

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD
COURT No.1**

**IA (IBC) No.1475 OF 2022
in
CP (IB) No.17/9/HDB/2020**

In the matter of

Trimex Industries Private Limited

Trimex Towers

No.1, Subbaraya Avenue

C.P. Ramaswamy Road

Alwarpet, Chennai – 600018

Represented by its authorised signatory

Uppalapati Sasidhar.

.. **Applicant**
Operational Creditor

AND

1. Sathavahana Ispat Limited

Represented by Resolution Professional

Bhuvan Madan

having registered office at 505

Block 1, Divyashakti Complex

Ameerpet, Hyderabad – 500016.

Also at:

A-103, Ashok Vihar

Phase-3, Delhi 110052.

2. JC Flowers Asset Reconstruction Private Limited

12th Floor, Crompton Greaves House

Dr. Annie Besant Road

Worli, Mumbai

Maharashtra – 400030.

3. Jindal Saw Limited

A-1, UPSIDC Industrial Area

Nandgaon Roadkosi Kalan

Mathura, Uttar Pradesh-281403.

Also at:

Jindal Centre

12, Bhikaji Cama Place

New Delhi – 110066.

4. Bhuvan Madan

Resolution Professional of

Sathavahana Ispat Limited

A-103, Ashok Vihar, Phase-3

Delhi – 110052.

.. .. Respondent
No.1: Corporate Debtor

No.2: Member, Committee of Creditors

No.3: Successful Resolution Applicant

No.4: Resolution Professional

APPLICATION UNDER SECTION 60(5) OF I&B
CODE, 2016 READ WITH RULE 11 OF THE NCLT
RULES, 2016 SEEKING CERTAIN DIRECTIONS/
RELIEFS.

Date of order : 31ST MARCH 2023

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)**

Parties / Counsels Present:

For applicant : Shri Avinash Desai, Senior Advocate assisted
by Ms.Mrudula Sarampally and
Ms.Mahathi Reddy, advocates.

Respondent no.1 : Shri Alay Razvi and Shri Shank Agarwal,
Advocates.

Respondent no.2 : Juris Corp, advocates.

Respondent no.3 : Shri Daizy Chawla, advocate for S&A

Law Offices.

Respondent no.4 : Shri Alay Razvi and Shri Shank Agarwal,
Advocates.

PER BENCH

The applicant/ Trimex Industries Private Limited/ Operational Creditor has filed this application under section 60(5) of the I&B Code, 2016 read with Rule 11 of the NCLT Rules, 2016, with the following prayers:

- (a) Set aside the Letter of Intent dated 19.10.2022 issued by the Resolution Professional to Jindal Saw Limited confirming Jindal Saw Limited as the Successful Resolution Applicant.*
- (b) Call for fresh Resolution Plans with respect to the Corporate Debtor by extending the time period for CIRP.*
- (c) Bar Jindal Saw Limited, its sister concerns or its alter egos from participating in the fresh CIRP process.*
- (d) Declare the Agreement for Repair and Maintenance dated 02.11.2021 issued to Jindal Saw Limited as being void, tailor-made to Jindal Saw and exclude the costs incurred by Jindal Saw Limited from the CIRP cost.*
- (e) Direct the RP to disclose the sales/ invoices during the period which Jindal Saw Limited operated the plant as per the Agreement for Repair and Maintenance dated 02.11.2021.*
- (f) Direct the RP to disclose the Resolution Plans submitted.*
- (g) Direct investigation/ enquiry into the terms of the contract awarded to Jindal Saw Limited.*

The applicant/ company is incorporated under the Companies Act, 1956. Respondent no.1/ Sathavahana Ispat Limited is the Corporate Debtor, which is undergoing Corporate Insolvency Resolution Process (CIRP) vide order dated 28.07.2021 in CP (IB) No.17/9/ HDB/ 2020. Respondent no.2 is the sole Member of the Committee of Creditors (CoC), Respondent no.3 is the Successful Resolution Applicant (SRA). Respondent no.4 is the Resolution Professional.

1. Brief particulars of the respondents are given as under:

i) The Respondent No. 1 herein is Sathavahana Ispat Ltd. (SIL), a company undergoing corporate insolvency resolution process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC or Code) and is represented by its Resolution Professional Mr Bhuvan Madan (RP).

ii) The Respondent No. 2 is JC Flowers Asset Reconstruction Company Private Limited (JC Flowers), an asset reconstruction company and also the sole member of the Committee of Creditors (CoC) of SIL.

iii) The Respondent No. 3 is Jundal Saw Limited (Jindal Saw) the Successful Resolution Applicant of SIL, whose plan has been approved by the CoC.

iv) The Respondent No. 4 is Mr. Bhuvan Madan, the RP of SIL appointed vide Order of the National Company Law Tribunal (NCLT), Hyderabad dated 08/09/2021.

2. Having regard to the chequered history of the present case the facts may be appreciated in the following chronology:

Dec. 2021 IA No.791 of 2021 in CP (IB) No.17/9/HDB/2020 was filed by the applicant herein, namely, Trimex Industries Private Limited, wherein it was *inter alia*, prayed that the Committee of Creditors be restrained from considering the Resolution Plan of the Prospective Resolution Applicant/ Jindal Saw Limited.

07.03.2022 This Tribunal passed the following order in IA No.791 of 2021 (ANNEXURE-A/1):

“Pending disposal of this IA, if the CoC is convened and the Resolution Plan is voted, then we direct the CoC to put the outcome in hold till the next hearing date.”

05.05.2022 Thereafter, said IA No.791 of 2021 has been disposed of by this Tribunal, however, vide order at ANNEXURE A/2, with divergent verdicts. Consequently, the matter was submitted to the Hon’ble President under section 419(5) of the Companies Act, 2013, with a request to refer it to another Bench, duly formulating the following point.

“Whether the CoC be restrained from considering the Resolution Plan of respondent no.3/ the Prospective Resolution Applicant, who/ which has already submitted Resolution Plan to the CoC?”

14.10.2022 On reference by the Hon’ble President, Shri Mohan Raj, Hon’ble Member (Judicial), NCLT, Cuttack Bench has

delivered verdict, vide order at ANNEXURE A/3, in IA No.791 of 2021 in CP IB No.179/HDB/2020 as under:

“56. In these circumstances, the reference is answer(ed) that the Committee of Creditors cannot be restrained from considering the Resolution Plan of the 3rd respondent and I agree with the findings of the Hon’ble Judicial Member and accordingly am of the view that this application deserves to be dismissed as held by him. I direct the Registry to place this order before the NCLT, Hyderabad to pass appropriate orders with regard to disposal of the application.”

17.10.2022 In view of the findings recorded by the Hon’ble Member (Judicial), NCLT, Cuttack Bench vide above order dated 14.10.2022, this Tribunal has passed the following order:

“In view of the findings above we make it clear that the Committee of Creditors are at liberty to consider the resolution plans which are already received including that of the 3rd respondent, for voting and follow up further as per the procedure under the code. With these directions IA No.791/2021 stands dismissed. Restraint order earlier passed stands lifted.”

The applicant/Trimex Industries Private Limited/ Operational Creditor has carried the above order dated 17.10.2022 of this Tribunal before the Hon’ble NCLAT, Chennai by way of

- Company Appeal (AT) (CH) (Ins) No.434/ 2022, IA No.1098 of 2022 (for ‘exemption’) and IA No.1099 of 2022 (for stay).
- 18.10.2022 Twelfth CoC Meeting held on 18-10-2022 confirmed Jindal Saw as Successful Resolution Application (SRA).
- 19.10.2022 Consequently, the Resolution Professional has issued Letter of Intent (LoI) to Jindal Saw.
- 20.10.2022 The Resolution Professional has filed an application under section 30(6) of the I&B Code, 2016 for approval of Resolution Plan of Jindal Saw being IA (IBC) No.1198 of 2022. Such confirmation by CoC is pending approval of this Tribunal.
- 21.10.2022 The Corporate Debtor has filed Disclosure in respect of 12th CoC Meeting dated 18.10.2022, on 21.10.2022 (ANNEXURE A/4) to National Stock Exchange of India Limited.
- 30.11.2022 The applicant/ Trimex Industries Private Limited/ Operational Creditor has preferred the present application/ IA No.1475 of 2022, mainly challenging the decision of the CoC in approving the Resolution Plan of Jindal Saw in 12th CoC Meeting dated 18.10.2022, among other reliefs as stated above.
- 02.01.2023 On an appeal instituted before the Hon’ble NCLAT, Chennai by the applicant/ Trimex Industries Private Limited/ Operational Creditor being Company Appeal (AT) (CH) (Ins) No.434/2022 and IA Nos.1098 and 1099 of 2022, the Hon’ble Appellate Tribunal has passed the following order:

“16. At this stage, this ‘Tribunal’, simpliciter, in the instant ‘Appeal’, without ‘expressing any opinion on the merits’ of the matter, one way or the other and not delving deep, permits the ‘appellant’/ ‘applicant’ to raise all available factual and legal pleas, before the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench – I), including the aspect of raising such necessary pleas concerning the recent order, about which the ‘appellant’/ ‘applicant’ is ‘aggrieved’, viz. in respect of the ‘impugned order’ dated 17.10.2022 in IA/791/2021 in CP (IB) No.17/9/HDB/2020, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Bench – I).

17. Be that as it may, the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Bench – I) shall expressly permit the ‘appellant’/ ‘applicant’ to raise those pleas (both on facts and in law), which are available to it in IA/791/2021 in CP (IB) No.17/9/HDB/ 2020, before the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Bench – I), at the time of ‘Hearing’ of IA/ 1475/ 2022 in CP (IB) No.17/9/HDB/2020 in a conclusive manner and after providing an opportunity of ‘hearing’ to the other side, by adhering to the ‘principles of natural justice’, is to pass a fair, just and a reasoned order (speaking one) on ‘merits’, by adverting to the pleas raised by countering them and to pass ‘final orders’, of course, uninfluenced and

untrammelled with any of the ‘observations’ made by this ‘Tribunal’, in this Comp. App. (AT) (CH) (Ins) No.434/ 2022.

With the aforesaid ‘observations and directions’, the instant Comp. App. (AT) (CH) (Ins) No.434/ 2022 stands disposed of. The connected IA/ 1098/ 2022 (for ‘exemption’) and IA/ 1099/2022 (for stay) are closed.”

3. In the above backdrop the present application being IA No.1475 of 2022 is required to be adjudicated upon having regard to the pleas raised in this IA as well as those raised in IA No.791 of 2021 as directed by the Hon’ble NCLAT, Chennai in its above order dated 02.01.2023.

4. As directed by Hon’ble NCLAT, Chennai in the order dated 02/01/2022, the matter was dealt with afresh:

(i) The applicant/ Operational Creditor has raised the point of funding of JC Flowers ARC Private Limited to purchase the financial debt from the Bank. The details are provided as under:

Percent- age	Comprising of amount of Rupees	Mode of subscription
85.00	451,35,00,000	In form of security receipts issued by respondent no.2/ JC Flowers subscribed by Hexa Securities & Finance Company Limited, a NBFC. It is a wholly owned subsidiary of Hexa Tradex Limited, which was a unit of Jindal Saw Limited till 2010.

13.05	69,65,00,000	Non-convertible debentures issued by respondent no.2/ JC Flowers Asset Reconstruction Private Limited and subscribed by Siddeshwari Tradex Private Limited, which is reported to be part of Jindal Saw Group.
01.95		Funded by equity investment by JC Flowers Asset Reconstruction Private Limited.

Applicant further submits that it is evident that primary source of funds used to purchase the account and financial debt of the Corporate Debtor by JC Flowers is derived from Siddeshwari Tradex Private Limited and Hexa Tradex Limited, which according to their submission are part of Jindal group. In support of this contention the applicant/ Operational Creditor has enclosed Master data (ANNEXURE-A/6) in respect of the said company downloaded from the website of the MCA; and also NOC dated 08.04.2013 (ANNEXURE-A/7) to the RoC, Ahmedabad, Gujarat expressing 'no objection', if Siddeshwari occupies the premises owned by them. Besides, they have further submitted that Ms. Arti Jindal is a Director on the board of the Directors of Siddeshwari. Shareholding pattern of Jindal Saw (ANNEXURE-A/8) indicates that Siddeshwari holds 11.68% Ms. Arti Jindal holds 1.27% in Jindal Saw Limited.

By virtue of the above submissions the applicant/ Operational Creditor states that the above four entities, namely, Jindal Saw (SRA), Hexa

Securities, Hexa Tradex and Siddeshwari (who funded JC Flowers ARC) belong to single group.

The applicant/ Operational Creditor has further elaborated that Financial Statements of Siddeshwari for the Financial Year 2020-21 (ANNEXURE-A/12) disclose that Jindal, Hexa Securities and Hexa Tradex are all listed as entities where key management personnel and their relatives exercise significant influence over the companies.

(ii). It is submitted by the applicant that during the CIRP, Request for Proposal for Repair and Maintenance (RFP) dated 04.09.2021 (ANNEXURE- A/15) was made by the then IRP. Immediately thereafter, the CoC constituting the Sole FC/ JC Flowers filed an application for replacement of IRP and appointed Mr. with Bhuwan Madan as new RP. This Tribunal, vide order dated 08.09.2021, appointed Bhuwan Madan, respondent no.4 herein as Resolution Professional. Public Notice was issued on 16.09.2021. Copies of said order dated 08.09.2021 and Public Notice dated 16.09.2021 are at ANNEXURE A/16 (COLLY.). Bhuwan Madan as per applicant had association for nine years with Jindal group as Associate Vice President (Finance & Treasury), Jindal Steel & Power Limited. A copy of Linked In Profile of Bhuwan Madan is at ANNEXURE – A/17. Within two days on having been appointed as Resolution Professional, Shri Bhuwan Madan issued an addendum dated 17.09.2021 (ANNEXURE A/18) to the RFP for repair and maintenance contract and made following change in the scope:

“The Resolution Professional can also consider the offer to where Contractor can run the complete facilities during the contract period and to have full access to the entire facilities. Contractor

would be required to arrange the raw material & sale (sic., sell) the finished products. In such situation, contractor can retain the consideration received from sales.”

It is alleged that Addendum dated 17.09.2021 (ANNEXURE A/18) was issued in haste giving merely one working day for incorporation of changes as per the revised RFP. Besides Performance Requirements have been drastically altered viz-a-viz earlier Performance Requirements. Pre-revised Performance Request and Revised Performance Request are illustrated at page 17 of the IA, in a comparative table.

As regards Agreement for Repair and Maintenance dated 02.11.2021 issued to Jindal Saw Limited, which was for a term of seven months, viz. until May 2022, it had travelled beyond the period of Corporate Insolvency Resolution Process (CIRP). That apart, the mode and manner of the impugned Agreement for Repair and Maintenance dated 02.11.2021 issued to Jindal Saw Limited violates norms of public procurement and the Guidelines issued vide Manual for Procurement of Works dated 01.07.2022 (ANNEXURE A/20) issued through Government of India, Ministry of Finance, Department of Expenditure,

It is submitted that the Resolution Professional ought to have disclosed to this Tribunal about selection of Jindal Saw Limited and that it would be paid its repair fee as part of CIRP costs.

The petitioner further submits that the Resolution Professional has submitted Disclosure dated 19.10.2021 (ANNEXURE A/21), under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements)

Regulations, 2015, informing about decision of the CoC as to the appointment of Jindal Saw Limited as contractor for repair and maintenance works of the Corporate Debtor. The said Disclosure dated 19.10.2021, reveals that the CoC in its Fifth Meeting dated 14.10.2021/ 16.10.2021 accorded approval for appointment of Jindal Saw as contractor for repair and maintenance works for a total consideration of Rs.266,00,00,000. It is alleged that over and above the said consideration of Rs.266 crores, Jindal Saw has been given complete control and management of the affairs of the Corporate Debtor including retention of all proceeds and consideration from sales during the period of contract. Also included are payment with an additional 16% interest per annum in the event of default of payment by the Corporate Debtor on and after 15 days from raising of bill by Jindal Saw. It is alleged that such a default clause of such minimal timeline and stringent nature, on a Corporate Debtor under CIRP, ex facie, is an attempt to usurp and siphon away monies to the detriment of the Corporate Debtor and its other stakeholders.

(iii) The petitioner thus submits that the CoC (Sole Member/ JC Flowers) had acted in a non-transparent manner as explained below:

- Disclosure dated 19.10.2021 states that -- the appointment of Jindal Saw as Repair and Maintenance Contract was made pursuant to detailed technical evaluation, recommendation by experts and various discussions/ negotiations. Whereas, the CoC proceedings produced in IA No.791 of 2021 in CP (IB) No.179/9/ HDB/2020 disclosed that only one Technical Expert, namely, Korus Engineering Solutions Private Ltd was appointed in this regard.

- Guidelines governing Procurement of Consultancy and other Services issued by Ministry of Finance, Department of Expenditure (available on CVC Website) [ANNEXURE A/23] prescribed minimum period of four weeks and maximum of three months require for receiving proposal. However, in the present case, Report has been submitted within 38 days. This is in utter violation of the above Guidelines and in contravention of best practices.

(iv) The applicant has filed Additional Affidavit and Verifying Affidavit dated 27.12.2022, with the following prayers:

“(a) Reject the Resolution Plan submitted by Jindal Saw and as approved by the sole CoC Member, JC Flowers as being contrary to law in terms of section 29A, 30 and 31 of the Code.

(b) Direct the RP to disclose the Agreement for operation, maintenance and management dated 02.08.2019 entered into between the Corporate Debtor and Jindal Saw.”

(v) Besides the above prayers, by this Additional Affidavit, the applicant sought leave to add additional grounds, additional facts in IA No.1475 of 2022 and to bring additional document thereto, as under:

(a) Jindal Saw does not qualify to be a Resolution applicant and it does not fulfil the requirements under section 29A of the I&B Code, 2016.

(b) As already submitted by the applicant in IA No.1475 of 2022 the Corporate Debtor had entered into an Agreement for Operation, Maintenance and Management with Jindal Saw Limited in 2019, valid for

three years, extendable upto 10 years. A disclosure to this effect has been made under SEBI (LODR) Regulations by the Corporate Debtor to BSE and NSE vide its letter dated 02.08.2019. A copy of the said Disclosure is produced at ANNEXURE-1 of this Additional Affidavit. Now the applicant by way of this Additional Affidavit dated 27.12.2022 seeks to bring the said Disclosure dated 02.08.2019 on record of IA No.1475 of 2022.

(c) It is submitted by the applicant that sufficient and essential information of technical services had been passed on to Jindal Saw during the course of grant and execution of the Repair and Maintenance Contract of SIL. Thus, Jindal Saw could not have been declared SRA. The Resolution Professional, at the threshold, ought to have declared Jindal Saw ineligible to submit Resolution Plan. The CoC ought not have approved the Resolution Plan submitted by Jindal Saw, which is otherwise ineligible under section 29A of the I&B Code, 2016.

(d) Jindal Saw is maintaining, operating and in management of the Corporate Debtor since 2019 in accordance with the above Disclosure dated 02.08.2019, as such ineligible to submit a Resolution Plan.

(e) It is alleged by the applicant that the CIRP was piloted by a collusive group of individuals/ entities with a pre-meditated objective, solely for personal gain as opposed to maximisation of value of assets of the Corporate Debtor. It is further alleged by the applicant that JC Flowers ARC Private Limited, the Sole Member of the CoC has acted in a manner detrimental to the commercial wisdom while only allowing the interests of Jindal Saw/ SRA against the principles of the I&B Code.

5. Respondents have filed their reply and main points are as under:

(A) Respondents' no.1 and 4 have filed REPLY dated 02.01.2023, contending that:

(i) The prayers made by the applicant, whose operational debt is equivalent to 1.28% of the total debt of the Corporate Debtor, are beyond the scope of and contrary to the I&B Code, 2016.

(ii) The applicant had previously prayed for restraining the CoC from even considering the Resolution Plan of respondent no.3/ SRA vide IA No.791 of 2021. The said IA has been dismissed by this Tribunal vide order dated 05.05.2022 (para 15.5/ page 61 is relevant) and also vide order dated 14.10.2022. Para 56 of order dated 14.10.2022 (NCLT, Cuttack Bench) reads:

“In these circumstances, the reference is answered that the Committee of Creditors cannot be restrained from considering the Resolution Plan of the 3rd respondent and I agree with the findings of the Hon’ble Judicial Member and accordingly am of the view that this applications deserves to be dismissed as held by him. I direct the Registry to place this order before the NCLT, Hyderabad to pass appropriate orders with regard to disposal of the application.”

Pursuant to the said order NCLT, Hyderabad Bench passed order dated 17.10.2022 in IA No.791 of 2021 as under:

“In view of the findings above we make it clear that the Committee of Creditors are at liberty to consider the resolution plans which are already received including that of the 3rd respondent, for voting and follow up further as per the procedure under the Code. With these directions IA No.791 of 2021 stands dismissed. Restraint order earlier passed stands lifted.”

(iii) The Referral Bench has also dismissed the contentions of the applicant challenging the status of respondent no.3 as the awardee of the repairs and maintenance contract vide para 50 of its order. Therefore, the applicant cannot reopen the same issues by way of the present application. The issues were discussed, deliberated and decided by this Tribunal in IA No.791 of 2021. The same are barred by the principles of *res judicata*.

(iv) The applicant is a stakeholder as an Operational Creditor with merely 1.28% of the total admitted debt. Yet the applicant seeks to effectively hamper the CIRP of the Corporate Debtor.

(v) The applicant has preferred an appeal before the Hon'ble NCLAT, Chennai by way of Company Appeal (AT) (CH) (Ins) No.434/ 2022, which is currently pending. Rather than waiting for outcome of the said appellate proceedings the applicant has preferred the present application on the same grounds.

(vi) Furthermore, the applicant has filed SLP, in the nature of Public Interest Litigation (PIL) before the Hon'ble Supreme Court of India on or about 11.11.2022, through a proxy. Such multiple proceedings on the same grounds, for same reliefs are barred by the principles of *res judicata*. In the meantime the Hon'ble Supreme Court has dismissed, at the threshold, said PIL, vide order dated 18.11.2022 (ANNEXURE R1/2 of this Affidavit).

(vii) As regards the allegations levelled by the applicant that there would be conflict of interest if respondent no.4 is appointed as Resolution Professional as he was formerly associated with Jindal Group for 9 years and has worked as Associate Vice President, Finance & Treasury at Jindal

Steel & Power Ltd., it is submitted that there will not be any such conflict of interest. The applicant has failed to establish such conflict of interest.

(viii) Respondent no.4 has resigned from Jindal Steel & Power Ltd in January 2018, and he was appointed as Resolution Professional on 08.09.2021, viz. after more than three years.

(B). Respondent no.3 has filed REPLY dated 02.01.2023, contending that:

(i) The applicant made various attempts to stall CIRP. Proceedings instituted by the applicant and others and outcome thereof:

- Applicant filed IA No.791 of 2021 challenging consideration of Resolution Plan of respondent no.3 by respondent no.2/ CoC. Said IA has been dismissed vide order dated 05.05.2022.
- One Prakash Sharma filed Writ Petition (C) No.979 of 2022 before the Hon'ble Supreme Court of India to stall resolution process. Said Writ Petition has also been dismissed vide order dated 18.11.2022.
- One Maa Tara Enterprises filed IA No.1392 of 2022, inter alia, seeking to declare all meetings held by CoC post 10.01.2022 illegal and void. Said IA has also been rejected vide order dated 23.12.2022 with exemplary costs of Rs.1,00,000/-.

(ii) The applicant has failed to establish its locus standi or cause for filing these proceedings.

(iii) Resolution Plan earlier submitted by respondent no.3 has been modified in terms of judgment of the Hon'ble Supreme Court in State Tax Officer Vs. Rainbow Papers Ltd, Civil Appeal No.1661 of 2020, which has been approved by respondent no.2 in Meeting dated 16.12.2022. As such the present application has become infructuous.

(iv) The applicant was one of five Prospective Resolution Applicants (PRAs). While issuing provisional list of eligible PRAs, the Resolution Professional had invited objections *inter alia* to the inclusion of any PRA in the provisional list within five days as per Regulation 36A(11) of the CIRP Regulations. Though the applicant had opportunity to challenge inclusion of respondent no.3/ Jindal Saw Limited as PRA, it had failed to do so. Apart from not having any locus to file the present application and waiving its right to object as available to the application under Regulation 36A(11) of CIRP Regulations, by not filing objection, the applicant clearly lacks bona-fide in approaching this Tribunal.

(v) This AA is neither a writ court nor it has any revisionary powers to adjudicate the issue in question. Section 60(5) of IBC and Rule 11 of NCLT Rules are the provisions which can be invoked by this AA with great caution. In the present case, the applicant itself chose not to avail opportunity to object candidature of respondent no.3 as PRA, when the list of PRAs was made available to it.

(vi) As regards the allegation levelled by the applicant that respondent no.3/ SRA is in control and management of the Corporate Debtor as it had executed contract with the Corporate Debtor during CIRP, it is submitted by the applicant that awarding contract for repair and maintenance of the Corporate Debtor of the Corporate Debtor to respondent no.3 does not amount to giving whole management and control of the Corporate Debtor to respondent no.3, as alleged by the applicant.

(vii) Respondent no.3 is a public limited company having reputation of a total pipe solution provider across the globe. Respondent no.3 constantly evaluates new avenues for expansion of business. Respondent no.3 considers the business of Corporate Debtor to be a natural fit for its

business and for this reason it proceeded with submitting its candidature for PRA.

(viii) Respondent no.3 submits that the applicant's attempt to show the companies being related parties is baseless. It is submitted that the companies are separate legal entities having distinct business operations and cannot be linked to each other. Various courts, tribunals have observed that veil of corporate character can be taken off and people who are behind the corporate entities can be looked into inter alia only when there is apparent improper conduct and requirement of prevention of fraud, there is an economic offence, requirement of revenue protection, company acting a mere fraud, etc. In the present case, the applicant has not produced any material to show requirement of lifting corporate veil.

(ix) It is submitted by respondent no.3 that the applicant is trying to defeat the purpose of I&B Code, viz. to revive the Corporate Debtor through time bound resolution. This application is beyond the scope of I&B Code. The pleas put forth by the applicant are figments of imagination. Applicant is influence by greed and deceit.

(C). Respondent no.2/ JC Flowers ARC Private Limited has filed Affidavit and Reply dated 03.01.2023, contending that:

(i) The issues raised and relief sought in the present application have already been adjudicated and decided by this Tribunal vide order dated 05.05.2022 in IA No.791 of 2022 with divergent verdicts. Thus, the present application is bared by *res judicata* and constructive *res judicata* as explained hereunder.

- The applicant herein intends to improve its case in IA No.791 of 2021 in CP (IB) No.17/9/HDB/2020, which was already decided by this Tribunal vide order dated 05.05.2022, which was reaffirmed by NCLT, Cuttack vide order dated 14.10.2022 and upheld by this Tribunal vide order dated 17.10.2022.
- The present application raises similar and identical grounds as of IA No.791 of 2021 in CP (IB) No.17/9/HDB/2020, such as (a) assignment of debt to respondent no.2, (b) request for proposal for repaid and maintenance works of SIL”, (c) alleged conflict between respondents no.2 and 3.
- Out of three issues raised in IA No.791 of 2021 in CP (IB) No.17/9/HDB/2020, two were answered in negative. As regards issue no.(iii), viz. whether the CoC could be restrained from considering the Resolution Plan of JSL, viz. PRA? Said issue has also been answered in negative by Cuttack Bench when the matter was referred to it for adjudication on divergent views.
- It is tried law that the principle of res judicata though a part of the Civil Procedure Code, 1908, it would be applicable to the proceedings of this Tribunal and the I&B Code, 2016. In this regard respondent no.2 relied on order of the Hon’ble NCLAT in Vikas Dahiya Vs. Arrow Engineering Limited & another, Company Appeal (AT) (INS) No.699 of 2022, wherein it is held:

“30. The Hon’ble Apex Court, recently held that doctrine of res judicata is applicable to proceedings under IBC also in Ebix Singapore Pte Ltd. vs Committee Of Creditors Of Educomp6held that the doctrine of res judicata is applicable to the proceeding of IBC.”

“31. In view of the principle laid down in the above judgment strictly doctrine of res judicata is applicable even to the proceedings under IBC and challenge to the findings in incidental or collateral proceedings amounts to an abuse of process of Court.”

“39. In view of the principle laid down in the above judgements, the principle of res judicata, though a part of CPC, it would be applicable to the proceeding of this Tribunal and IBC. Only to prevent the abuse of process of law and give a finality to any proceeding, or orders, and to avoid an endless litigation to frustrate the very object of enacting IBC, the claim of appellants is liable to be rejected.”

(ii) The present application, if granted, it would derail the time bound process of insolvency and defeat the purpose of the I&B Code, 2016.

(iii) The present application is the second round of litigation on the same subject matter to scuttle the process of CIRP. In this regard respondent no.2 relied on Swapnil Gupta & another Vs. Govt of NCT of Delhi and others, 2022 SCC online Del 4580, wherein it is observed that:

“73. Before parting, though not specifically in the facts of the present case, this Court berates as to how a web of complex IAs is deliberately created in the civil suits as well as other petitions pending only to ensure that the main matter never meets its logical conclusion and the precious judicial time is exhausted in adjudicating only the numerous IAs. It should be noted that until the Bar and Bench comes together to fix responsibility qua the meritless

IAs filed, the main matters will continue to linger and will never see the light of the day. This court is conscious of its duty to the citizens of the country and hence, is constrained to make such observations.”

(iv) It is submitted that the present application is intended to sabotage and stall CIRP of the Corporate Debtor. It is settled law that final decision of the COC cannot be challenged on any ground. Besides, the NCLT or NCLAT have a limited judicial review and they ought to function within the scope of section 30(2) of the I&B Code, 2016. In support of this contention respondent no.2 relied on Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & others, (2020) 8 SCC 531, wherein it is held:

“ Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see 75 that the Committee of Creditors 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 operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters.”

6. The applicant has filed WRITTEN SUBMISSIONS dated 12.01.2023, which are almost on the same lines as contentions raised in the application. The salient points are as under:

(i) It is submitted that CoC comprising of the sole member/ respondent no.2, viz. JC Flowers ARC Limited has orchestrated CIRP of the Corporate Debtor and misused the provisions of the I&B Code, 2016 for its self-serving benefit. Hon'ble Member (Technical) has rightly answered the following Point in negative.

“Whether the CoC be restrained from considering the Resolution Plan of respondent no.3/ the Prospective Resolution Applicant, who/ which has already submitted Resolution Plan to the CoC?”

However, the Hon'ble Member (Judicial), Cuttack held that the CoC shall not be restrained from considering the Resolution Plan of Jindal Saw and it was upheld by the NCLT, Hyderabad. The applicant has carried the said order in appeal before the Hon'ble NCLAT, New Delhi by way of Company Appeal (AT) (CH) (Ins) No.434/ 2022. The said appeal is disposed of vide order dated 20.07.2022 (page 182 of this Written Submission) permitting the applicant to raise pleas.

(ii) Respondent No. 2 has become the sole CoC Member wielding 100% of voting rights in the CoC. Whereas, Jindal Saw, Siddeshwari Tradex Private Ltd and Hexa Securities & Finance Company Ltd are related companies as explained in para 10 of the Written Submissions. JC Flowers was funded in acquiring the financial debt of the Corporate Debtor / SIL by two primary sources, namely, 85% through Hexa Securities & Finance Company Ltd and Haxa Tradex Ltd.; and 15% through Siddeshwari Tradex Pvt Ltd. as demonstrated at page 5 of this Written

Submissions. The CoC and the Corporate Debtor are related parties. Grant of repair and maintenance contract to Jindal Saw/ SRA is evidence of bias and controlling influence over the affairs of the Corporate Debtor and the CIRP.

(iii) The applicant relied on Regulation 36A(8) of IBBI CIRP Regulations, 2016 to suggest that it is necessary for the Resolution Professional to ensure that collusive relationships are nipped in the bud. Said provision reads as under:

“36A. Invitation for expression of interest.

(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with—

(a) the provisions of clause (h) of sub-section (2) of section 25;

(b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest.”

The applicant relied on Arcelor Mittal India Vs. Satish Kumar Gupta, (2019) 2 SCC 1.

“Thus, the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order. Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law.”

(iv) As regards the role of CoC the applicant submitted that commercial wisdom of the CoC as envisaged by the Hon'ble Supreme Court of India allows interference in the decisions of the CoC to ensure that the Corporate Debtor continues as a going concern during CIRP; to ensure maximisation of value of assets of the Corporate Debtor; and the interest of all the stakeholders including operational creditors is taken care of. In this regard the applicant relied Committee of Creditor of Essar Steel India Limited Vs. Satish Kumar and others, (2020) 8 SCC 531.

“ There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors.”

7. Respondents no.1 (Corporate Debtor) and 4 (RP) also` filed WRITTEN SUBMISSIONS dated 12.01.2023, submitting that:

(i) The applicant by way of prayers (a), (b) and (c) in this application is effectively seeking judicial review of Resolution Plan submitted by respondent no.3. This Tribunal has already dismissed similar relief, vide order dated 14.10.2022 in IA No.791 of 2021, albeit in the nature of restraining the CoC from even considering the Resolution Plan of respondent no.3.

(ii) As regards prayers (d), (e) and (g), this Tribunal has already settled the issue to be beyond the jurisdiction of this Tribunal (para 16.1 of order dated 05.05.2022). Even the Hon'ble Member (J), Cuttack Bench has also

dismissed such contentions of the applicant challenging the status of respondent no.3, as awardee of the repairs and maintenance contract (paras 42, 49 and 50 of order dated 14.10.2022).

(iii) This application is preferred challenging the aforesaid orders for reopening of the issues already dealt with and decided in IA No.791 of 2021.

(iv) The applicant could not establish its locus so as to challenge approval of Resolution Plan.

(v) As regards order dated 02.01.2023 of the Hon'ble NCLAT, the Hon'ble Appellate Tribunal has permitted the applicant herein to raise all available factual and legal pleas, before the 'Adjudicating Authority', including the aspect of raising such necessary pleas concerning the recent order, about which the 'appellant'/'applicant' is 'aggrieved'. The applicant under the garb of the order of the Hon'ble NCLAT cannot raise any of the issues which have been already decided and against which no appeal is filed.

(vi) ON the issue of Operation, Maintenance and Management Agreement between the Corporate Debtor and the Respondent No. 3 and 'related party' aspect respondent no 3 submitted that:

- a)** In the Additional Affidavit dated December 26, 2022, the Applicant has alleged that the Respondent No. 3 is not eligible under section 29A of the IBC for submitting the Resolution Plan for the Corporate Debtor as there was an Agreement for Operation, Maintenance and Management (OMM Agreement) subsisting between the Corporate Debtor and the Respondent No. 3 since August 2, 2019. For this, Applicant has relied upon

the Annual Report of the Corporate Debtor for the FY 2018-19 (at page 927 of the Application) and disclosure made by the Corporate Debtor to the BSE and NSE under the SEBI (LODR) Regulations to BSE and NSE vide letter dated August 02, 2019 (at page 11 of the Additional Affidavit filed by the Applicant).

- b) However, as can be noted from the disclosures made in the said Annual Report for the FY 2018-19 itself, the said OMM Agreement was subject to sanction of the restructuring proposal by the banks/lenders of the Corporate Debtor (see pages 927, 928 and 955 of the Application.). The relevant extracts from page 955 of the Application are reproduced hereunder:

OUTLOOK:

...

The challenges on the bank loans to industry and increased non-performing assets with banks, high interest costs, and volatile price trends are of concern in the growth of the industry. Your Company after creating a value chain has been suffering from working capital constraints which led to severe financial stress. To overcome from the financial stress, your Company has approached the secured lenders to restructure the debt which under active consideration of the banks. The management is hopeful on restructuring of loans by the banks. Your Company on 2nd August, 2019 has entered into “OPERATION, MAINTENANCE & MANAGEMENT AGREEMENT” with JINDAL SAW Ltd. JINDAL SAW LIMITED has agreed to

*operate, maintain and manage the manufacturing facilities of SATHAVAHANA ISPAT LIMITED for a period of 3 years which may be extended for a maximum period of 10 years subject to certain conditions as provided in the Agreement. Under the above Agreement JINDAL SAW LIMITED shall manufacture and sell the products, namely ductile iron pipes, pig iron and coke and all other related items under its brand name during the term of the Agreement in consideration of the rentals as defined in the above Agreement. **This arrangement will be effective upon sanction of the restructuring proposal by the banks.***

- c) Even the disclosure made by the Corporate Debtor to the BSE and NSE states as follows: (at page 11 of the Additional Affidavit filed by the Applicant)

“Under the above Agreement, JINDAL SAW LIMITED shall manufacture and sell the products, namely ductile iron pipes, pig iron and coke and all other related items under the brand name during the term of the Agreement in consideration of the rentals as defined in the above agreement.

The above arrangement will be effective upon receipt of all necessary statutory and other approvals.”

- d) The applicant has miserably failed to point out or establish whether the OMM Agreement had ever been enforced or was ever given effect to or was ever acted upon by the parties (i.e. the Corporate Debtor and the Respondent No. 3)

- e) On the other hand, in the Annual report for the FY 2019-20, the Corporate Debtor has disclosed that the debt restructuring proposal was still under active consideration by the lenders/bankers of the Corporate Debtor and that the management of the Corporate Debtor was hopeful on restructuring of loans/debts by the banks. The relevant extracts are reproduced hereunder: (see page 1077 of the Application)

“OUTLOOK:

...

*The challenges on the bank loans to industry and increased non-performing assets with Banks, high interest costs, and volatile price trends are of concern in the growth of the industry. Your Company after creating a value chain has been suffering from working capital constraints which led to severe financial stress. To overcome from the financial stress, your company has approached the secured lenders to restructure the debt which under active consideration of the banks. **The management is hopeful on restructuring of loans by the banks**”*

- f) Therefore, since, even until the FY 2019-20, the debt restructuring proposal had not been approved, the OMM Agreement which was subject to the approval/sanction of the debt restructuring proposal by the lenders could not be given effect to.
- g) Even otherwise and without prejudice to the above, the Respondent No. 4, RP, has obtained a copy of the OMM

Agreement from the personnel of the Corporate Debtor. A bare perusal of the said OMM Agreement would show that as per sub-clause 3.2 of clause (Conditions Precedent), the OMM Agreement was conditional upon, inter alia, receipt of lenders approval to the arrangement envisaged under the said OMM Agreement and clause 3.6 of the OMM Agreement provided that in the event the 'Conditions Precedent' are not fulfilled by the Company, then the OMM Agreement shall cease to have any effect.

- h)** Therefore, since the debt restructuring proposal of the Corporate Debtor at the given time was not sanctioned by its banks/lenders, the said OMM Agreement ceased to have effect and was never given effect to. The said position has also been confirmed by the personnel of the Corporate Debtor.
- i)** Accordingly, as the OMM Agreement was never given effect to, no activity was carried out by the Respondent No. 3 pursuant to the said OMM Agreement and, accordingly, the Respondent No. 3 cannot be said to have been maintaining, operating and/or in management of the Corporate Debtor since the year 2019 on account of the OMM Agreement, so as to make the Respondent No. 3 ineligible to submit a resolution plan under section 29A(m)(iii) read with section 5(24) of the Code on account of it being a "related party" of the Corporate Debtor.

- j)** As regards the allegation that the RP did not disclose the existence of the OMM Agreement earlier during the course of proceedings in IA 791, it is submitted that the RP never came to the knowledge of the same. Further, no material was made available to the RP which would even warrant the RP to enquire about the OMM Agreement or whether the Respondent No. 3 was managing the plant of the Corporate Debtor, as the plant of the Corporate Debtor was lying shut and in dilapidated condition.
- k)** In any case, as the said OMM Agreement never came into force, the same did not and does not bear any relevance to the proceedings in IA 1791 or in the current proceedings.
- l)** The fact that the Respondent No. 3 was not operating, maintaining and/or managing the plants of the Corporate Debtor, whether pursuant to OMM Agreement or otherwise, is further strengthened by the report of the Interim Resolution Professional (Mr. Gola Ramakantha Rao (IRP), who was appointed pursuant to the Application (Main Petition) filed by M/s Thirumala Logistics) and captured in the minutes of the 1st meeting of the COC held on August 31, 2021.
- m)** In the said minutes, the IRP has reported to the COC that the plants and machineries of the Corporate Debtor had been lying

shut and/or in dilapidated condition for the past 4 years. **(see page 318 of the IA No. 1198 of 2022; IA 1198”)**

- n)** If the Respondent No. 3 was, in fact, operating, maintaining and/or managing the plants of the Corporate Debtor since the year 2019, as alleged by the Applicant, the IRP would have reported so instead of reporting that the plants and machineries were lying shut and/or in dilapidated conditions.

(vii) On Respondent No. 4’s role in Jindal Steel & Power Limited (JSPL) and connection with Jindal Saw Limited (JSAW) respondent number 3 submitted that:

- a)** The respondent No. 4 was employed with JSPL, as AVP – Finance until January, 2018. He resigned in January 2018.
- b)** The Respondent No. 4 was never a director or a shareholder or even a ‘Key Managerial Person’ (as per Companies Act) (“KMP”) in JSPL or JSAW.
- c)** The Respondent No. 4 became RP of this Corporate Debtor only in September 2021 (consent form was given post commencement of CIRP on July, 28, 2021, i.e. after more than 3 years of resignation from JSPL.

- d)** Therefore, the Respondent No. 4 is not a “related party” of the Corporate Debtor or JSPL or JSAW, in any manner, within the meaning given to the said term under section 5(24) or 5(24A) of IBC.
 - e)** The Applicant has failed to show how the Respondent No. 4 is a “related party” (within the meaning of section 5(24A) of IBC) of the Corporate Debtor or the Respondent No. 3.
 - f)** It is also pertinent to mention that JSPL and JSAW are recognized as separate groups for all regulatory, statutory, business purposes. Even the banks in India who have very strict prudential norms with respect to exposure on any individual company or a group consider these companies belonging to separate groups.
- (viii)** Respondent no 3 further submitted that:
- a.** Admittedly, the Applicant did not submit any Resolution Plan during the CIRP despite receiving all such information as was supplied to all 7 other prospective resolution applicants (PRAS)
 - b.** Out of 7 PRAs, only 2 PRAs submitted resolution plans, namely, Jindal Saw Limited (Respondent No. 3) and Vedanta Limited;

- c. While Vedanta Limited had offered a total payment of Rs. 620 Crores (NPV = Rs. 577.24 crores) to the Financial Creditor(s), the Respondent No. 3 had offered a sum of Rs. 671.89 Crores to the Financial Creditor(s) (as on March 17,2022)
- d. Both the PRAs had also provided to pay the contract price of Rs. 266 crores (and taxes thereupon) see summary at page 479 of IA 1198).
- e. The COC had, after considering both the resolution plans and their feasibility and viability (also based on the report of M/s Dunn & Bradstreet), in their commercial wisdom, have approved the resolution plan of the Respondent No. 3 as the best suited resolution plan, in respect of which the Respondent No. 4 has filed the IA 1198.

8. Respondent no.2 (Member, CoC) has filed Counter and WRITTEN SUBMISSIONS, submitting that:

- **The Respondent No. 2** is an Asset Reconstruction Company registered with Reserve Bank of India in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (“SARFAESI”) Act 2022 which acquires and resolves the bad loans from banks / Financial Institutions in India. The Respondent No. 2 company is co-owned by J.C. Flowers & Co, Eight Capital and Emso Asset Management.

- **The Assignment of Debt to the Respondent No. 2 is permissible under law** – the process of acquisition of debt by the Respondent No.2, under a transparent and an open Swiss Auction process was completed on 25th June 2021, which was much prior to the commencement of the CIRP of the Corporate Debtor. It is not the case of the Applicant that Respondent No.2, Respondent No.3 are a related parties of said M/s. Thirumala Logistics Pvt. Ltd.
- Pursuant to a Notification for Sale of Financial Asset by Canara Bank lead consortium under Swiss challenge method dated 25th May, 2021, the Respondent No. 2 had participated in the public e-auction (which was open for any interested party across the globe) along with many other bidders.
- Subsequently, the Respondent No. 2 purchased and consolidated debt of the Corporate Debtor after a long process where through a bidding process Respondent No.2 was declared the H1 bidder.
- **Siddeshwari and Hexa** – As per the Securitisation Companies and Restructuring Companies (Reserve Bank) Guidelines and Directions, 2003, issued by the Reserve Bank of India, asset reconstruction companies are required to mandatorily hold 15% of the security receipts in the Securitisation Trust. Accordingly, the Respondent No. 2 raised money on its balance sheet to fund the investment in 15% of the security receipts. Out of this 15% to be mandatorily held by ARC, 87% was raised by way of issuing Non-convertible Debentures to Siddeshwari Tradex Private Limited (“**Siddeshwari**”) and the remaining 13% was funded from equity

investment. The same is part of the public disclosures made by the Respondent No.2 on the website of Ministry of Corporate Affairs (“MCA”). Also, Hexa Securities & Finance Co. Ltd., a Non-Banking Financial Company (“NBFC”) and a qualified buyer in terms of the SARFAESI Act, 2002, has subscribed to the balance 85% of the security receipts offered by the trust constituted by the Respondent No.2 for a total consideration of Rs.451,35,00,000/- (Rupees Four Hundred and Fifty One Crores and Thirty Five Lakhs only) on 25th June 2021. Thus, the Respondent No.2 is compliant with the guidelines of the Reserve Bank of India.

- The Applicant had conveniently concealed from this Hon’ble Tribunal in I.A.791 that the Applicant was one of the PRAs of the Corporate Debtor. By filing the present Application, the Applicant is seeking to improve his case with the motive to eliminate its competitor and obstructing and stalling the successful CIRP of the Corporate Debtor.
- It is submitted that the records of the Meetings of the CoC prove that the procedure adopted by the RP as well as the CoC in issuance of an invitation for EOIs for submissions of the resolution plans by the PRAs, was fair, transparent and equitable.
- Assuming (for the sake of an argument), whilst denying that the Respondent No. 2 and the Respondent No.3 have some commonality, however, that does not debar the Respondent No. 3 from submitting a Resolution Plan. There is no express bar or no prohibition on a related party of a member of the CoC from presenting a plan as a PRA. In fact, Section 30(5) of the IB Code

contain an enabling provision allowing even a member of the CoC to present a Resolution Plan.

- On the issue of repair and maintenance contract respondent no 2 submitted that only one entity i.e., Jindal Saw Ltd submitted their bid of INR 280 crore for the above contract after two rounds of RFRP publications. To validate the scope and cost estimate, RP with the approval of CoC had appointed an independent technical advisor i.e. Korus Engineering Solution Pvt Ltd (**“Korus”**), which had carried out a detailed analysis and provided the scope of repairs and maintenance with a contract cost estimate of INR 269 crore. On the basis of the technical advice of Korus, RP negotiated the contract value with the sole bidder i.e., Jindal Saw Ltd and could bring down the contract value to INR 266 crore.
- Subsequently, in the 5th CoC Meeting held on 14th October 2021 and 16th October 2021, the CoC, in its commercial wisdom, has given the approval for appointment of Jindal Saw as the Contractor for carrying out ‘Repairs and Maintenance of Manufacturing Facilities’ of the Corporate Debtor, at a total contract Price of Rs.266 Crore for the completion of work in 7 months.
- It is pertinent to point out that NCLT, Cuttack vide its order dated 14th October 2022 has categorically dismissed the objection raised by the Applicant being unsustainable; the relevant extract is reproduced below:

“49. The PRA was awarded the repairs and maintenance contract by the RP of the CD on 18/10/2021. This, according to the OC, has made the PRA a related party to the CD, and hence the PRA is barred from submitting the Resolution Plan

in view of section 5(2) (m)(iv), IBC, 2016. This argument of the OC is unsustainable and rejected for the following reasons, viz.:-

- (I) The contract was awarded to the PRA only after the CD was admitted into CIRP;*
- (II) The contract was awarded in a transparent manner based on an expert's opinion by advertising a Request for Proposal and following the due process;*
- (III) The object and reason for initiating the contract is to ensure the value maximization of the CD by continuing its operations, and*
- (IV) In the event, the PRA is associated with the essential technical information pertaining to the CD after awarding of the contract, it is inevitable since it is necessary to continue the CD as an ongoing concern; even otherwise, the OC has not explained what technical information of the CD is available with the PRA.*

50. The OC finding fault with awarding of the repairs and maintenance contract to the PRA by the RP of the CD on the basis of Circular issued by the Central Vigilance Commission of CVC and stipulating seven months' time period to complete the works awarded contract is contrary to the contemplation in the Code that the CIRP has to be completed within six months' time, and hence is inapplicable. In fact, the PRA took seven months' time period to complete the works

under the awarded contract, and thus exceeded the six months' time period contemplated in the Code to complete the CIRP. However, this will not vitiate the contract awarded to the PRA in the absence of any challenge from any quarter and in view of section 12(2), IBC, 2016. Hence, this would not give any cause of action to restrain the CoC from considering the Resolution Plan submitted by the PRA."

- It is pertinent to note that this Hon'ble Tribunal has adjudicated upon the aforesaid issue vide its order dated 5th May 2022 and held that:

"9.5 Having given my anxious consideration to the submissions of the respective counsels. I state that, since there is no provision in the IB Code, enabling this Adjudicating Authority to consider any kind of questions that relate to an assignment of debt by Banks/Financial Institutions, made under the provisions SARFAESI Act, it shall be seen whether the pleas as raised by the Applicant can be considered in exercise of the inherent or residuary powers of this Tribunal, under the IB Code or under the NCLT Rules or not.

.....

9.7 Therefore, when the legal position being that even the defaulted borrower whose debt has been assigned, is debarred from questioning the Assignment before a Tribunal or Court, we fail to understand how a third party like the Applicant herein, can demand the details as to the finding for purchase of the debt by the assignee."

- Therefore, the allegations levelled by the Applicant in paragraph numbers 16 to 21 of the present Application is a malicious and motivated attempt to reopen an issue that has attained finality having been decided by this Hon'ble Tribunal.
- The applicant has no locus to file the present application. The applicant was a Potential Resolution Applicant of the Corporate Debtor. However, the applicant did not submit its Resolution Plan by the last date, viz. 20.12.2021. Thus, the applicant can neither raise grievance nor voice apprehension of bias in consideration of its plan by the CoC. It is trite law that an unsuccessful Resolution Applicant has no locus standi to challenge implementation of Resolution Plan. Having failed to submit Resolution Plan, the applicant cannot be considered an unsuccessful Resolution Applicant. The applicant has no locus standi to file the present application.
- The applicant had scope to raise objection to inclusion of respondent no.3 after publication of provisional list of Prospective Resolution Applicants. The applicant did not raise any objection to the list of PRAs having respondent no.3. Thus, the applicant is estopped from raising such allegations against the CoC, after waiving its right to raise objections to inclusion of respondent no.3 in the list of PRAs.
- The application is barred by principles of *res judicata* and constructive *res judicata*. Respondent no.2 has already raised the said contentions in its Affidavit in Reply dated 03.01.2023, as discussed above.

- It is submitted that no irregularity committed in the process of inviting applications for successful resolution of the Corporate Debtor.
- It is tried law that ‘commercial wisdom’ of the CC is paramount. It has been consistently held by the Hon’ble Supreme Court that it is not open to the Adjudicating Authority to take into consideration any factor other than the provisions of the IB Code.

9. Respondent no.3/ SRA has filed WRITTEN SUBMISSIONS dated 12.01.2023, submitting that:

(i) Order passed in IA No.791 of 2021 has attained finality. It is not open for anyone to reopen the issues which have already been adjudicated upon in the said order. Such an exercise is barred by the doctrine of *res judicata*.

(ii) One M/s Maa Tara Enterprises filed IA No.717 of 2021 against Sathavahana Ispat Limited before this Tribunal. Said IA has been dismissed vide order dated 05.05.2022. Thereafter, one Prakash Sharma filed Writ Petition (C) No.979 of 2022 against Union of India & others before the Hon’ble Supreme Court of India to stall the ongoing resolution process. The Hon’ble Supreme Court has dismissed the said Writ Petition at the threshold. Further, M/s Maa Tara Enterprises filed another IA being IA No.1392 of 2022 to declare all the meetings held by CoC post 10.01.2022 illegal and void. Said IA was also rejected by the Tribunal vide order dated 23.12.2022 with cost of Rs.1 lac. Hence the similar relief as sought by the applicant cannot be granted.

(iii) It is submitted that the conduct of the applicant attracts the doctrine of *res judicata*, estoppel, and acquiescence. In support said contention respondent no.3 relied on the following decisions:

- Ebix Singapore Pte Ltd & others Vs. Committee of Creditors of Educomp Solutions Limited and others (13.09.2021-SC) (2022) 2 SCC 401.
- Satyadham Ghosal Vs. Deorajin Debi, (1960) 3 SCR 590.
- Ishwar Dutt Vs. Lan Acquisition Collector & others (02.08.2005-SC) : (2005) 7 SCC 190.
- Vikas Dahiya Vs. Arrow Engineering & another, CA (AT) (ins) No.812 of 2022.
- Raghavendra G. Kundangar & others Vs. Shashi Agarwal, Liquidator of Bharat NRE Coke Ltd. & others (24.08.2022 – NCLAT) Manu/ NL/ 0727/2022.

(iv) It is submitted that time and again courts have suggested that commercial wisdom of the CoC should not be interfered with. Jurisdiction as regards approval and rejection of Resolution Plan is vested in the CoC. Jurisdiction of the Adjudicating Authority is limited to section 31(2) of the Code. In support of the said contention respondent no.3 relied on the following decisions:

- India Resurgence ARC Vs. Amit Metaliks Limited & another, 2021 SCC OnLine SC 409.
- Vallal Rck Vs. Siva Industries and Holdings Limited & others, 2022 SCC OnLine SC 717.

10. The points which emerge for our consideration on the basis of allegations made by applicant are as under:

- (1) Whether purchase of financial debt by JC Flowers ARC Private Limited from banks and raising of funds for completing the

transaction from Hexa Securities & Finance Limited and Siddeshwari Tradex Private Limited has any angel of collusion with Jindal Saw Limited, SRA as alleged by applicant.

- (2) Whether this Tribunal has jurisdiction to deal with the issue as raised in point no.(1)
- (3) Whether appointment of Mr Bhuwan Madan as IRP involves any conflict of interest and the act of changing the scope of repair and maintenance contract after his appointment is an act of collusion of IRP and COC with Jindal Saw Limited.
- (4) Whether Jindal Saw Limited attract provision of section 29 A of the I&B Code, 2016 on account of having entered into an OMM agreement with JSL in 2019 and thus transfer of technology between SRA and CD.
- (5) Whether there is any substance in allegation of applicant regarding non-compliance of Regulation 36A (8) of IBBI CIRP Regulations, 2016.

11. We have heard Shri Avinash Desai, learned Senior Advocate appearing with Ms.Mrudula Sarampally and Ms.Mahathi Reddy, learned advocates for the applicant; Shri Alay Razvi and Shri Shank Agarwal, learned Advocates for respondent no.1 and 4; Messrs Juris Corp, Advocates for respondent no.2; Shri Daizy Chawla, advocate for S&A, Advocates for respondent no.3, perused the record, Written Submissions and the case law. We have examined each of these issues in detail on the basis of submissions written and oral, documents produced before us and other facts pertaining to these issues.

12. Hon'ble NCLAT, Chennai through its order in Company Appeal (AT) (CH) (Ins) No.434/2022, the applicant was allowed to raise all available factual and legal pleas, in respect of the 'impugned order' dated 17.10.2022 in IA/791/2021 at the time of 'Hearing' of this IA/ 1475/ 2022. In compliance with the order of NCLAT Chennai, an opportunity of hearing and raising of issues was provided to both sides by adhering to the 'principles of natural justice'.

POINT NO.(1)

Whether purchase of financial debt by JC Flowers ARC Private Limited from banks and raising of funds for completing the transaction from Hexa Securities & Finance Limited and Siddeshwari Tradex Private Limited has any angel of collusion with Jindal Saw Limited, SRA as alleged by applicant.

To raise this point before us the applicant has relied on the fact that JC Flowers ARC Private Limited has purchased 100% of debt from Banks and for the transaction, 85% of the funds were arranged through security receipts subscribed by Hexa Securities & Finance Company Limited, a NBFC which is a wholly owned subsidiary of Hexa Tradex Limited and in turn which used to be a unit of Jindal Saw Limited till 2010. For the remaining 15%, ARC borrowed 13.05% from Siddeshwari Tradex Private Limited which is reported to be a Company from Jindal Saw Group and rest 1.95% was contributed through equity. The applicant sees this act as a collusion between respondent no 2 and respondent no 3. The Applicant has not raised any point on the issue that respondent no 2 i.e FC (ARC) is a related or connected party to respondent no 1(CD) or respondent No 3

(SRA) or respondent no 4 (RP). The only question raised is that funding of acquisition of assets by respondent no 2 is by parties connected to respondent no 3.

On the basis of submissions, facts and records placed before us by applicant and respondents, we first examine the connectedness or relativeness of Hexa Securities & Finance Company Limited, a NBFC which has funded major part i.e 85% through subscribing to SRs. We observe from the petition, that this Company directly is not alleged to have any relationship with the respondent no 3 but its promoting Company which used to be a unit of respondent no 3 in 2010 is alleged to be linked to respondent no 3. This allegation is not tenable in our view as the relationship on the basis of which this allegation is put up is non-existent since more than 13 years. If we extend our enquiry into past so many years of their antecedents and existence and delve deep into all the layers of corporate structure, we will find that most of the corporates are related/ connected to each other in one or the other way.

Now the other issue to be examined is about Siddeshwari Tradex Private Limited, reported to be a Company from Jindal Saw Group which has subscribed to the debenture of Respondent no 2 for acquisition of debts of CD. Applicant could not produce any specific evidence suggesting that this was an act of collusion. In our view, issuing debentures and subscribing to them is a very common method of raising funds in corporate world. The Companies which are in need of funds issue debentures and the Companies which have surplus funds subscribe to them to earn interest income. Further the companies generally invest in debentures of those

companies whose credentials are well known to them to ensure safety of their funds. The other interesting point is that Respondent no 3 emerged as SRA much after Siddeshwari Tradex Private Limited subscribed for debentures and at the time of subscribing to debentures Respondent no 3 was not in the picture. In that situation, how Siddeshwari Tradex Private Limited would come to know that JSL will emerge as SRA out of 7 PRAs. There were chances that any other PRA would have become SRA instead of JSL and in that situation JSL would not have been there and the allegation of collusion also would not have survived. Therefore, this allegation of collusiveness does not pass the test of logical reasoning and is not maintainable in our view. The applicant has also raised the point that respondent no 2 acquired 100% of debts and became sole member of COC and did not act in a transparent manner. In this regard we referred to RBI Master Circular - Asset Reconstruction Companies, NO RBI/2021-22/154, DOR.SIG.FIN.REC 84/26.03.001/2021-22 dated February 10, 2022.

Para 1(iii) of Guidance Notes of said circular which is reproduced below clearly states that acquisition of 100% of debts is in compliance with guidance note of regulator.

“(1) Acquisition of Financial Assets

*iii) For easy and faster realisability, **all the financial assets due from a single debtor to various banks/ FIs may be considered for acquisition.** Similarly, financial assets having linkages to the same collateral may be considered for acquisition to ensure relatively faster and easy realisation.”*

Therefore, based on the points as discussed above in detail, we do not find collusiveness as alleged by applicant.

POINT NO.(2)

Whether this Tribunal has jurisdiction to deal with the issue as raised in point no.(1)

This point was heard and discussed in detail in IA no 791/2021 and few paras from order per judicial member dated 05.05.2022 are reproduced below:

“9.5 Having given my anxious consideration to the submissions of the respective counsels. I state that, since there is no provision in the IB Code, enabling this Adjudicating Authority to consider any kind of questions that relate to an assignment of debt by Banks/Financial Institutions, made under the provisions SARFAESI Act, it shall be seen whether the pleas as raised by the Applicant can be considered in exercise of the inherent or residuary powers of this Tribunal, under the IB Code or under the NCLT Rules or not.

.....

9.7 Therefore, when the legal position being that even the defaulted borrower whose debt has been assigned, is debarred from questioning the Assignment before a Tribunal or Court, we fail to understand how a third party like the Applicant herein, can demand the details as to the finding for purchase of the debt by the assignee.”

This point was again heard, discussed and deliberated upon and we again came to a conclusion that there is no provision in the IB code or NCLT rules to adjudicate on this issue. However, we have concluded and decided on this point relying on available facts and records and by applying logical reasoning as explained in point no.(1).

POINT NO.(3)

Whether appointment of Mr Bhuwan Madan as IRP involves any conflict of interest and the act of changing the scope of repair and maintenance contract after his appointment is an act of collusion of IRP and COC with Jindal Saw Limited.

Applicant has alleged that Mr Bhuwan Madan was working with Jindal Ispat and Power Limited as AVP (Finance and Treasury) JSPL and SRA are group companies and therefore there is a conflict of interest. But, Respondent No 3 in his oral and written submissions submitted that JSPL and JSAW (SRA) are two different groups for all regulatory, statutory, business purposes. He further submitted that these two companies belong to two different groups, one group managed by Mr Prithviraj Jindal and the other group is led by Mr Naveen Jindal. Respondent no 3 further submitted that Mr Madan was appointed RP in the present case in January 2018 whereas he resigned from JSPL in January 2018.

To decide on this issue of group company, we place our reliance on RBI guidelines on this matter. Group Companies are defined by Reserve Bank of India in its Master Circular – Regulatory Framework for Core

Investment Companies. The relevant para of the said circular is reproduced below:

“Companies in the Group” means an arrangement involving two or more entities related to each other through any of the following relationships, viz., Subsidiary – parent (defined in terms of AS 21), Joint venture (defined in terms of AS 27), Associate (defined in terms of AS 23), Promoter-promotee [as provided in the SEBI (Acquisition of Shares and Takeover) Regulations, 1997] for listed companies, a related party (defined in terms of AS 18) Common brand name, and investment in equity shares of 20% and above).

Applicant has failed to put before us any of the relationship as stipulated by RBI for treating these two Companies as group companies. As per record also, we do not observe any such relationship between these two Companies. Respondent No 3 has very emphatically submitted before us that both these groups are different groups for all purposes and we do not find any reason not to accept his contention.

We, therefore are not convinced for treating both these companies as group companies and the allegation of conflict of interest in appointment of Mr Bhuwan Madan as resolution professional is not maintainable.

The applicant has also alleged that IRP, Mr Bhuwan Madan after his appointment changed the scope of repair and maintenance contract to benefit respondent no 3 and it is an act of collusion of IRP and COC with Jindal Saw Limited. Respondent no 2 denying this allegation submitted that this contract was awarded through a transparent process after two rounds of RFRP publications. Jindal Saw Ltd was the only Company who submitted their bid of INR 280 crore in response to the RFRP. To further

validate the cost estimate submitted by JSL, RP with the approval of CoC appointed an independent technical advisor i.e., Korus Engineering Solution Pvt Ltd (“Korus”). Korus provided the scope of repairs and maintenance with a contract cost estimate of INR 269 crore. On the basis of the technical advice of Korus, RP negotiated the contract value with the sole bidder i.e., Jindal Saw Ltd and could bring down the contract value to INR 266 crore below the estimate submitted by technical advisor. Subsequently, in the 5th CoC Meeting held on 14th October 2021 and 16th October 2021, the CoC, in its commercial wisdom, has given the approval for appointment of Jindal Saw as the Contractor for carrying out ‘Repairs and Maintenance of Manufacturing Facilities’ of the Corporate Debtor, at a total contract Price of Rs.266 Crore for the completion of work in 7 months.

After going through the flow of events submitted by respondent no. 2 and verifying with the available facts , we form a view that the whole exercise of awarding the contract was transparent and open to everyone without any collusiveness in it .

POINT No.(4)

Whether Jindal Saw Limited attract provision of section 29 A of the I&B Code, 2016 on account of having entered into an OMM agreement with JSL in 2019 and thus transfer of technology between SRA and CD.

Applicant has submitted that Corporate Debtor had entered into an Agreement for Operation, Maintenance and Management with Jindal Saw Limited in 2019, valid for three years, extendable upto 10 years. For this allegation, he has placed his reliance on disclosures to this effect made by

Corporate Debtor to SEBI, BSE and NSE and annual report of the CD for the FY2018-19. It is submitted by applicant that sufficient and essential information of technical services had been passed on to Jindal Saw during the course of grant and execution of the OMM since 2019. Thus, respondent no 3 should be treated as related party in terms of section 5(24) m (iii) of I&B Code, 2016 and thus become ineligible under section 29A of the I&B Code, 2016. To bring more clarity in the matter, Section 5(24) m (iii) of I&B Code, 2016 is reproduced as under:

[24 “Related Party” in relation to a corporate debtor, means-

(m) any person who is associated with the corporate debtor on account of-
(iii) provision of essential technical information to, or from, the corporate debtor;]

Respondent no 1 has countered this allegation by submitting that applicant has not brought full facts on record. He has also referred to disclosures made in the said Annual Report for the FY 2018-19 and pointed out that as per above said disclosure itself the said OMM Agreement was subject to sanction of the restructuring proposal by the banks/lenders of the Corporate Debtor and because restructuring proposal was never sanctioned therefore the above referred OMM contract also never became operational or effective. He also submitted that even in the disclosure to SEBI, BSE this condition was stipulated. The relevant para is reproduced below:

“Under the above Agreement, JINDAL SAW LIMITED shall manufacture and sell the products, namely ductile iron pipes, pig iron and coke and all other related items under the brand name during the term of the Agreement in consideration of the rentals as defined in the above agreement. The above arrangement will be

effective upon receipt of all necessary statutory and other approvals.”

According to respondent no 1, the applicant has miserably failed to point out or establish whether the OMM Agreement had ever been enforced or was ever given effect to or was ever acted upon by the parties (i.e., the Corporate Debtor and the Respondent No. 3).

Respondent No 1 further strengthened its point by placing its reliance on IRP report to COC which has a mention that the plants and machineries of the Corporate Debtor had been lying shut and/or in dilapidated condition for the past 4 years. If the Respondent No. 3 was, in fact, operating, maintaining and/or managing the plants of the Corporate Debtor since the year 2019, as alleged by the Applicant, the IRP would have reported so instead of reporting that the plants and machineries were lying shut and/or in dilapidated conditions.

We also perused the documents referred by the parties and based on the submissions of both the parties and on the basis of facts and records placed before us, we can safely conclude that OMM agreement though executed by both the parties but not implemented. If that be the case, there is no question of applicability of 5(24) m (iii) of I&B Code, 2016 and section 29A of the I&B Code, 2016 against SRA.

POINT No.(5)

Whether there is any substance in allegation of applicant regarding non-compliance of Regulation 36A (8) of IBBI CIRP Regulations ,2016.

Applicant has made a point that since collusiveness is there in this process, Regulation 36A (8) of IBBI CIRP Regulations, 2016 is attracted. Since, we have not found any collusiveness as discussed in detail in points no.(1), (3) and (5), Regulation 36A(8) of IBBI CIRP Regulations, 2016 is not applicable in this case.

Therefore, none of the allegations as alleged by applicant in his application are established and prayers sought on the basis of these allegations are not maintainable and deserve to be denied.

13. Apart from the above issues raised by applicant, the respondents have raised an issue of locus standi of applicant and thus maintainability of various legal proceedings. As per the submissions made by respondents the applicant is making various attempts to stall CIRP proceedings by filing various cases without establishing its locus standi or cause for filing these proceedings. The applicant was one of five Prospective Resolution Applicants (PRAs). Resolution Professional, while issuing provisional list of eligible PRAs, had invited objections *inter alia* to the inclusion of any PRA in the provisional list within five days as per Regulation 36A (11) of the CIRP Regulations. Though the applicant had opportunity to challenge inclusion of respondent no.3/ Jindal Saw Limited as PRA at that point of time, it had failed to do so. Therefore, the applicant does not have any locus to file the present application as it has waived its right to object as available to it under Regulation 36A (110 of CIRP Regulations, by not filing objection. The applicant clearly lacks bona-fide in approaching this Tribunal.

We have examined on this issue and find merit in the arguments put forth by respondents that applicant has no locus standi as on date, once the resolution plan is approved by CoC, because it did not use the opportunity when available to it under Regulation 36A (11) of the CIRP Regulations . We also place our reliance on a very recent judgement of Hon'ble NCLAT Chennai in **IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023. The relevant part is reproduced below:**

“On a careful consideration of the respective contentions advanced on either side, this `Tribunal`, keeping in mind of a vital fact that the `Petitioner / Appellant`, being an `Unsuccessful Resolution Applicant`, has no `Locus`, to `assail` a `Resolution Plan` or its `implementation`, coupled with a candid fact that he is not a `Stakeholder`, as per Section 31 (1) of the I & B Code, 2016, in relation to the `Corporate Debtor`, this `Tribunal`, without any `haziness`, holds that the `Petitioner / Appellant`, is not an `Aggrieved Person`, coming within the ambit of Section 61 (1) of the I & B Code, 2016, especially, when he is not a `Privy`, to the `Resolution Plan`. Viewed in that perspective, the `Leave`, sought for in IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, sans merits.”

In the above cited case even the “unsuccessful resolution applicant” who is on a much better footing than “prospective resolution applicant” was declared to be having no locus to assail a resolution plan.

Therefore, we are of the view that applicant has no locus standi to file the above case and applicant needs to be put to heavy cost to restrain him

from filing such applications in future which consume lot of resources and time of tribunal for no meaningful purpose.

14. In light of our discussion as aforestated, we are of the firm opinion that the application is devoid of any merit or substance and the same is liable to be dismissed. We accordingly hereby dismiss this application with cost of Rs.5,00,000/- (Rupees five lacs only) payable to Prime Minister's Relief Fund/ Bharat Kosh within 15 (fifteen) days from the date of this order.

15. In the result, the petition is dismissed with cost of of Rs.5,00,000/- (Rupees five lacs only).

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-

Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

karim