90% majority and not considered to revalue the assets or increase the floor price for bidding. This raises the question as to whether the proper process for selling the assets of the CD as a going concern through the Resolution Process has been undertaken. However, since a challenging method was undertaken and the bidding process was closed between the H1 bidder (initial) who was subsequently rejected after deliberations due to non - non-compliance with certain conditions and the next

successful bidder, the process complies and seems to have gone through the process of due diligence and no merit of rejection is applied.

f) While the Adjudicating Authority has limited jurisdiction to review the commercial wisdom of CoC the judgments in this regard give limited scope to this Tribunal to intervene and reject the application as it complies with Sec 30(2) of the IBC. The judgments passed in the matter of the Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta and Ors. and in the matter of Maharashtra Seamless Steel Ltd vs. Padmanabhan Venkatesh & Others in Civil Appeal No.4242 of 2019 held that the Resolution Plans need not match up to liquidation value of the CD.

g) It is also observed that the Customs and State Tax Department filed their claim i.e. 55.20 crores (approx) but the RP admitted nil amount and did not give any reason for the same at Schedule - 4 (List of Statutory Dues) of the Resolution Plan. Further, observed that in the Resolution Plan, the Resolution Applicant paid a nil amount regarding the statutory dues which is against the provision of Section 30(2) of the IB Code, 2016.

h) The valuation report /summary of the valuation is also not provided by the RP to this Tribunal and it is also observed that as per Regulation 39(4) of the IBBI (CIRP) Regulations, 2016, the copy of the receipt of performance security required under sub-regulation (4A) of Regulation 36B of the IBBI (CIRP) Regulations, 2016 not attached with the Compliance certificate. i) The copy of the minutes of the meeting of the 8th CoC meeting that was held on 28.07.2023 is also not attached to the application wherein the process of the Swiss challenge was carried out.

j) The RP has not made the Operational Creditor – Statutory Authorities who were not paid in terms of Section 30(2)(b) of IBC Code, 2016.

k) It is observed that the Resolution Plan as approved by the CoC does not confirmed to the requirements of Section 30 of the IBC."

8. Observation in sub-Para (a) of the Adjudicating Authority is that fair value and the liquidation value of the Corporate Debtor is higher than the Resolution Plan Value. It is settled by the Judgment of the Hon'ble Supreme Court in ***`Maharashtra Seamless Steel Ltd.' Vs. `Padmanabhan***

Venkatesh & Ors.' in ***Civil Appeal No. 4242 of 2019,*** that a Resolution Plan can be approved with the commercial wisdom which is less than the liquidation value, thus observation (a) cannot be a ground to reject the Resolution Plan. Observation (b) that SRA has been approved after declaring another Applicant as H1 bidder, whose plan was rejected at a subsequent stage. In para 20(b) it was again observed that the Plan of SRA is lower than the fair value and the liquidation value which was not assessed by the CoC. Other part of observation relates to the business decision of the CoC in approving the Resolution Plan which cannot form any ground to reject the Resolution Plan. In observation (c) Adjudicating Authority has said that RP has not submitted copy of the RFRP and Information Memorandum to further verify the facts and further the original Applicant the Financial Creditor has dissented from the approved Resolution Plan and the reason for dissent, if any, have not been recorded. Insofar as copy of the RFRP and Information Memorandum which are part of the record and could have very well called for by the Adjudicating Authority. Not recording reason for dissent by original applicant has no bearing, dissent is recorded and expressed by votes in the Meeting of the CoC. In observation (d), it has been observed that an opportunity to submit the revised bid was not given to the H1 bidder, whereas it was further observed that Resolution Plan of H1 bidder was a conditional plan regarding non-inclusion of the CIRP cost in the Plan itself. It was further observed that document submitted it is not clear whether the SRA has had any dealings with the Corporate Debtor in the past, the eligibility certificate under Section 29-A has not been submitted to the Adjudicating Authority. The eligibility under Section 29-A is of utmost importance and only after

satisfying with the eligibility of the SRA, the CoC proceeds further to consider a Plan. It does not appear that there was any objection raised before the Adjudicating Authority regarding eligibility of the SRA, nor any grounds have been indicated and as to on what grounds SRA can be held to be not eligible. In observation (e), it has been observed that a copy of the two valuations done was not submitted whereas Resolution Plan fell below the fair value. It was further observed that CoC did not consider to re-value the asset or increase the floor price for bidding. Observation has also been made as to whether the proper process for selling the assets of the Corporate Debtor as a going concern through Resolution Process has been undertaken. However, later part of the observation indicates that challenge process was undertaken and process complies and seems to have gone through the process of due diligence. In observation (f), Adjudicating Authority has noticed the limited jurisdiction to review the commercial wisdom of CoC and has also referred to the Judgment of the ***`Committee of Creditors of Essar Steel India Limited' Vs. `Satish Kumar Gupta & Ors.'*** in ***(2020) 8 SCC 531,*** and ***`Maharashtra Seamless Steel Ltd.' Vs. `Padmanabhan Venkatesh & Ors.'*** in ***Civil Appeal No. 4242 of 2019.*** In observation in Para (g), it has noticed that Customs and State Tax Department has filed their claim i.e. Rs. 55.20 Crores, but the claim was not admitted and no reasons have been given for the same at Schedule 4. Further in the Resolution Plan, the Resolution Applicant paid a NIL amount regarding the statutory dues which is against the provision of Section 30(2) of the Code. We fail to see any reason in the above observation when the claim of Customs & State Tax Department was not admitted, there was no reason of allocating any amount in the plan. Further, no reason was

indicated as to how the RP committed error in not admitting the claim. In observation (h), it is observed that Valuation Report/summary of the valuation is also not provided by the RP to this Tribunal. Copy of receipt of performance security is not attached along with Compliance Certificate. It is sufficient to indicate that in event, any document was wanting and was required to be examined by the Adjudicating Authority, Adjudicating Authority was well within its jurisdiction to direct the RP to submit all relevant documents which was part of the CIRP. Further in observation (i), it was stated that Meeting of 8th CoC held on 28.07.2023 is not attached.

9. When we look into the index of the application, it is clear that Minutes of the 2nd CoC Meeting, 6th CoC Meeting, 7th CoC Meeting, 9th CoC Meeting, 10th CoC Meeting and 11th CoC Meeting, as well as summary of e-voting result dated 25.11.2023 have been filed. Adjudicating Authority has observed that 8th CoC Meeting has not been filed, it was open for the Adjudicating Authority to direct the RP to produce the 8th CoC Meeting for consideration.

10. In observation (j), it has been observed that Operational Creditor Statutory Authorities have not paid amount in terms of Section 30(2)(b). However, there is no finding or details as to how the observation has been made that Operational Creditor, Statutory Authorities has not been paid the amount under Section 30(2)(b). In sub-Paragraph (k), it is observed that Resolution Plan does not confirm the requirement of the Section 30 of the Code.

11. The observations of the Adjudicating Authority as noticed above are observation, relating to various documents not being filed by the RP, including the Minutes of the 8th CoC, rejection of the claim of the Customs and State

Tax Department without giving any reason and further non-payment of Operational Creditor/Statutory Authorities. Adjudicating Authority itself in sub-Paragraph (f) has noted the limits of jurisdiction of the Adjudicating Authority while reviewing the commercial wisdom of the CoC.

12. The observation made in paragraphs (j) and (k) that there is a non-compliance of Section 30(2)(b) and Section 30 of the Code are only bare observation without any basis or material. Rejection of the Resolution Plan can be on limited grounds as laid down in the ***`Committee of Creditors of Essar Steel India Limited' (Supra)*** as has been noticed by the Adjudicating Authority itself. Hon'ble Supreme Court in ***`Committee of Creditors of Essar Steel India Limited' (Supra)*** has held that Adjudicating Authority's jurisdiction is circumscribed by Section 30(2). ***`Committee of Creditors of Essar Steel India Limited' (Supra)*** has referred to earlier Judgment of the Hon'ble Supreme Court in the case of ***`K. Sashidhar' Vs. `Indian Overseas Bank & Ors.' (2019) 12 SCC 150*** in Paragraph 67 of the Judgment of the ***`Committee of Creditors of Essar Steel India Limited' (Supra)*** following has been held:

> ***"67.*** *After adverting to the 2016 Regulations, the Court in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] set out the jurisdiction of the Adjudicating Authority as well as the Appellate Tribunal as follows: (K. Sashidhar case [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , SCC pp. 185-89, paras 55-59, 62 & 64)*
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> > *"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can*

reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

56. For the same reason, even the jurisdiction of NCLAT being in continuation of the proceedings would be circumscribed in that regard and more particularly on account of Section 32 of the I&B Code, which envisages that any appeal from an order approving the resolution plan shall be in the manner and on the grounds specified in Section 61(3) of the I&B Code. Section 61(3) of the I&B Code reads thus:

*'**61. Appeals and appellate authority**.—(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the adjudicating authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

*(2)****

(3) An appeal against an order approving a resolution plan under Section 31 may be filed on the following grounds, namely—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) 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;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.'

57. On a bare reading of the provisions of the I&B Code, it would appear that the remedy of appeal under Section 61(1) is against an "order passed by the adjudicating authority (NCLT)", which we will assume may also pertain to recording of the fact that the proposed resolution plan has been rejected or not approved by a vote of not less than 75% of voting share of the financial creditors. 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, has 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 the CoC in exercise of its business decision.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.

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. The fact that substantial or majority per cent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75%

(after amendment of 2018 w.e.f. 6-6-2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter III of the I&B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75% (as in October 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified per cent (25% in October 2017; and now after the amendment w.e.f. 6-6-2018, 44%). The inevitable outcome of voting by not less than requisite per cent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.

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62. The argument, though attractive at the first blush, but if accepted, would require us to rewrite the provisions of the I&B Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground — to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the corporate debtor concerned was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the Appellate Tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan.

Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.

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64. Suffice it to observe that in the I&B Code and the Regulations framed thereunder as applicable in October 2017, there was no need for the dissenting financial creditors to record reasons for disapproving or rejecting a resolution plan. Further, as aforementioned, there is no provision in the I&B Code which empowers the adjudicating authority (NCLT) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under Section 30(4) of the I&B Code. At best, the adjudicating authority (NCLT) may cause an enquiry into the "approved" resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors — be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the appellate authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial creditors albeit by requisite per cent of voting share to approve the resolution plan; and in the process authorise the adjudicating authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of jurisdiction vested in the adjudicating authority under Section 31 of the

I&B Code dealing with approval of the resolution plan."

(emphasis supplied)

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 [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] ."

13. From the above, it is clear that the Adjudicating Authority can reject Resolution Plan only when it is in non-compliance of Section 30(2). From the observations made by the Adjudicating Authority in the impugned order, it is clear that apart from only bare observation that Plan does not confirm to Section 30(2), there are no reasons or material given as to how the plan can be said to be non-compliance of Section 30(2).

14. As observed above with regard to Minutes and Documents which were not filed by RP, it was always open for the Adjudicating Authority to call for the relevant documents from the RP for examination of the same and rejection of the Plan on the ground that RP has not filed Information Memorandum, RFRP and certain Minutes of the CoC is clearly uncalled for.

15. It is further relevant to notice that Paragraph 20 is the only Paragraph where Adjudicating Authority has noticed and made observation in sub-Paragraphs (a) to (k). There are no consideration of materials or findings based on any material or facts regarding Plan being non-compliance of Section 30(2). In the facts of the present case, interest of justice be served in setting aside

the impugned order passed by the Adjudicating Authority and reviving the application filed by the RP for fresh consideration.

16. To obviate the delay in disposal of the application, we are of the view that Minutes and the Documents which have not been filed by RP as referred to in Paragraph 20 as noticed above, may be submitted by RP along with an Additional Affidavit before the Adjudicating Authority within two weeks from today. Adjudicating Authority after receipt of the documents and Minutes as noted by the Adjudicating Authority in the impugned order may proceed to consider the I.A. No. 1394/2023 afresh and decide the same in accordance with law.

17. In view of the foregoing discussions, we allow both the appeals, set aside the impugned order dated 05.04.2024, passed by the Adjudicating Authority and revive the I.A. No. 1394/2023, before the Adjudicating Authority for fresh consideration in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

30th May, 2024

himanshu