NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1472 of 2023

[Arising out of Order dated 19.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No.II, Kolkata in I.A. (IB) No. 1648/KB/2022]

IN THE MATTER OF:

HDFC Bank Ltd. **...Appellant**

Versus

Pratim Bayal, **...Respondent**
Resolution Professional of Birla Tyres Ltd. & Ors.

Present:

For Appellant: **Mr. Ramesh Singh, Sr. Advocate with Mr. Bheem Sain Jain and Mr. D. Ray, Advocates.**

For Respondent: **Ms. Shweta Dubey and Ms. Kanishka Prasad, Advocates for R-4, R-5, R-7 to R-9, R-12 & R-13.**
Ms. Astha Sharma, Ms. Anju Thomas, Mr. Piyush Agarwal, Ms. Srivali Kajaria and Ms. Panistha Bhatt, Advocates for R-2 & R-3.
Mr. Abhijeet Sinha, Sr. Advocate with Mr. Shuanak Mitra, Mr. Avishek Guha, Ms. Soumya Dutta, Mr. Saikat Sarkar and Mr. Siddhant Upmanyu, Advocates for R-1.

J U D G M E N T
(30th January, 2025)

Ashok Bhushan, J.

This Appeal by a Dissenting Financial Creditor has been filed challenging the order dated 19.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA No.1648 of 2023. By the impugned order, IA No.1648 of 2023 filed by the

Appellant has been rejected. Aggrieved by the said order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor- 'Birla Tyres Limited' commenced vide an order dated 05.05.2022 passed by the Adjudicating Authority. In pursuance of publication made by the IRP, the Appellant as Financial Creditor filed its claim of Rs.21,55,00,138/-. Appellant was made part of the CoC with a voting share of 1.90%. In pursuance of the Form G issued by the Resolution Professional, two Resolution Applicants have submitted their plans. Revised financial offer received from PRA were discussed in the 13th and 14th CoC meetings. The Resolution Professional placed calculation with regard to distribution to be made to the Financial Creditors. Distribution mechanism by the Resolution Professional was as per security interest of respective Financial Creditors and as per voting percentage of respective Financial Creditors were shared with members of the CoC. In the 16th meeting of the CoC held on 31.07.2023, the CoC approved the distribution mechanism as per security interest of the respective Financial Creditors. The Resolution was passed with 75.67% vote shares, the Resolution Plan submitted by the Resolution Applicants was also approved by the CoC with requisite vote share. On 02.08.2023, Appellant sent an e-mail to the Resolution Professional objecting to the distribution methodology proposed by the Axis Bank on the basis of security interest. Resolution Professional replied to the e-mail and

asked the Financial Creditor to vote on distribution mechanism. Aggrieved by the distribution mechanism approved by the CoC, Appellant filed IA No.1648 of 2023 where following reliefs was prayed for:-

> *"a) to pass an order directing the Resolution Professional to take into account the voting shares of the financial creditors while determining the calculation methodology of the Creditors' proportional share in the liquidation value of the Corporate Debtor for the purposes of distribution under the Section 53 (1) of the Code.*
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> *b) to pass an order directing the Resolution Professional to withdraw the voting results of the distribution mechanism of the Resolution Plan amount and to take into account the voting shares while determining the calculation methodology of the Creditors' proportional share in the Resolution Plan amount, or in the alternative, pass an order directing the Committee of Creditors to deliberate upon a fair and equitable distribution pattern for the resolution plan amount.*
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> *c) to pass an order declaring the Resolution Plan submitted by the Respondent No. 2 along with their strategic partner Respondent No 3 illegal, inequitable, null and void.*
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> *d) to pass an order quashing setting aside the Resolution Plan submitted by the Respondent No 2 along with their strategic partner Respondent No. 3*

e) to stay of all further proceedings in the instant corporate insolvency resolution process, pending disposal of the instant application.

f) Ad-interim orders in terms of prayer (e) hereinabove.

g) Any further order or orders and or direction or directions as may deem fit and proper."

2.2. The Application filed by the Appellant was opposed by the Resolution Professional. The Adjudicating Authority by the impugned order upheld the distribution mechanism. It was held that the CoC in its commercial wisdom approved the distribution of plan value based on the value of the security held by the CoC members, which is in line with Section 30(4) of the IBC. By the impugned order dated 19.10.2023, the Adjudicating Authority rejected the IA No. 1648 of 2023. By an order of the same date passed in IA No.1527 of 2023, Resolution Plan submitted by the Successful Resolution Applicant was also approved by the Adjudicating Authority. Aggrieved by the order rejecting IA No.1648 of 2023 filed by the Appellant, this Appeal has been filed.

3. We have heard Shri Ramesh Singh, Learned Senior Counsel for the Appellant and Shri Abhijeet Sinha, Learned Senior Counsel for the Respondent. We have also heard Counsel appearing for other Financial Creditors opposing the Appeal.

4. Counsel for the Appellant challenging the impugned order submits that as per the vote shares, the Appellant was entitled for amount of Rs.6.19 Crores and as per value of security interest, an amount of Rs.1.05 Crores have been paid. It is submitted that under Section 53(1)(b)(ii), the distribution among lenders has to be as per vote share and which provision does not contemplate distribution as per security interest. Section 53(1)(b)(ii) uses expression 'debt' which debt has to be paid in equal proportion to all Financial Creditors including Dissenting Financial Creditor. It is submitted that the distribution on the basis of value of debt has already been settled by the Hon'ble Supreme Court and this Tribunal. Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***"India Resurgence ARC (P) Ltd. vs. Amit Metaliks Ltd.- (2021) 19 SCC 672"***, judgment of this Tribunal in ***"Jet Aircrafts Maintenance Engineers Welfare Association vs. Ashish Chhawchharia Resolution Professional and Ors.- 2022 SCC OnLine NCLAT 418"*** and the judgment of this Tribunal in ***"Small Industries Development Bank of India (SIDBI) vs. Vivek Raheja, Resolution Professional, M/s. Gupta Exim (India) Pvt. Ltd. & Ors.- 2022 SCC OnLine NCLAT 3979"*** and judgment of this Tribunal in ***"ICICI Bank Ltd. vs. BKM Industries Limited and Anr- Company Appeal (AT) (Ins.) No. 405 of 2023"***.

5. Counsel for the Respondent refuting the submissions of the Counsel for the Appellant submits that the CoC was fully entitled as per Section 30(4) to approve the Resolution Plan and the distribution as per security interest. The decision taken by the CoC on distribution as per security

interest and accordingly approval of the Resolution Plan is in the commercial wisdom of the CoC which need no interference in exercise of jurisdiction by the NCLT or NCLAT. It is submitted that a Dissenting Financial Creditor is at best entitled for liquidation value as per Section 53(1)(b)(ii) read with Section 30(2)(b) and the liquidation value payable to the Appellant is only Rs. .97 Crores. It is submitted that there is no error in the decision of the CoC approving the Resolution Plan and Dissenting Financial Creditor is bound by the approval of the Resolution Plan. Approval of the Resolution Plan is in accordance with Section 30(2). It is further submitted that the Appellant has not challenged the order approving the Resolution Plan. The above submission has been addressed both by the Resolution Professional as well as other Financial Creditors who is respondents in this Appeal.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. The only issue which need to be considered in this Appeal is as to whether CoC was justified in approving the Resolution Plan on the basis of security interest of the Financial Creditor and not approving the distribution mechanism on the basis of vote share of the financial creditors. Section 30(4) has been amended by Act 26 of 2019 w.e.f. 16.08.2019. Amended Section 30(4) is as follows:-

> *"**30. Submission of resolution plan.** -[(4) The committee of creditors may approve a resolution plan by*

a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, 3 [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board: Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection]:

[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the

resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]"

8. The amended provisions clearly empower the CoC to vote after considering its feasibility and viability. The manner of distribution proposed which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured creditor. After the amendment of sub-section (4) of Section 30, the priority and value of the security interest of a secured creditor has also become one of the factor which may be considered by the CoC for approval of a plan. We may also notice Section 30(2) which also amended by the amendment Act 26 of 2019 w.e.f. 16.08.2019 which provides as follows:-

*"**30. Submission of resolution plan...**-(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –*

(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 a liquidation of the corporate debtor under section 53; or

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

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

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
(d) The implementation and supervision of the resolution plan;
(e) does not contravene any of the provisions of the law for the time being in force
(f) confirms to such other requirements as may be specified by the Board.
[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"

9. Section 30(2)(b) also provided that the Financial Creditor who do not vote in favour of the Resolution Plan shall be paid an amount not less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor takes place. In the present case, the Resolution Plan was submitted by the SRA which contains provision for pertaining to mechanism for payment amongst the Financial Creditors and payment to the dissenting financial creditor. We may refer to clause 5.10 of the Resolution Plan which is as follows:-

"5.10. Notwithstanding anything to the contrary contained in this Plan the distribution of the AFC Payout, Available Cash and other payments among the Financial Creditors may be decided by the COC in its commercial wisdom, without in any manner

affecting the total obligation of the Resolution Applicant which shall be limited to the Total Resolution Amount and/or the achievement of the timelines for Closing Date stipulated in this Plan."

10. Clauses 5.5 and 5.6 dealing with 'settlement of dissenting financial creditors' are as follows:-

"5.5. In the event that there are Dissenting Financial Creditors entitled to an amount in the nature of liquidation value in terms of Sections 30 and Section 53 of the Code read with Regulation 38 of the CIRP Regulations ("DFC Payout"), then the Dissenting Financial Creditors would be provided the DFC Payout from the RA Contribution on the Payment Date in priority to the Assenting Financial Creditors.

5.6. Notwithstanding anything to the contrary contained in this Resolution Plan, the Dissenting Financial Creditors shall neither be entitled to, nor shall they receive any amounts other than the amounts due to them in the nature of liquidation value as stipulated hereinabove i.e., the DFC Payout. The Resolution Applicant submits that such treatment of Dissenting Financial Creditors is fair and equitable, and in compliance with Section 30(2), 53 of the Code and Regulation 38(1) of the CIRP Regulations."

11. The Appellant has brought on the record the report of the result of e-voting on the resolution put to vote in the 16th meeting of the CoC held on 31.07.2023. The copy of Annexure 19 to the Appeal is the voting result. The

distribution mechanism as per security interest as well as voting percentage has been both separately noticed in Scenario 1 and Scenario 2 in the result and Scenario 1 which provided distribution as per security interest has been approved with 75.67% vote share and Scenario 2 which provided for payment as per voting percentage has not been approved with 75.65% vote share. It is useful to extract both the resolutions and result as brought on record:-

"RESOLUTION AS DISCUSSED IN SIXTEENTH MEETING OF THE COC OF THE COMPANY ALONG WITH RESULT THEREOF

Scenario No. 1

To approve the distribution mechanism of the resolution plan - As per security interest of the respective financial creditors.

Resolution:

*"**RESOLVED THAT** the consent of the Committee of Creditors be and is hereby accorded to the distribution mechanism of the resolution plan amount to the financial creditors of Birla Tyres Limited based on the security interest of the respective financial creditors which is mentioned below:*

S. No.	***Name of CoC Members***	***Nature***	***Amount of each lender as per security interest (in INR Cr.)***
1	*Axis Bank Limited*	*Secured*	*196.51*

2	*Asset Reconstruction Company (India) Limited*	*Secured*	*62.25*
3	*State Bank of India*	*Secured*	*5.86*
4	*DBS Bank India Ltd. (Erstwhile: The Lakshmi Vilas Bank Ltd.)*	*Secured*	*15.75*
5	*West Bengal Infrastructure Development Finance Corporation Limited (WBIDFC Ltd.)*	*Secured*	*21.49*
6	*The Karur Vysya Bank Ltd.*	*Secured*	*14.46*
7	*Punjab National Bank*	*Secured*	*1.24*
8	*HDFC Bank*	*Secured*	*1.05*
9	*ICICI Bank*	*Secured*	*0.52*
10	*J.C. Flowers Asset Reconstruction Pvt. Ltd.*	*Secured*	*0.18*
11	*IndusInd Bank Limited*	*Secured*	*-*
12	*Euston Industries Limited*	*Unsecured*	*0.05*
	TOTAL		

NOTE:

- *The upfront payment defined as per the plan is INR 154.34 Crores*
- *Out of the Upfront payment to Financial Creditors, a sum equivalent to Gratuity Liability (INR 37.03 crores) would be held back and such funds would be deposited in a special escrow account as specified in the Resolution Plan*

- *The above amounts are subject to adjustment of Unpaid CIRP Cost and any other adjustment as specified in the plan till approval of Plan by NCLT.*
- *The Resolution Applicant has sole discretion to pre-pay the Deferred Payment anytime between NCLT Order Date and 3 years from NCLT Order Date. The Deferred Payment shall be discounted by following the tiered discounting rates specified in Evaluation Matrix of Corporate Debtor (i.e., 10% discounting rate). Accordingly, if Deferred Payment is paid alongside with Upfront payment (i.e., within 90 days of NCLT Order Date) to Assenting Financial Creditors, then instead of INR 165 Crore, Resolution Applicant shall be liable to pay only INR 123.97 Crore towards full and final settlement of the Deferred Payment obligation. In case of pre-pay deferred payments, the above-mentioned amounts will be re-distributed among financial creditors*

Particulars	***Voting (in No.)***	***Voting Shares (in Crs.)***	***Result declared for the above Resolution/ Scenerio No.1***
Votes cast in Favour	*4*	*75.67%*	***Resolution/ Scenerio approved (75.67% as per requirement)***
Votes cast Against	*5*	16.09%	
Votes cast Abstained	*1*	5.41%	
TOTAL	*10*	97.17%	

Resolution/Scenario No. 2

To approve the distribution mechanism of the resolution plan - As per voting percentage of the respective financial creditors.

Resolution:

*"**RESOLVED THAT** the consent of the Committee of Creditors be and is hereby accorded to the distribution mechanism of the resolution plan amount to the financial creditors of Birla Tyres Limited based on the voting percentage of the respective financial creditors which is mentioned below:*

S. No.	***Name of CoC Members***	***Nature***	***Amount of each lender as per COC voting share (in INR Cr.)***
1	*Axis Bank Limited*	*Secured*	*162.84*
2	*Asset Reconstruction Company (India) Limited*	*Secured*	*57.01*
3	*State Bank of India*	*Secured*	*34.71*
4	*DBS Bank India Ltd. (Erstwhile: The Lakshmi Vilas Bank Ltd.)*	*Secured*	*17.74*
5	*West Bengal Infrastructure Development Finance Corporation Limited (WBIDFC Ltd.)*	*Secured*	*17.55*
6	*The Karur Vysya Bank Ltd.*	*Secured*	*11.80*

7	*Punjab National Bank*	*Secured*	*7.34*
8	*HDFC Bank*	*Secured*	*6.19*
9	*ICICI Bank*	*Secured*	*3.06*
10	*J.C. Flowers Asset Reconstruction Pvt. Ltd.*	*Secured*	*1.06*
11	*IndusInd Bank Limited*	*Secured*	*-*
12	*Euston Industries Limited*	*Unsecured*	*0.05*
	TOTAL		

NOTE:

- *The upfront payment defined as per the plan is INR 154.34 Crores*
- *Out of the Upfront payment to Financial Creditors, a sum equivalent to Gratuity Liability (INR 37.03 crores) would be held back and such funds would be deposited in a special escrow account as specified in the Resolution Plan*
- *The above amounts are subject to adjustment of Unpaid CIRP Cost and any other adjustment as specified in the plan till approval of Plan by NCLT.*
- *The Resolution Applicant has sole discretion to pre-pay the Deferred Payment anytime between NCLT Order Date and 3 years from NCLT Order Date. The Deferred Payment shall be discounted by following the tiered discounting rates specified in Evaluation Matrix of Corporate Debtor (i.e., 10% discounting rate). Accordingly, if Deferred Payment is paid alongside with Upfront payment (Le., within 90 days of NCLT Order Date) to Assenting Financial Creditors, then*

instead of INR 165 Crore, Resolution Applicant shall be liable to pay only INR 123.97 Crore towards full and final settlement of the Deferred Payment obligation. In case of pre-pay deferred payments, the above-mentioned amounts will be re-distributed among financial creditors.

Particulars	***Voting (in No.)***	***Voting Shares (in Crs.)***	***Result declared for the above Resolution/ Scenerio No.2***
Votes cast in Favour	*6*	*21.5%*	***Resolution/ Scenerio not passed as per requirement***
Votes cast Against	*4*	75.67%	
Votes cast Abstained	*0*	0	
TOTAL	*10*	97.17%	

12. The question thus to be considered is as to whether the CoC was bound to accept the distribution mechanism as per voting share of the financial creditors or it had jurisdiction to approve the distribution mechanism as per security interest. The Hon'ble Supreme Court in ***"Essar Steel India Ltd. Committee of Creditors vs. Satish Kumar Gupta- (2020) 8 SCC 531"*** had occasion to consider Act 19 of 2019 by which Section 30(2) was amended. Paragraphs 128 and 131 of the judgment are relevant for the present case which is as follows:-

*"**128.** When it comes to the validity of the substitution of Section 30(2)(b) by Section 6 of the Amending Act of 2019, it is clear that the substituted Section 30(2)(b) gives operational creditors something more than 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 refers to dissentient 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 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 earlier payable. 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). Ms Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(b) as amended. 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 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 provisions of the Code and the Regulations made thereunder.

131. *The challenge to sub-clause (b) of Section 6 of the Amending Act of 2019, 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 security interests of a secured creditor. This flexibility is referred to in the BLRC Report, 2015 (see para 56 of this judgment). 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 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."*

13. When we look into the observations made in paragraph 131, it is clear that the amending act gives the flexibility to the CoC to approve or not to approve the Resolution Plan and which may take into account different classes of creditors, different priorities and values of security interest of a secured creditor.

14. Judgment of the Hon'ble Supreme Court in ***"India Resurgence ARC (P) Ltd."*** (supra) which has been relied by both the parties clearly has laid down the law on the subject. In case before the Hon'ble Supreme Court, the CoC has approved the Resolution Plan approving the distribution as per the vote share of the financial creditor. The Appellant who was a financial creditor with vote share of 3.94% expressed reservations on the distribution mechanism. The CoC, however, approved the Resolution Plan with 95.35% vote shares which decision was challenged by the Appellant. The Adjudicating Authority approved the Resolution Plan and rejected the objection and Appeal filed by Appellant was also dismissed by this Tribunal against which the matter was taken by the Appellant before the Hon'ble Supreme Court. It was contended by the Appellant- ***"India Resurgence ARC (P) Ltd."*** (supra) that Appellant was entitled to receive the distribution as per security interest which argument was noticed and rejected by the Hon'ble Supreme Court. The Hon'ble Supreme Court has noticed the amendments made in Section 30(2) as well as Section 30(4) and has held that the approval of the Resolution Plan is in the commercial wisdom of the CoC and scope of judicial review remains limited. In paragraphs 13 and 14 of the judgment, following was laid down:-

> "***13.*** *As regards the process of consideration and approval of resolution plan, it is now beyond a shadow of doubt that the matter is essentially that of the commercial wisdom of Committee of Creditors and the scope of judicial review remains limited within the four corners of Section 30(2) of the Code for the*

adjudicating authority; and Section 30(2) read with Section 61(3) for the appellate authority. In Jaypee, this Court, after taking note of the previous decisions in Essar Steel as also in K. Sashidhar v. Indian Overseas Bank and Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, summarised the principles as follows : (Jaypee Kensington case, SCC pp. 562-63, para 107)

"107. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the adjudicating authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

107.1. Such limitations on judicial review have been duly underscored by this Court in the decisions abovereferred, where it has been laid down in explicit terms that the powers of the adjudicating authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to adjudicating authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for : (a) payment of insolvency resolution process costs in priority; (b) payment of debts of the operational

creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

107.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board.

107.3. The material propositions laid down in Essar Steel on the extent of judicial review are that the adjudicating authority would see if CoC has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including the operational creditors have been taken care of. And, if the adjudicating authority would find on a given set of facts that the requisite parameters have not been kept in view, it may send the resolution plan back to the Committee of Creditors for re-submission after satisfying the parameters. Then, as observed

in Maharashtra Seamless Ltd., there is no scope for the adjudicating authority or the appellate authority to proceed on any equitable perception or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors."

14. *It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal. [For the purpose of illustration, reference may be made to the decision in Jaypee Kensington, (2022) 1 SCC 401 wherein, as regards the grounds sought to be urged by minority shareholders against the resolution plan, this Court held that their grievances could not be recognised as legal grievances (vide para 154). Similarly, when this Court noticed that the homebuyers as a class assented to the plan, it was held that any individual homebuyer or association was not entitled to maintain a challenge to the resolution plan and could not be treated as carrying any legal grievance (vide para 170).]*

15. The Hon'ble Supreme Court also in paragraph 15 after noticing amendment in Section 30(4) amplifies the consideration of the CoC. The submission of the Appellant that distribution should be as per security interest was not accepted and in paragraphs 16 and 17, following was laid down rejecting the submission of the Appellant:-

> "*16. The repeated submissions on behalf of the appellant with reference to the value of its security interest neither carry any meaning nor any substance. What the dissenting financial creditor is entitled to is specified in the later part of sub-section (2)(b) of Section 30 of the Code and the same has been explained by this Court in Essar Steel [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] as under : (SCC pp. 628-29, para 128)*
>
> *"128. When it comes to the validity of the substitution of Section 30(2)(b) by Section 6 of the amending Act of 2019, it is clear that the substituted Section 30(2)(b) gives the operational creditors something more than 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 the operational creditors. The same goes for the latter part of sub-clause (b) which refers to dissentient financial creditors. Ms Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of the operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of the*

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 earlier payable. 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). Ms Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(b) as amended. 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 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 provisions of the Code and the Regulations made thereunder."

(emphasis supplied)

17. Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like

the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest."

16. The above judgments clearly laid down that the decision taken by the CoC in commercial wisdom has to be respected and the scope of judicial review is too limited.

17. However, the dissenting financial creditor as per Section 30(2)(b)(ii) is entitled for an amount which is not less than the amount to be paid to such creditors in accordance with Section 53(1). Present is not a case where amount offered to the Appellant is less than the liquidation value which has also been noticed by the Adjudicating Authority in paragraph 13.1. Paragraph 13.1 of the impugned order is as follows:-

"13.1. We find that it is not the case of the applicant that the amount of distribution has not been arrived based on liquidation value as provided in Section 30(2)(b) read with Section 53 of the IBC. The Applicant's grievance before us is that the distribution method adopted by the CoC should be based on the voting share and not based on value of security held by respective financial creditors."

18. As per liquidation value of the Appellant, he was to receive Rs. .97 Crores and as per the plan approved by the CoC he has been offered Rs.1.05 Crores, thus, provision of Section 30(2)(b) are fully satisfied.

19. The judgment of this Tribunal in ***"Small Industries Development Bank of India (SIDBI)"*** (supra) was a case where dissenting financial

creditors prayed that the dissenting financial creditors' distribution should be made as per the security interest whereas the CoC have approved the distribution of proceed as per the voting share. This Tribunal relying on the judgment of the Hon'ble Supreme Court in ***"India Resurgence ARC (P) Ltd."*** (supra) took the view that the entitlement of dissenting financial creditor is to receive the amount not less than the liquidation value of their debt. The decision of the CoC to distribute the proceed as per the voting share was upheld. In paragraphs 20, 24 and 25 following was held:-

> *"**20.** When we look into above statement of objects and reasons, it is made clear that financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt. The above statement of objects and reasons also makes it clear that the entitlement of dissenting financial creditor is to receive liquidation value of their debt and not the distribution as per their security value as is sought to be contended by the Learned Counsel for the Appellant before us. The statement of objects and reasons by which amendments in Section 30(2)(b) has been made, makes it clear that entitlement of dissenting financial creditor is the liquidation value of their debt which also clearly negate the submissions raised by the Learned Counsel for the Appellant before us.*
>
> ***24.** The Judgment of this Tribunal in Company Appeal (AT) Ins. No. 547 of 2022 in "Oriental Bank of Commerce v. Anil Anchalia" decided on 26th May,*

2022 also does not support the submission of Learned Counsel for the Appellant. It was held that dissenting financial creditor is entitled for distribution as per Section 53(1). The claim of the dissenting Financial Creditor that he is entitled to receive the entire amount received from property which was secured with the Financial Creditor was rejected relying on the Judgment of the Hon'ble Supreme Court in "India Resurgence" (supra).

***25.** In view of the foregoing discussion, we do not find any error in the Order dated 17.03.2022 of the Adjudicating Authority rejecting I.A. No. 581 of 2021 filed by the Appellant. The decision of the Committee of Creditors and the Adjudicating Authority deciding to distribute the proceeds of the plan value as per voting share of the secured creditor in no manner contravenes the provisions of Section 30(2)(b) of the Code. None of the submissions raised by the Learned Counsel for the Appellant has any substance. In result, the Appeal is dismissed."*

20. The judgment of this Tribunal in ***"Jet Aircrafts Maintenance Engineers Welfare Association"*** (supra) relied by the Appellant was also a case where Hon'ble Supreme Court has held that the distribution under Section 53(1) is contemplated as per debt of the financial creditor. It is useful to extract the conclusion recorded in paragraph 107 where submission that financial creditor has to be paid as per their value of security interest was rejected. Paragraph 107 of the judgment is as follows:-

> *"**107.** We, thus, do not find any substance in the submission of the learned Counsel that payment to the Secured Financial Creditors under Section 53(1)(b) has to be made as per their value of the security interest and the Resolution Plan did not take into consideration their debt, which is the debt of the Financial Creditors while allocating the amount."*

21. From the above, it is clear that after amendments made in Section 30(4), the CoC have been given jurisdiction to take a decision as to distribute the amount as per vote share of the financial creditor or as per the security interest which is in their commercial wisdom and decision taken by requisite vote share by the CoC is final and binding on all including the dissenting financial creditors and dissenting financial creditors at best is entitled for minimum of liquidation value. The use of expression "may" in Section 30(4) clearly indicate the discretion vested in the CoC to take into account of the matter of security interest of the secured creditors in approving the Resolution Plan. We, thus, are of the view that no error has been committed by the Adjudicating Authority rejecting the application filed by the Appellant seeking direction to distribute the amount as per security interest. The decision of the CoC approving the Resolution Plan as per security interest was in accordance with Section 30(4) and has rightly been not interfered with by the Adjudicating Authority in the impugned order.

22. We do not find any error in the impugned order warranting interference by this Tribunal. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali