NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.800 of 2023

(Arising out of Order dated 24.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in IA No.702/2022 in Company Petition No.: IB 300(PB)/2020)

IN THE MATTER OF:

Phoenix ARC Pvt. Ltd. ...Appellant

Versus

Ajit Gyanchand Jain & Ors. ...Respondents

Present:

For Appellant	:	**Mr. Gulshan Kr. Sachdev, Advocate.**
For Respondents	:	**Mr. Pankaj Garg, Ms. Nikita Jain Garg and Mr. Yashra Ahuja, Advocates for R-1/RP.**
		Mr. Ajay Bhargava, Ms. Wamika Trehan, Ms. Raddhika K. Tandon and Mr. Siddhant Kumar, Advocates for R-3/SRA.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 24.04.2023 passed by National Company Law Tribunal, Principal Bench, New Delhi in IA No.702 of 2022 in CP(IB) No.300 of 2020. By the impugned order, the Adjudicating Authority allowed IA No.702 of 2022 filed by the Resolution Professional ("**RP**") for approval of Resolution Plan in respect of Sare Gurugram Pvt. Ltd. – Corporate Debtor ("**CD**"). Aggrieved by the order approving the Resolution Plan, this Appeal has been filed.

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

(i) The CD – M/s Sare Gurugram Pvt. Ltd. is in business of construction and development of residential and commercial real estate projects. One M/s Sun Agrifresh Industries Pvt. Ltd. ("**Sun Agrifresh Industries**"), the Borrower had approached Bajaj Finance Ltd. for grant of financial facilities for the purpose of seven flats developed by the CD. A sum of Rs.6,65,08,737/- was advanced by Bajaj Finance Ltd. to Sun Agrifresh Industries against the equitable mortgage created on the aforesaid seven flats. A Tripatite Agreement between the Borrower, CD and Bajaj Finance Ltd. was entered in July 2015. Identical Agreement was entered for different units in Project – Sare Crescent ParC Township.

(ii) On an application filed by Asset Care and Reconstruction Enterprises Ltd. ("**ACREL**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**"), Corporate Insolvency Resolution Process ("**CIRP**") against the CD commenced vide order dated 09.03.2021. Shri Ajit Gyanchand Jain was appointed as Interim Resolution Applicant ("**IRP**").

(iii) The IRP issued public announcement on24.03.2021 inviting claims. The Appellant has taken an assignment dated 04.04.2018 from Bajaj Finance Ltd., who assigned all the rights, title and interest of the Lender as against Borrower. The Appellant filed its claim in the category of other creditors in Form-F on 24.03.2021, claiming an amount of Rs.6,65,08,737/- with interest @ 12%, totaling Rs.9,62,02,610. The IRP admitted principal claim of Rs.6,65,08,737/- in accordance with Tripartite Agreement relied by the Appellant. With respect to seven units, Sun Agrifresh Industries filed its claim, which was admitted for different amount and the name of Sun Agrifresh Industries was admitted as Financial Creditor, which was submitted in Form-CA. The IRP issued a List of Creditors on 11.11.2021, where principal amount of claim of the Appellant was also uploaded.

(iv) In the CIRP of the CD, Resolution Plan was submitted, which was approved by the Committee of Creditors ("**CoC**") with 100% vote share. Under the category of Other Creditors, Resolution Plan proposed payment of consolidated amount of Rs.5 lakhs to be paid in proportion to their admitted claims. The Plan was approved by the CoC on 26.12.2021. RP filed IA No.702 of 2022 before the Adjudicating Authority for approval of the Resolution Plan.

(v) In November 2022, the Appellant filed IA No.214 of 2023 on the decision of the RP for not admitting entire claim of Rs.9,62,02,610/-, whereas only claim of principal amount of Rs.6,65,08,737/- was admitted.

(vi) The Resolution Plan submitted by Successful Resolution Applicant ("**SRA**") came to be ultimately approved by the Adjudicating Authority by the impugned order. Aggrieved by which order this Appeal has been filed.

3. We have heard Shri Gulshan Kumar Sachdeva, learned Counsel appearing for the Appellant; Shri Pankaj Garg, learned Counsel appearing for Respondent No.1/ RP; and Shri Ajay Bhargava and Ms. Wamika Trehan for Respondent No.3/ SRA.

4. Learned Counsel for the Appellant in support of the Appeal submits that as per Tripartite Agreement between the Borrower, CD and Bajaj Finance Ltd., mortgage was created with regard to seven flats and as per the clauses of Tripartite Agreement, the CD was obliged to refund the amount, if Borrower defaults in payment of loan. Charge was created against the CD in favour of the Appellant. The Appellant has also initiated SARFAESI proceedings under Section 13, sub-section (2) and Awards have already been made in favour of the Appellant for Rs.3,38,00,688/- with 12% interest and Rs.4,36,80,732/- with 12% interest and execution petitions have already been filed before the Debt Recovery Tribunal ("**DRT**"), which by order dated 07.03.2020 granted stay on the mortgaged flats. The CIRP commenced thereafter, where the claim was filed by the Appellant for Rs.9,62,02,610/-. The RP refused to share the Resolution Plan and the CoC in the Resolution Plan has approved the meagre amount of Rs.5 lakhs to other creditors. It is submitted that the mere fact that the Appellant has filed its claim under other creditors, did

not in any manner restrict the RP to determine the claim in the correct category, i.e. the Financial Creditors. Learned Counsel for the Appellant submits that amount was disbursed by the Financial Creditors to the CD under the Tripartite Agreement and the amount disbursed by Bajaj Finance Ltd. was a 'financial debt' within the meaning of Section 5, sub-section (8) of the IBC. The Appellant placed reliance on judgment of the Hon'ble Supreme Court in ***(2024) 6 SCC 767 – Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Anr***. Learned Counsel for the Appellant further relied on the judgment of this Tribunal dated 09.01.2025 in the matter of ***Canara Bank vs. Sh. Vivek Kumar in Company Appeal (AT) (Ins.) No.390 of 2023*** and stated that Appellant is a Financial Creditor. It is submitted that the Appellant was entitled to be treated as the Financial Creditor and paid the amount as a Financial Creditor under the Resolution Plan.

5. Learned Counsel appearing for RP as well as SRA have opposed the submissions of the Appellant. Learned Counsel for the RP submits that Appellant has filed its claim in Form-F as other creditors. The Appellant's claim for principal amount of Rs.6,65,08,737/- was admitted by the RP and was uploaded in the List of Creditors under the category of other creditors. The Appellant has filed an IA, objecting to the partial admission of the claim by filing IA No.214 of 2023, after a year of intimation of rejection of its part claim by the IRP. The application – IA No.214 of 2023 was never listed till Plan approval application was heard and reserved on 12.12.2022. It is submitted that Appellant never

questioned its categorization as 'other creditor' and now it is not open for the Appellant to challenge the Resolution Plan. The Resolution Plan has been approved by the CoC in its commercial wisdom and Resolution Plan being in compliance of Section 30, sub-section (2) has rightly been approved by the Adjudicating Authority.

6. Learned Counsel appearing for the SRA refuting the submissions of the Appellant, submits that claim of the Appellant was accepted as 'other creditors' on the total principal amount and the treatment of the Appellant has been given in the approved Resolution Plan as other creditors and there is no error in the treatment of the Appellant as other creditors in the Resolution Plan. The Resolution Plan having been approved by the CoC in its commercial wisdom, no grounds have been made out to challenge the approval of Resolution Plan in this Appeal. The judgment of the Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Anr***. ("**Greater Noida**") does not help the Appellant in the present case. In the present case, the Appellant himself has filed its claim under the category of 'other creditors' and never claimed as Financial Creditor, whereas in a case before the Hon'ble Supreme Court in **Greater Noida**, the Greater Noida claimed itself as a Financial Creditors and the decision of the RP to treat the Grater Noida as Operational Creditor was challenged by filing an IA, which was dismissed by the NCLT, giving rise to the Appeal before the NCLAT and an Appeal before the Hon'ble Supreme Court. It is submitted that the judgment of this Tribunal in **Canara Bank vs. Sh. Vivek Kumar**

("**Canara Bank**") is also distinguishable. In the above case, Canara Bank has filed its claim as Financial Creditor and not as other creditor. In Canara Bank, the application for approval of Resolution Plan was pending before the Adjudicating Authority, when the application filed by Canara Bank was decided. Whereas, in the present case, the Plan approval application has been allowed by the impugned order and the present Appeal has been filed challenging the order approving the Resolution Plan. The Resolution Plan being in compliance of Section 30, sub-section (2), no grounds have been made out to interfere with the commercial wisdom of the CoC in approving the Resolution Plan. It is submitted that the Appellant having obtained order from Debt Recovery Tribunal, it is free to execute the said order before the competent Court. The claim insofar as the CD is concerned has been filed by the Appellant and has become final in the Resolution Plan, which cannot be allowed to be questioned any further.

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

8. The Appellant has relied on Tripartite Agreement between the Borrower - Sun Agrifresh Industries Pvt. Ltd., the CD and Bajaj Finance Ltd. entered in July 2015. The Borrower entered into an Agreement with Bajaj Finance Ltd. for grant of housing loan, which housing loan was granted by Bajaj Finance Ltd. to the Borrower - Sun Agrifresh Industries Pvt. Ltd. The learned Counsel for the Appellant has relied on Annexure-B of the Tripartite Agreement and has relied on Clauses 6, 9, 10 and 12 of

the Agreement. It is submitted that in the event of default of repayment of loan by Borrower, on written instruction of Bajaj Finance Ltd., the CD shall refund the entire amount advanced to it and cancel the allotment. The present is a case where allotment in favour of Borrower, i.e. Sun Agrifresh Industries has not been cancelled and in the CIRP of the CD, a claim was filed by Sun Agrifresh Industries as Financial Creditor, claiming allotment of seven units, whereas the Appellant has filed its claim as other creditor. The copy of the claim filed in Form-F [proof of claims by creditors (other than Financial Creditors and Operational Creditor)] has been brought on record in reply filed by Respondent No.1, which indicates that total claim of Rs.6,65,08,737/- along with interest was admitted. Reference to seven flats, which were held as securities have also been made in the Claim Form. The RP has also brought on record the List of Creditors published by IRP as Annexure-'C' to the reply, where claim of allotted in Class – Home Buyers in Form-CA has been noticed and the claim of M/s Sun Agrifresh Industries Pvt. Ltd. has been mentioned from Item Nos.1165 to 1171, where different amount has been admitted. It is useful to extract the above part of List of Creditors, which is as follows:

S. No.	Code	Name of Creditors	Group	Claim Submitted (Amount in Rs.)	Claim Provisionally Admitted (Amount in Rs.)	Security Interest, if any in respect of Such claims	Whether Related Party
1165	CPG010102	Sun Agrifresh Industries Private Limited	Group 2	24,109,306	3,687,749	N/A	No
1166	CPG010202	Sun Agrifresh Industries Private Limited	Group 2	24,240,919	3,689,749	N/A	No
1167	CPG020204	Sun Agrifresh	Group 2	24,380,978	3,739,781	N/A	No

		Industries Private Limited					
1168	CPG022004	Sun Agrifresh Industries Private Limited	Group 2	24,066,867	3,659,427	N/A	No
1169	CPG040103	Sun Agrifresh Industries Private Limited	Group 2	23,821,367	3,303,935	N/A	No
1170	CPG040203	Sun Agrifresh Industries Private Limited	Group 2	23,735,262	3,295,793	N/A	No
1171	CPG030203	Sun Agrifresh Industries Private Limited	Group 2	23,735,262	3,295,793	N/A	No

9. The claim of the Appellant was filed in the category of other creditors. The claim of the Appellant was never admitted in the category of Financial Creditor, nor in the List of Creditors as published by the IRP, the name of the Appellant was included as Financial Creditors, i.e. creditors in a class. The Appellant had filed an IA No.214 of 2023, questioning the partial admission of the claim only, which application was never listed before the Adjudicating Authority, prior to hearing and reserving the order on Plan approval application. After the order dated 24.04.2023 approving the Resolution Plan was passed, a communication was sent by the RP to the Appellant on 29.04.2023, giving details of admission of the claim of the Appellant and allocation of the amount as per the Resolution Plan.

10. The learned Counsel for the Appellant has submitted that the Appellant ought to have been treated as Financial Creditors of the CD and treatment in the Resolution Plan of the Appellant in other creditors is not in accordance with law. From the facts brought on the record, it is clear that the Appellant has filed its claim as other creditor (other than Financial Creditors and Operational Creditor) and in the List of Creditors

of class, i.e. Home Buyers, the name of the Appellant was never included and the Appellant did not agitate the categorization of its as 'other creditors' and IA No.214 of 2023, which was filed by the Appellant was with respect to questioning the admission of claim only to the extent of Rs.6,65,08,737/- in place of Rs.9,62,02,610/-. IA No.214 of 2023, which has been brought on the record by the Appellant as Annexure-'D', the prayers made in the application, were to the following effect:

> "A. To Direct the RP to release the entire amount of INR 9,62,02,610/- to the Applicant Company.
>
> B. To Direct the RP to provide an explanation as to why he only admitted the amount of INR 6,65,08,737/- in place of INR 9,62,02,610/-
>
> C. To Direct the RP to share the resolution plan with applicant.
>
> D. Pass any further order as Hon'ble Bench deem fit and proper."

11. The application mentions that RP has admitted only claim of Rs.6,65,08,737/- in place of Rs.9,62,02,610/-. List of Creditors was uploaded by RP, in which List of Creditors, which was updated as on 30.09.2021, the name of the Appellant was never included in the List of Creditors in a class i.e. Financial Creditor, whereas the name of the Borrower - Sun Agrifresh Industries was mentioned as Financial Creditor in a class and in the Resolution Plan, the Borrower mentioned as entitled to the units, which was allotted to the Borrower. The Appellant having never agitated the non-inclusion of the Appellant's name as creditor in a class before the Adjudicating Authority and the approval of Resolution Plan is on the basis of List of Creditors as uploaded by the RP and shared

with the Resolution Applicant, now at the time of challenging the order approving the Resolution Plan, the Appellant cannot be allowed to challenge the categorization of claim on the basis of which the Resolution Plan was submitted and approved. It is well settled that challenge to the order of commercial wisdom of the CoC approving the Resolution Plan can be questioned only on a limited ground, i.e. if Resolution Plan violates Section 30, sub-section (2) of the IBC. The learned Counsel for the Respondent has relied on judgment of the Hon'ble Supreme Court in ***K. Sashidhar vs. Indian Overseas Bank and Ors. – (2019) 12 SCC 150***. The Hon'ble Supreme Court in paragraph 55 of the said judgment has laid down the limited scrutiny of the Resolution Plan, which the Adjudicating Authority is required to make while approving the Resolution Plan. In paragraph-55 of the judgment following has been laid down:

> "**55.** Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (*i*) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (*ii*) the repayment of the debts of operational creditors in prescribed manner, (*iii*) the management of the affairs of the corporate debtor, (*iv*) the implementation and supervision of the resolution plan, (*v*) does not contravene any of the provisions of the law for the time being in force, (*vi*) conforms to such other requirements as may be specified by the Board. The Board referred

to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code."

12. In subsequent judgment of the Hon'ble Supreme Court in ***Kalpraj Dharmashi and Anr. vs. Kotak Investment Advisors Ltd. and Anr. – (2021) 10 SCC 401***, the Hon'ble Supreme Court again reiterated the limited jurisdiction of the Adjudicating Authority in interfering with approval of the Resolution Plan. In paragraphs 150 to 155, following was laid down:

"**150.** For deciding the said issue, it will be apposite to refer to Sections 30 and 31 of the I&B Code, which read thus:

> "**30. *Submission of resolution plan*.**—(1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under Section 29-A to the resolution professional prepared on the basis of the information memorandum.
>
> (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
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> (*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 the 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 purposes 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*) conforms 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.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under Section 29-A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

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

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

Provided also that the eligibility criteria in Section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the adjudicating authority.

31. *Approval of resolution plan*.—(1) If the adjudicating authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan:

Provided that the adjudicating authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the adjudicating authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1)—

(*a*) the moratorium order passed by the adjudicating authority under Section 14 shall cease to have effect; and

(*b*) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the adjudicating authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in Section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

151. The aforesaid provisions have been recently considered in three judgments of this Court. The first one, being in *K. Sashidhar* [*K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , to which one of us (A.M. Khanwilkar, J.) was a party, and two other judgments, delivered by three-Judge Bench of 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] and *Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh* [*Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh*, (2020) 11 SCC 467 : (2021) 1 SCC (Civ) 799] .

152. 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] has set out the relevant extracts from the Bankruptcy Law Reforms Committee ("BLRC") Report of 2015, which read thus : (SCC pp. 577-79, para 56)

> "*56*. At this juncture, it is important to set out the relevant extracts from the aforementioned Report:
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> '**2.** ***Executive Summary*** * * *
>
> ***The key economic question in the bankruptcy process***
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> * * *
>
> *The Committee believes that there is only one correct forum for evaluating such possibilities, and making a decision : a creditors committee, where all financial creditors have votes in proportion to the magnitude of debt that they hold*. In the past, laws in India have brought arms of the Government (legislature, executive or judiciary) into this question. This has been strictly avoided by the Committee. *The appropriate disposition of a defaulting firm is a business decision, and only the creditors should make it.*
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> * * *
>
> **5.** ***Process for legal entities*** * * *
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> ***Business decisions by a creditor committee***
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> All decisions on matters of business will be taken by a committee of the financial creditors. This includes evaluating proposals to keep the entity as a going concern, including decisions about the sale of business or units, retiring or restructuring debt. The debtor will be a non-voting member on the creditors committee, and will be invited to all meetings. The voting of the creditors committee will be by majority, where the majority requires more than 75 per cent of the vote by weight.
>
> * * *
>
> ***No prescriptions on solutions to resolve the insolvency***
>
> *The choice of the solution to keep the entity as a going concern will be voted on by the creditors committee. There are no constraints on the proposals that the resolution professional*

can present to the creditors committee. Other than the majority vote of the creditors committee, the resolution professional needs to confirm to the adjudicator that the final solution com-plies with three additional requirements. The first is that the solution must explicitly require the repayment of any interim finance and costs of the insolvency resolution process will be paid in priority to other payments. *Secondly, the plan must explicitly include payment to all creditors not on the creditors committee, within a reasonable period after the solution is implemented*. Lastly, the plan should comply with existing laws governing the actions of the entity while implementing the solutions.

*   *   *

5.3.1. *Steps at the start of the IRP*

*   *   *

4. *Creation of the creditors committee*

The creditors committee will have the power to decide the final solution by majority vote in the negotiations. The majority vote requires more than or equal to 75 per cent of the creditors committee by weight of the total financial liabilities. *The majority vote will also involve a cram down option on any dissenting creditors once the majority vote is obtained. …*

The Committee deliberated on who should be on the creditors committee, given the power of the creditors committee to ultimately keep the entity as a going concern or liquidate it. *The Committee reasoned that members of the creditors committee have to be creditors both with the capability to assess viability, as well as to be willing to modify terms of existing liabilities in negotiations. Typically, operational creditors are neither able to decide on matters regarding the insolvency of the entity, nor willing to take the risk of postponing payments for better future prospects for the entity. The Committee concluded that, for the process to be rapid and efficient, the Code will provide that the creditors committee should be restricted to only the financial creditors*.

*   *   *

5.3.3. *Obtaining the resolution to insolvency in the IRP*

The Committee is of the opinion that there should be freedom permitted to the overall market to propose solutions on keeping the entity as a going concern. Since the manner and the type of possible solutions are specific to the time and environment in which the insolvency becomes visible, it is expected to evolve over time, and with the development of the market. The Code will be open to all forms of solutions for keeping the entity going without prejudice, within the rest of the constraints of the IRP. *Therefore, how the insolvency is to be resolved will not be prescribed in the Code*.

There will be no restriction in the Code on possible ways in which the business model of the entity, *or its financial model*, or both, can be changed so as to keep the entity as a going concern. *The Code will not state that the entity is to be revived, or the debt is to be restructured, or the entity is to be liquidated. This decision will come from the deliberations of the creditors committee in response to the solutions proposed by the market.'"*

(emphasis in original)

153. It is thus clear, that the Committee was of the view, that for deciding key economic question in the bankruptcy process, the only one correct forum for evaluating such possibilities, and making a decision was, a creditors committee, wherein all financial creditors have votes in proportion to the magnitude of debt that they hold. The BLRC has observed, that laws in India in the past have brought arms of the Government (legislature, executive or judiciary) into the question of bankruptcy process. This has been strictly avoided by the Committee and it has been provided, that the decision with regard to appropriate disposition of a defaulting firm, which is a business decision, should only be made by the creditors. It has been observed, that the evaluation of proposals to keep the entity as a going concern, including decisions about the sale of business or units, restructuring of debt, etc. are required to be taken by the Committee of the financial creditors. It has been provided, that the choice of the solution to keep the entity as a going concern will be voted upon by CoC and there are no constraints on the proposals that the resolution professional can present to CoC.

154. The requirements, that the resolution professional needs to confirm to the adjudicator, are:

154.1. That the solution must explicitly require the repayment of any interim finance and costs of the insolvency resolution process will be paid in priority to other payments.

154.2. That the plan must explicitly include payment to all creditors not on the creditors committee, within a reasonable period after the solution is implemented; and lastly.

154.3. The plan should comply with existing laws governing the actions of the entity while implementing the solutions.

155. The Committee also expressed the opinion, that there should be freedom permitted to the overall market, to propose solutions on keeping the entity as a going concern. The Committee opined, that the details as to how the insolvency is to be resolved or as to how the entity is to be revived, or the debt is to be restructured will not be provided in the I&B Code but such a decision will come from the deliberations of CoC in response to the solutions proposed by the market."

13. The learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***(2024) 6 SCC 767 – Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Anr***. and submits that it was open for the RP to consider the claim of the Appellant as Financial Creditor, despite the claim having not been filed in the proper Form. The Hon'ble Supreme Court in the case **Greater Noida** held that Plan did not meet the requirement of Section 30, sub-section (2). In paragraphs 54 and 55, following was laid down:

> "**54.** In our view the resolution plan did not meet the requirements of Section 30(2) IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 for the following reasons:
>
> **54.1.** The resolution plan disclosed that the appellant did not submit its claim, when the unrebutted case of the appellant had been that it had submitted its claim with proof on 30-1-2020 for a sum of Rs 43,40,31,951. No doubt, the record indicates that the appellant was advised to submit its claim in Form B (meant for operational creditor) in place of Form C (meant of financial creditor). But, assuming the appellant did not heed the advice, once the claim was submitted with proof, it could not have been overlooked merely because it was in a different form. As already discussed above, in our view the form in which a claim is to be submitted is directory. What is necessary is that the claim must have support from proof. Here, the resolution plan fails not only in acknowledging the claim made but also in mentioning the correct figure of the amount due and payable. According to the resolution plan, the amount outstanding was Rs 13,47,40,819 whereas, according to the appellant, the amount due and for which claim was made was Rs 43,40,31,951. This omission or error, as the case may be, in our view, materially affected the resolution plan as it was a vital information on which there ought to have been application of mind. Withholding the information adversely affected the interest of the appellant because, firstly, it affected its right of being served notice of the meeting of the CoC, available under Section 24(3)(*c*) IBC to an operational creditor with aggregate dues of not less than ten per cent of the debt and, secondly, in the proposed plan, outlay for the appellant got reduced, being a percentage of the dues payable. In our view, for the reasons above, the resolution plan stood vitiated. However, neither NCLT nor Nclat addressed itself on the aforesaid aspects which render their orders vulnerable and amenable to judicial review.

54.2. The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD. As per Regulation 37 of the CIRP Regulations, 2016, a resolution plan must provide for the measures, as may be necessary, for insolvency resolution of the CD for maximisation of value of its assets, including, but not limited to, satisfaction or modification of any security interest. Further, as per *Explanation 1*, distribution under clause (*b*) of sub-section (2) of Section 30 must be fair and equitable to each class of creditors. Non-placement of the appellant in the class of secured creditors did affect its interest. However, neither NCLT nor Nclat noticed this anomaly in the plan, which vitiates their order.

54.3. Under Regulation 38(3) of the CIRP Regulations, 2016, a resolution plan must, inter alia, demonstrate that:

(*a*) it is feasible and viable; and

(*b*) it has provisions for approvals required and the timeline for the same.

In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the CoC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of approval does not envisage such approvals. But neither NCLT nor Nclat dealt with those aspects.

55. As we have found that neither NCLT nor Nclat while deciding the application/appeal of the appellant took note of the fact that:

(*a*) the appellant had not been served notice of the meeting of the CoC;

(*b*) the entire proceedings up to the stage of approval of the resolution plan were ex parte to the appellant;

(*c*) the appellant had submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected the appellant as one who did not submit its claim; and

(*d*) the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016.

We are of the considered view that the appeals of the appellant are entitled to be allowed and are accordingly allowed. The impugned order dated 24-11-2022 [*Greater Noida* v. *JNC Construction P. Ltd.*

> *(Resolution Professional)*, (2024) 243 Comp Cas 444 : 2022 SCC OnLine NCLAT 456] is set aside. The order dated 4-8-2020 [*Ranjeet Ramakrishna Yadav* v. *JNC Constructions (P) Ltd.*, 2020 SCC OnLine NCLT 1432] passed by NCLT approving the resolution plan is set aside. The resolution plan shall be sent back to the CoC for re-submission after satisfying the parameters set out by the Code as exposited above. There shall be no order as to costs."

14. In the case of **Greater Noida**, the Greater Noida has filed an IA challenging to the categorization of it as an Operational Creditor, in which the Greater Noida claimed it to be a secured creditor. An IA No.344 of 2021 was filed by Greater Noida, challenging the decision of the RP, which came to be rejected by the NCLT. The Appeal having been dismissed by NCLAT, an Appeal was filed in the Hon'ble Supreme Court. In the present case, the categorization regarding non-inclusion of the Appellant as Financial Creditor in a class was never questioned by the Appellant, although List of Creditors was uploaded by RP, where Appellant was not included as creditor in a class. Further, the Appeal has been filed challenging the order approving the Resolution Plan, which has been submitted on the basis of List of Creditors as uploaded by the RP and shared with the Resolution Applicant formulating the Resolution Plan on the basis of List of Creditors as shared. The Appellant's claim was included in the category of other creditors, hence, the treatment of the Appellant in the Plan was in other creditors. The treatment of the Appellant in the category of other creditors, cannot be said to violate the provision of Section 30, sub-section (2) of the IBC.

15. Learned Counsel for the Appellant has also relied on judgment of this Tribunal in ***Canara Bank vs. Sh. Vivek Kumar in Company Appeal (AT) (Ins.) No.390 of 2023***. In the above case, Canara Bank has

filed its claim in Form-C as Financial Creditor on the basis of it having given housing loan to the Borrower for purchasing residential units. The RP rejected the claim of Canara Bank as Financial Creditor, which was challenged by filing IA No.836 of 2023, which came to be rejected on 10.02.2023, which order came to be challenged before this Tribunal and this Tribunal by its judgment dated 09.01.2025 allowed the Appeal and set aside the order and remitted the matter to NCLT for reassessment of the case. In paragraphs 82 and 83, following was directed:

> "**82.** In view of above detailed discussion, the appeal succeeds. The Impugned Order is set aside and I.A No. 836 / 2023 in C.P. (IB) No. 654(PB)/2019 is restored to its original number and the matter is remanded back to the Tribunal for reassessment of the case, in accordance with law. The Adjudicating Authority may decide without being influenced by any of the observation made herein above. All contentions of the parties will also remain open.
>
> **83.** Parties are directed to appear before the Adjudicating Authority on 27.01.2025.

16. The judgment of this Tribunal in **Canara Bank** is distinguishable from the present case due to two distinguishing features. Firstly, the Canara Bank filed its claim as a Financial Creditor and RP having rejected the claim as Financial Creditor, the decision of RP was agitated by filing an IA No.836 of 2023, which was rejected by the Adjudicating Authority giving rise to the Appeal. In the **Canara Bank**'s case, the Resolution Plan was not approved and the said matter was still pending before the Adjudicating Authority, whereas in the Appeal before us, challenge to the Appellant in other creditors on the basis of List of

Creditors uploaded by the RP, was never questioned by the Appellant. We, thus, are of the view that the judgment of this Tribunal in **Canara Bank** relied by the Appellant is clearly distinguishable and does not help the Appellant.

17. In view of the foregoing discussions, we do not find any ground to interfere with the order dated 24.04.2023 approving the Resolution Plan in the CIRP of the CD. We, however, make it clear that approval of Resolution Plan and treatment of the claim of the Appellant in the Resolution Plan of the CD, shall not preclude the Appellant from taking steps for execution of Decree obtained from Debt Recovery Tribunal against the Borrower. The Appeal is dismissed subject to above. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

12th September, 2025

Ashwani