

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 612 of 2025

[Arising out of the Impugned Order dated 24.03.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-V in I.A. No. 07 of 2024 in CP(IB) No. 106 of 2022]

In the matter of:

Univastu India Limited

Bungalow No. 36/B.C.TS. No. 994 & 945,
(S. No. 117 & 118), Madhav Baug,
Shivtirth Nagar, Kothrud, Pune,
Maharashtra 411038.

...Appellant

Versus

**1. Setubandhan Infrastructure Limited,
(formerly known as Prakash Constrowell Limited)**

Office No. A, 3rd Floor,
The Exchange, Near Ved Mandir,
Tidke Colony, Trimbak Road,
Nashik, Maharashtra – 422002.

**2. Sandeep D. Maheswari,
Resolution Professional,
Setubandhan Infrastructure Limited
1503, Bella Vista, Near Oswal Park,
Pokhran Road No. 2, Majiwada, Thane,
Maharashtra – 400601.**

**3. State Bank of India
Stressed Asset Management Branch –II,
Raheja Chambrs, Ground Floor,
Wing-B, Free Press Journal Marg,
Nariman Point, Mumbai,
Maharashtra – 400021.**

...Respondents

Present:

For Appellant : Ms. Anusha Nagarajan, Ms. Aakanksha Bhola, Mr. Prajeet Ghosh and Mr. Vikas Tomar, Advocates.

For Respondent :

WITH
Company Appeal (AT) (Insolvency) No. 613 of 2025

[Arising out of the Impugned Order dated 24.03.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-V in I.A. No. 07 of 2024 in CP(IB) No. 106 of 2022]

In the matter of:

Sandeep D. Maheshwari
(Resolution Professional of
Setubandh Infrastructure Limited;
formerly known as
Prakash Constrowell Limited)
On behalf of the Committee of Creditors

Having his address at:
1503, Bella Vista, Near Oswal Park,
Pokharan Road No.2, Majiwada,
Thane, Maharashtra – 400 601
Email id: setu.cirp@gmail.com

...Appellant

Versus

1. State Bank of India

Having its office at:
Stressed Asset Management Branch – II,
Raheja Chambers, Ground Floor,
Wing-B, Free Press Journal Marg,
Nariman Point, Mumbai,
Maharashtra – 400 021
Email id: agm1infra2.sarg@sbi.co.in

2. IL&FS Financial Services Limited

Having its registered office at:
IL&FS Financial Centre, Plot No. C-22,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai,
Maharashtra – 400 051
Email id: Jinesh.Sanghavi@iflindia.com

3. Kotak Mahindra Prime Ltd.

Having its registered office at:
27 BKC, G Block, Bandra (East),
Mumbai, Maharashtra – 400 051
Email id: RajShekhar.Roy@kotak.com

4. Union Bank of India

Having its registered office at:
Asset Recovery Management Branch,
21, Veena Chambers, Mezzanine Floor,

Dalal Street, Fort, Mumbai 400 001
Email id: samvmumbai@unionbankofindia.bank

5. Univastu India Limited,

Having its registered office at:
Bungalow No. 36/B, C.T.S. No. 994 & 945,
(S. No. 117 & 118), Madhav Baug,
Shivtirth Nagar, Kothrud, Pune,
Maharashtra 411038
Email id: cs@univastu.com

...Respondents

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Pranjit Bhattacharya and Ms. Salonee Shukla, Advocates.

For Respondent : Mr. Abhijeet Sinha Sr. Advocate with Mr. Lokesh Malik, Advocates for SBI & IL&FS.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present two appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellants arise out of the common order dated 24.03.2025 (hereinafter referred to as the '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-V) in I.A. No. 07 of 2024 in CP(IB) No. 106 of 2022. By the impugned order, the Adjudicating Authority has dismissed I.A. No. 07 of 2024 filed by the Resolution Professional seeking approval of the resolution plan filed by Univastu India Limited as the Successful Resolution Applicant in the Corporate Insolvency Resolution Proceedings ("**CIRP**" in short) of the Corporate Debtor- Setubandhan Infrastructure Ltd. Aggrieved by the impugned order, CA No.612 of 2025 has been preferred by the Resolution

Professional and CA No.613 of 2025 has been preferred by the Successful Resolution Applicant.

2. The sequence of events and the salient facts which are relevant to be noticed for consideration of both the appeals at hand are as depicted below:

- Setubandhan Infrastructure Ltd.-Corporate Debtor was initiated into the rigours of CIRP vide order dated 28.11.2022 passed by the Adjudicating Authority.
- The Respondent No. 2 was appointed by the Adjudicating Authority as the Resolution Professional (**'RP'** in short) for insolvency resolution of the Corporate Debtor. The RP has filed the present appeal also on behalf of the CoC having been so authorised by the CoC with 64.83% vote share.
- The RP constituted the final Committee of Creditors (**'CoC'** in short) comprising of Respondent No. 3-State Bank of India as a lead member of CoC. The other members of the CoC were IL&FS Financial Services Limited, Kotak Mahindra Bank and the Union Bank of India.
- The 2nd meeting of the CoC on 23.01.2023 resolved to go ahead with the issuance of the invitation of Expression of Interest in Form-G under Regulation 36A of the CIRP Regulations which was published by the RP in newspapers with circulation in Nashik on 28.01.2023.
- At the 3rd meeting of the CoC on 20.02.2023, the RP presented the updated list of creditors before the CoC. The CoC approved the Request for Resolution Plan (**"RFRP"**) including the Evaluation Matrix (**"EM"**) by e-voting.

- The RP verified and circulated the final list of the four Proposed Resolution Applicants (“**PRAs**”in short) to the CoC on 26.02.2023. The RP then issued the RFRP, EM and Information Memorandum (“**IM**” in short) to the eligible PRAs.
- On 06.04.2023, at the 5th meeting of the CoC, the Respondent No. 2 informed the CoC that two PRAs had withdrawn from the process. The resolution plans received from the other two PRAs was circulated to the CoC members by email on 12.04.2023.
- On 24.04.2023, at the 6th meeting of the CoC, the RP gave a presentation on the details of the plans received. On 23.05.2023, at the 7th CoC meeting, it was decided that the last date for submission of modified resolution plans be kept as 20.06.2023.
- On 23.06.2023, in the 8th CoC meeting, the RP apprised the members of the CoC about discovery of certain properties over which the ownership of the Corporate Debtor was disputed and the steps taken by RP to safeguard the interests of Respondent No. 1 in the said properties.
- On 20.07.2023, at the 9th CoC meeting, the RP gave a presentation regarding the modified resolution plans received from the PRAs.
- The 10th CoC meeting on 02.08.2023 decided to proceed with voting upon the modified resolution plan and the e-voting window was opened on 16.08.2023. However, the e-voting window for approval of resolution plans was halted and cancelled owing to intimation received from the

Respondent No. 3 seeking re-issuance of Form G with wider publication.

- On 21.08.2023, at the 11th CoC meeting, the CoC decided to re-issue the Form G to be published in the whole of Maharashtra and Gujarat, with the intent of value maximisation of the Respondent No. 1. The Form G was reissued on 26.08.2023.
- On 05.09.2023 and 13.10.2023, the Adjudicating Authority allowed two extensions of 90 days for completion of the CIRP, in order to allow value maximisation.
- The RP had received four EOIs from PRAs with whom the IM and the RFRP was shared along with EM. The last date for submission of the resolution plan of 09.11.2023 was further extended up to 17.11.2023 at the request of the PRAs.
- On 05.12.2023, at the 13th CoC meeting, it was resolved by the CoC, to go forward with modification of the resolution plans after one time negotiations for value maximisation. The CoC members further resolved to seek third extension of 60 days for completion of the CIRP. RP apprised the CoC regarding the claims received after the issue of RFRP dated 10.10.2023. This included a claim from Mohini Buildwell Pvt. Ltd.
- On the advice of the CoC members, as discussed in the 8th meeting, the RP informed the PRAs to exclude the Pinnacle Mall as an asset which though appeared in the books of accounts of the Corporate Debtor but there was no legal documentation in place; title had not been

transferred to the Corporate Debtor and possession of the asset was also not with the Respondent No. 1.

- On 26.12.2023, in the 15th CoC meeting, the RP informed the members of the CoC that he had received a claim of Rs. 28 lakhs from the Employees' Provident Fund Organisation ('**EPFO**' in short) and thereafter CoC decided to put the modified resolution plans for e-voting.
- Voting on the modified resolution plans was opened from 04.01.2024 to 11.01.2024 which was extended twice, on the request of the CoC until 16.01.2024. Upon conclusion of the e-voting window, the CoC, in its commercial wisdom, approved the Resolution plan along with the Addendum received from Univastu India Limited, with a voting share of 98.57%. Kotak Mahindra with voting share of 1.43% had abstained from voting and classified as dissenting Financial Creditor.
- Subsequent to approval by the CoC, the RP issued the Letter of Intent ('**LoI**' in short) dated 16.01.2024 to the Univastu India Limited as the Successful Resolution Applicant (hereinafter referred to as the '**SRA**') which thereafter remitted the balance amount of Rs. 2.50 Cr towards performance guarantee on 17.01.2024 having already deposited Rs. 25 Cr towards EMD earlier.
- In January 2024, the RP filed IA No. 7 of 2024 in CP No. 106 of 2022 before the Adjudicating Authority, under Sections 30(6) and Section 31 of the IBC for approval of the Resolution Plan of the SRA.

- The Adjudicating Authority on 21.08.2024 reserved IA No. 7 of 2024 for Orders. Thereafter, vide Order dated 17.12.2024, IA No. 7 of 2024 was listed for clarification on certain issues.
- On 18.12.2024, the RP provided a clarificatory note giving justification on the issues raised by the Adjudicating Authority which the latter however found to be insufficient particularly the amount of Rs 48 lakhs to be paid to the Dissenting Financial Creditor. Vide Order dated 19.12.2024, the Adjudicating Authority adjourned the matter to 06.01.2025 with liberty to the RP to respond to all the issues raised earlier on 17.12.2024.
- On 03.01.2025, the RP conducted the 18th CoC Meeting and apprised the CoC of the clarifications sought by the Adjudicating Authority. On 07.01.2025, the RP requested for time from the Adjudicating Authority to place on record the proceedings of the 18th CoC meeting by an Additional Affidavit. The Additional Affidavit was filed on 15.01.2025 which the Adjudicating Authority allegedly refused to consider on the ground that the said affidavit was rife with procedural irregularities.
- On 06.02.2025, the Adjudicating Authority reserved IA No. 07 of 2024 for Orders. By way of the Impugned Order dated 24.03.2025, the Adjudicating Authority rejected the Resolution Plan of the SRA purportedly for reasons of statutory violations and procedural irregularities and for compromise of the principles of transparency and fairness.

- Aggrieved by the rejection of their resolution plan, the impugned order has been assailed by the SRA in C.A. No.613 of 2025 for rejecting the plan by overriding the commercial wisdom of the CoC and by the RP in C.A. No.612 of 2025 for the Adjudicating Authority not having considered their clarifications to the resolution plan provided by way of the Additional Affidavit dated 15.01.2025 and for rejecting the plan on grounds which did not constitute part of the clarifications sought vide its orders of 17.12.2024.

3. Before we proceed further, it may be useful to notice the prayers of the RP and the SRA in their respective appeals which are as reproduced:

Reliefs sought by the RP in CA- 613 of 2025

- (i) That this Hon'ble Appellate Tribunal may be pleased to allow this appeal and set aside the Impugned Order dated 24.03.2025 passed by the Ld. NCLT, Mumbai in I.A. No.7 of 2024 in C.P. (IB) No.106 of 2024;
- (ii) That this Hon'ble Appellate Tribunal may be pleased to hold that the Resolution Plan of the SRA does not contravene any of the provisions of Section 30(2)(e) of the Code;
- (iii) That this Hon'ble Appellate Tribunal may be pleased to direct the Ld. NCLT, Mumbai to proceed to pass fresh order in I.A. No.7 of 2024 in C.P. (IB) No. 106 of 2022 approving the Resolution Plan of the SRA within a short period of time;
- (iv) That this Hon'ble Appellate Tribunal may be pleased to remove the observations made against the Resolution Professional;
- (v) That costs in relation to this Appeal be provided for; and
- (vi) Any such other and/or further order/ orders be passed as this Hon'ble Tribunal may deem fit and proper.

Reliefs sought by the SRA in CA- 612 of 2025

- (a) That the Hon'ble Tribunal be pleased to allow this Appeal and set aside the Impugned Order dated 24.03.2025 passed by the Hon'ble NCLT, Mumbai in IA No. 7 of 2024 in CP No. 106 of 2024;

- (b) Declare that the Resolution Plan submitted by the Appellant, Univastu Infrastructure Ltd., ought to be approved by the Adjudicating Authority under Section 31 of the IBC;*
- (c) Pending the hearing and final disposal of the said Appeal, the Hon'ble Appellate Tribunal may be pleased to grant a stay of the operation of the Impugned Order; and/or*
- (d) and grant any such other reliefs and orders as this Hon'ble Tribunal may deem fit and proper.*
- (e) Grant any other reliefs and pass any other orders as this Hon'ble Tribunal may deem fit and proper.*

4. Shri Krishnendu Datta, Ld. Senior Advocate appeared for the RP; Learned Sr. Counsel, Shri Abhijeet Sinha appeared for the CoC while Ms Anusha Nagarajan appeared for the SRA in both appeals. The Learned Counsels appearing for the RP, CoC as well as the SRA and have collectively assailed the findings of the Adjudicating Authority in the impugned order. Making their submissions, it has been submitted that the impugned order has been passed without due application of mind and without consideration of the relevant material placed on record for approval of the resolution plan by the Adjudicating Authority. Since their submissions largely overlap, for reasons of convenience, their arguments are compositely captured.

5. It has been contended that the reasoning adduced in the impugned order for rejection of the resolution plan cannot be sustained as no valid grounds of rejection as envisaged under Section 30(2) and Section 31 of the IBC have been substantiated. It was vehemently contended that the Adjudicating Authority had substituted the commercial wisdom of the CoC with its own findings which is not permissible as it is well-settled law that the jurisdiction of the Adjudicating Authority under the IBC is limited in that it cannot sit in appeal over the justness of the commercial wisdom of the CoC

while considering the approval of the resolution plan. It was emphatically asserted that the Adjudicating Authority failed to appreciate that the CoC had voted in favour of the resolution plan of the SRA after detailed deliberations by the members of the CoC with an overwhelming majority of 98.57%. Reliance was placed upon the recent decision of the Hon'ble Supreme Court in ***Piramal Capital & Housing Finance Ltd. v. 63 Moons Technologies Ltd. in Civil Appeal No.1632-1634 of 2022*** wherein it has been held that it is no more res integra that the legislature has given paramount importance to the commercial wisdom of CoC and that the scope of the judicial review by the Adjudicating Authority is limited to the extent provided under Section 31 and that of the authority of the Appellate Authority is limited to the extent provided under Section 61(3) of the IBC.

6. It is the case of the RP and CoC that it is not for the Adjudicating Authority to decide on the fitness and justness of the plan as the legislative fiat of IBC has not provided for any such ground to challenge the justness of the plan which is approved by the CoC in the exercise of its commercial wisdom. It was strenuously contended that the Adjudicating Authority has exceeded its jurisdiction under Sections 31 and 30(2) of the IBC as it cannot examine the justness or commercial prudence or any other aspect of the resolution plan which the CoC has already considered. The Adjudicating Authority has transgressed its jurisdiction in having entered into the issue of admittance/rejection of claims of particular creditors, valuation of the Respondent No. 1's purported assets, alleged arithmetical discrepancies in the plan, etc. and in not going by the wisdom of the CoC which has approved

the plan under Section 30(4) of the IBC. It is not for the Adjudicating Authority to adjudge whether the most viable resolution plan has been tabled before the CoC for bringing about an effective resolution of the Corporate Debtor.

7. It was also asserted that the Adjudicating Authority had rejected the resolution plan on grounds other than those in respect of which it had sought clarifications in its order dated 17.12.2024. The Learned Counsel for the RP highlighted that five queries were posed by the Adjudicating Authority for clarification while the matter was reserved for orders. It was contended that the RP had placed a note on record by way of an affidavit on 18.12.2024 to provide clarifications sought by the Adjudicating Authority. Admittedly, the clarifications offered by the RP were found insufficient by the Adjudicating Authority, and hence the RP furnished an Additional Affidavit dated 15.01.2025 with requisite clarifications which however the Adjudicating Authority did not take proper cognisance of.

8. It was contended that the Adjudicating Authority instead of cursorily dismissing the additional affidavit and debunking the clarifications contained therein as an afterthought to cover loop-holes in the resolution plan ought to have referred the plan back to the CoC for reconsideration in terms of the judgement of the Hon'ble Supreme Court in ***Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531***. If the resolution plan was found deficient on the grounds as pointed out by the Adjudicating Authority in its order dated 17.12.2024, it ought to have given proper and adequate opportunity to the RP who had filed an application for approval of the plan to properly explain and clarify various aspects of the

resolution plan. Even the SRA was not given a chance to address any queries or give any clarifications on the plan to the Adjudicating Authority at a time when they were the best placed to address any such queries. By depriving the SRA of such an opportunity and rejecting the resolution plan without seeking clarifications from them, the Adjudicating Authority had violated the basic principles of natural justice.

9. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

10. The narrow issue for consideration before us is whether the Adjudicating Authority was justified in passing the impugned order rejecting the plan when the CoC had already approved the plan with majority voting and whether the adverse observations made by the Adjudicating Authority that the RP had failed in steering the CIRP in a procedurally correct manner is tenable or not.

11. Before we go into our analysis and findings, it may be constructive to look at the main grounds outlined by the Adjudicating Authority for rejecting the plan of the SRA and for questioning the conduct of the RP which are encapsulated at para 21(xxvii) and (xxviii) of the impugned order as extracted hereunder:

***“xxvii.** While this Tribunal accords due deference to the commercial wisdom of the Committee of Creditors, it must be emphasized that such wisdom cannot override statutory compliance and mandatory legal requirements. The numerous violations of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, particularly concerning treatment of dissenting creditors and feasibility & viability assessment, non-collating and securing the assets of Corporate Debtor, scope for non-adherence to timeline, unequal*

treatment to the same class of creditors, pending unpaid dues owed to employees, and pending claims render the Plan legally untenable.

xxviii. *The conduct of the Resolution Professional in this matter requires separate consideration by the IBBI on the following issues-*

- *Keeping 3 of the immovable properties of the Corporate Debtor out of the collated assets for the valuation of the Corporate Debtor for maximization of the assets of the Corporate Debtor for the Resolution Plan without any legally justifiable grounds which has deprived the CoC from appreciating the true value and worth of the assets of the Corporate Debtor while evaluating and approving the Resolution Plan of the SRA on flimsy ground of some legal opinion. Reference deserves to be made to Paragraphs 6-8 of the present Order.*
- *Further, the RP's actions of not making a specific provision for pending EPFO Claims on the baseless premise of talking to / settling with EPFO Authorities.*
- *Not making any specific provision for dissenting / abstaining Financial Creditor in the total plan outlay against the statutory provisions.*
- *convening the 18th CoC meeting on 03.01.2025 while the matter was Reserved for Orders, filing an Additional Affidavit date 15.01.2025 as a belated attempt to address fundamental deficiencies.*
- *RP kept claims of Mohini Buildwell Private Limited and Assistant Commissioner of State Tax, Mazgaon, Mumbai on hold and got the plan approved from the CoC.*
- *Made no efforts to recover, protect, and preserve the assets of the Corporate Debtor.”*

12. At this juncture, it is equally pertinent to notice the earlier order of the Adjudicating Authority dated 17.12.2024 in which it had sought clarifications from the RP which have been extracted at para 2(xi) of the impugned order as reproduced here-under:

- “1. The case was listed for clarification on the following issues:*
- (i) The upfront cash payment in the Plan, to be paid within 45 days is stated to be Rs. 4.97 Crores. The breakup of the amount is as under:*
- a) Rs. 75 lacs CIRP cost.*
 - b) Rs. 2 lacs Operational Creditor.*
 - c) Rs. 48 lacs Dissenting Financial Creditor.*
 - d) Rs. 4 Crores to the Secured Financial Creditor.*

The sum total of the above-stated figures is more than Rs. 4.97 Crores. RP may clarify the same.

2. The Plan also says that RA proposes to pay Rs. 26.50 Crores to Financial Creditors which is as under:

(i) Rs. 4 Crores upfront.

(ii) Rs. 7 Crores after 360 days from transfer.

(iii) Rs. 4 Crores by issuance of Secured Convertible Debentures for a tenure of one year.

(iv) Rs. 4 Crores by issuance of Secured Convertible Debentures for a period of 5 years.

The Plan further says that the amount of Secured Convertible Debentures shall be paid after 1 year/5 years with a put option, it should not exceed 4% of the total shareholding of the Company by the end of 5th year. In view of the fact that the shareholding of the Company is not given in the Plan/not clarified thus, it leaves enough room for manipulation. Otherwise also, the sum total of the payment stipulated above does not make it Rs. 26.50 Crores for Financial Creditor-RP is directed to clarify the position.

3. RP is further directed to place on record the Balance-Sheet of the Corporate Debtor so as to show the Secured Loan of Kotak Mahindra Prime Limited. In the CoC proceedings, it has been stated by the RP that there is nothing on record to show that any loan was advanced by the Kotak Mahindra Prime Limited and also stated that no vehicle is traceable.

4. The Plan also says that the RA proposes to pay interest at the prevailing SBI base rate if there is any delay by RA in implementation of Plan due to any reason. Incorporation of such a clause is 'Implied Extension' on the part of CoC. CoC may clarify the position. Adjourned to 18.12.2024."

13. On 18.12.2024, the Respondent No. 2 provided a clarificatory note giving justification on all the issues raised by the Adjudicating Authority which the Adjudicating Authority found to be insufficient and vide its Order dated 19.12.2024, the Adjudicating Authority made the following observations which have been extracted at para 2(xiii) of the impugned order as under:

"The short note provided by the Ld. Counsel for the RP on 18.12.2024 has once again failed to take into consideration, the amount of Rs. 48

lacs to be paid to Dissenting Financial Creditor at the outset. On the request of the Ld. Counsel for the RP to respond all the issues raised vide order dated 17.12.2024. Adjourned to 06.01.2025.”

14. When we look at the contents of paras 10 to 12 above, it broadly captures the various grounds which have been inter-alia adverted to by the Adjudicating Authority in the impugned order for rejecting the resolution plan. The thrust of the impugned order primarily centers around the finding that the CoC had not been presented with the correct facts and value of the assets by the RP and that the latter had failed to take proper efforts to recover, protect and preserve the assets of the Corporate Debtor thus necessitating separate consideration by the IBBI on the conduct of RP.

15. Coming to the various grounds held by the Adjudicating Authority for not approving the plan, we notice that one of the principal grounds was inconsistency and blatant discrepancies in the total plan value of the SRA. The Adjudicating Authority has observed that the total plan value in the I.A. No 7 of 2024 filed by the RP mentions plan value to be Rs 27.50 cr while perusal of the resolution plan reveals that the plan value is only Rs 20 cr. Yet again the total plan amount mentioned by the SRA as put to the CoC was Rs 67.21 cr. Since there were three different plan values which are inconsistent with each other, it has been concluded by the Adjudicating Authority that the RP had called the 18th CoC meeting when the matter was already reserved for orders so as to cover up these inconsistencies and discrepancies in the plan values.

16. Per contra, the RP and CoC in their defence contended that the Adjudicating Authority had disregarded the fact that that the RP had

presented all the 3 figures to the CoC – (a) Rs. 67.21 Cr. as the plan value which included Rs. 19.32 crores against which debentures were to be issued to the SRA and Rs. 20.40 crores of estimated incentive to Financial Creditors based on contingent dues; (b) Rs. 47.90 Cr. as the plan value without payment to self of Rs. 19.32 cr; and (c) Rs. 27.50 as the plan value without payment to self and incentive. The incentive was conditional upon the recovery and hence no definitive value could be assigned. The reasons behind giving all these variable numbers was with the purpose of making a full and complete disclosure to the CoC so as to enable the CoC to take an informed decision while considering the resolution plan. It is also the case of the RP that the Adjudicating Authority did not seek any clarification on these alleged inconsistencies in the plan value but made it a ground to reject the plan.

17. When we look at the impugned order, we find that the Adjudicating Authority has concluded that the total plan value was misrepresented by the RP to the CoC and to the Adjudicating Authority in I.A. No. 7 of 2024 by showing inconsistent and separate figures of Rs. 67.21 Cr to the CoC, Rs.27.5 Cr in the IA of RP before the Adjudicating Authority and Rs. 20 Cr. in the Resolution Plan. The Adjudicating Authority has also expressed an apprehension that the RP had convened the 18th CoC meeting without seeking leave of the Court to cover up these inconsistencies in the plan value.

18. The above finding of the Adjudicating Authority however lacks force when we look at the material on record. We find that the various plan values of the SRA were discussed in various CoC meetings. The breakup of the modified plan of the SRA in the table at page 459 of Appeal Paper Book (“**APB**” in short) in the 15th CoC minute quite clearly depicts the basis of arriving at

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these plan values. The three different amounts arising due to incentive/upside and buy-back of shares therefore stood explained at the 15th CoC meeting. It was clarified by the RP in the 15th CoC meeting that the plan value of Rs. 67.21 Cr. was by the inclusion of maximum recoveries to be made from arbitration claim/car/ITNL dues and debentures to be issued to the SRA. The RP cannot be faulted for having communicated to CoC the maximum amount that may be payable upon recovery to make the CoC aware of the maximum amount that can be recovered from contingent events. The RP at IA No 7 of 2024 depicted the plan value as Rs 27.50 Cr. as seen at page 616-617 of APB. However, Rs. 20 Cr therein was referred to as the amount payable through upfront cash and secured convertible debentures. Note 1 therein also stated that the SRA proposed to buy back equity shares issued to all Secured Financial Creditors at a value of Rs. 7.5 Cr. at the end of five years thus adding Rs. 7.5 Cr. over and above the Rs. 20 Cr. to the total plan value. The Plan therefore clearly mentioned that in addition to this amount of Rs. 20 Cr., equity shares of Rs.7.50 cr were to be issued. The total of funds infused and shares issued was thus Rs. 27.50 cr which was the amount also mentioned in IA No 7 of 2024.

19. When resolution plans submitted by PRAs including the present SRA have been subjected to extended deliberations and detailed negotiations in the CoC and the financial component of the plan of the SRA which includes the actual and minimum upfront payments has been approved by the CoC with an overwhelming majority vote, such commercial wisdom deserves due deference and cannot be called into question either by the Adjudicating Authority or this Appellate Authority by supplanting its own wisdom. It is **Company Appeal (AT) (Insolvency) Nos. 612 & 613 of 2025**

clearly misconstrued on the part of the Adjudicating Authority to reject the plan of the SRA on the ground that the plan values projected before the CoC and the Adjudicating Authority suffered from inconsistencies.

20. Another ground for turning down the plan by the Adjudicating Authority in the impugned order is that the resolution plan created a class within a class of operational creditors by the SRA as it provided itself with Optionally Convertible Debentures issued at 0% coupon rate for 30 years with 18% p.a. discount while only providing for upfront payment amounting to 1% of the total admitted claim value to other operational creditors. The Adjudicating Authority held that such diverse treatment of same class of creditors by bifurcating them is against the mandate of Section 53 of the IBC thus rendering the plan unsustainable in law. Further the resolution plan by not providing for a specific and separate provision for priority payment to dissenting/abstaining financial creditors in the total plan outlay was violative of Regulation 38(1)(b) of the CIRP Regulations, 2016 and this constituted a fatal defect in the plan.

21. The SRA has denied that it had discriminated in favour of its own claims as an operational creditor in the plan by proposing a payment of Rs. 19 Cr. to itself as against only Rs. 2 lakh to be paid upfront to the other operational creditors which was 1% of the admitted claim. Attention was adverted to the judgement of this Tribunal in ***Gail India Ltd. v. Ajay Joshi, 2021 SCC OnLine NCLAT 359*** wherein it has been held that the CoC in its commercial wisdom has the discretion to classify Operational Creditors into further categories for deciding the manner in which payment is made to them.

It is also the case of the RP that the Adjudicating Authority did not seek any

clarification on this issue but erroneously made this a ground for not approving the plan.

22. When we peruse the CoC deliberations, we find that the Adjudicating Authority has failed to notice that during the 15th CoC meeting, the said question of potential differentiation between the operational creditors was placed by the SRA before the RP and the CoC alongwith justification in a transparent manner. It was contended that the repayment to self by the SRA was proposed in form of Optionally Convertible Debentures issued at 0% for 30 years with an immediate call option discounting the same at 18% p.a. as can be seen at page 460 of APB. Payment to self by SRA was thus to be made after 30 years without interest while payment to other operational creditors was to be upfront and that if both these payments were compared on the same time-scale, the quantum of self-payment to the SRA would be lower than other operational creditors. When the amounts amount proposed to be paid upfront to the operational creditors and SRA is juxtaposed on the same time-lines, it was stated that the SRA proposed to clear only 0.69% of its own dues as against clearing 1% of the dues of the other operational creditors on an immediate cash basis. The SRA had even proposed to grant the same option to the other operational creditors but the CoC in its commercial wisdom did not approve the same.

23. It is also pertinent to add here that the resolution plan of the SRA also clearly provided for payment to Financial Creditors who voted against their resolution plan or abstained from voting. The plan provided for payment to such dissenting Financial Creditors an amount which shall be equal to the

amount to be paid to such creditors in accordance with Section 53(1) of the IBC in the event of a liquidation of the Corporate Debtor. The plan also provided that such Financial Creditors will be paid in priority to the Financial Creditors who voted in favour of the resolution plan as may be seen at page 540 of APB. Further, the RP had expressly clarified in the additional affidavit dated 15.01.2025 that the upfront payment amount of Rs 4.97 Cr. included the amount of Rs 48 lakhs which was payable to the dissenting Financial Creditor as placed at page 657 of APB.

24. It is well settled that it lies within the domain of the CoC as regards the manner in which the debt of the Corporate Debtor is to be dealt with. In the present factual matrix, all the resolution plans were circulated to the CoC members for evaluation. The 13th, 14th and 15th meetings of the CoC had discussed the plans submitted by all the PRAs in the presence of the PRAs for clear clarifications. The plan of the SRA having been approved by the 98.57% of the CoC and that too after considerable deliberations, we find no good reason for substituting the wisdom of the CoC by that of the Adjudicating Authority and making it a ground for not approving the resolution plan.

25. Another set of objection to the plan by the Adjudicating Authority was on the ground that that RP had violated Sections 18 and 25 of IBC by ignoring three assets of the Corporate Debtor viz shops in Raipur; Pinnacle Mall and Bhakti Sankul Hotel at Nashik. It has been held by the Adjudicating Authority that this conduct of the RP tantamount to material violations of statutory and regulatory requirements by the RP who is otherwise ordained to take proper safeguards for the maximization of the corporate debtor's assets.

26. It was emphatically asserted by the RP and SRA that no clarification was sought even on this issue at all by the Adjudicating Authority but was surprisingly made a ground for knocking down the plan. It was asserted that the Adjudicating Authority had failed to appreciate that these immovable properties could not be made part of the plan as their titles were defective in nature. It was canvassed that no immovable property bereft of registered ownership transfer, can become part of the resolution plan in terms of the judgement of this Tribunal in ***Gaurav Mahendru v. Sunil Kumar Aggarwal*** in ***CA(AT)(Ins) No.1590 of 2024***.

27. When we look at the material facts placed before us, we find that the details of such properties and related shortcomings were brought to the notice of the CoC by the RP at 8th CoC meeting and discussed in detail. As regards the Pinnacle Mall in Nashik, only an advance payment had been made and RP was in possession of only an unstamped and unregistered purchase agreement. SBI, as the lead member of CoC, had advised valuers to exclude this property as it was in the name of a related company of the Corporate Debtor and separately mortgaged with SBI. Hence Pinnacle Mall was excluded from the assets of the Corporate Debtor. The shops in Raipur were in the possession of third party and no title documents were available to the RP except for purchase agreements. As regards Bhakti Sankul in Nashik, the title was in the name of the Corporate Debtor but in possession of third party. Neither the lenders nor the erstwhile management had given valid title documents to the RP. Given this backdrop, we are not persuaded to agree with the Adjudicating Authority that the RP had violated either Section 18 or 25 of the IBC particularly when the Adjudicating Authority has not rendered

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any conclusive finding on the rights, title and interests of the Corporate Debtor qua these immovable properties.

28. Given this backdrop, the question that arises is whether sufficient steps had been taken by the RP to safeguard these immovable properties or whether the RP had disregarded the asset maximisation objective of IBC. The shops at Raipur and Bhakti Sankul had been added to the assets of Corporate Debtor as seen at page 512 of APB and these assets were also valued by the valuer. No objection was received from any quarter with regard to the valuation undertaken. The RP has given evidence that it had filed police complaint and eviction application to protect the assets of the Corporate Debtor. Even otherwise all assets were considered in the PUFÉ and Avoidance Applications which were also filed by the RP with respect to each property vide I.A. Nos. 2967 of 2023 and 1204 of 2024. Moreover, the SRA's Resolution Plan also provided for distribution of proceeds from avoidance applications for the benefit of Secured Financial Creditors. The Adjudicating Authority has clearly failed to take these aspects into account. We are also inclined to agree with the RP that valuation is not a question to be casually raised by the Adjudicating Authority after the commercial wisdom of the CoC has approved a plan in terms of the judgement of the Hon'ble Apex Court in ***Ramkrishna Forgings Ltd. v. Ravindra Loonkar, 2023 INSC 1013.***

29. Another reason for not approving the plan stems from the findings returned by the Adjudicating Authority that three claims had not been considered by the RP. The claims of operational creditors like Mohini Buildwell Pvt. Ltd. and Commissioner of Sales Tax, Mazgaon, Mumbai were not verified and the SRA did not make provision for these claims in the resolution plan.

No specific provision was made in the plan for the claim of the EPFO which has been held to be violative of Section 30(2)(e) and Section 53 of the IBC by the Adjudicating Authority.

30. The findings of the Adjudicating Authority have been contended to be misplaced by the RP since claims raised by these creditors were brought to the notice of the CoC by the RP and the same was discussed by the CoC. The CoC had noted that the plan did make provision for these claims in that an amount of Rs 3 lakhs was set aside by the SRA towards contingencies to squarely provide for these claims if they so materialised. It was also asserted that no clarification was sought on these claims by the Adjudicating Authority except with respect to the status of the claim filed by Mohini Buildwell Pvt. Ltd. as may be seen at page 649 of APB.

31. As regards claims of Mohini Buildwell Pvt. Ltd., clearly the claim was received after the last date for filing claims. Hence the claim could not have been admitted. This fact was categorically communicated to Mohini Buildwell. Admittedly, however, there was a *bonafide* error on the part of the RP that the status of the claim was not changed from the category of “under verification” to “not admitted” immediately. When the reasons for non-acceptance of the claims had already been duly communicated to Mohini Buildwell and the latter had not challenged the rejection of their claim, mere inability on the part of the RP in not contemporaneously modifying and updating this position does not constitute a cogent statutory ground for rejection of the entire plan. It is also noteworthy that this technical omission was endeavoured to be clarified by the RP vide Additional Affidavit dated 15.01.2025 but the same was not accepted by the Adjudicating Authority for no sound reasons.

32. As regards claims of the Assistant Commissioner of State Tax, Mazgaon, the RP had raised a query regarding these claims as appeals were filed against GST orders which are yet to be decided. Upon not receiving any response from them, the RP committed no mistake in placing the claim on hold. The Assistant Commissioner of State Tax, Mazgaon had in any case not challenged the non-inclusion of their claims.

33. As regards EPFO claims, we find that RP informed CoC in the 15th CoC meeting that a claim of Rs. 28 lakh had been received from EPFO and that if the liability stood confirmed and validated, the claim amount will have to be reduced from the Plan amount. Being in the nature of an unverified claim, no provision could have been made in the plan especially as it was not a part of the Information Memorandum. EPFO had subsequently revised its claim on 28.12.2023 from Rs. 27.96 lakhs to be only Rs. 4520/- which amount would have been squarely covered by the amount set aside for contingencies in the Plan. We are therefore inclined to agree with the RP and SRA that in any event, the plan cannot be set aside for a trivial claim amount of Rs. 4520/- only.

34. Coming to yet another ground cited by the Adjudicating Authority in rejecting the plan which is that the provision to pay interest on delayed implementation of the plan was prejudicial to the interests of the creditors and violative of Regulation 38 of the CIRP Regulations. The Adjudicating Authority had therefore sought clarifications vide its order dated 17.12.2024 and the RP had responded to this query by issuing a clarification note dated 18.12.2024 as seen at page 634-635 of APB. However, in the order dated 19.12.2024, the clarification provided by the RP vide clarification note dated

18.12.2024 was not accepted without giving any reasons as is seen at page 636 of APB.

35. We do not find much force in this finding of the Adjudicating Authority to strike down the plan on grounds that interest payment upon delay in implementation of the resolution plan was indicative of impending default in payment. We find that the CoC had duly considered the Resolution Plan and after arriving at its own satisfaction the Resolution Plan has been approved by it. Furthermore, this clause did not deprive the CoC of the prerogative to initiate appropriate proceedings against the SRA for non-implementation of the plan as Clause 11 in the Addendum to the plan had categorically and expressly provided for secured financial creditor to proceed against SRA for default in payment. We find no good grounds to disagree with the RP and the CoC that the issue of interest payment upon delay in implementation of the Resolution Plan is a subject which falls squarely within the commercial wisdom of the CoC.

36. Yet another ground of objection to the plan expressed by the Adjudicating Authority was that the feasibility and viability of the plan was not expressly mentioned in the resolution plan thus violating Regulation 38 of CIRP Regulations. It was asserted by the RP that no clarification was sought on this issue by the Adjudicating Authority but surprisingly made a ground for rejecting the plan. Feasibility and viability aspects were parameters clearly expressed in the RFRP. The feasibility and viability of all PRAs' plans were considered during the explanations sought in several CoC meetings including the 15th meeting. Furthermore, the resolution plan of the SRA contained a

declaration qua the feasibility and viability of the resolution plan as can be seen at page 532 of APB. As per the provision and procedure prescribed with regard to approval of Resolution Plan and the powers and functions of the CoC as outlined in the IBC, it is the CoC which is required to deliberate on the feasibility and viability of Resolution Plan of SRA which deliberations were taken up by the CoC.

37. Prima facie, for the aforesaid reasons as discussed, we find the observations of the Adjudicating Authority in rejecting the resolution plan runs contrary to the material on record; the deliberations and minutes of the meetings of the CoC; the provisions of the plan of the SRA and the clarifications provided by the RP vide their clarification note dated 19.12.2024 and the Additional Affidavit dated 15.01.2025. Furthermore, the Adjudicating Authority has nowhere recorded that on examination of the resolution plan of SRA, it found that any provision of law appears to have been contravened or that there is any incidence of non-compliance to Regulations 38 and 39 of CIRP Regulations, 2016. We are of the considered view that though the CoC has done due diligence and meticulously evaluated the matrix in approving the plan of SRA, however, the Adjudicating Authority has ended up reconsidering various financial aspects of the plan. The majority CoC has already approved the plan in their commercial wisdom as contemplated under the law. That being the case, the Adjudicating Authority with the limited powers of judicial review available to it, cannot deal with the merits of Resolution Plan or substitute its views with the commercial wisdom of the CoC in rejecting the resolution plan unless it is found it to be contrary to the

express provisions of law and against the public interest. There can be no fetters on the commercial wisdom of CoC and the supremacy of commercial wisdom of CoC has been reaffirmed time and again by the Hon'ble Supreme Court in a catena of judgements including ***K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150 ; Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531; Maharashtra Seamless Limited v. Padmanabhan Venkatesh (2020) 11 SCC 467; Kalpraj Dharamshi v. Kotak Investment Advisors Limited, (2021) 10 SCC 401 and Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director (2021) 9 SCC 657.*** When the CoC has approved a Resolution Plan by requisite voting share after considering its feasibility and viability, such decision of CoC cannot be interfered in the exercise of judicial review either by the Adjudicating Authority or by this Tribunal in the exercise of its appellate powers.

38. Having said that we also do not find any good ground to refer the conduct of the RP in the present facts of the case to the IBBI. When we look at the sequence of events, we find that after the Corporate Debtor was admitted into CIRP, the RP on the basis of claims admitted, constituted the CoC. The composition of the CoC was never challenged at any stage. Material on record show that timely CoC meetings were also held. It is also an undisputed fact that the RP had published Form G on two occasions. The RP had given sufficient opportunity to PRAs to modify their plans to get the best possible plan for the revival of the Corporate Debtor. In any case, the CoC and

the RP together ensured value maximisation by republishing Form G twice. In both rounds, modified plans were received. The plan value of SRA's Resolution Plan as submitted in I.A. No.7 of 2024 is Rs. 27.50 Cr which is much higher than the plan value received in the first round of Form G of Rs 11.10 Cr and also the liquidation value of Rs. 7.48 Cr. This reinforces that there was no compromise on maximisation of the plan value on the part of the RP. We also find force in the contention of the RP that it was imperative for the RP to apprise the CoC of the clarifications being made before the Adjudicating Authority since the resolution plan had already been approved by the CoC. On the holding of the 18th CoC meeting, we do not find any infirmity or irregularity on the part of the RP. The clarifications sought by the Adjudicating Authority on 17.12.2024 being germane to the decision-making process of the CoC in the appraisal and evaluation of the resolution plan, the RP was duty bound to place these clarifications only after approval of the CoC. The submission of the RP that there is no bar under the IBC which prohibits the CoC from convening meetings after it has approved the resolution plan and the same is pending approval before the Adjudicating Authority is fully supported by the judgment of this Tribunal in ***Venus India Asset-Finance (P) Ltd. v. Suresh Kumar Jain 2023 SCC OnLine NCLAT 69***. The Adjudicating Authority ought to have considered the deliberation of the 18th CoC meeting to satisfy the queries raised by itself rather than outrightly ignore the same merely on an apprehension that the RP had held this meeting unauthorisedly to plug the loopholes in the plan.

39. In view of the above, we find sufficient merit in both the appeals. The impugned order is set aside with the direction to the Adjudicating Authority to remit the resolution plan of the SRA to the CoC for its consideration in the light of the queries raised by the Adjudicating Authority earlier on 17.12.2024 and 19.12.2024. The CIRP period is extended by 90 days for this purpose. We also expunge the observations made by the Adjudicating Authority on the conduct of the RP and do not find any reason for referencing the RPs conduct to IBBI. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**Place: New Delhi
Date: 09.07.2025**

Abdul/ Harleen