NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT CHENNAI

(APPELLATE JURISDICTION)

TA (AT) NO. 134/2021
(COMPANY APPEAL (AT) (INS) NO. 653/2019)

In the matter of:

Dr. Ravi Shankar Vedam
Being 38 % Shareholder of M/s Tiffins
Barytes Asbestos & Paints Limited,
Respondent No.1 herein and having address at Old No.9, New No. 28,
Balaji Avenue, 1st Street, T. Nagar,
Chennai – 600017. …Appellant

Versus

1. Tiffins Barytes Asbestos and Paints Limited
A company incorporated under the
Companies Act, 1956, having its
Registered office at No. 14 & 16
Gopalkrishna Road (West) T. Nagar
Chennai, Chennai – 600017, Tamil Nadu …Respondent No. 1

2. Vasudevan
Resolution Professional of M/s Tiffins Barytes Asbestos & Paints Limited
Having office at No. 17B/7B, Maruthi Nagar, Hasthinapuram,
Chrompet, Chennai – 600064. …Respondent No. 2

3. Embassy Property Developments Pvt. Ltd.
Embassy Golf links Business park, Royal Oaks
Intermediate Link Road,
Bangalore – 560 071 …Respondent No. 3

Present:

For Appellant	:	Mr. T.K. Bhaskar, Advocate For Mr. Pranav G, and Mr. Mayan H. Jain, Advocates
For Respondent Nos.1 & 2/ Resolution Professional	:	Mr. Sumant Batra, Advocate For Ms. Sarvapriya Roy and Mr. K. Moorthy, Advocates

For Respondent No.3 /
Resolution Applicant : Mr. Rana Mukherjee, Senior Advocate
For Mr. Kawsik Raghu Rajaa, and
Mr. Anand Selvam, Advocates

WITH

TA (AT) NO. 135/2021
(COMPANY APPEAL (AT) (INS) NO. 803/2019)

In the matter of:

Dr. Ravi Shankar Vedam
Old No.9, New No. 28,
Balaji Avenue, 1st Street,
T. Nagar, Chennai – 600017. …Appellant

Versus

1. Udhyaman Investments Pvt. Ltd.
I Floor, Embassy Point,
#150 Infantry Road,
Bangalore – 500001. …Respondent No. 1

2. Tiffins Barytes Asbestos and Paints Limited
14 & 16, Gopalakrishna Road,
Parthasarathi Puram,
T Nagar, Chennai,
Tamil Nadu 600017 …Respondent No. 2

3. K. Vasudevan
Resolution Professional of
Tiffins Barytes Asbestos and
Paints Limited
#17B/7B, Maruthi Nagar,
Hasthinapuram Chrompet,
Chennai, Tamil Nadu – 600064 …Respondent No. 3

4. M. Poobalan
S/o. M. Muthusamy,
No.2, 3rd Cross Street,
1st Main Road, Devappa Garden,
Nagashettyhalli,
RMV 2nd Stage Extension
Bangalore – 560094. …Respondent No. 4

5. M/s. D.P. Exports
Represented by Mr. Poobalan
No.2, 3rd Cross Street,
1st Main Road, Devappa Garden,
Nagashettyhalli,
RMV 2nd Stage Extension
Bangalore – 560094 …Respondent No. 5

6. M/s D & D Exports
Represented by Mr. Poobalan
No.2, 3rd Cross Street,1st Main Road, Devappa Garden,
Nagashettyhalli,
RMV 2nd Stage Extension
Bangalore – 560094 …Respondent No. 6

7. M/s Elite Exports
Represented by Mr. Poobalan
Moneteraral Manor, 3rd Floor,
No.103, Serpentine Road
Shopping Street,
Kumara Park,
Bangalore – 560020 …Respondent No. 7

8. Mrs. P. Poongodi
W/o Mr. Poobalan
No.2, 3rd Cross Street,1st Main Road, Devappa Garden,
Nagashettyhalli,
RMV 2nd Stage Extension
Bangalore – 560094. …Respondent No. 8

9. Aasan Global Trade
Flat No. 32, 3rd Floor,
Rishikesh Apartment
No. 38, G.N. Chetty Road,
T.Nagar, Chennai 600017 ….Respondent No. 9

10. Indian Overseas Bank
Esplanade Branch,
Esplanade,
Chennai ….Respondent No. 10

11. Jayashree Agencies
No. 12/44-A,
South West Boag Road,
T.Nagar, Chennai 600017 …Respondent No. 11

12. Palak HR (India) Pvt. Ltd.
No. 29/30, Suit No. 9, 4th Floor,
Kumbhat Complex,
Rattan Bazaar,
Chennai 600003 …Respondent No. 12

13. JSW Steel Ltd.
JSW Center,
Bandra Kurla Complex,
Bandra (East), Mumbai 400052 …Respondent No. 13

14. M/s. Embassy Property Development Pvt. Ltd.
1st Floor, Embassy Point
#150, Infantry Road
Bengaluru – 560001 …Respondent No. 14

Present:

For Appellant	:	Mr. T.K. Bhaskar, Sr. Advocate For Mr. Pranav G, and Mr. Mayan H Jain, Advocates
For Respondent Nos.1, 4 to 8	:	Mr. E. Om Prakash, Senior Advocate For Ms. Madhusmita Bora, Advocate

For Respondent Nos.2 & 3/
Resolution Professional : Mr. Sumant Batra, Sr. Advocate
For Ms. Sarvapriya Roy and
Mr. K. Moorthy, Advocates

For Respondent No.13 : Mr. Yashraj Singh Deora, Advocate
For Mr. Abhishek Singh and
Mr. Priyesh Mohan Srivastava, Advocates

J U D G M E N T

[Per: Shreesha Merla, Member (Technical)]

1. The Present Appeals are filed under Section 61 of the 'Insolvency and Bankruptcy Code, 2016', against the Impugned Orders dated 12/06/2019 and 09/07/2019, passed by the 'Adjudicating Authority'/ 'National Company Law Tribunal, Chennai' in MA/179/2019 and MA/120/2019 in CP/39/IB/2018. The Learned Adjudicating Authority, has dismissed MA/120/2019 filed by the Appellant here in, *inter alia*, seeking for forensic audit of the 'Books of Accounts' of the Corporate Debtor, and not to approve the Resolution Plan till the disposal of the Application. Further, the Adjudicating Authority has also dismissed MA/179/2019, challenging the approval of the Resolution Plan.

2. Since both these Appeals deal with common facts and issues, they are being disposed of by this common Order.

3. MA/120/2019 was filed by the Appellant, herein seeking the following reliefs:

> *a) Direct the 3rd Respondent to produce the audit reports of M/s GPVS and Associates, Chartered Accountants for*

the financial years 2012-2013 to 2016-2017 before this Hon'ble Tribunal;

b) Direct that a forensic audit be conducted on the 2nd Respondent Company by a forensic auditor appointed by this Hon'ble Tribunal;

c) Direct that until receipt of the forensic audit report, restrain the 3rd Respondent from convening a meeting of the committee of creditors;

d) Direct that only those financial creditors, whose claims of financial debt, are supported by such forensic audit be included in the committee of creditors with their respective voting percentage proportionate to the financial debt recognized in the forensic audit and that the committee of creditors be reconstituted accordingly;

e) Direct that all decisions of the committee of creditors pending disposal of this application be made subject to the orders of this Hon'ble Tribunal;

f) Direct that no resolution should be proceeded with in respect of the 2nd Respondent Company until disposal of the instant application;

g) Appoint an Advocate Commissioner to ascertain the quantity of iron ore, barytes etc., at the mines of the 2nd Respondent Company, the quality of such goods, the valuation of such goods etc, with the assistance of independent surveyors and that the sale of the goods of the 2nd Respondent's shall be only with the prior permission of this Hon'ble Tribunal;

h) Pass such other order or orders this Hon'ble Tribunal may deem fit.

4. The Learned Adjudicating Authority while dismissing the Application has noted that MA 179/2019 was filed by the Resolution Professional seeking the approval of the Resolution Plan and 'Embassy Property Developments Private

Limited' ("EPDPL") was voted as SRA. The Resolution Plan was approved vide Order dated 12/06/2019. The Adjudicating Authority in Para 23 of the Order has referred to the objections raised in MA/129/2019 by the Appellant herein and we find it relevant to reproduce the same here in:

> *"The Objector viz., Mr. Ravi Shankar Vedam is the shareholder of the Corporate Debtor viz., M/s. Tiffins Barytes Asbestos and Paints Ltd., and is the absolute owner of 35,590 shares and upon his father's intestate demise in April 2013, he and his brother viz., Mr. Sriram Vedam, inherited the 12,938 shares a n d therefore has a substantial interest in the Corporate Debtor. The objector has alleged that the Resolution Professional has not shared the documents with him which is in violation of the Principles of Natural Justice. The decision of the Committee of Creditors is not in accordance with law as the constitution of the committee is invalid. The Resolution Professional and other persons will get illegal benefit from the approval of the Resolution Plan. The Objector has also stated that the pending MAs were to be decided first and then the Resolution Plan should have been taken into consideration. He has questioned the quantity of the material lying on the spot and seeks forensic audit of various transactions in relation to the Corporate Debtor. It is also alleged that the Resolution Plan is discriminatory.*
>
> *In connection with the objections noted above, there does not appear any provision in the IBC to prescribe any role for the shareholders of the Corporate Debtor during the CIR Process, as there require no approval of the shareholders to implement actions under the 'Resolution Plan'. A reference may be made to an Explanation to Sub Section (2) of the Section 30 of IBC, 2016 which provides that if any approval of shareholders is required under the Companies Act 2013 or any other Law for the time being in force for the implementation of the action under the Resolution Plan, such approval shall deemed to have been given a n d it shall not be a contravention of that Act or Law. Thus, it becomes clear that the legislature did not*

mandate for seeking approval of shareholder in relation to the Resolution Plan. Therefore, any objection raised by the shareholder cannot be considered by this Authority while approving or rejecting the Resolution Plan. In this connection reliance is placed on the judgement given by Hon'ble NCLAT in J M Financial Asset Reconstruction Company Limited us. Well-Do Holding a n d Exports Put. Ltd, and Ors., reported in MANU/NL/0141/2019, wherein, it has been held that the Shareholders and Promoters being ineligible to file the Resolution Plan under Section 29A, has no right to raise their grievances. In view of it this Authority is not legally required to entertain any kind of objection pertaining to the Resolution Plan approved by the CoC. Therefore, the objections raised by the shareholder are hereby rejected."

Submissions of the Learned Counsel appearing on behalf of the Appellants:

5. Mr. T.K. Bhaskar, the Learned Counsel for the Appellant has strenuously contended that the 'MoU' relied upon is not genuine; that CIRP was triggered only on the basis of this 'MoU' dated 16/04/2016; that the font used in the 'MoUs' is different, that the Stamp Papers don't match, that only one 'MoU' has the Company Seal of the Corporate Debtor, Clause 3 is absent in the 'MoU' filed in the Ballari Court, the handwriting of the witnesses are different, there is discrepancy in the Stamp used in the 'MoU' filed before the Adjudicating Authority; that there was no time value of money when the money was purportedly disbursed to the Corporate Debtor; that CIRP was initiated fraudulently and with a malicious intent for a purpose other than the Resolution of Insolvency; that the SRA is admittedly the Co-Subsidiary of the 1st Respondent; that the RP is duty bound under Regulation 35 A of the 'Corporate

Persons Regulations' read with Section 25(2) (j) and Sections 43, 45, 49, 50 & 66 of the Code to form an opinion on whether the Corporate Debtor has been subjected to any of the Transactions covered therein; that the Resolution Professional is duty bound under Sections 20(1) and 20(2) (a) read with Sections 25(1) and 25(2) of the Code to protect and preserve the value of assets of the Corporate Debtor; that in the 3rd meeting of the CoC held on 23/06/2018, the Resolution Professional stated that he have to file a Certificate regarding the Fraudulent Transactions, Preferential Transactions and Undervalued Transactions and that he would be engaging auditors to conduct the Forensic Audit of the Transactions of the Corporate Debtor; on 24/10/2018, in the 5th CoC Meeting, a proposal for conducting the Forensic Audit was placed before the CoC, which was rejected; that the decision by the CoC on 24/10/2018 was taken by 91.90% voting share, out of which 46.20% voting share was by ineligible persons; that the Resolution Professional gave a Report stating that he was not taking any responsibility about the authenticity of the Financial Transactions that occurred prior to his engagement; that the account of the Corporate Debtor after 'CIRP' commenced are inconsistent when compared with the 'Tax Audit Accounts' before 'CIRP'; that in the 6th Meeting of the CoC, held on 15/12/2018, IOB, the Financial Creditor has stated that the rejection of the Audit Report is not only to shield the Resolution Professional and other Creditors; that the Impugned Order is a non speaking Order and that approval of the Resolution Plan has no nexus with the Appellant's prayer for a Forensic Audit in the interest of Justice.

6. It was contended by the Learned Counsel that the Adjudicating Authority has not discussed the various submissions made by the Appellant, and only passed a non speaking Order.

7. The Learned Counsel while arguing Company Appeal (AT) (Ins) No. 653/2019 (TA (AT) No. 134/2021), which challenges the Impugned Order in MA/179/2019 submitted that the Adjudicating Authority had failed to consider that the three claimants, who were termed as Financial Creditors by the Resolution Professional in the 2nd CoC Meeting dated 02/06/2018 were directed to be deleted as Financial Creditors from the list of CoC by the Adjudicating Authority, vide Orders passed in MA/573/2018 dated 27/03/2019 and therefore the Resolution Plan filed by 'EPDPL' could not have been approved, without directing the Resolution Professional to reconstitute the CoC. It is also submitted that there was material irregularity in the exercise of power by the Resolution Professional and that the Corporate Debtor was sold at a throw away price of Rs. 89 Crores, despite the fact that the Company had assets to the tune of Rs. 150 Crores, and that the refusal of Resolution Professional to conduct the Forensic Audit despite specific remarks made by the erstwhile Auditors, is in contravention of the provisions of the law for the time being in force. The Learned Counsel contended that the Adjudicating Authority ought not to have admitted the Application for initiation of CIRP by M/s. Udhyaman Investments Private Limited, in so far as the Application was in clear violation of Section 65 of the Code for suppression of material facts as the presence of Mr. Poobalan and

his aides were involved in the functioning of the Company till 2018 and thereafter being a member of CoC, was in violation of Section 29A of the Code. It is submitted by Mr. T.K. Bhaskar that Mr. Poobalan was incharge of the day to day affairs of the Corporate Debtor Company and was working hand in glove with the Resolution Professional for their personal benefits and the Resolution Professional was determined to undervalue the Company. The Learned Senior Counsel placed reliance on the following Judgements:

a. Dr. B.V.S. Lakshmi v. Geometrix Laser Solutions Private Limited C.A. (AT) (Ins) No. 38 of 2017 (judgment dt. 22.12.2017) (para 29 to 31)
b. Sanjay Kewalramani v. Sunil Parmanand Kewalramani & Ors., C.A. (AT) (Ins) No. 57 of 2018 (judgment dt. 12.07.2018) (para 12 & 13)
c. Mohinder Singh Gill Vs. Chief Election Commission 1978 AIR 851
d. Committee of Creditors of Essar Steel India v. Sathish Kumar Gupta & Ors. (2020(8) SCC 531)
e. Hemant Kanoria v. SREI Infrastructure Finance Limited (IA (IB) No. 75/KB/2022)
f. Embassy Property Developments Pvt. Ltd. v. State of Karnataka ((2020) 13 SCC 308)
g. Behari Kunj Sahakari Avas Samiti v. State of U.P. ((2008) 12 SCC 306)
h. Punjab Merchantile Bank Ltd. v. Kishan Singh & Ors. (AIR 1963 P&H 230)

i. Ramachandra Ganpat Shinde & Ors. v. State of Maharashtra ((1993) 4 SCC 216)

8. The Resolution Professional (RP) has filed his 'Reply'/ 'Status Report' on behalf of the Corporate Debtor Company.

9. The Learned Senior Counsel Mr. Sumant Bhatra appearing for the Resolution Professional strenuously contended that a 'shareholder' does not have locus to challenge a Resolution Plan which has already been approved; that the Code recognizes 'stakeholders' only in the Liquidation process; that both the Companies Act, 2013 and the Code as on today does not envisage any 'Representative Capacity' for them; that the shareholders have no role to play, after the initiation of 'CIRP' against the Corporate Debtor; that the Appellant has never raised these issues during the 'CIRP'; that the Appellant for the very first time met the Resolution Professional on 01/11/2018, after taking prior appointment; that during the meeting, the Appellant informed that he was a shareholder of the Corporate Debtor and brother of Managing Director Late Shriram Vedam, that he was not aware of any of the business activities of the Corporate Debtor, as he is a non-resident and not involved in the management of the Corporate Debtor, that after the said meeting on 01/11/2018, the Appellant had never contacted the Resolution Professional, till later on 2019, when he had sent an e-mail to the Resolution Professional on the last date of 'Express of Interest' ("EOI"), at 12.13 p.m. requesting for participation in the EOI and his willingness to furnish a refundable deposit of Rs 5 Lakhs; the Resolution

Professional had also provided the EOI link file to the Appellant on 08/01/2019, but there was no response; after the 10th CoC meeting, held on 27/02/2019, when the Resolution Plan was approved, the Appellant had sent an e-mail asking for a Copy of the Resolution Plan and the Information Memorandum for which the Resolution Professional had duly replied stating that this information cannot be shared as it is confidential in nature; that all the Transactions entered into by Mr. Poobalan and his entities are through Banking channels and are reflected in the Books of Accounts of the Corporate Debtor; there is no document of proof that Mr. Poobalan was the signatory to any bank account and the same was given in an affidavit by Ms. Nandita Vedan, before the Hon'ble Adjudicating Authority; that the CoC in their 5th Meeting rejected the Audit Report of the Statutory Auditor and has discussed the same elaborately; the Government of Karnataka challenged the direction issued by the Adjudicating Authority before the Hon'ble High Court of Karnataka in W.P. No. 41029 of 2019 and obtained an Order of Stay, against which 'Special Leave Petitions' ("SLPs") were preferred and the Hon'ble Supreme Court in SLP Nos. 22596/2019, 22684/2019 and in 22724/2019 stayed the Order passed by the Hon'ble High Court of Karnataka. The Resolution Professional has appointed 2 registered valuers under Regulation 35 to determine the Liquidation Value.

10. The Learned Senior Counsel for R2 (Resolution Professional) contended that there was no material irregularity in the conduct and exercise of powers by the Resolution Professional and that the revised Form (H) in terms of the Orders

passed in MA/573/2018, dated 27/03/2019 were taken on record by the Adjudicating Authority and the question on reconstitution of the CoC does not arise, since 270 days time has already expired as on 07/03/2019 and the Order in MA/573/2018, was passed on 27/03/2019. The CoC in the 5th Meeting voted against any Forensic Audit as it would consume a lot of time and the 'CIRP' process would be delayed. The Valuation of the Stocks was arrived at based on the Report of the concerned Departments of the Government of Karnataka and Andhra Pradesh in so far as the mining stocks are concerned and for other valuation, the Resolution Professional had acted based on the Valuation Report of the Registered valuers.

11. The Learned Senior Counsel Mr. E. Om Prakash, appearing for the Respondents No. 1, 4, 5-8 strenuously contended that the 'Locus of the shareholder', in the context of 'Insolvency and Bankruptcy Code, 2016 Proceedings', is absolutely minimal; that stakeholders come into play only in the process of Liquidation; that in 'CIRP', stakeholders have no role to play and further drew our attention to a family tree explaining the relationship between the brothers and their wives and the number of shares held by each, for the better understanding of the case.

12. The Learned Senior Counsel also drew our attention to the Application seeking Forensic Audit in which it is submitted that the Applicant's, Mr. Ravi Shankar Vedam's father, played a significant role in building the business of the Company namely, 'Tiffins Barytes Asbestos and Paints Limited' and was actively

involved in the management of the business till the financial year 2011-2012, but unfortunately due to deterioration in health in the second half of 2012, his involvement was greatly reduced and the Applicant's brother, who was appointed as the Managing Director of the Company was looking after the management along with his wife Mr. Geetha Vedam and two other Directors. The Learned Senior Counsel contended that it was not the Debtors who were managing the Company and from 2011-2018, the 'Appellant'/ 'Applicant' did not raise any issue, that various Creditors have approached different Courts seeking other reliefs, the MoU was entered into with the Financial Creditor on 16/04/2016, where by 'M/s Udhyaman Investments' had given a loan of Rs. 11,50,00,000/-, at the request of the Company.

13. It is submitted that the MoU was entered into between the Company and Udhyaman, keeping in view, the mutual interest of both the parties. It was consented that the Company would pay to Udhyaman, a sum of Rs. 11,50,00,000/- with interest of 18% p.a. as recorded in the 'Joint Memo of Compromise', before the Learned Judicial Magistrate, Bellari in CC No. 1687/2014.

14. It is submitted that in CP/39/IB/CB/2018, it was stated before the Adjudicating Authority by the Financial Creditor, who had filed the Section 7 Application, that the Corporate Debtor had given a cheque to the Financial Creditor for an amount of Rs. 8,82,68,439/-, on 03/04/2014, which was dishonoured due to lack of funds. Therefore, CC No. 1687/2014 was filed by the

Financial Creditor before the Learned Judicial First Class Magistrate, Bellari, under Section 138 of the 'Negotiable Instruments Act, 1881' and a 'Joint Memorandum of Compromise' as mentioned in the MoU was filed before the Court in CC No. 1687/2014, based on which the Company was acquitted of the offence. The Learned Senior Counsel Mr. E. Om Prakash, contended that the Corporate Debtor had raised all the issues through its Managing Director and also preferred an Appeal, which was dismissed by this Tribunal.

15. It is also brought to our Notice that when 'EOI' was published, the Appellant had approached the Resolution Professional, stating that he was intending submitting a Resolution Plan, and stepped in when the CoC was finalising the Plan.

16. The Learned Counsel drew our attention to a few dates for better understanding of the case, on 19/02/2019, an MA was filed by the Resolution Professional for clarity of two sets of Voting; on 27/02/2019, the CoC approved the Resolution Plan; on 04/03/2019 an MA was filed by the Appellant. It was only after the approval of the Resolution Plan that MA No. 120/2019 was taken up. The Learned Senior Counsel submitted that none of these issues were ever raised during 'CIRP' and that the Appellant was the Director at that point of time and was aware of the Statutory Applications as he was active till 20/11/2012 and thereafter his brother had become the Managing Director.

17. The Learned Counsel for the Appellant, in his rebuttal, drew our attention to the independent Auditor's Report by 'GPVS and Associates, Chartered

Accountants' where in, it is stated that the Company had paid advances to various third parties and has not given details of these advances and that the Resolution Professional has kept these documents confidential. It is further submitted that the Resolution Professional is duty bound to protect and preserve the value of the assets of the Corporate Debtor; that the Resolution Professional in the 3rd Meeting of the CoC, held on 23/06/2018 had categorically stated that he would be engaging Auditors to conduct the Forensic Audit of the Transactions of the Corporate Debtor, but after 4 months during the 5th Meeting of the CoC, the Resolution Professional suddenly placed a proposal for conduct of Forensic Audit which were rejected by the CoC and that this cannot be taken into consideration since 46.20% of the Voting Share was by ineligible members. It is vehemently contended that there was 'Material irregularity' in the conduct and exercise of the powers of the Resolution Professional and that had the Forensic Audit been done, CIRP would not have been triggered against the Corporate Debtor and that the Tribunal ought not to have approved the Resolution Plan without reconstituting the CoC.

Assessment:

18. At the outset, this Tribunal is of the earnest view that the question whether a shareholder of the Corporate Debtor has locus standi, to challenge the Resolution Plan, is to be adjudicated. In an Insolvency process, when an insolvency of Debtor is imminent, the fiduciary duty of the Directors and Managers, who are Agents of the Shareholders, shifts to the Creditors to preserve

the value of the Enterprise for maximising the returns for Creditors. The Legislature in its wisdom, has curtailed the 'Rights of the Shareholders' based on the established 'Principles of Creditors' in the control framework. The Court provides the 'shareholders' right to file a 'Claim' only in the Liquidation Process as 'stakeholders' and the advances of stakeholders as stated in Regulation 2(k) includes shareholders only because unlike 'CIRP', in Liquidation, distribution to stakeholders is in accordance with the waterfall mechanism. Shareholders are excluded from representation, participation or voting in the CoC and are represented in the CoC only through the Directors and can speak only through the Directors.

19. The Learned Counsel for the Appellant relied on the Judgment of the Hon'ble Supreme Court in the matter of ***'Vijaykumar Jain Vs. Standard Chartered Bank',*** reported in ***[(2019) 20 SCC 455]***, in support of his Submission that 'shareholder' has 'locus' as he is an 'affected Party' and hence can challenge the Resolution Plan, and drew our attention to Para 20 of the afore noted Judgment, which reads as follows:

> ***" 20.*** *It is also important to note that every participant is entitled to a notice of every meeting of the Committee of Creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Obviously, resolution plans are "matters to be discussed" at such meetings, and the erstwhile Board of Directors are "participants" who will discuss these issues. The expression "documents" is a wide*

expression which would certainly include resolution plans."

20. As can be seen from the aforenoted Para, the Hon'ble Supreme Court discussed the Rights of the Members of the erstwhile Board of Directors to receive a 'Copy' of the Resolution Plan along with other documents, but *does not* decide the 'Rights of the Shareholders'.

21. This Tribunal, is of the considered view that once the 'CIRP' is triggered, the Management of the affairs of the Corporate Debtor lies with the Interim Resolution Professional and the shareholders do not have a Right to file any claim in the 'CIRP' but can only do so in the Liquidation Process. It is seen from the provisions of the Code that the Shareholders are excluded from 'representation', 'participation' or 'voting in the CoC' and are represented in the CoC only through the Directors.

22. At this juncture, this Tribunal pertinently reproduces Section 30(2) of the Code which reads as herein:

30. Submission of resolution plan. –

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

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

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

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

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

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

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

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force (f) confirms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."

(Emphasis Supplied)

23. As can be seen from the Explanation to Section 30(2) of the 'I&B Code, 2016', the Code contemplates for *'Deemed Approval'* of the Shareholders of the Resolution Plan and its implementation and even a Shareholder, is deemed to have given its approval for implementation of the Resolution Plan, and such *'Deemed Approval'* cannot be taken away or undone by objecting to the Resolution Plan. We are of the view that giving the shareholder a Right to challenge the Resolution Plan or raise objections against its Approval, would *'render the Explanation redundant'*.

24. This Tribunal is alive and quite conscious of the fact that the Applicant/ Appellant is not a Guarantor of the Corporate Debtor and is hence not affected by the approval of the Resolution Plan. Hence, when an Application under Section 30(6) of the Code, is filed for approval of the Resolution Plan, the 'Adjudicating

Authority' examines whether the Resolution Plan is compliant of Section 30(2) of the 'Insolvency and Bankruptcy Code, 2016'. In the instant case, the 'Adjudicating Authority' found the 'plan', in adherence with Section 30(2) (e) of the 'I&B Code, 2016' and has approved the same, vide Order dated 12/06/2019 and therefore this Tribunal, is of the considered view that these issues raised by the shareholder when the CoC has approved the Plan with requisite Majority is not provided for in the Code and hence have no bearing.

25. The 'CIRP' proceedings are proceedings '*in rem'*, to the extent that once a Petition filed by a Financial Creditor/ Operational Creditor against the Corporate Debtor is admitted, it becomes a collective Creditors Proceedings and all Creditors, pool their Security Interest, in a common manner and the same is distributed as provided for, under Section 30(4) of the Code, subsequent to the approval of the 'plan' by the CoC. The Provisions of the Code does not provide for the shareholders to seek 'representation', 'participation', or otherwise and to agitate their views only through the Directors.

26. The High Court of Delhi in the matter of ***'ICP Investments (Mauritius Ltd.) Vs. Uppal Housing Pvt. Ltd. & Ors.'*** reported in ***[(2019) SCC Online Del 12371]*** has held as follows:

> ***"20.*** *It is felt that once the affairs of the Umang are taken over by an IRP, the Directors of Umang can no longer be blamed for not taking the requisite steps to seek redress for the wrong if any done to Umang, and a derivative action by plaintiff, as a majority shareholder, for the benefit of Umang would not be maintainable. The*

plaintiff now has to approach the IRP for taking action against Uppal and it is me IRP who has to, if finds any merit in the grievance of the plaintiff, take appropriate remedy on behalf of Umang. Moreover, if the plaintiff remains dissatisfied with the decision of IRP, has remedy before the NCLT.

21. *I find the question to be not res integra, as far as foreign jurisdictions are concerned. Reference in this regard may be made to:*

> *(i) Fargro v. Godfroy, [1986] 3 All ER 279, which was a case of derivative action on behalf of a "deadlock company" i.e. Articles of Association whereof did not provide a casting vote for the nominee director of either of two shareholders in the company. It was held that once such a company goes into liquidation, the situation is completely changed because there is neither a board nor any shareholders' meeting which in any sense is in control of the activities of the company let alone its litigation, and it is the liquidator who is the person in whom that right is vested. It was held that there is a vast distinction between the position where the company is a going concern and the minority shareholders' action can be brought as a derivative action, and a case where a company goes into liquidation, where there is no longer any necessity for bringing a minority shareholders' action.*
>
> *(ii) Barrett v. Duckett, 1995 BCC 362 where the Court of Appeal (UK), relying on Ferguson v. Wallbridge, [1935] 3 DLR 66, held that as soon as company goes into liquidation, the necessity for any such expediency in procedure (derivative action) disappears; the minority shareholders are then no longer at the mercy of majority and when even if the liquidator, acting at the behest of the majority, refuses when requested to take action in the name of the company, it is open to any contributory to apply to the Court.*
>
> *(iii) Cinematic Finance Ltd. v. Ryder, 2012 BCC 797, where a Chancery Division of UK held that a*

derivative action is not maintainable where the company cannot or will not enforce its rights due to malfeasance of the Directors. It was held that if a company is placed into liquidation or administration, then it would be for the liquidator or the administrator to decide whether or not to pursue the claims, and thus derivative action should not normally be brought on behalf of a company in liquidation or administration. It was further held that the controlling shareholder should not seek to circumvent the insolvency regime by starting a derivative action.

(iv) Petroships Investment Pte Ltd. v. Wealthplus Pte Ltd., 2016 SGCA 17 where the Supreme Court of Singapore also held that a derivative action, enshrined in Section 216A of the Companies Act, 2006 of that country, is one where there exist directors who are capable of taking action to vindicate the company's right i.e. they remain in active management. It was held that whilst a company is a going concern, it is normally for the Board of Directors to authorize legal proceedings, as the power to manage is usually vested in the Board; however when a company enters into liquidation, the board is effectively functus officio and the liquidator is in the driver seat and the directors have no power to react to any notice, whether to prosecute, defend or discontinue an action on the company's behalf.

22. *I must however note that the aforesaid cases involved a company which was at the stage of liquidation, as distinct from Umang in the present case, against which only the insolvency process has begun. However, considering the duties and role of the IRP under the IBC as discussed hereinabove, the principle in each of the aforesaid cases i.e. of the management of the company, on whose fraud/mismanagement a derivative action becomes maintainable, being no longer in power/control, and consequently a derivative action being no longer maintainable, also applies to the present case."*

23.*I also find a Single Judge of the High Court of Madras in Jai Rajkumar v. Stanbic Bank Ghana Ltd., 2018 CC OnLine Mad 10472 to have held a suit by way of a derivative action to be not maintainable when the company, for whose benefit derivative action was initiated, was under insolvency. It was held that it is for the RP to act on behalf of the corporate debtor and to initiate suitable proceedings if any deemed necessary for the benefit of the corporate debtor and its creditors.*

(Emphasis Supplied)

27. From the aforenoted observations, it is clear that once the affairs of the Corporate Debtor was handed over to the IRP, any action taken by Shareholder, even if a Majority shareholder, would not be maintainable.

28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has 'no locus standi' to challenge the Resolution Plan.

29. Now, this Tribunal addresses to the other contention raised by the Appellant that the Admission of CIRP itself was illegal. It is seen from the Record that the Admission Order dated 12/03/2019 was challenged by one of the Directors Ms. Nandita Vedam, in CA/116/2018 and this Tribunal, vide Order dated 31/07/2018 has dismissed the Appeal and has confirmed the 'Order of

Admission' under Section 7 of the Code. Hence, the Admission of CIRP has attained Finality. With respect to 'Mr. Poobalan', being a related Party to the Corporate Debtor, it is evident from the Record that the Adjudicating Authority, vide Order dated 27/03/2019 in IA/503/2019 decided that Mr. Poobalan is not in any way related to the Corporate Debtor, but that his relationship was only as an Agency. The same can be seen from the Report of the Resolution Professional and it is significant to mention that an Appeal filed against Order dated 09/05/2019 was dismissed by this Tribunal in CA/803/2019.

30. The Learned Counsel for the Appellant has strenuously argued that had the Transaction Audit been carried out, the Resolution Plan would not have been approved. It is not in dispute that the Appellant is one of the largest shareholders of the Corporate Debtor and not having raised these issues earlier, at the later stage, contends that other shareholders and Directors have indulged in 'Fraudulent Transactions'. We find force in the Contention of the Learned Senior Counsel Mr. E. Om Prakash, that these issues were never raised earlier, no action was taken and that there are other remedies in Law for any of these grievances.

31. The Hon'ble Supreme Court in the matter of ***'Arunkumar Jagatramka V. Jindal Steel & Power Ltd. & Anr.',*** reported in **[(*2021) 7 SCC 474]*** in Para 95 has observed as follows:

> " ***95.*** *At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of Nclat in Y. Shivram*

Prasad [Y. Shivram Prasad v. S. Dhanapal, 2019 SCC OnLine NCLAT 172]. Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for NCLT and Nclat, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

> *"An adjudicating authority ensures adherence to the process*
>
> *At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the Directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions*

against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."

(Emphasis Supplied)

32. From the aforenoted para, it is clear that the 'Foundational Principles' of the Insolvency and Bankruptcy Code, cannot be disturbed and this Tribunal is of the considered view that giving the 'Shareholder', the 'locus' to challenge the approval of the Resolution plan tantamounts to *'disturbing the Foundational Principles of the Insolvency and Bankruptcy Code'*. Keeping in view the facts of the attendant case, the Judgments relied upon by the Appellant are not applicable to the matter on hand.

33. The Learned Counsel for the Appellant strenuously contended that in the matter of ***'Embassy Property Developments Private Limited Vs. State of Karnataka & Ors.'*** reported in **[(*2020) 13 SCC 308]***,* this Tribunal has been granted the jurisdiction to enquire into the matter of fraud in insolvency proceedings. Referring to the assertions of the Appellant that serious allegations of fraud have not been dealt with by the Adjudicating Authority, the record shows that the 5th CoC Meeting on 24/10/2018, deliberated on the financial statements, rejected the draft audit report and decided to appoint another auditor to conduct the Corporate Debtor. The CoC has rejected the conduction of a forensic audit by a vote of an overwhelming majority of 91.9% . In the 6th CoC meeting held on 15/12/2018, 'Chartered Accountants' were appointed to complete the audit of the Corporate Debtor.

34. The minutes of the 10th CoC meeting held on 27/02/2019 shows that two sets of voting were conducted by the RP are with all CoC Members and are without the Members whose 'Membership status' is disputed and both sets had approved the Resolution Plan by a Majority. Therefore, we see no grounds to hold that had the Applications seeking forensic audit been allowed, the Resolution Plan would not have been approved.

35. IA No. 112 & 113 of 2023 have been filed by Mr. Vishnu Vedam, son of the Former Managing Director, seeking to be impleaded, praying for directions to permit him to represent the Corporate Debtor before appropriate forums. This impleadment Application was strongly contested by the Appellant on the ground that as the Applicant in IA No.113 & 113 of 2023 did not chose to prefer any Appeal, the question of impleadment does not arise.

36. It is submitted that Mr. Sriram Vedam, the Applicant's brother died intestate on 21/05/2018 and at that point of time, the Corporate Debtor was in moratorium under IBC, vide Order dated 12/03/2018. As the Board was suspended during that time, the Shares would not have been transferred and therefore, this Applicant is not a shareholder and has no locus to file this Application. At this juncture, this Tribunal is of the earnest view that the impleadment Applications filed by Mr. Vishnu Vedam are devoid of merits and are hence being dismissed as we are of the considered view that the issues raised in these Appeals can be adjudicated without the intervention / impleadment of the Applicant herein.

37. The Adjudicating Authority, had rightly observed in MA/120/2019 that the gist of the objections raised by the very same Applicant in MA/179/2019 are similar and have been considered exhaustively and dismissed. It is clear that in MA/179/2019, the Adjudicating Authority has held that *'legislature did not mandate for seeking approval of shareholder in relation to the Resolution Plan. Therefore, any objection raised by the Shareholder cannot be considered by this Authority while approving or rejecting the Resolution Plan'*.

38. The case of the Learned Counsel Mr. T.K. Bhaskar that the Adjudicating Authority has wrongly relied on ***'JM Financial Assets Reconstruction Company Ltd. Vs. Well-Do and exports Private Limited and Ors.'*** reported in ***MANU/NL/01412019,*** as it was observed by NCLAT in the aforenoted Judgment that shareholders and Promoters who were ineligible under Section 29A, cannot raise their grievances, is untenable, keeping in view that the basic Principle laid down is that when a Shareholder and a Promoter is ineligible to file a Resolution Plan, (except, if an MSME), viewing from the same yard stick, their role cannot be extended in getting involved in the decision making on the commercial viability of disposing off assets etc., which clearly falls in the domain of the CoC, whose decision is final. Even with regard to distribution of assets of a Company, under Liquidation, as per Section 53(h), Equity shareholders have been placed at the bottom of the list of Priorities. Regulation 38 (1A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 notes that *'a Resolution Plan shall include a statement as to how it has to be dealt with the*

interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor'. The necessary and requisite condition was that the Resolution Plan has been adhered to by the 'Successful Resolution Applicant' and approved by the Adjudicating Authority. It is significant to mention that the Appellant/ Shareholder of the Corporate Debtor has challenged the decision of the Adjudicating Authority approving the Resolution Plan, at a belated stage. At this juncture, we find it relevant to place reliance on the Judgment of the Hon'ble Apex Court in the matter of ***'Kalparaj Dharamshi v. Kotak Investment Advisors Ltd.'*** reported in **[(*2021) 10 SCC 401],*** in which the Hon'ble Apex Court has clearly laid down that the Commercial wisdom of the CoC cannot be set aside unless there is a 'material irregularity' as defined under Section 30(2) of the Code.

39. From these decisions rendered by the Hon'ble Supreme Court, it is crystal clear that the 'discretion of the Tribunals', is circumscribed by Section 31 limited to scrutiny of the Resolution Plan, if it is in violation of Section 30 of the 'I&B Code, 2016'.

40. The Successful Resolution Applicant (SRA), Mr. Embassy Property Development Limited was impleaded as the Respondent, vide Order dated 25/10/2019. The Learned Senior Counsel, Mr. Rana Mukherjee representing the SRA submitted that the Resolution Plan was approved by the CoC with 96.45% Voting Share in its 10th CoC Meeting, held on 27/02/2019 and has already been implemented. Keeping in view the material on record, the Submissions of the

Learned Counsels of both sides, this Tribunal is of the earnest view that there is no 'material irregularity' in the approval of the Resolution Plan and that Section 30(2) of the Code and Regulations 37, 38 (1) (A), and 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was adhered to and there is no contravention to Section 29A or any other Provisions of the Law, for the time being in force.

41. In the 10th CoC Meeting dated 27/02/2019, the CoC has discussed at length both the Resolution Plans and highlighted the following:

> *"The Resolution Plan of VITPL contains a better offer compared to the Plan submitted by EPDPL. However, the risk involved in VITPL offer was in case of non-renewal of the mining lease, the plan submitted by them states that it is under no obligation to implement the Resolution Plan. Then the Resolution Plan collapses and nobody gets anything. Whereas, the Resolution Plan of EPDPL though the offer was lesser than that of VITPL, the members are of the view that EPDPL though the offer was lesser than that of VITPL, the members are of the view that EPDPL commits to the Resolution Plan irrespective of the outcome of the Government in renewing the mining lease.*
> *There is no upfront cash Payment in the Resolution Plan of VITPL whereas the Resolution Plan of EPDPL contains upfront cash payment to Secured Financial Creditor and Workmen and Employees.*
> *The Results of the 1st Voting set is as follows:*

Financial Creditor	*Voting %*	*EPDPL*	*VITPL*
Indian Overseas Bank	*28.80 %*	*Favour*	*Against*
AASAAN Global Trade	*2.50 %*	*Against*	*Against*
Jayashree Agencies	*7.60 %*	*Favour*	*Against*
Palak HR	*3.80 %*	*Against*	*Against*
Udhayaman Investments	*55.50 %*	*Favour*	*Against*
Sujathaa Mehta	*1.70 %*	*Against*	*Against*

Total	*100 %*		
Votes in Favour *Votes Against*		*91.90%* *8.10%*	- *100.00%*

The Results of the 2nd Voting is as follows:

Financial Creditor	Voting %	EPDPL	VITPL
Indian Overseas Bank	6.80 %	Favour	Against
AASAAN Global Trade	0.60%	Against	Against
Jayashree Agencies	22.80%	(e-voting)	
JSW Steels	22.80 %	Against	Against
Palak HR	0.90 %	Against	Against
Mr. Poobalan	7.30%	Favour	Against
Udhayaman Investments	13.10%	Favour	Against
D & D Enterprises	24.30%	Favour	Against
DP Exports	19.10%	Favour	Against
Elite Exports	2.80%	Favour	Against
Sujathaa Mehta	0.40%	Against	Against
Total	100%		
Votes in Favour Votes Against		75.20% 1.90%	- 77.20%

Note: Voting result subject to the e-voting of JSW Steels.

RP informed the CoC Members the results of the Voting (subject to the e-voting of JSW) and the following resolution has been passed in the CoC."

42. The Hon'ble Supreme Court in the matter of ***'Kalparaj Dharamshi & Anr. v. Kotak Investment Advisors Ltd. & Anr.'*** reported in ***2021 (10 SCC 401)*** has held as follows:

> ***"164.*** *It will be further relevant to refer to the following observations of this Court in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] : (SCC pp. 186-87, para 57)*

57. ... Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in NCLT or Nclat as noticed earlier, have not made the commercial decision exercised by CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order "approving a resolution plan" under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers "by the resolution professional" during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds—be it under Section 30(2) or under Section 61(3) of the I&B Code —are regarding testing the validity of the "approved" resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision."

165. *It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same.*

166. *The position is clarified by the following observations in para 59 of the judgment in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , which reads thus : (SCC p. 187)*

"59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (Nclat) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors."

167. *This Court in Essar Steel India Ltd. Committee of Creditors [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] after reproducing certain paragraphs in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] observed thus : (Essar Steel India case [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , SCC p. 589, para 67)*

"67. ... Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the adjudicating authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] ."

168. *It can thus be seen, that this Court has clarified, that the limited judicial review, which is available, can in no circumstance trespass upon a business decision arrived at by the majority of CoC.* ***169.*** *In Maharashtra Seamless Ltd. [Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467 : (2021) 1 SCC (Civ) 799] , NCLT had approved [V. Venkatachalam v. Indian Bank, 2019 SCC OnLine NCLT 713] the plan of the appellant therein with regard to CIRP of United Seamless Tubulaar (P) Ltd. In*

appeal, Nclat directed [Padmanabhan Venkatesh v. V. Venkatachalam, 2019 SCC OnLine NCLAT 285] , that the appellant therein should increase upfront payment to Rs 597.54 crore to the "financial creditors", "operational creditors" and other creditors by paying an additional amount of Rs 120.54 crores. Nclat further directed, that in the event the "resolution applicant" failed to undertake the payment of additional amount of Rs 120.54 crores in addition to Rs 477 crores and deposit the said amount in escrow account within 30 days, the order of approval of the "resolution plan" was to be treated to be set aside. While allowing the appeal and setting aside the directions of Nclat, this Court observed thus : (Maharashtra Seamless case [Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467 : (2021) 1 SCC (Civ) 799] , SCC p. 487, para 30)

> *"30. The appellate authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the adjudicating authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an adjudicating authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the adjudicating authority in limited judicial review has been laid down in Essar Steel [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , the relevant passage (para 54) of which we have reproduced in*

earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the appellate authority ought to have interfered with the order of the adjudicating authority in directing the successful resolution applicant to enhance their fund inflow upfront."

170. *This Court observed, that the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.*

171. *It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.*

(Emphasis Supplied)

43. It is clear from the aforenoted Judgment of the Hon'ble Apex Court that the Commercial Wisdom of the CoC has been given paramount importance and that there can be judicial intervention only when there is any material irregularity or if the Plan is not in adherence to Section 30(2) of the Code.

44. The Hon'ble Apex Court, in the matter of **'Ebix Singapore Pvt. Ltd. & Ors. v. Committee of Creditors of Educomp Solutions Private Limited'**, **reported in 2022 (2 SCC 401)** has clearly laid down that subsequent to the approval of the Resolution Plan of the CoC and before the approval by the

Adjudicating Authority, no modifications / alterations can be called for as IBC is a time bound process.

45. At the cost of repetition, in the instant case, this Tribunal finds no infirmity in the 'Order of the Learned Adjudicating Authority' in the 'Approval of the Plan' or in the rejection of MA/120/2019. The Learned Senior Counsel, Mr. Rana Mukherjee has submitted that the 'Successful Resolution Applicant', in compliance with the timelines mentioned in the 'Plan' has brought in funds amounting to Rs. 26.50 Crores on 20/07/2019 and Rs. 62,97,11,280 on 12/10/2021. Further having regard to the fact that the Resolution Plan is successfully implemented and for all the aforegoing reasons, we do not find it a fit case to interfere in the well reasoned Orders of the Adjudicating Authority and hence both these Appeals fail and are accordingly dismissed. No Order as to costs.

Result:

46. In fine, both the Appeals, Company Appeal (AT) (Ins) No. 653/2019 and Company Appeal (AT) (Ins) No. 803/2019 are dismissed. The connected pending Interlocutory Applications, if any, are 'closed'.

[Justice M. Venugopal]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

13/06/2023
SPR/TM