

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

**I.A. 2238/2022**

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read  
with Rule 11 of the National Company Law Tribunal Rules, 2016

**In the matter of**

IFCI Ltd.

IFCI tower, 61, Nehru Palace,  
New Delhi – 110019

Also at

Earnest House, 7<sup>th</sup> – 9<sup>th</sup> Floors,  
Nariman Point, Mumbai - 400021

**...Applicant**

1. Raju Palanilkunnathil Kesavan,  
Resolution Professional of  
Heera Constructions Company Pvt. Ltd.  
Having Registration No.  
IBBI/IPA-001/IP-P00801/2017-2018/11356,  
Having registered address at:  
CGNRA-9, (33/11383A), Kodamassery Lane,  
Challikkavatom, Vennala P.O.,  
Kochi – 682028 (Kerala)

**...Respondent No. 1**

2. Royal Heights Projects Private Limited  
Lead Member of the Successful Resolution Applicant  
63/2982, Manjankal House, Surabhi Enclave,  
S A Road, Kochi - 682016

**...Respondent No. 2**

**In the matter of  
C.P. No. (IB) 4447/MB/2018**

IFCI Ltd.

**...Financial Creditor**

**Versus**

Heera Constructions Private Limited

**...Corporate Debtor**

**Reserved for order on: 27.02.2023**

**Order delivered on: 31.03.2023**

**Coram:**

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

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

**Appearance:**

For the Applicant: Adv. Shyam Kapadia i/b M/s Apex Law  
Partners

For the Respondents: Adv. Amir Arsiwala a/w Adv. Abdullah  
Qureshi and Adv. Arjun Sathees i/b  
Indialaw LLP a/w Resolution Professiona  
Mr. Raju P. K. (for Respondent No. 1/  
Resolution Professional) and Adv.  
Nausher Kohli a/w Adv. Rishabh  
Dhanuka a/w Mr. Vaibhav Srivastava  
and Adv. Daminia Thacker i/b A&D  
Legal (for Resolution Applicant/  
Respondent No. 2)

***Per: H.V. Subba Rao, Member (J)***

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**ORDER**

1. The above I.A. 2238 of 2022 has been filed by IFCI Limited who is a dissenting Financial Creditor having 20.546% voting in the Committee of Creditors (hereinafter referred to as the "CoC") challenging the approval of the Resolution Plan submitted by the Royal Heights Projects Private Limited (hereinafter referred to as

the “**Respondent No. 2**”) duly approved by the CoC with a majority of 79.43% voting under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 praying the following reliefs:

- a. *Reject the Resolution Plan submitted by Royal Heights Projects Private Limited which is the subject matter of I.A. No. 1841 of 2022 on the ground that it does not provide a holistic resolution of all the projects of the Corporate Debtor and that it is in contravention of the Order of this Hon’ble Tribunal dated 3<sup>rd</sup> March 2022.*
- b. *Alternatively, direct the Resolution Professional or any other party to disburse to the Applicant the liquidation value keeping in mind the security interest of the Corporate Debtor exclusively mortgaged to the Applicant.*
- c. *Pending the hearing and final disposal of the present Application the Respondent No. 1 be restrained from taking any major steps in the CIRP of the Corporate Debtor.*
- d. *Pass any such order that it deems fit in support of the reliefs so claimed by the Applicant.*

**2. The brief facts behind filing the above Interlocutory Application are as follows:**

- i. The Applicant is a Financial Creditor who filed the present application for challenging the resolution plan which was approved on 22.06.2022 by a majority of 74.19% in the CoC meeting.
- ii. The Applicant had granted financial assistance to the Corporate Debtor to the tune of Rs. 50 Crore by a way of a Corporate Loan Agreement. The Corporate Debtor has secured the said loan by

creating an exclusive mortgage in favour of the Applicant on 4  
(four) different properties are as follows:

<b>Sr. No.</b>	<b>Property Details &amp; Location</b>	<b>Owner/ Mortgage</b>
1.	5.46 acres of land at Attipra Village, Thiruvananthapuram Taluk, Thiruvananthapuram Distt., Kerala (Although entire 5.46 acres is mortgaged, valuation of 4.06 acres is reported as it is towards developer's share as also dispute by one of the land owners)	1. Mr. K. G. Cheriyan 2. Mr. K. G. Babukuttan 3. Mr. Mohan K. George 4. M/s Concept Reality India Pvt. Ltd (in JV with HCCPL to develop Heera Nature)
2.	0.60 acres of land at Poonithura Village, Kanayannoor Taluk, Ernakulam Distt., Kerala	Corporate Debtor
3.	0.30 acres of land at Nedumangad Village, Nedumangad Taluk, Thiruvananthapuram Distt., Kerala (commercial hotel property)	Mr. Abdul Rasheed
4.	6 Residential falts at HeeraWindfaire, Vytilla, Ernakulam Distt., Kerala	Mr. Abdul Rasheed

iii. On 22.06.2022, a Resolution Plan of Royal Heights Projects Private Limited's consortium (hereinafter referred to as the "**Resolution Plan**") was put to vote which was approved by a majority of 74.19%.

iv. The Applicant dissented to the Resolution Plan on the following grounds:

- a. It does not provide any holistic resolution of the Corporate Debtor.

It is stated that the said Resolution Plan is in gross violation of this Tribunal's Order dated 03.03.2022. This Tribunal had laid down only one condition for the approval of

Resolution plan i.e., providing a holistic resolution of ALL the projects of the Corporate Debtor.

It is submitted that there are total 17 projects identified by the Resolution Professional, namely:

- i. Heera 4 Pillars
- ii. Heera Residency
- iii. Heera Dreams
- iv. Heera Lakefront
- v. Heera Skygolf
- vi. Heera Breeze
- vii. Heera Wind Faire
- viii. Heera Atmosphere
- ix. Heera Nature
- x. Heera Office Premises
- xi. Art by Heera
- xii. Heera Riverpark
- xiii. Heera Swiss Town
- xiv. Heera Grand Village
- xv. Heera Cyber View
- xvi. Heera Life Style
- xvii. Heera I Think

It is stated that the Respondent No. 2 was to provide a plan to revive and rehabilitate ALL of these projects. However, the Respondent No. 2 has conveniently provided a plan for resolution of only 7 out of the 12 projects of the Corporate Debtor and categorized it as Phase – I of implementation of the Plan.

The Applicant further proposed a vaguely worded Second phase in the Resolution Plan and has proposed to complete in the Second Phase. However, for the 3 of the projects, namely,

Heera Office Premises, Art by Heera and Heera River Park there is no description or any information provided for Second Phase and what the plan of action of Respondent No. 2 is with respect to the remaining projects in Second Phase.

It is further stated that despite clear and repeated directions by this Tribunal to provide a Resolution Plan for ALL the projects, namely, Heera Swiss Town, Heera Grand Village, Heera Cyber View, Heera Life Style and Heera I Think under the category “Other Projects” and provided and vaguely worded plan for the said projects which is clearly to mislead this Tribunal.

b. There is no liquidation value provided to the Applicant.

It is stated that since the Applicant has dissented to the Resolution Plan, the Applicant is eligible to the liquidation value as prescribed under Section 30(2)(b) of the Code.

The Resolution Plan does not provide the liquidation value of the Corporate Debtor and has not proposed the payment to be made to creditors in the event of dissent. This made the Resolution Plan IBC non compliant.

There is no liquidation value assigned to one of the properties i.e. Heera Nature (due to absence of requisite approvals as mentioned by the RP), which is charged to IFCL. However, home buyers who are parties to the said projects, got their claims admitted. Therefore, the plan is not IBC compliant.

Further, on 24.06.2022 i.e., after the 9<sup>th</sup> CoC meeting was held and before the conclusion of voting on the said Resolution Plan, the Applicant sought for the liquidation value receivable to the Applicant being the Secured Financial Creditor of the Corporate Debtor to enable them to take an informed decision

before voting on the said Resolution Plan. However, the Applicant received no response till date.

- c. Resolution Applicant is not contributing any funds for the revival of the Corporate Debtor.

It is evident from the Resolution Plan that the Respondent No. 2 is not bringing in any funds into Corporate Debtor and for payment under Resolution Plan and are only liquidating assets at their own whims and fancies or are taking monies from the homebuyers. Therefore, the entire concept of a holistic resolution of the Corporate Debtor is defeated under the present Resolution Plan.

- v. It is stated that the Resolution Plan is a mere facade and/or ploy created by the Respondent No. 2 to obtain 7 feasible projects of the Corporate Debtor at a bargain. Therefore, due to the above mentioned reasons the Resolution Plan deserves to be rejected and the Corporate Debtor may be liquidated.

**3. The Respondents denied all the averments and alleges that the Applicant is creating a frivolous litigation.**

- i. The Respondent No. 1 broadly opposing the present application on the following grounds:
  - a. The Resolution Plan being holistic plan addressing the entire projects by undertaking the remaining projects for handing over to the homebuyer.
  - b. The Applicant cannot challenge the Commercial Wisdom of the Committee of Creditors, if the plan has been approved by the requisite majority under the Code.
  - c. An Applicant (Secured Financial Creditor) does not have a right to claim liquidation value in the plan if the CoC has voted.

**FINDINGS**

4. Heard Mr. Shyam Kapadia appearing for the Applicant and Mr. Amir Arsiwala appearing for the Respondent No. 1 and Mr. Nausher Kohli appearing for the Respondent No. 2/ Resolution Applicant and perused the material available on record.
5. As submitted by the counsel appearing for the Applicant, and as pleaded in their application, the main contention of the Applicant is that the Resolution Applicant had not provided a holistic resolution for all the projects of the Corporate Debtor. It is the contention of the Applicant that there are 17 projects under the construction of the Corporate Debtor and the Resolution Plan provided a holistic resolution for only 13 projects, being silent on remaining 4 projects and therefore the CoC should not have approved the Plan as it was not feasible and viable.
6. Resisting the above submissions of the Applicant the Learned Counsel appearing for the Resolution Professional submits that the CoC has discussed at length with regard to all the projects of the Corporate Debtor and their way forward, and after elaborate discussions and deliberations approved of the Resolution Plan submitted by the Resolution Applicant taking into consideration all the factors. It is the submission of Learned Counsel appearing for the Resolution Professional that some of the projects for which no resolution was submitted by the Resolution Applicant are not commenced nor even approvals were obtained by the Corporate Debtor. Considering the legal requirements of obtaining approvals etc., the CoC approved the Resolution Plan. He further submits that the issue of deciding the feasibility and viability are the exclusive domain of the CoC and the Adjudicating Authority has very limited role in interfering with the commercial wisdom of the CoC. In support of his contention he has invited the attention of

this Bench to the minutes of the 9<sup>th</sup> CoC Meeting dated 22.06.2022 which is extracted below for ready reference:

Item No. 9: To consider and vote the resolution plan as submitted by the following applicant: M/s Royal Heights Projects Limited & Others (Consortium Applicants)

...

Deliberations on the feasibility and viability of the Resolution Plan:

The Committee notes the following deliberations presented by the home buyers (financial creditors) through the AR, extracts of which are reproduced as below:

*Quote:*

*1. Agenda Item No. 9: Resolution Plan Submitted by the Resolution Applicant- Consideration, Discussion and Approval/Rejection by voting Home buyers (676 Nos) of various stranded projects of Heera Construction Company Limited (HCCL) have been suffering for more than one decade since 2009 and the HCCL has been facing insolvency proceedings since 27.03.2019. In this background, we have noted that one Resolution Plan submitted by M/s Royal Heights is in the active consideration for voting and for recommendation of CoC. As the authorized representative of home buyers, you are kindly requested to inform CoC in its 9th Meeting that the only possibility of resolving the stalemate facing home buyers is to permit the Resolution Applicant to complete remaining construction and hand over the flats in a time bound manner. The total claim submitted by Homebuyers is 332 Cr within the 330 days from 27.03.2019 and the total accepted claim by RP is 275.39 Cr as per IM. Many home buyers could not submit the claim on time and 90 home buyers had submitted claims on their flats recently. There are different ways to recoup*

*the liability of Financial and other creditors from the CD as proclaimed by Hon'ble SC from time to time and hence completion of residential projects through the resolution process is the only way for home buyers. Action sought from AR: Since implementation of holistic resolution plan is the only feasible and viable way to address the concerns of home buyers, all necessary support may be provided from your side to pass the resolution plan in the forthcoming CoC*

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- 1. The basic objective of resolution plans in real estate sector is to primarily complete the abandoned residential projects for hand over. Therefore, initiation of balance construction should be treated with utmost importance, as the execution of proposed holistic Resolution Plan envisages in two phases.*
- 2. We have examined the final resolution plan in detail and noted that the allocation made for all stakeholders has been found to be just and equitable. This observation is made by considering the liabilities of all stakeholders as per IM and the reported value of of assets of CD and land owners together.*

UnQuote:

The Secured Financial Creditors (who collectively constitute 26.87% of the total voting power) unanimously expressed their concern to the fact that resolution plan provides an approximate allocation of only 10% of their admitted claims. They further requested the resolution applicant for the possibility for upward revision. However, the resolution applicant expressed their inability to concede the request stating that any such revision will make the plan unviable for them.

The AR representing the home buyers (constituting 73.13% of the voting total voting power) informed that he has obtained 92%

consent from the class of creditors for approving the resolution plan.

After detailed deliberations and discussions, the Committee resolved to place the resolution plan submitted by M/s Royalty Heights Projects Private Limited & Others for final voting and approval. RP clarified that consent by not less than 66% of voting share in the final voting will be required for approval of the resolution plan.

**Item for voting:**

To consider and vote the resolution plan as submitted by the following resolution applicant: M/s Royal Heights Projects Private Limited & Others (Consortium Applicants)

**RESOLUTION:**

***The Committee considered the revised resolution plan dated 14.06.2022 submitted by M/s Royal heights Private Limited & Others (consortium applicants) together with the compliance report submitted by RP along with specific observation on compliance under section 30(2)(b) of the Code. The Committee also considered the liquidation value of the corporate debtor submitted by the registered valuers together with the comments of RP and the remarks received from home buyers in a class.***

***The Committee evaluated the resolution plan and considering its feasibility and viability, resolved to approve the resolution plan submitted by M/s Royal Heights Projects Private Limited and others.***

***The Committee further entrusted the RP to file the approval resolution plan before the Hon'ble NCLT after obtaining the necessary performance guarantee from the successful resolution applicant.***

7. It is very clear from the above minutes and the resolution that the CoC has discussed the issue of feasibility and viability, and approved the Resolution Plan with 74.19% majority which is undisputedly more than the requisite majority of 66% as prescribed under the Code for approval of the Resolution Plan.
8. It is contented by the Counsel for the Respondent No. 1 that the proposed Resolution Plan attempts for a holistic resolution of the all the 17 pending projects in the following manner:

<b>Status of Projects</b>	<b>Number of Projects and Number of Allottees / Claimants</b>	<b>Resolution Proposed under the Resolution Plan</b>
Where there is an approved plan but permission is pending for renewal.	Number of Projects: 7 Number of Claimants: 605 Admitted Claims Rs. 268,68,55,641/- (All the 7 projects are under Joint Venture)	<i>Renewal of the permits and complete the constructions within 1-3 years depending on the stage of completion.</i>
Where the approval of plain is still pending but allotments were made.	Number of Projects: 4 Number of Claimants: 42 Admitted Claims Rs. 9,88,30,474/- (All projects except one are under Joint Venture.)	The proposes following options for the allottees: i. Allotment in case permit is obtained. ii. Allotment in other projects. iii. Refund of money.
Where the project is complete / possession is handed over but registration pending for few units.	Number of Projects: 4 Number of Claimants: 58 Admitted Claims Rs. 5,09,75,085/- (All projects except one are under Joint Venture.)	<i>The resolution plan proposes for completing the registration pending, if any.</i>

Project where no claim received.	Number of Project: 1 Number of Claimants: None Admitted Claims: Nil Name of the Project: Art by Heera (Partly under Joint Venture).	<i>The resolution plan proposes to take up the project if the permit is received.</i>
Corporate Office	Number of Project: 1	<i>No resolution required and the same shall vest with the successful Resolution Applicant.</i>

Therefore, the contention raised by the Applicant that the proposed Resolution Plan duly approved by the CoC with requisite majority is not a holistic resolution plan and does not deal with all the projects of the Corporate Debtor is totally vague and misleading.

9. It is further contended by the Counsel for Respondent No. 1 that Clause 12.2 of the Resolution Plan deals with Compliance of Section 30(2)(b) of the Code which is reproduced herein below for the ready reference:

“12.2 - Compliance of Section 30(2)(b) of IBC

*As per Section 30(2)(b) each resolution plan “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.*

*The liquidation value referred in section 53(1), will depend upon the method adopted for valuation of assets of the Corporate Debtor. The first step is to identify assets of the Corporate Debtor which can be valued as on date. In the case of the Corporate Debtor, there are several aspects to be considered while arriving the liquidation value such as:*

- a. In case of joint venture projects, the land is not owned by the Corporate Debtor and the value of land does not appear in the balance sheet of the corporate debtor;*
- b. The work in progress reflected in the corporate debtor's balance sheet also cannot be taken as correct since it may be accounted on the basis of Accounting Standard- 7 by recognising the income and expenditure of the project on the percentage completion method;*
- c. The undivided share in some of the projects have been already registered in the name of the homebuyers;*
- d. As per the holistic resolution plan, the primary emphasis is on completion of the incomplete projects of the Corporate Debtor and in that case, no distribution as per Section 53(1) is envisaged to the homebuyers who constitute 73% of admitted claims from the class of financial creditors. On the other hand,*

*the resolution applicant is proposed to collect the balance amount receivable from home buyers and complete the incomplete projects by bringing in additional funds required.*

*e. The unsold units available in the projects also will have value only when it is completed and ready for occupation for which the Resolution Applicant has to bring in substantial amounts.*

*f. The primary objective of the resolution plan i.e. completion of incomplete projects, results in a deficit of Rs. 24,52,06,000/- and therefore, the question of distribution to the secured financial creditors during the Phase 1 have only limited scope.*

*g. Unlike, in other resolution plans, where the assets and liabilities of the Corporate Debtor is taken over by the resolution applicant as a part of revival plan, in the case of HCCPL (corporate debtor), the major class of financial creditors being the homebuyers with a total admitted claim of Rs.283,11,69,184 Crores are not being paid off and settled in the resolution process, but their eligible area of flats in the respective projects are being built and handed over to them collecting funds from the homebuyers as per this plan.*

*h. Moreover, the secured financial creditors have the right to recover their dues out of personal guarantees and collaterals and also by recovery of preferential/fraudulent/avoidance transactions pending before the Hon'ble NCLT as contemplated in clause 5.2.3.2. The resolution applicant have not claimed any waiver for any personal/corporate guarantees available to the secured financial creditors.”*

10. It is submitted that the proposed Resolution Plan attempts for completing the pending residential projects for handing over to the homebuyers and not settling their claims, in case of projects which are capable of completion. Accordingly, while approving the

resolution plan, the CoC by majority observed that the distribution of liquidation value under Section 53 is not specific for projects which are being developed under Joint Development Agreement with land owners as it will not form part of the liquidation estate in the event of liquidation of the Corporate Debtor for following reasons:

- a. The resolution plan being holistic plan addresses the entire pending projects by undertaking the remaining constructions for handing over to the homebuyers.
- b. The properties developed under the Joint Venture Agreement are not appearing as “assets” in the Balance Sheets of the Corporate Debtor.
- c. The right of the Corporate Debtor is limited to development rights which cannot be liquidated independently in case of liquidation.

As it is was difficult in the present case to ascertain liquidation value of particular secured creditor due to above circumstances, the CoC while approving the resolution plan considered the fair value and liquidation value of the Corporate Debtor as a whole to successful revive the Corporate Debtor in the best interest of all the stakeholders.

11. It is submitted that the details and status of securities claimed by the Applicant are tabulated which is extracted as below for the ready reference:

<b>Sr. No.</b>	<b>Details of Securities</b>	<b>Status/ Remarks</b>
1.	5.46 acres of land at Attipra Village, Thiruvananthapuram	<i>A joint venture project with no valid permit for construction hence value for development rights for Corporate Debtor is taken as Nil in the valuation. Further one of the joint owner</i>

		<i>of the land has disputed the creation of security.</i>
2.	0.60 acres of land ta Poonithura Village, Kanayannoor Taluka, Ernakulam District, Kerala.	<i>This asset is not capitalized in the books of accounts as per audited accounts but shown under "advance for land" and hence included under financial assets in valuation</i>
3.	0.30 acres of land at Nedumangad Village, Nedumangad Taluka, Thiruvananthapuram District, Kerala (Commercial Hotel Property).	The property belongs to the promoter guarantor.
4.	6 Residential Flats at Heera Windfaire, Vytilla, Ernakulam District, Kerala.	After executing sale agreement in favour of the suspended director. the properties were pledged to the Applicant (IFCI).

The Respondent No. 1 also provided the Applicant with the copy of the Resolution Plan along with the valuation reports consisting of fair value and liquidation value of the Corporate Debtor by the Respondent No.1 well before the CoC Meeting in which resolution plan was approved and the Applicant was required to make their own judgement while considering the resolution plan. Even otherwise taking into consideration the facts and circumstances of the present case and status of securities held by the Applicant, the Applicant would have been entitled to NIL liquidation value because the securities held by the Applicant would not form part of the liquidation estate of the Corporate Debtor in liquidation process. Whereas, the under the proposed Resolution Plan, the Applicant is allocated Rs. 7,92,60,000/- i.e. 9.97% percent of its admitted claim and moreover, the secured financial creditors

including the Applicant have a right to recover its dues out of personal guarantees and collaterals and also by recovery of PUF transactions which are pending before this Tribunal.

12. It is submitted that the proposed Resolution Plan categorically provides for manner of supervision and effective implementation of the plan and the Resolution Plan also provides for financial summary such as Inflow and Outflow of money during the implementation of the Resolution Plan. Therefore, the contention of the Applicant that the Resolution Plan is a baseless created by the Respondent No. 2 to obtain 7 feasible projects of the Corporate Debtor at a bargain appears to be frivolous and baseless.

13. Further the Respondent No.1 contended the Hon'ble Supreme Court time and again through its various judgments has ruled that the commercial wisdom of CoC is not open for judicial review. In *The Karad Urban Cooperative Bank Ltd v. Swapnil Bhingardevay & Others (Civil Appeal No. 2955 of 2020)* vide judgement dated 04.09.2020 has held and observed in para 13, that the law is clear that,

*“13...if all factors that need to be taken into account for determining whether or not corporate debtor can be kept running as a going concern have been placed before the CoC and the CoC has taken a conscious decision to approve the resolution plan, then the Adjudicating Authority will have to switch over to hands-off mode....”*

14. The Respondent No. 1 to buttress his contention against the Applicant placed its reliance on the law laid down by the matter of *India Resurgence ARC Private Limited v M/s. Amit Metaliks Limited and Anr. (Civil Appeal No. 1700 of 2021)* the Hon'ble Supreme Court has vide judgement dated 13.05.2021 held and observed in para 13.1 that the law is clear that,

*“13.1. Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.”*

wherein it is held that secured creditors cannot challenge resolution plan insisting the higher amount should be paid based on its security interest. Further, the Supreme Court has held that in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up a ground of appeal. The Supreme Court has further held that what amount is to be paid to different classes of subclasses or creditors in accordance with provisions of the Code and the regulated Regulations, is essentially the commercial wisdom of the Committee of Creditors, a dissenting Secured Creditor cannot suggest a higher amount to be paid to it with reference to the value of the security interest.

15. The Respondent No. 1 further contented that the Hon'ble NCLAT in *SREI Infrastructure Finance Limited v Shri Ashish Chhawchharia (Company Appeal (AT) (Ins) No. 591 of 2020)* vide judgement dated 18.01.2022 upheld and observed in para 71 to 72, that the decision of the CoC to transfer the right of a secured creditor to enforce a personal guarantee to the successful resolution application, in pursuance to the terms of the resolution plan, since the said decision was in the commercial wisdom of the CoC, which is extracted as below for the ready reference:

*“Para. 71. With regard to the extinguishment of liability of the Guarantor the Learned Counsel for the Appellant submitted that the Appellant is only the Financial Creditor*

*whose loan to the Corporate Debtor is secured by a personal guarantee from one Mr. Anshuman Ruia, Promoter of the Corporate Debtor and whereas the Resolution Plan submitted by the 3rd Respondent herein seeks to protect the Promoter which is contrary to the spirit of the IBC. Having approved the plan by the Committee of Creditors by applying its Commercial Wisdom, which extinguishes the right to proceed against the Guarantors. Since as per the decision of the Hon'ble Supreme Court the wisdom exercised by COC for the issue of guarantee cannot be interfered with by the NCLT or NCLAT. As stated supra, the approved Resolution Plan is not rendered invalid or illegal in any manner and the approved Resolution Plan does not extinguish the personal guarantee and only assigns the same in favor of AMIPL on account of AMIPL having fully settled the debt of the Appellant in relation to the Corporate Debtor and thereby automatically stepping into the shoes of the Appellant for the said debt.*

*Para. 72. As the law laid down by the Hon'ble Supreme Court with respect to the Commercial Wisdom of the COC, we do not find any contravention with regard to the rules and regulations of the I&B Code and we are also of the view that the Committee of Creditors acted in the interest of all the stakeholders. Therefore, we do not interfere with the decision of the Committee of Creditors."*

16. It is submitted that in the present case the CoC in its commercial wisdom after extensive deliberations has approved the Resolution Plan which is fair and equitable to all the lenders including the Applicant. I further say the Hon'ble Supreme Court in the landmark decision in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others (2019) SCC*

*OnLine SC 1478*) has categorically held that it is commercial wisdom of the CoC which is free to determine as to what amounts are to be paid to different classes or sub-classes of the creditors. It was also held that there is no residual jurisdiction not to approve a resolution plan on the ground that it is unfair or unjust to a class of creditors, so long as the interest of each class has been looked into and taken care.

17. After hearing both the sides and upon perusing the material on record for the aforesaid reasons, this Tribunal is in complete agreement with the submissions made by the Counsel appearing for the Resolution Professional and is also of the considered view that as well contested by the Resolution Professional this tribunal has a very limited role to interfere with the commercial wisdom of the CoC. It is also appropriate to observe here that the Hon'ble Apex Court in a catena of judgements clearly held that the power of judicial review of the Adjudication Authority while dealing with the approval of the Resolution Plans shall be merely confined to Section 30(2) of the Code and nothing beyond. Keeping the above rulings relied by the Resolution Profession in mind this Bench did not find any merit in the above Application filed by the Applicant and the same is deserves to be rejected. Accordingly, the Interlocutory Application **2238/2022 is rejected and disposed of.**

**Sd/-**

**Madhu Sinha**  
**MEMBER (TECHNICAL)**

**Sd/-**

**H.V. Subba Rao**  
**MEMBER (JUDICIAL)**