

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Interlocutory and Intervention Applications:

I.A. (IB) No. 1733/KB/2023

And

IVN.P (IBC)/37(KB)2023

In

I.A. (IB) No. 1381/KB/2022

And

IVN.P (IBC)/34(KB)2023

In

I.A. (IB) No. 1551/KB/2023

And

I.A. (IB) No. 1551/KB/2023

And

I.A. (IB) No. 1381/KB/2022

IN

Company Petition:

C.P. (IB) No. 204/KB/2021

IN THE MATTER OF:

SUASTH HEALTH CARE FOUNDATION

... Corporate Debtor.

AND

IN THE MATTER OF:

I.A. (IB) No. 1733/KB/2023

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
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Suasth Health Care Foundation

I.A. (IB) No. 1733/KB/2023, IVN.P (IBC)/37(KB)2023, IVN.P (IBC)/34(KB)2023, I.A. (IB)
No. 1551/KB/2023 and I.A. (IB) No. 1381/KB/2022 In C.P. (IB) No. 204/KB/2021

Shankar Mukherjee, a member of the Suspended Board of Directors of Suasth Health
Care Foundation

... Applicant No. 1.

And

Badri Kumar Tulsyan, a member of the Suspended Board of Directors of Suasth
Health Care Foundation

... Applicant No. 2.

Verses

Ravi Sethia, Resolution Professional of Suasth Healthcare Foundation

... Respondent No. 1.

And

J.C. Flower Assets Reconstruction Company [CIN: U74999MH2015PTC264081]

... Respondent No. 2.

And

Axis Bank Ltd. [CIN: L65110GJ1993PLC020769]

... Respondent No. 3.

And

**The consortium of Nishkala Healthcare Private Limited [CIN
U74999MH2019PTC321858] and Ujin Pharma Chem**

... Respondent No. 4.

AND

IVN.P (IBC)/37(KB)2023 In I.A. (IB) No. 1381/KB/2022

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Hari Vitthal Mission, [CIN U74999WB2016NPL234196]

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... Applicant.

Verses

Ravi Sethia, Resolution Professional of Suasth Healthcare Foundation

... Respondent No. 1.

And

J.C. Flower Assets Reconstruction Company

... Respondent No. 2.

And

Axis Bank Ltd. [CIN: L65110GJ1993PLC020769]

... Respondent No. 3.

And

Nishkala Healthcare Private Limited [CIN U74999MH2019PTC321858]

... Respondent No. 4.

AND

IVN.P (IBC)/34(KB)2023 In I.A. (IB) No. 1551/KB/2023

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Hari Vitthal Mission, [CIN U74999WB2016NPL234196]

... Applicant.

Verses

Ravi Sethia, Resolution Professional of Suasth Healthcare Foundation

... Respondent.

AND

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I.A. (IB) No. 1551/KB/2023

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Mr. Ravi Sethia, Resolution Professional of the Suasth Health Care Foundation

... Applicant.

I.A. (IB) No. 1381/KB/2022

*An Application under Sections 30(6) and 31 of the Insolvency and Bankruptcy Act,
2016 read with Regulation 39(4) of the Insolvency and Bankruptcy (Insolvency
Resolution Process for Corporate Persons), 2016.*

IN THE MATTER OF:

Mr. Ravi Sethia, Resolution Professional of the Suasth Health Care Foundation

... Applicant.

Date of Pronouncement: December 18, 2023.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

For Resolution Professional:

1. Mr. Ramji Srinivasan, Sr. Adv.
2. Mr. Deep Roy, Adv.
3. Mr. Rahul Auddy, Adv.
4. Mr. Aditya Gooptu, Adv.
5. Mr. Dhaval Savla, Adv.

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For Committee of Creditors:

1. Mr. Abhinav Vashist, Sr. Adv.
2. Ms. Manju Bhuteria, Adv.
3. Mr. Adwitya Das, Adv.
4. Mr. Pramit Chakraborty, Adv.
5. Mr. Arindam Mrinal Pal, Adv.

For the Applicant in I.A. (IB)/1733(KB)2023:

1. Mr. Rishav Banerjee, Adv.
2. Mr. Supriyo Gole, Adv.
3. Mr. Rajarshi Banerjee, Adv.

For the Respondent in I.A. (IB)/1551(KB)2023:

1. Mr. Joy Saha, Sr. Adv.
2. Mr. Shaunak Mitra, Adv.
3. Ms. Madhuja Barman, Adv.

For the Petitioner in IVN.P (IBC)/34(KB)2023:

1. Mr. Joy Saha, Sr. Adv.
2. Mr. Shaunak Mira, Adv.
3. Ms. Madhuja Barman, Adv.

For Successful Resolution Applicant:

1. Mr. Arun Kathpalia, Sr. Adv.
2. Ms. Shweta Dubey, Adv.
3. Ms. Kanishka Prasad, Adv.
4. Ms. Ichchha Kalash, Adv.

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ORDER

Per: Bidisha Banerjee, Member (Judicial) and D. Arvind, Member (Technical)

1. This Court is congregated through hybrid mode.

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I.A. (IB) No. 1733/KB/2023

2. Heard the Ld. Counsels for both parties.
3. This application has been preferred under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code”/ “IBC”, by one Mr. Shankar Mukherjee and another member of the suspended board of directors of the Corporate Debtor (CD), Suasth Health Care Foundation, hereinafter referred to as “Applicant” seeking the following reliefs, *inter alia*:
 - (a) *An order and/or orders rejecting and/or quashing and/or setting aside the Resolution Plan submitted by the Respondent No. 4/The Successful Resolution Applicant that has been filed by the Respondent No. 1 the Resolution Professional. for approval by this Tribunal;*

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- (b) *An order and/or orders rejecting and/or disallowing and/or dismissing I.A.(IB)No. 1381/KB/2022 filed by the Respondent No. 1/RP for approval of the said resolution plan of the CD*
- (c) *An order and/or initiating liquidation as a going concern in respect of the Corporate Debtor;*
- (d) *An order and/or orders appointing any insolvency professional from the panel of the National Company Law Tribunal as the Liquidator of the Corporate Debtor;*
- (e) *An order and/or orders directing the RP to disclose all the valuation reports prepared so far in respect of the Corporate Debtor;*
- (f) *Ad-interim orders in terms of prayers (a) to (e) above;*

Brief facts of the case:

4. The Applicant is aggrieved by the approval of the resolution plan by the Committee of Creditors (hereinafter referred to as “CoC”) consisting of Respondents 2 and 3, i.e., J. C. Flowers Asset Reconstruction Private Limited and Axis Bank Limited respectively.
5. The Corporate Debtor was put into insolvency process on 31.08.2021, by this Adjudicating Authority in C.P. (IB) No. 204/KB/2021 under section 10 of the I&B Code.
6. During the Corporate Insolvency Resolution Process (for brevity “CIR Process”), the Resolution Professional of the Corporate Debtor received resolution plan from the consortium of Nishkala Healthcare Private Limited and M/s. Ujin Pharma Chem.
7. While the Resolution professional did receive intent to submit resolution plans from two more resolution applicants, but ultimately received resolution plan only from the Successful Resolution Applicant, which in

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this case is Nishkala Healthcare Private Limited and M/s. Ujin Pharma Chem (hereinafter called as “SRA”).

8. The Applicant has challenged the Resolution plan on various grounds, particularly regarding the distribution of plan value amongst operational creditors such as employees and workmen. According to him, the distribution proposed is not fair and equitable as required in terms of Section 30 (2) (b) of I&B Code.
9. the Applicant claims that the resolution plan may suffer from illegality and may not be in the interests of all the stakeholders in the instant CIR Process contrary to the certification by the Resolution professional that the plan is in compliance with all the provisions of the code and the regulations made thereunder
10. It is submitted that in the application for plan approval, the plan value is less than the liquidation value and more particularly its financial layout, as put up before the CoC is contrary to the provisions of the I&B Code.
11. In this case, the manner of distribution in respect of class stakeholders i.e., employees and workmen were not even placed before the CoC and therefore the said plan could not have been approved in its entirety by the CoC in its commercial wisdom.
12. Further, the Applicant questions the allocation of the NIL amount to Hari Vitthal Mission who is an unsecured financial creditor and alleges that the manner of distribution is not in line with Section 30 (2) (b) and the plan is in violation of section 30 (2)(e), 30 (2) (f) and 30(3) of the IBC.
13. The applicant also questions the allocation to operational debt when unsecured financial creditors who are standing on higher footing under the Waterfall mechanism under Section 53 of I&B Code are proposed to be paid NIL amount is contrary to the provisions of Code.

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14. The Applicant also submits in his application that the said resolution plan does not provide any statement of gratuity dues that are payable by the corporate debtor to the workmen and employees.
15. The Applicant further stated that the entire CIRP process has not been conducted in the manner that would result in maximization of wealth of the Corporate Debtor and therefore he submitted that the application seeking approval of the plan may be rejected as it is less than the liquidation value apart from irregularities in terms of Section 30 as well as in conducting the CIRP process.

Submissions made by the Applicant:

16. The Ld. Counsel for the Applicant submits that the hospital operated by the Corporate Debtor has been shut down by the Resolution professional for the reasons best known to him, although he was obliged to keep the CD as a “going concern”.
17. The Ld. Counsel for the applicant submitted that the resolution professional has relied on the valuation report of the registered valuer, which has undervalued the assets of the Corporate Debtor to accommodate the Respondent Nos. 4 i.e., Successful Resolution Applicant (SRA).
18. The Ld. Counsel for the applicant submits that the liquidation and fair value of the Corporate Debtor was valued at Rupees 294 Crores and 398 Crores respectively by erstwhile IRP (Interim Resolution Professional) appointed Registered valuer.
19. He also submitted that in spite of Adjudicating Authority sending back to the plan earlier for reconsideration vide its order dated 28-08-2023, no modification has been done in the resolution plan which was already submitted earlier which make it clear that a Resolution professional is in

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hand and gloves with the SRA and the entire CIRP is vitiated by a fraud and material irregularity.

20. The Applicant submits that in the given case since the liquidation value is greater than the plan value, for the purpose of maximisation of the Corporate Debtor it would be better if the same is liquidated and the Corporate Debtor is sold as a “going concern”.

Submissions made by the Respondent, per contra:

21. Ld. counsel for the Respondent claims that no evidence of material irregularity has been brought in by the Applicant to demonstrate any fraud or mischief committed by Resolution Professional in collusion with the Successful Resolution Applicant. He submits that though two more Applicants proposed to submit the resolution plan no one came forward with any resolution plan except the Successful Resolution Applicant, therefore it would be entirely wrong on the part of the Applicant to allege fraud or material irregularity in conducting CIRP without basis what so ever.
22. Ld. Counsel for the Respondent urged that this Adjudicating Authority may note the conduct of the Applicant. He submits that it is based on the Corporate Debtor’s application under Section 10 of the IBC, CIRP has been initiated, whereas now they are seeking liquidation and a resolution by intervening in the application filed for approval of the resolution plan of the Corporate Debtor.
23. He also submits that they have challenged the admission of the CIRP in writ Court under the pretext that the Corporate Debtor is a section 8 company under the Companies Act 2013 and therefore the Company cannot be put under CIRP and the matter is pending for disposal.

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24. He submits that one who wanted admission under CIRP cannot seek liquidation just because he suspects the CIRP process was conducted without any material evidence or any basis to prove any material irregularity.
25. He further submits that the applicant has no locus standi to file this application. Therefore, he pleaded that the same is liable to be dismissed with heavy costs.
26. The rival contentions were noted and the decisions were considered.

Analysis and Findings:

27. Before getting into the merits of this case and the objections raised by the Applicant, we are inclined to examine whether a suspended member of the board, the applicant herein is aggrieved by the approval of the resolution plan by the CoC which is pending before this Adjudicating Authority.
28. It is not the case of the Applicant that the Corporate Debtor is solvent, and consequently if the Corporate Debtor is liquidated, he will get something from the liquidation estate after satisfying all the creditors under Section 53(1) of IBC.
29. It is also not the case of the Applicant that even under the Resolution plan he is entitled to the allocation of value when the plan value or even the liquidation value is not even sufficient to meet the financial and operational debts of the corporate debtor. Therefore, in no case he can be an aggrieved party to file this application.
30. The Ld. Counsel's contention that the plan value is less than the liquidation value and the distribution thereof would be examined by the Adjudicating Authority in light of section 30 (2) (b) of the I&B Code and the Regulations made thereunder. We are conscious of the legal position laid down by the Hon'ble Apex Court in the case of *Maharashtra Seamless Ltd v.*

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Padmanabhan Venkatesh reported in (2020) 11 SCC 467: MANU/SC/0066/2020 that the resolution plan value need not match the liquidation value.

31. His allegation of material irregularity fraud etc., is not substantiated by any evidence whatsoever. Therefore, merely on surmise and apprehensions plan cannot be challenged.
32. In view of the above we find that the Applicant has no locus standi to intervene and file this application challenging the approval of the resolution plan by the CoC. In this regard, we rely on the decision of the Hon'ble Supreme Court of India in the case of *Adi Pherozshah Gandhi vs H.M Seevai* reported in 1970 (2) SCC 484, wherein the Hon'ble Apex Court has held that grievance must be legal grievance; the applicant must not come merely saying "*I do not like this thing to be done, it must be shown that it tends to his injury or to his damage, in the legal sense of the word.*" One who feels disappointed with the order is not the person aggrieved. He must be disappointed by a benefit that he would have received if the order (plan in this case) had gone the other way. It is very clear that regardless of the plan value or its distribution, the Applicant is not entitled to anything and therefore cannot be an aggrieved party to come before us.
33. Therefore, we think that there is no necessity to deal with his objections regarding the amount of plan value or liquidation value being more than the plan value or the distribution of plan value.
34. In terms of the foregoing observations and findings, we are of the view that this application needs to be dismissed as not maintainable.
35. Accordingly, we are **dismissing** this application being **I.A. (IB) No. 1733/KB/2023.**
36. No costs.

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(IBC)/37(KB)2023 In I.A. (IB) No. 1381/KB/2022**

Factual Background:

1. These applications have been preferred under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code”/ “IBC” by Hari Vittal Mission (hereinafter called the “Applicant”/ “HVM”) a company incorporated under the provisions of the Companies Act having its office in Kolkata, against Resolution Professional (hereinafter referred to as the “Respondent” or “RP”) of the Corporate Debtor Suasth Health Care Foundation the “Corporate Debtor” (CD) herein.
2. The Corporate Debtor, Suasth Health Care Foundation was admitted into CIRP on 31.08.2021 by an order passed by this Adjudicating Authority pursuant to an application made by the Corporate Debtor under Section 10 of the I&B Code.
3. Consequent to the admission of the Corporate Debtor into CIRP, the Resolution Professional (RP) invited claims from the creditors of the Corporate Debtor.
4. Pursuant to the invitation for claims the Applicant submitted its claim of approximately Rs. 64 Crores.
5. Against the said claim of the Applicant a letter was sent by the Resolution Professional to the Applicant conveying that a portion of the claim has been admitted by him.
6. Applicant was initially allowed to participate in the CoC meetings but was later excluded on the ground that he was a “Related Party” to the Corporate Debtor. The challenge to the said decision made by the applicant vide IA No. 390 of 2022 before the Adjudicating Authority, met with a dismissal.
7. Aggrieved by the decision of the Adjudicating Authority, the Appellant preferred an appeal before the Hon’ble NCLAT which is still pending for consideration.
8. Meanwhile the Respondent filed an application bearing IA No. 1381 of 2022 for approval of the resolution plan to which the Applicant objected. The Applicant

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on the other hand filed an application in IA No. 1563 (KB) of 2022 to intervene in the said IA as the applicant was unaware of the proportion of the amount allotted to and seeking direction by the Adjudicating Authority to provide a copy or extracts of the relevant portion of resolution plan where allotment against its claim has been dealt with.

9. This IA was allowed by the Adjudicating Authority and consequently the Applicant was supplied with relevant extracts of the resolution plan wherein the Applicant was allotted NIL payment against the claim made. To justify this action Resolution Professional declared the Applicant as a “Related Party” of the corporate debtor and excluded it from the CoC meetings apart from treating the Applicant as an unsecured financial creditor.
10. To this as a response to the decision of the Resolution Professional, a supplementary affidavit to Application being I.A. (IB) No. 1563/KB/2022 was filed wherein it is stated that the successful resolution professional could not have discriminated against the applicant on the basis of “related party” and some fair amount had to be paid to the Applicant.
11. On 28.08.2023 the Applications filed by Applicant along with other IAs were decided by the Adjudicating Authority whereby the resolution plan was sent back to the committee of creditors with a direction that a balance should be stuck amongst all the stakeholders and review the distribution proposed in the resolution plan to see whether any provision can be made to the Applicant.
12. After a detailed discussion that took place during the 18th CoC meeting of the corporate debtor wherein the order of the Adjudicating Authority dated 28.08.2023 was discussed in detail and after discussion, the CoC concluded that Nil payment to the applicant would still meet the directions of the Adjudicating Authority’s order dated 28-8-2023.
13. The Present application has been filed by the Applicant, being aggrieved by the decision taken in the 18th CoC meeting to allot Nil payment to the Applicant

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despite specific directions for review of distribution and allocation of an amount by the Adjudicating Authority.

Applicant's Contention:

- 14.** Learned Sr. Counsel for the Applicant submits that the decision taken in the 18th CoC meeting to allot NIL payment to the Applicant is against the directions of the Adjudicating Authority's order dated 28.08.2023.
- 15.** Learned Sr. Counsel took us to **Para 32, 33, 34 and 35** of the said order which is reproduced verbatim from **Para 32:**

“What we infer from forgoing discussions is that

- i. IBC treats related parties as separate category for specific purpose so that they are excluded from the CoC and are as such not able to implead and interfere with the resolution process (Section 21) and are disqualified from being resolution applicants (Section 29A).*
- ii. However, there is nothing to show that Section 53 treats them as a different class and excludes them altogether from the ambit of its reach.*
- iii. None of the provisions whether it is regulation 38(1A) or the Section 32 of IBC specifically negates the claim of the related party, financial creditor who is not allowed a place in the CoC and is hence not allowed to vote.*
- iv. Admittedly the RP has treated the applicant as an unsecured financial creditor and in terms of distribution of assets under Section 33, the financial debts of unsecured creditor rank at 4th place.*

Para 33:

We are given to understand that the admitted claim of all the stake holders is 628.Crs. The amount proposed by SRA is 180 Crores. While the

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commercial wisdom of CoC is paramount, we are of the opinion that a balance is required to be struck amongst all the stake holders.

Para 34:

In the above said backdrop to ensured fairness qua of the stake holders we deemed appropriate to send the resolution plan back to CoC to review the distribution so as to balance the interest of all stake holders as required in Section 30(2) explanation 1 and see that a provision can be made for payment to the applicant from the proceeds.

Para 35:

The CoC will be at liberty to consider any other proposal including that of Resolution Applicant in IA 187/AB/2023 on the basis of its viability, feasibility, and merits. IA e 1381/KB/2022 shall be put back on board for considering along with the revised distribution if any.

- 16.** The Learned Senior Counsel further submits that the liquidation value is approximately Rs. 191 Crore whereas the plan value is approximately **Rs. 180 Crore**. In fact, previous valuer has valued it for even more.
- 17.** Further it is submitted that the order of Adjudicating Authority dated 28.08.2023 is very clear and gives directions to SRA and the CoC to review the distribution so as to balance the interest of all stakeholders as required in Section 30(2) Explanation 1 of I&B Code.
- 18.** He further submits that *Explanation 1 of Section 30(2)* contemplates distribution on a fair and equitable basis to “such creditors” which would mean operational creditors and dissenting financial creditors like the Applicant.
- 19.** It is further contended that the CoC and SRA have chosen to interpret the order of the Adjudicating Authority as per their convenience under the pretext that the

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liquidation value of the applicant would be nil and accordingly no amount needs to be paid as per the waterfall mechanism envisaged under Section 53(1) of I&B Code, the applicant being an unsecured financial creditor.

20. He further submits that the intention of the code which is to strike a balance of all stakeholders as well as the order of Adjudicating Authority dated 28.08.2023 have not been followed in the present case causing grave injustice to the Applicant.
21. Ld. Sr. Counsel claims that having not filed an appeal against the order of the Adjudicating Authority dated 28-8-2023, the said order has become final and not following the directions of the Adjudicating Authority is not only illegal but also amounts to contempt of court.
22. The Learned Sr. Counsel further relies upon the judgments of *M/s SP Enterprises vs. M/s Electrosteel Steels Limited & Ors.* being **Civil Appeal No. 1133 of 2019** passed by the **Hon'ble Apex Court** and *Hammond Power Solutions Private Limited vs. Sanjit Kumar Nayak and Others* reported in **2020 SCC OnLine NCLAT 199** passed by the **Hon'ble NCLAT** cater to that the minutes of the meeting of committee should demonstrate that it has taken care of the interest of all stakeholders and the reasons for allocation of a particular amount against each claim to be recorded which is not the case here.
23. The Ld. Senior Counsel further relies upon the judgement of the Hon'ble High Court at Calcutta in the case of *Indu Bhushan v. UOI* in **FMA 613 of 2008** that once an Order attains finality it matters little as to whether it is erroneous.
24. He further submits that a party aggrieved by an order should work out his remedies within the legal framework. If an issue is concluded upon a finding being rendered and if the finding remains unchallenged it is no longer open to the party to undo the effect, thereof at any subsequent stage.
25. Ld. Sr. Counsel further submits that the principle of finality or Res-Adjudicata is a matter of public policy and is one of the pillars on which the judicial system is

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founded. The principle applies both to an order from which an appeal lies or no appeal is preferred and to an order for which no appeal is provided.

26. In view of the above he submits that having not challenged the NCLT order dated 28.08.2023, respondents have no choice but to obey the directions of NCLT and review the distribution of plan value to allocate some reasonable amount to the Applicant.
27. He submits that Section 30(2)(b) and (4) as well as Section 53(1) of the Code should be read in the manner the legislature intended and the intention of the legislature was to give some amount of money to all the stake holders of the Corporate Debtor. No class or subclass of creditors can be paid NIL under the code.
28. He also relies upon the judgment rendered in the case of *Sansar Texturisers vs Ravindra Kumar* by the Hon'ble NCLAT to state that provision to operational creditors and not providing anything to the financial creditor is a breach of provision of law i.e., sequence of priority in payment if the dues to stakeholders as stated in Section 30(4) read with Section 53(1) of I&B Code.
29. He also relied on case laws of the Hon'ble Apex Court rendered in *Prithvi Nath Ram vs. State of Jharkhand* as well as in *Ramchandra Rao v. Nagabushana* to strengthen his argument that right or wrong, unchallenged order of this Authority dated 28-8-2023 will have to be obeyed.

Respondent' submission per contra:

30. The Learned Sr Counsel for the Respondent argued that the order of NCLT dated 28.08.2023 was discussed in detail in its 18th meeting of CoC for the purpose of implementation.

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31. Ld. Sr. Counsel submits that every relevant aspect of the NCLT order was discussed and it was reiterated that nil payment has been allotted not on account of HVM being “related party” but being an unsecured financial creditor.
32. He also submits that as per the minutes of the CoC the differentiation on account of distribution is on the basis of nature of security held by the respective Financial Creditor and not based on HVM being “related party”.
33. It was also highlighted that even assuming that HVM was admitted in the CoC and have dissented from the resolution plan as a dissenting financial creditor, it would have been entitled receive such amount which shall not be less than amount to be paid to it in accordance with Section 53(1) in the event of liquidation of Corporate Debtor.
34. In the present instance the liquidation value is not sufficient to meet the obligations towards even the Secured Creditors and therefore the unsecured dissenting financial creditor HVM would have received NIL value and accordingly there was no infirmity in the resolution plan for providing NIL payment against its claim.
35. Relying extensively on the judgement of the Hon’ble Supreme Court in *Essar Steel India Ltd Vs. Satish Kumar Gupta*, reported in (2020) 8 SCC 531, Ld. Senior Counsel argued that the Supreme Court has been consistently holding that it is the commercial wisdom of CoC that is free to determine what amounts to be paid to different classes and sub-class of creditors under the provisions of the I&B Code and regulations made thereunder.
36. Ld. Senior Counsel further submits that the CoC in the meeting held to approve the plan have stated (as per the minutes of the meeting of CoC) that in the present case, the resolution plan has proposed nil payment to HVM which is on account of it being an unsecured financial creditor and which is in line with the provisions of the code and Supreme Court Judgements. Accordingly, the CoC decided not

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to interfere with the distribution of the plan value already proposed and approved by the CoC.

37. The Learned senior counsels relying on the judgement of the Hon'ble Supreme Court in the case of *Essar Steel India Ltd Vs. Satish Kumar Gupta* (supra) contended that the order of priority of payment of creditors mentioned in Section 53 (1) is not engrafted in sub-section (2) (b) as amended. Section 53(1) is only referred to so that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the "commercial wisdom" of the committee of creditors that is free to determine what amount is to be paid for different classes or sub-classes of creditors under the provisions of the I&B Code and Regulations made thereunder.
38. The Learned Senior Counsels brought to attention Para 129 of the judgement to state that Explanation 1 to Section 30(2)(b) has only been inserted so that the Adjudicating Authority and the Appellate Tribunal cannot enter into matters of the business decision taken with requisite majority of CoC.
39. Relying on the *Essar Steel Judgement* (supra) of the Hon'ble Supreme Court of India, and several other judgements which are part of the compilation of cases filed by them, the Learned Senior Counsel has contended that there is no residual equity jurisdiction in the Adjudicating Authority or the Appellate Tribunal to interfere in the merits of business decision taken by requisite majority of CoC provided that is otherwise in conformity with the provisions of the code and the regulations made thereunder.
40. The learned senior counsels further brought to our attention the judgement of Hon'ble Apex Court in the case of *India Resurgence ARC Private Limited v. Amit Metaliks Limited* reported in *2021 SCC Online SC 409*, in para 17 of the judgement, the Hon'ble Supreme Court has held that what amount is to be paid to different classes or sub-classes of creditors is essentially the commercial

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wisdom of CoC and a dissenting financial creditor. cannot suggest a higher amount to be paid to it with reference to the value of Interest

41. The Learned Senior Counsels also brought to our attention that the Hon’ble Supreme Court in the case of *Vallal RCK Vs. Siva Industries*, reported in (2022) 9 SCC 803 where it was held that the decision taken by the committee of creditors is paramount and cannot be interfered with by the Adjudicating Authority or Appellate Authority.
42. He also brought to our attention BLRC report Para 5.3.3 to strengthen the argument that it is well within the rights of the successful resolution applicant and CoC to arrive at a distribution mechanism as long as it is not in contravention of Section 30(2)(b) of I&B Code.
43. The Learned Senior Counsels further submitted and relied on eight judgements by way of case law compilation and brought to our attention the relevant paras in those judgements which are reproduced herein.
44. The gist of case laws relied on by the Ld. Senior Counsel is produced in the table below:

SN	Case Name	Relevant Paras
CoC in its ‘Commercial wisdom’ can distribute the amounts on the basis of security interests held by the relevant financial creditor		
i.	India Resurgence ARC Pvt Ltd Vs. Amit Metaliks Ltd [2021] SCC online SC [409]	“17 <u>Thus, what amount is to be paid to different classes or sub classes of creditors in accordance with the provisions of the code and the related regulations, is essentially the commercial wisdom of the Committee of Creditors</u> and a dissenting secured creditor like the Appellant cannot

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		suggest a higher amount to be paid to it with reference to the value of the security interest.”
ii.	<i>Committee of Creditors of Essar Steel India Ltd Vs. Satish Kumar Gupta and Ors.</i>	<p>“79 reading this footnote will show that <u>what is meant by protecting creditors from each other is only that a Bankruptcy Code should not be read so as to imbue creditors with greater rights in a bankruptcy proceeding than they would enjoy under the general law, unless it is to serve some bankruptcy purpose.</u></p> <p>90 <u>Quite clearly, secured and unsecured financial creditors are differentiated when it comes to amounts paid under a resolution plan with what dissenting secured or unsecured financial creditors are to be paid.</u></p> <p><i>And most importantly, operational creditors are separately viewed from these secured creditors and unsecured creditors in SL No. 5 of Para 7 of Statutory Form H. Thus, it can be seen from the Code and Regulations read as a whole, together with the observation of expert bodies and this Court’s judgement, all lead to the conclusion that the equality principal cannot be stretched to treating un-equals equally, as that will destroy the very objective of the Code- to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it</i></p>

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		<p><i>belongs, secured or unsecured, financial or operational.</i></p> <p><i>128 Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. <u>It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the problems of the code and regulations made thereunder.</u></i></p> <p><i>131 The Challenge to sub-clause (b) of Section 6 of the Amending Act of 2019, <u>again goes to the flexibility that the code gives to the Committee of Creditors to approve or not to approve a resolution plan and which may take into account different classes of creditors as is mentioned in Section 53, and different priorities and values of securities interest of a secured creditor.</u> This flexibility is referred to in the BLRC Report 2015 (See Para 56 of this judgement). Also, the discretion given to the Committee of Creditors by the word “May” again makes it clear that this is only a guideline which is set out by this sub-section</i></p>
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		<i>which may be applied by the Committee of Creditors in arriving at a business decision as to acceptance or rejection of a resolution plan. For all these reasons therefore, it is difficult to hold that any of these provisions is constitutionally infirm.”</i>
iii.	Indian Bank Vs Charu Desai [2022] SCC Online NCLAT 190	19. <i>“The provision which has been incorporated by the Amendment Act 2019 by sub-clause (b) was substituted is about the payment of debts of Financial Creditors who do not vote in favour of the resolution plan. The amendment which has been introduced by the Amendment Act 2019 came to be considered by the Hon’ble Supreme Court in “Committee of Creditors Essar Steel India Ltd Vs. Satish Kumar Gupta (2020) 8 SCC 531” In Paragraph 128 the following has been laid down: “128 When it comes to the validity of substitution of Section 30(2)(b) by Section 6 of the Amending Act 2019 it is clear that the substituted Section 30(2)(b) gives operational creditor something more than what was given earlier as it is the higher of the figures mentioned in sub-clauses (i) and (ii) of sub-clause (b) that is now to be paid as a minimum amount to operational Creditors. The same goes for the latter part of sub-clause (b) which</i>

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		<p><i>refers to dissentient financial creditors Mrs. Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision to favour of operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of clause (b), and the minimum in the case of dissentient financial creditor being a minimum amount that was not payable earlier. As a matter of fact, pre-amendment, secured financial creditors may cramdown unsecured financial creditors, who are dissentient the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid the minimum amount mentioned in sub-section (2). 53 is not engrafted in sub-section (2)(b) as amended. <u>Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of Committee of</u></i></p>
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		<p><u><i>Creditors that is free to determine what amounts to be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder.</i></u></p>
<p>iv.</p>	<p>MK Rajagopalan Vs. Dr Periyasamy Palani Gounder & ANR [2023] SCC Online SC 574</p>	<p><i>“201 However thereafter the Appellate Tribunal proceeded with the promoters as equity shareholders and then further made certain observations about discrimination between related party unsecured financial creditor and other unsecured financial creditors as also between related party operational creditor and other operational creditors. <u>Such far-stretched observations of the Appellate Tribunal are difficult to be reconciled with the operation of the statutory provisions.</u></i></p> <p><u><i>202 It has rightly been argued on behalf of the Appellants and had rightly been observed by the Adjudicating Authority (vide extraction in Paragraph 15.4.1 hereinabove) that there was no provision in the code which mandates that the related party should be paid in parity with the unrelated party. So long as the provisions of the Code and CIRP Regulations are met, any proposition of differential</i></u></p>

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		<u>payment to different classes of creditors in the resolution plant is ultimately subject to the commercial wisdom of CoC and no fault can be attached on the resolution plan merely for not making provisions for related party”</u>
v.	Vallal RCK Vs. Siva Industries and Holdings Ltd and Ors. [(2022) 9 SCC 803]	<u>“24 When 90% and more of the creditors, in their wisdom after the deliberations, find that is will be in the interest of all the stake holders to permit settlement and withdraw CIRP, in our view the adjudication authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating or appellate authority finds the decision of CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the rules.”</u>
vi.	Ebix Singapore Private Ltd and Ors. Vs. Committee of Creditors of Edu comp Solutions Ltd and Ors. [(2022) 2 SCC 401]	<u>“115 While the above observations were made in the context of a scheme that has been sanctioned by the court, the Resolution Plan even prior to the approval of the adjudicating authority is binding inter se on the CoC and the successful resolution applicant.”</u>
vii.	Kallinga Allied Industries India Pvt Ltd Vs. Hindustan Coils Ltd	<u>“20 With the aforesaid, we are of the view that when the application for approval of resolution plan is pending before the adjudicating authority at that time the</u>

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	[(2021) SCC Online NCLAT 51]	<u>adjudicating authority cannot entertain an application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful resolution applicant.</u> <i>If a resolution plan is considered beyond the time limit, then it will make a never-ending process. Thus, impugned order is not sustainable in law as well as in fact. The impugned order is hereby set aside.”</i> <i>“21 The adjudicating authority is directed to proceed with the application filed by the RP for approval of resolution plan as per law”.</i>
viii.	Chhattisgarh Distilleries Ltd Vs. Dushyant Dave [(2020) SCC Online NCLAT 1078]	<i>“17 However the adjudicating authority cannot direct the CoC to consider the second resolution plan submitted before the Authority although the second resolution applicant is ready to invest more amount in comparison to the first resolution applicant.</i> <u>Learned adjudicating authority has rightly held that the adjudicating authority cannot Suo motu direct the CoC to consider the new resolution plan and reconsider already approved resolution plan.”</u>

45. Ld. Sr. Counsels also relied on the recent judgement of Hon’ble NCLAT rendered in the case of Paramveer Singh and Others to state that Tribunal does not have residual equity they have followed the right path of law as per the

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judgments laid down by the Hon'ble Apex Court and NCLAT which have become final and consequently submitted that the application of HVM is liable to be dismissed.

Analysis and Findings of this Adjudicating Authority:

46. We have heard the learned senior counsels of the Applicant as well as the respondent at length.
47. In the case at hand, we need to examine whether an unsecured financial creditor can be paid the NIL amount in a resolution plan submitted by the successful resolution applicant which has been approved by a majority of members in the CoC meeting and is pending for approval before this adjudicating Authority.
48. In all the Judgements of the Hon'ble Supreme Court of India and the NCLAT referred to by the Respondent settles the legal position that approval of a resolution plan is done by the CoC based on its "commercial wisdom" and the Adjudicating authority has a limited role. All that the Adjudicating Authority is to see whether provision contained in Section 30(2)(b) of IBC and regulations 37, 38 and 39 of IBBI (Insolvency process of corporate persons) Regulations 2016 have been complied before approving the plan.
49. In other words, the Adjudicating Authority is required to see whether there is any violation of section 30(2)(b) of the I&B Code and the Regulations as referred to above.
50. The Honourable Supreme Court in the case of *Committee of Creditors of Essar Steel vs. Satish Kumar Gupta (Supra)* made detailed observations on the validity of the substitution of Section 30(2)(b) by stating that:

"It is clear that the substituted section 30(2)(b) gives operational creditors something more than what was given earlier as it is higher of the figures mentioned in sub-clause (i) & (ii) of sub-clause (b) which is to know to be paid as minimum amount to operational creditors. The same goes for later

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part of sub-clause (b) which refers to descendant financial creditors. Ms. Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational creditors and descendant financial creditors as they are now to be paid certain minimum amount, the minimum in case of operational creditors being higher of the two figures calculated under sub-clause (i) and (ii) of sub-clause (b) and the minimum in case of descendant financial creditors being the minimum amount that was not earlier payable. As a matter of fact, pre amendment secured financial creditors may cramp down unsecured financial creditors who are descendants, the majority vote of 68% voting to give them nothing are next to nothing for their dues. In the earlier regime it might have been possible to have this but after the amendment such financial creditors are now to be paid minimum amount mentioned in sub-section (ii). Ms. Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not grafted in sub-section (2)(b) as amended. Section 53 is only referred to in order that certain minimum figure to be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked as it is cleared that it is the commercial wisdom of Committee of Creditors that is free to determine what amounts to be paid to different classes or sub classes of creditors in accordance with the provisions of the code and regulations made thereunder.

(Emphasis Added)

51. Keeping the above observations of the Hon'ble Apex Court, now we proceed to analyse Section 30(2)(b) of the I&B Code 2016.
52. As per Section 30(2) of the I&B Code the resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-

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- (a) Provides for the payment of insolvency resolution process costs in a manner specified by the board in priority to the payment of other debts of the corporate debtor.
- (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 liquidation of corporate debtor under Section 53 or
 - (ii) The amount that would have been paid to such creditors if the amount to be distributed under resolution plan had been distributed in accordance with order of priority in sub-section (1) 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 corporate debtor.

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

53. On careful examination of Section 30(2)(b) of the I&B Code, 2016 in our view, two legal propositions emerge:

53.1. Reference to Section 53(1) of the I&B Code is only for the purpose of calculating the amount payable to operational creditors and dissenting financial creditors. Otherwise, there is no place for Section

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53 (1) when it comes to the resolution of a corporate debtor under the CIR Process.

53.2. The **provision** of some amount should be made for operational creditors as well as dissenting financial creditors, and the amount so provided cannot be NIL.

- 54.** This being a beneficial amendment as observed by the Hon'ble Apex Court, in our view code contemplates a scenario where a provision made to an operational creditor or dissenting financial creditor in a Resolution Plan could be lesser than what they would have got in the event of liquidation in terms liquidation value as per section 53(1). In such a situation the code provides for provision as per liquidation value.
- 55.** In fact, in the case of operational creditors the code says that they will have to be paid as per the value provided to them as per the resolution plan, or liquidation value or the amount that would have been paid to them in the plan as if the resolution plan value had been distributed in accordance with the order of priority mentioned in sub-section (1) of Section 53 whichever is higher.
- 56.** Therefore, we are of the view, that is the reason for the word "not less than" used in Section 30(2)(b). If the legislature wanted to restrict the amount payable to them to liquidation value at the most, then the words "not more than liquidation value" would have been used.
- 57.** In view of the above analysis, we are of the view that the code contemplates mandatory allocation to dissenting financial creditors and to operational creditors and the allocation would be the amount provided in the plan or liquidation value whichever is higher and the contention that such creditors can be paid NIL value because liquidation value for them is NIL, would defeat the very purpose of the beneficial amendment made in Section 30(2) of the I&B Code. Such contention made by Ld. Senior Counsels, in our view, will not be correct proposition in a

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CIRP proceedings, though the same would be correct in a liquidation proceeding under Section 53(1) of the I&B Code.

58. Vide an order dated 30.01.23 this Adjudicating Authority sent the plan back to the Committee of Creditor (CoC) to see that a provision is made for the unsecured creditor Hari Vittal Mision (HVM). HVM was at first treated as an unsecured creditor and its claim was admitted by the Resolution Professional (RP). It was even allowed representation in the Committee of Creditors. Later it was treated as a related party and ousted from the Committee of Creditors (CoC). Finally, it was treated as an unsecured creditor and allotted NIL value under the plan, value whereof was Rs. 160 Crores.
59. This Adjudicating Authority, being of the opinion, that NIL payment to an unsecured creditor was unfair, passed an order, gist whereof would be thus:
- i. That HVM has been treated as an unsecured creditor.
 - ii. An unsecured creditor does not deserve 'NIL' value under the plan.
 - iii. The plan is sent back to COC to "see" that a provision is made for HVM.
 - iv. The revised distribution, if any
 - v. The plan application will be put back a board once the exercise is over.
60. The Order suffered from no ambiguity or ambivalence, as no clarification was sought for.
61. The aforesaid order was passed by this Tribunal upon detailed analysis of various decisions, as to whether an unsecured creditor does deserve any payment under the plan, whether the plan can be sent back to CoC for a revised distribution, etc. It was never challenged in the higher fora, instead, the CoC in its own wisdom sat on appeal and scrutinized it threadbare to examine and analyse whether as an Adjudicating Authority, this Tribunal was permitted to take such a course. The

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legal opinion was sought for, a dissection of the order was conducted and finally the CoC agreed at not revising the allocation of HVM.

62. In the Order dated 28.08.2023, we held at Para 34 that:

“In the aforesaid backdrop, to ensure fairness qua all the stakeholders, we deem it appropriate to send the resolution plan back to the CoC to review the distribution so as to balance the interest of all stakeholders as required in section 30(2) – Explanation 1, and see that a provision can be made for payment to the applicant from the proceeds.”

63. In terms of the order above, the CoC was required “to see” that a provision could be made for payment to the applicant from the proceeds.

64. Further, at Para 35 of the Order dated 28.08.2023, the direction was also given that the CoC will be at liberty to consider any other proposal including that of a resolution applicant based on its viability, feasibility, and merits. Accordingly, IA 1381/KB/2022 which deals with resolution plan approval was put back on board for considering it along with revised distribution if any.

65. The words **“to see”** in normal parlance would mean to perceive, discern, spot, and notice.

66. **“To see”** can never be construed to mean, convey, denote, or indicate **“to consider”** which requires deep thought, contemplation, an examination or scrutiny of something.

67. **The Black’s Law Dictionary** defines the term **“consider”** as to ponder, to study and to examine carefully. Hence **“to see”** that a provision is made cannot be construed to convey the meaning of “to consider whether a provision can be made”.

68. The CoC was not left with any choice to consider whether to give or not to give. What the CoC in this case, attempted is to examine the correctness, legality and propriety of the order passed by this Adjudicating Authority, and such power only an Appellate forum can exercise. The Committee of Creditors overstretched

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its authority to see whether it was required to act in terms of the order or it could act independently exploring its own 'commercial wisdom' and stretching it a bit too far to include its legal wisdom too.

69. The CoC could not have conducted itself as an appellate forum to exercise its authority and power to examine the correctness of an order passed by the Adjudicating Authority. If it was not satisfied or if it was aggrieved with the order, the law provides a recourse of appeal to the Appellant Forum.
70. While the commercial wisdom of the CoC must be held in primacy, this Tribunal cannot act as a mute spectator to endorse and put its seal of approval on whatever decision the COC takes in the name of exercising its "commercial wisdom".
71. Be that as it may, when the intention of this Tribunal was loud and clear, as enumerated above, the manner and there was no challenge to the order the way the COC conducted itself to take a different view cannot and should not be encouraged.
72. It is a settled legal position that distribution of plan value including categorizing different classes of creditors and subclass of creditors based on security, the value of debt etc. should be left to the commercial wisdom of CoC and as long as the plan is not in violation of Section 30(2) the I&B Code and the regulations made thereunder, the Adjudicating Authority will have to approve.
73. While we do see the violation of the said section of the code, we are conscious of the legal position that the Adjudicating Authority cannot direct the allocation of a particular amount to such creditor as the applicant. Therefore, we leave it upon the Committee of Creditors to take a pragmatic and holistic view to allocate a reasonable amount as per its "commercial wisdom", against the claim of the applicant.
74. Accordingly, the applications are **allowed and disposed** of accordingly.

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I.A. (IB) No. 1551/KB/2023

- 75.** This Application has been preferred by the Resolution Professional of the Suasth Health Care Foundation under Section 60(5) of the I&B Code, 2016, seeking direction from us to put I.A. (IB) 1381/KB/2022 (Resolution Plan Application) back on the board for consideration.
- 76.** Vide an Order dated August 28, 2023, we sent the Resolution Plan submitted by the consortium of “**Nishkala Healthcare Private Limited**” (CIN: **U74999MH2019PTC321858**) and “**Ujin Pharma Chem**” back to the CoC to review the distribution so as to balance the interest of all stakeholders as required in section 30(2) – Explanation 1, and see that a provision can be made for payment to the applicant from the proceeds to ensure fairness qua all the stakeholders.
- 77.** Vide an Order dated October 05, 2023, we have allowed prayer 1 in this application (I.A. (IB) 1551/KB/2023) and directed the Registry to take necessary steps for the restoration of the Plan Application and to put it back on Board to be heard out along with this application.
- 78.** It is evident from the said order that Hari Vitthal Mission, who is affected by the decisions of the CoC at its 18th meeting held on 07/08/2023, upon the review as was directed by this Adjudicating Authority vide its order dated 28/08/2023, is also allowed to be impleaded in I.A. (IB) No. 1551/KB.2023 and allowed to file its Reply Affidavit within one week with advance copy served on all concerned.
- 79.** In terms of the foregoing discussion, in IVN.P (IBC)/37(KB)2023 and IVN.P (IBC)/34(KB)2023 and the order dated October 05, 2023, we dispose of this application being **I.A. (IB) 1551/KB/2023**.

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I.A. (IB) No. 1381/KB/2022 (Resolution Plan)

1. Now, we proceed to consider the Resolution Plan filed before this Adjudicating Authority through I.A. (IB) No. 1381/KB/2022.
2. Heard the Learned Senior Counsel, Mr. Ramji Srinivasan, for the Applicant (Resolution Professional).

Prologue

3. This instant application is filed under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” by **Mr. Ravi Sethia** [Registration No. IBBI/IPA-001/IP-P01305/2018-2019/12052], the Resolution Professional of the Suasth Health Care Foundation, Corporate Debtor herein, seeking approval and final sanction from this Adjudicating authority of the Resolution Plan as approved by the Committee of Creditors, hereinafter referred to as “CoC”, in the matter of Corporate Insolvency Resolution Process of Suasth Health Care Foundation.
4. The Learned Senior Counsel for the Applicant that the “Resolution Plan” dated May 15, 2022, as amended and restated vide amendment dated September 03, 2022, along with the clarifications and annexures submitted by the consortium of **“Nishkala Healthcare Private Limited” (CIN: U74999MH2019PTC321858) and “Ujin Pharma Chem”**, hereinafter referred to as **“Successful Resolution Applicant”** for brevity “SRA”. The Resolution Plan was placed before the Committee of Creditors of the Suasth Health Care Foundation in its 15th Meeting, held on September 21, 2022.
5. It is further submitted that the Resolution Plan submitted by the SRA has been approved by **100%** of the voting share of the CoC, vide the e-voting which concluded on October 06, 2022, at 6:00 P.M. The Copy of the Resolution Plan is annexed as Annexure “A” at Pages 53-133.

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6. Further, it is contended that the Letter of Intent (“LoI”) was issued on October 07, 2022, by the Resolution Professional on behalf of the CoC of the Corporate Debtor, annexed at Pages 246-248 as Annexure “W” which was unconditionally accepted by the SRA and furnished the Performance Security of an amount of Rs. 20 Crore on 15.10.2022 and 17.10.2022 through RTGS under the terms of Request for Resolution Plan, for brevity “RFRP” issued by the RP on March 26, 2022, and to the satisfaction of the Committee of Creditors and the Resolution Professional. The Copy of the Bank statement evidencing the furnishing of Performance Security provided by the SRA is annexed at Page 249 as Annexure “X”.
7. Further, it is submitted that the Corporate Insolvency Resolution Process (for brevity “CIR Process”) was initiated and an Interim Resolution Professional (for brevity “IRP”) was appointed on August 31, 2021. The invitation for the Expression of Interest (“EoI”) was issued on January 03, 2022. The date of approval of the Resolution Plan by the CoC is October 06, 2022.

Particulars of the Corporate Debtor

8. Suasth Health Care Foundation (Corporate Debtor herein) is a company within the meaning of the Companies Act, 2013, having Corporate Identification Number (CIN): U85100WB2008NPL130971, having its registered address at Plot No. X-1, 2 & 3, Block - EP Sector - V, Salt Lake City Kolkata West Bengal 700091. The Corporate Debtor is a company that offers comprehensive and integrated super-speciality services with experienced consultants of repute supported by a well-trained team of nurses, technicians and support staff. The Corporate Debtor owns and operates a 400-bed multi-speciality hospital in Kalamboli, Navi Mumbai.

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**Initiation of Corporate Insolvency Resolution Process of Suasth Health Care
Foundation**

9. Suasth Health Care Foundation filed an application under Section 10 of the I&B Code, 2016, before this Adjudicating Authority for the initiation of Corporate Insolvency Resolution Process (for brevity “CIR Process”/ “CIRP”) in respect of the Corporate Debtor and vide an Order dated August 31, 2021, this Adjudicating Authority has admitted the application and Mr. Arun Kumar Khandelia was appointed as an IRP of the Corporate Debtor.

Constitution of Committee of Creditors

10. The IRP made the publication of a public announcement in Form A dated September 03, 2021, published in newspapers on September 04 and 05, 2021, under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for brevity “CIRP Regulation” read with Section 13(1)(b) of the I&B Code and under Section 15 of the I&B Code. The Public announcement was published in:
- a) *Financial Express* (English-Kolkata)
 - b) *Financial Express* (English-Mumbai)
 - c) *Aajkal* (Bengali-Kolkata)
 - d) *Lakshdeep* (Marathi-Mumbai)
11. The IRP constituted the Committee of Creditors of the Corporate Debtor on September 24, 2021, which was re-constituted on January 11, 2022. The list of Financial Creditors of the Corporate Debtor being members of the Committee of Creditors and distribution of voting share among them is as under:

Financial Creditor Claims as on April 06, 2022

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SN.	NAME OF THE CREDITOR	AMOUNT CLAIMED	AMOUNT ADMITTED			VOTE SHARE
			PRINCIPAL	INTEREST	TOTAL	
1.	Yes Bank Limited	Rs. 1,248,672,98 6/-	Rs. 1,086,171,1 80/-	Rs. 162,501,8 06/-	Rs. 1,248,672,98 6/-	50.54 %
2.	Axis Bank	Rs. 1,222,098,69 3/-	Rs. 1,018,282,7 84/-	Rs. 203,815,9 09/-	Rs. 1,222,098,69 3/-	49.46 %
3.	Srei Equipment Finance Ltd.	Rs. 3,208,499,82 0/-	Rs. 2,525,728,2 29/-	Rs. 682,771,5 91/-	Rs. 3,208,499,82 0/-	-
4.	Hari Vittal Mission	Rs. 631,948,267/-	Rs. 442,000,00 0	Rs. 161,746,1 50/-	Rs. 603,746,150/ -	-

12. The Learned Senior Counsel, Mr. Srinivasan submits that in pursuance of the provisions of the Code, the Resolution Professional conducted his due diligence and from the documents and information available and as per the opinion obtained from the Legal Counsel, the Resolution Professional opined that “Srei Equipment Finance Ltd.” and “Hari Vittal Misson” are related party to the Corporate Debtor. The same was communicated by the RP vide an email dated January 11, 2022. It is further contended that considering the related party status of Srei Equipment Finance Ltd. and Hari Vittal Misson, in pursuance to the proviso to Section 21(2) of the I&B Code, 2016, they have no right to represent, participate and vote in the meetings of the Committee of Creditors of the Corporate Debtor. The List of Financial Creditors as per their claims as on April 06, 2022, is annexed at Page 134 as Annexure “B”.

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- 13.** It is further submitted that the on December 08, 2021, in 2nd CoC Meeting, by requisite majority, the Mr. Ravi Sethia was appointed as Resolution Professional, for brevity “RP” and this Adjudicating Authority allowed the same on November 15, 2023.
- 14.** The Total number of meetings of CoC held is 16 on 15th CoC meeting held on September 21, 2022, the Resolution Plan submitted by the SRA has been approved by a vote of 100% of the voting share of the CoC, wherein the voting process ended on October 06, 2022. The list of CoC meetings that have been held during the CIR Process Period is as under:

Particulars	Date of CoC Meetings
1 st CoC Meeting	29.09.2021
2 nd CoC Meeting	08.10.2021
3 rd CoC Meeting	08.12.2021
4 th CoC Meeting	27.12.2021
5 th CoC Meeting	04.01.2022
6 th CoC Meeting	12.01.2022
7 th CoC Meeting	25.01.2022
8 th CoC Meeting	24.02.2022
9 th CoC Meeting	27.02.2023
10 th CoC Meeting	26.04.2022
11 th CoC Meeting	16.05.2022
12 th CoC Meeting	26.05.2022
13 th CoC Meeting	13.06.2022
14 th CoC Meeting	05.08.2022
15 th CoC Meeting	21.09.2022

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Collations of Claims

15. The Ld. Senior Counsel for the RP submits that the amounts claimed and verified/admitted are summarised below:

(Amount in Rs. Crore)

SN	Category of Creditor	Claimed Filed	Claimed Admitted	Contingent Claims Admitted
1.	Secured Financial Creditors	567.93	567.93	-
2.	Unsecure Financial Creditors	63.19	60.37	-
3.	Operational Creditors (Other than Workmen, Employees and Government and Statutory Authorities)	22.65	14.16	2.70
4.	Operational Creditors (being Workmen, Employees)	1.54	1.54	
5.	Operational Creditors (being Government and Statutory Authorities)	0.24	0.24	
	TOTAL	655.53	644.23	2.70

Corporate Insolvency Resolution Process and Compliance

16. The Learned Senior Counsel for Applicant contends that the IRP apprised the CoC Members that the RP is required to appoint two sets of valuers in terms of Regulation 27 of the CIRP Regulations, 2016 who will determine the liquidation

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value as per Regulation 35 of the CIRP Regulations, 2016 and the fair market value, as per Regulation 35(1) of the CIRP Regulations and submit it to the IRP. The IRP further apprised the CoC regarding the appointment of Gtech Valuers Pvt. Ltd. and k-Zen Advisors Pvt. Ltd. as the registered valuers of the Corporate Debtor on October 17, 2021.

17. It is further submitted that in terms of the provisions of Section 25(2)(h) of the I&B Code read with regulation 36A (1) of the Insolvency and Bankruptcy Board, (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the RP has published the invitation of for Expression of Interest (“EoI”) i.e., “Form G” on 03.01.2022 in the following newspapers as under:
 - a. *Financial Express* (English – All India Edition)
 - b. *Aajkal* (Bengali – Kolkata)
 - c. *Lakshdeep* (Marathi – Mumbai)
18. It is submitted that the RP prepared the final list of eligible Prospective Resolution Applicants on February 18, 2022, and issued the invitation of the Resolution Plan on March 26, 2022. Further, it is submitted that the last date of submission of the Resolution Plan was fixed on May 15, 2022.
19. The Learned Senior Counsel further submits that the “Resolution Plan” dated May 15, 2022, as amended and restated vide amendment dated September 03, 2022, along with the clarifications and annexures submitted by “Nishkala Healthcare Private Limited” and “M/s. Ujin Pharma Chem” (“SRA”).

Evaluation and Voting

20. It is submitted that the Resolution Plan submitted by “Nishkala Healthcare Private Limited” and “Ujin Pharma Chem” was placed before the Committee of Creditors, in its 15th meeting dated 21.09.2022. It is contended that the RP has

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- presented the fair value and liquidation value of the Corporate Debtor to the members of the CoC in accordance with Regulation 35 of the CIRP Regulations.
21. Further it is submitted that the RP has informed the CoC that the entire interim finance approved by the CoC had been drawn and utilized and therefore requested for an additional interim finance be provided.
 22. It is further submitted that the RP has presented the list of deviations in the Resolution Plan from the provisions of the RFRP. Upon deliberation and negotiations on the Resolution Plan between the CoC and the Resolution Applicant, the Resolution Applicant has submitted certain clarifications to the Resolution Plan. The members of the CoC have thereafter deliberated upon the feasibility and viability of the Resolution Plan submitted by the Resolution Applicant and subsequently, the Resolution Plan along with the necessary clarifications was put for e-voting.
 23. It is further contended that the distribution methodology was also proposed and subsequently voted upon by the CoC. Upon a request received from certain members of the CoC for the extension in the timeline for the last date for e-voting on the Resolution Plan, the last date for voting was extended to October 06, 2022, at 6:00 P.M.
 24. It is further submitted pursuant to the e-voting that concluded on October 06, 2022, the CoC has approved the Resolution Plan submitted by “Nishkala Healthcare Private Limited” and “Ujin Pharma Chem” with **100%** voting share of the CoC and declared “**Nishkala Healthcare Private Limited**” and “**Ujin Pharma Chem**” as the Successful Resolution Applicant for brevity “SRA”.

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Compliance of the Resolution Plan submitted by the SRA with various provisions

25. The Applicant has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, she has filed a Compliance Certificate in prescribed form i.e., Form “H”, annexed at Page 250 to the Application as Annexure “Y”.
26. It is submitted that contended that the Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.
27. Further is it submitted that the Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA.
28. It is further submitted that the Resolution Applicant has submitted an affidavit stating its eligibility in terms of Section 30(1) of the I&B Code, 2016.
29. Further, it is submitted that details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan should adhere to, which is reproduced.
30. It is further submitted that in terms of **Section 30(2) of the I&B Code, 2016**, (as amended vide Amendment dated August 16, 2019) the Resolution Plan provides the compliance as under:

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SN	Sections of the I&B Code and/or the Regulations of the CIRP Regulations, 2016	Requirement	Whether complied or not and how dealt with in the plan
<i>Submission of Resolution Plan in terms of the provisions of the I&B Code, 2016.</i>			
a.	Section 25(2)(h)	The Resolution Applicant meets the criteria approved by the CoC having regards to the complexity and scale of the operations of the business of the Corporate Debtor.	N.A.
b.	Section 29A	The Resolution Applicant is eligible to submit the Resolution Plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority.	N.A.
c.	Section 30(1)	The Resolution Applicant has submitted affidavit stating it is eligible.	N.A.
d.	Section 30(2)	The Resolution Plan provides for the payment of insolvency resolution process.	Complied. Clause 2 (2.1) (a) of Part II at Page 19 of the Plan provided.

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e.	Section 30(2)	The Resolution Plan provides for the payment to the Operational Creditors.	Complied. Clause 2 (2.2) (a) of the Part II at Page 20.
f.	Section 30(2)	The Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan.	Complied. Clause 2 (2.3) (a) (iv) of Part II at Page No. 24 of the Plan.
g.	Section 30(2)	The Resolution Plan provides for the management of the affairs of the Corporate Debtor.	Clause 2(2.5) Part I at Page No. 17 and Clause 7 (Table 5) of Part II at Page No. 56 of the Plan.
h.	Section 30(2)	The Resolution Plan provides for the implementation and supervision of the Resolution Plan.	Clause 7 of Part II at Page 56 of the Plan.
i.	Section 30(2)	The Plan is not in contravention of provisions of any applicable law.	Introduction to the Resolution Plan at Page No. 1 of the Plan.
j.	Section 30(4)	The Resolution Plan is feasible and viable according the Committee of Creditors of the Corporate Debtor.	N.A.
k.	Section 30(4)	The Resolution Plan has been approved by the CoC with 66% voting share.	N.A. Resolution Plan submitted by the SRA has been

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			approved by a vote of 100% of the voting share of the CoC on October 06, 2022.
l.	Section 31(1)	The Resolution Plan has provisions for its effective implementation of the Plan, according to the CoC.	N.A.
<i>Mandatory contents of the Resolution Plan in terms of the Regulations of CIRP Regulations, 2016.</i>			
m.	Regulation 35A	Whether the Resolution Professional made a determination if the Corporate Debtor has been subjected to any transaction of the nature covered under Section 43, 46, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.	Yes, but after 115 th day of insolvency commencement date.
n.	Regulation 38(1)	The amount due to the Operational Creditors under the Resolution Plan has been given priority in payment over financial creditors.	Clause 2(2.2) (a) of Part II at Page 20 of the Plan.
o.	Regulation 38(1A)	The Resolution Plan includes a Statement as to how it has dealt with the interests of all the stakeholders.	Clause 2 of Part II at Page 19 the Plan.

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p.	Regulation 38(1B)	The Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any Resolution Plan under the I&B Code, 2016.	Clause 7 (b) of Part II at Page 56 of the Plan.
q.	Regulation 38(1B)	If so, the Resolution Applicant has submitted the statement giving the details of such non-implementation.	–
r.	Regulation 38(2)	The Resolution Plan provides the terms of the plan and its implementation schedule.	Clause 2.4 of Part I at Page 17 and Clause 7 of Part II at Page 56 of the Plan.
s.	Regulation 38(2)	The Resolution Plan provides the management and control of the business of the corporate debtor during its terms.	Clause 5 of Part II at Page 49 of the Plan.
t.	Regulation 38(2)	The Resolution Plan provides adequate means for supervising its implementation.	Clause 7 of Part II at Page 56 of the Plan.
u.	Regulation 38(2)	The Resolution Plan provides for the manner in which proceedings of Avoidance applications will be pursued after the approval of the resolution plan and the manner in which proceeds us of such applications shall be distributed.	Clause 2.6 (b) of Part II at Page 35.

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v.	Regulation 38(3)	The Resolution Plan demonstrates that it addresses the cause of default.	Point 13 of table under Clause C of Introduction to the Resolution Plan at Page No. 9.
w.	Regulation 38(3)	The Resolution Plan demonstrates that it is feasible and viable.	Clause 7 of Part II at Page 56 and Part IV at Page 72.
x.	Regulation 38(3)	The Resolution Plan demonstrates that it has provisions for its effective implementation.	Clause 7 of Part II at Page 56.
y.	Regulation 38(3)	The Resolution Plan demonstrates that it has provisions for approvals required and the timeline for the same.	Clause 7 of Part II at Page 56.
z.	Regulation 38(3)	The Resolution Plan demonstrates that the Resolution Applicant has the capacity to implement the resolution plan.	Clause 7 of Part II at Page 56 and Part III at Page 70
aa.	Regulation 39(2)	The Resolution Professional has filed the capability to implement the resolution plan.	N.A.
bb.	Regulation 39(4)	The details of the performance security received, as referred to in sub-regulations (4A) of Regulation 36B.	N.A.

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Details of the Resolution Plan and/or Payment Schedule

31. The Learned Senior Counsel for the Applicant submits that the Resolution Plan submitted by “Nishkala Healthcare Private Limited” and “Ujin Pharma Chem” (Successful Resolution Applicant) on May 15, 2022 and amended on September 03, 2022.
32. **Clause 2.2 of Part I of the Resolution Plan (Page 15)**, provides the “**Financial Proposal**” of the Successful Resolution Applicant. **Clause 2.2. (a) of Part I at Page 15** provides that the Resolution applicant proposed to pay an aggregate amount of **Rs. 180 Crore** hereinafter referred to as “**Aggregated Resolution Amount**” to settle all liabilities of the Corporate Debtor, by making the payments to various creditors of the Corporate Debtor, in the manner provided in the Detailed Resolution Plan in Part II. **Clause 2.2. (b) of Part I (Page 15)** of the Plan, the Resolution Applicant has provided the “**Financial Proposal**” in a tabular (Table 2) form as under:

Particulars	Total Amount	Timelines for Payment	Priority
CIRP Cost	Up to Rs. 10 Crore.	Within 45 working days of the NCLT Approval date	Priority to all other stakeholders/creditors
Operational Creditors being Employees and Workmen	Rs. 0.73 Core.	Within 45 working days of the NCLT Approval date	Prior to the Financial Creditor.

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Operational Creditors other than Employees and Workmen	Rs. 0.27 Core.	Within 45 working days of the NCLT Approval date	Prior to the Financial Creditor.
Unsecured Financial Creditor	NIL		
Secured Creditors being Term Loan Lenders and having first charge on the fixed and current assets of the Corporate Debtor.	Rs. 157 Crore	Within 45 working days of the NCLT Approval date	
Other Secured Financial Creditors, i.e., Secured Financial Creditors having residual charge and/or having charge which has not been perfected.	Rs. 12 Crore	Within 45 working days of the NCLT Approval date	
Other Creditors	NIL		
Shareholders	NIL		
Total	Rs. 180 Crore		

33. It is submitted that in the event, that internal accruals of the Corporate Debtor are not sufficient to pay the CIRP Cost, the unpaid CIRP Cost of up to Rs. 10 Crore will be borne by the Resolution Applicant. In case the unpaid CIRP Cost is more

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than Rs. 10 Crore, the excess amount payable as CIRP Cost will be adjusted against the Aggregated Resolution Amount specified in Clause 2.2. (a) of Part I at Page 15 of the Plan.

34. Further, Clause 2.4. of Part I, provides the “Term of Resolution Plan” that shall begin on the NCLT Approval Date and shall end on the payment of the Secured Financial Creditors Amount (“Term”).
35. Further, Clause 2. at Part II of the Plan (Page 19) provides the detailed Financial Terms, Treatment of Stakeholders and Effect of the Plan.
36. Further, the Ld. Sr. Counsel through Additional Affidavit dated December 14, 2022 submits that in Part I, Clause 2.3 of the Plan, the SRA specifies that the proposed payments under the Plan will be sourced by way of promoter’s contribution, internal accruals and/or external debt by the SRA. The SRA has also provided the relevant term sheet dated July 04, 2022 from Hinduja Leyland Finance for raising external debt to the Resolution Professional, annexed at Annexure A to the said Additional Affidavit.

Effective Date and NCLT Approval Date

37. The Effective Date has been defined at Page 64 of the Plan as *the date on which the control of the company shall be handed over to the Resolution Applicant upon payment of the Secured Financial Creditors Amount and which shall not be later than 45 days from the NCLT Approval Date.*
38. NCLT Approval Date has been defined at Page 65 of the Plan as *the date on which this Resolution Plan, as approved by the CoC, is approved by this Adjudicating Authority.*

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Acquisition as a Going Concern

- 39.** Clause 3. at Part II of the Plan (Page 46) deals with the “Acquisition as a Going Concern”. Clause 3. (a) provides on the Effective Date, the Resolution Applicant and/or its Affiliates/ Nominee (which entity shall be eligible under Section 29A of the I&B Code and such entity shall be identified and an undertaking in relation to its eligibility under Section 29A of the Code shall be submitted prior to the Effective Date) shall subscribe to One Crore equity shares of the Corporate Debtor of Rs. 10 each (“Upfront Equity Infusion”) such that they will hold 100% of the share capital of the Corporate Debtor and following the Capital Reduction, acquire control of the Corporate Debtor. The Resolution Applicant and/or its aforesaid Affiliates/ Nominees shall cause such infusion of funds as may be required by the Corporate Debtor and which shall be utilised for funding in the manner as specified in Clause 2.2. of Part I.

Management of the Corporate Debtor after the NCLT Approval Date

- 40.** Clause 5. at Part II of the Plan (Page 49) deals with the Management of the Corporate Debtor after the NCLT Approval Date. Clause 5. (a) says that on the NCLT Approval Date, a committee shall be deemed to be constituted which shall have one nominee on behalf of the CoC, the Resolution Professional and one nominee of the Resolution Applicant (“Implementation and Monitoring Committee”). On and from the date of its constitution and till the Effective Date, the Management and affairs of the Corporate Debtor shall be managed by the Implementation and Monitoring Committee (in short “IMC”). The IMC shall stand dissolved on and from the Effective Date sans any further action or deed required from the Corporate Debtor.
- 41.** Further, Clause 5. (g) of Part II provides that the Corporate Debtor will make necessary filing with the RoC and IBBI, as applicable and as required, regarding

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- i. Implementation of the Resolution Plan;
 - ii. vacation of office by the erstwhile directors of the Corporate Debtor;
 - iii. deemed resignation/replacement of the statutory auditor by virtue of the Resolution Plan; and
 - iv. such other filings as may be required to be made by the Corporate Debtor to give effect to the provisions of the Resolution Plan.
- 42.** Further, Clause 5. (h) of Part II provides that the IMC shall supervise the implementation of the resolution Plan, comply with the provisions of this Plan related to its implementation and shall not take any actions that could impact the successful implementation of this Resolution Plan on a reasonable effort basis. The responsibilities of the IMC are mentioned in Clause 5. (h) (i) to 5. (h) (xv) of the Part II in the Resolution Plan.

Regulatory Approvals and Implementation of Resolution Plan

- 43.** Clause 7. (Part II) at Page 56-57 of the Resolution Plan caters to the provisions of “Regulatory Approvals and Implementation of Resolution Plan.”
- 44.** Clause 7. (a) provides that the Resolution Applicant understands that there is no requirement to make an application to the Competition Commission of India for approval under Section 5 of the Competition Act, 2002 as the revenue threshold provided in Notification dated March 27, 2017 (amended on March 16, 2022) under the Competition Act, 2002, is not met and therefore, the exemption from is applicable.
- 45.** Clause 7. (b) provides that neither the Resolution Applicant nor any of its Related Parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

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46. Clause 7. (c) provides that upon being declared as successful, Resolution Applicant shall pursuant to the approval granted to the Approved Resolution Plan, obtain the necessary approval required under any law for the time being in force in accordance with Section 31(4) of the Code within a period of one year from the NCLT Approval Date or within such period as provided for in such Applicable Law, whichever is later.
47. Clause 7. (d) provides that to the extent legally applicable under the provisions of Applicable Laws, The NCLT Approval, shall pursuant to the Code, be deemed to be adequate compliance with all relevant provisions of any Applicable Law, that would otherwise have become applicable in relation to the steps that comprise any part of the Resolution Plan. Further, Section 238 of the I&B Code, stipulates that to the extent of any inconsistency between the provisions of the Code and other laws, the former shall prevail. Accordingly, the NCLT Approval sanctioning this Resolution Plan will be final and binding on all stakeholders and third parties, and to the extent permitted under the applicable law, will not require compliance with procedural requirements under other laws including but not limited to those under Companies Act and contracts.
48. Clause 7. (e) caters to that the statutory auditors of the Corporate Debtor shall be deemed to have resigned from their position as the statutory auditors with effect from the Effective Date and the Resolution Applicant shall be entitled to appoint such suitable persons as the statutory auditors of the Corporate Debtor as deemed fit by them sans requiring any other approval or action save and except any shareholder approval after the Resolution Applicant and/or its nominees (provided each such nominee is eligible under Section 29A of the Code to be Resolution Applicant) have become the sole shareholders of the Corporate Debtor.
49. Clause 7. (f) provides an indicative timeline of events of implementation of the Resolution Plan in tabular form (Table 5 at Page 57 of the Plan).

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Reliefs and Waivers

50. The Reliefs and Waivers sought by the Resolution Applicant from the Adjudicating Authority are mentioned in Part V of the Resolution Plan for the successful implementation of the Resolution Plan and effective resolution of the Corporate Debtor, as under:

SN	Clause	Reliefs and Waivers
i.	1.1	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, restraint on, and prohibition of, all Adverse Actions shall be deemed to be declared until the Effective Date.
ii.	1.2	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all counterparty(ies) to the Company Contracts shall be deemed to have given their approval for change in ownership of the Corporate Debtor (as Specified in this Plan) with effect from the date of Effective Date.
iii.	1.3	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, except for anything to the contrary provided in this Resolution Plan, all Related Party contractual arrangements entered into by the Corporate Debtor shall be deemed to be terminated, with such termination being effective from the NCLT Approval Date. Any claims or liabilities arising as a consequence of such termination shall be deemed to be relinquished, cancelled and written off the NCLT Approval Date.

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iv.	1.4	As the Resolution Applicant is required to take over the Corporate Debtor’s business on a “Going Concern” basis, all consents, licences, approvals, clearness, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licences, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, for a period of 12 months from the Effective Date or such other period as required under Applicable Law. Further, no coercive actions shall be taken against Resolution Applicant or corporate Debtor post NCLT Approval Date towards lapse of any consents, licenses, approvals, clearance etc., under the applicable law during the CIRP Period.
v.	1.5	The Resolution Applicant and the Corporate Debtor shall be deemed to have received a waiver from all actions, proceedings or penalties under any applicable Law for any Non-Compliance, including in connection with any prior transfer of assets, contracts or business by the Corporate Debtor.
vi.	1.6	The Implementation of the Resolution Plan by the Resolution Applicant and any change in control occurring pursuant thereto shall not impact or breach the validity of any such

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		agreements contracts etc., to which the Corporate Debtor is a party to.
vii.	1.7	Any Stamp Duty liabilities of Tax Liability arising pursuant to the transactions contemplated under this resolution plan shall be exempted or waived off.

Our Inference

51. At the hearing, the submission made by the Learned Senior Counsel, Mr. Ramji Srinivasan appeared on behalf of the Resolution Professional of the Suasth Health Care Foundation, Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we find that the Resolution Plan dated May 15, 2022, (as amended and restated vide amendment dated September 03, 2022, along with the clarifications and annexures), submitted by the consortium of **“Nishkala Healthcare Private Limited” (CIN: U74999MH2019PTC321858)** and **“Ujin Pharma Chem”** was placed before the Committee of Creditors of the Suasth Health Care Foundation in its 15th Meeting, held on September 21, 2022, and has unanimously been approved by **100%** of the voting share of the CoC, vide the e-voting which concluded on October 06, 2022, at 6:00 P.M and subsequently, **“Nishkala Healthcare Private Limited” (CIN: U74999MH2019PTC321858)** and **“Ujin Pharma Chem”** has been declared as the **Successful Resolution Applicant (SRA)**. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

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52. In the course of the hearing, Ld. Sr. Counsel, Mr. Srinivasan, further submitted that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.
53. Upon perusal of the documents on record and/or documents, we are satisfied that the Resolution Plan submitted by the consortium of **“Nishkala Healthcare Private Limited” (CIN: U74999MH2019PTC321858) and “M/s. Ujin Pharma Chem”**, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
54. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.
55. We have perused the reliefs, waivers and concessions as sought and as provided in Part V of the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession,

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whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

- 56.** It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.
- 57.** The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
- 58.** Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited* reported in MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737 that “once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.” (Emphasis Added)

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59. Further, the relevant part of the *Ghanshyam Mishra judgment (supra)* in this regard is given below:

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.”

“62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).”

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this

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would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

(Emphasis Added)

- 60.** In this regard we also rely on the judgement of the Hon’ble High Court of Rajasthan in the matter of *EMC v. State of Rajasthan*, Civil Writ Petition No. 6048/2020 with 6204/2020 reported in **(2023) ibclaw.in 42 HC**, wherein it has been inter-alia held that:

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

(Emphasis Added)

- 61.** Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon’ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of

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I.A. (IB) No. 1733/KB/2023, IVN.P (IBC)/37(KB)2023, IVN.P (IBC)/34(KB)2023, I.A. (IB) No. 1551/KB/2023 and I.A. (IB) No. 1381/KB/2022 In C.P. (IB) No. 204/KB/2021

such dues for the period before the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

62. Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in *Lalit Kumar Jain v. Union of India* reported in **MANU/SC/0352/2021: (2021) 9 SCC 321** that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.
63. For the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.
64. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.
65. In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
66. In terms of foregoing decisions made in the order for the intervention applications, we would infer that the Resolution plan filed in I.A. (IB) No. 1381/KB/2022 is approved subject to our direction for allocation of some amount to **Hari Vitthal Mission (HVM)** as being the unsecured financial creditor. We left it upon the CoC or IMC to take a pragmatic and holistic view regarding what amount will be allocated for HVM. Being the Adjudicating Authority, we are conscious of the legal position that we cannot direct the CoC to allocate a particular amount to HVM as the same has to be decided by the CoC in its "commercial wisdom". No purpose is served in sending the plan for this purpose

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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only to come back to us once again for approval. This will only delay the resolution further.

67. Subjected to the directions made above, the Resolution Plan dated May 15, 2022, (as amended and restated vide amendment dated September 03, 2022, along with the clarifications and annexures), submitted by the consortium of “**Nishkala Healthcare Private Limited**” (CIN: U74999MH2019PTC321858) and “**M/s. Ujin Pharma Chem**” is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved in terms of section 31 of the Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect.
68. The Moratorium imposed under section 14 of the Code by virtue of the order dated May 25, 2022, shall cease to have effect from the date of this order.
69. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters.
70. Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
71. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal by the RP.
72. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
73. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the

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Resolution Professional to finalise the further line of action required for starting the operation.

- 74.** The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Senior Counsels/ Learned Counsels for information and for taking necessary steps.
- 75.** In terms of the view above, the interlocutory application being **I.A. (IB) No. 1381/KB/2022** in the main Company Petition being C.P. (IB) No. 204/KB/2023 shall stand **disposed of** accordingly.
- 76.** Accordingly, **I.A. (IB) No. 1733/KB/2023, IVN.P (IBC)/37(KB)2023, IVN.P (IBC)/34(KB)2023, I.A. (IB) No. 1551/KB/2023 and I.A. (IB) No. 1381/KB/2022** along with the main Company Petition being **C.P. (IB) No. 204/KB/2021** are **disposed of**.
- 77.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 78.** File be consigned to the record.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 18th Day of December, 2023.

Bose, R. K. [LRA]
Tiwari, V. [LRA]
AR [Steno]