

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**I.A. 1311/2022  
IN  
C.P. No. 2915/IBC/MB/2019**

**Filed by**

Edelweiss Asset Reconstruction Company Limited

....Applicant

**Vs.**

1. Mr. Anuj Jain,  
Resolution Professional.
2. Committee of Creditors  
Of Ballarpur Industries Limited

....Respondents

**In the matter of**

Finquest Financial Solutions Private Limited

...Financial Creditor

V/s

Ballarpur Industries Limited

....Corporate Debtor

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

**Order Reserved on: 10.01.2023**

**Order pronounced on: 31.03.2023**

**For the Applicant:** Mr. Zal Andjyarujina a/w Mr. Shrey Sancheti, Mr. Shayan  
and Ms. Suyesha Kakarla

**For the Respondent:** For the Resolution Professional: Mr. Pradeep Sancheti,  
Mr. Somesh Srivastava and Mr. Yashish Chandra  
For the Committee of Creditors: Mr. Ankur Mital and

Mr. Ateendra Saumya Singh

**Per: H.V. Subba Rao, Member (Judicial)**

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### ORDER

1. The above application is filed by the Edelweiss Asset Reconstruction Company Limited, applicant herein under Section 60(5) seeking following reliefs:
  - a. *Pass ad-interim ex-parte order staying the proceedings in respect of approval of Revised Resolution Plan submitted by Finquest u/S.30(1) of IBC and the sale of the Immovable Asset exclusively charged in favour of the Applicant/ Secured Creditor, until adjudication of the present Application;*
  - b. *Pass necessary orders rejecting the revised resolution plan submitted by Finquest Financial Solutions Private Limited by declaring Finquest Financial Solutions Private Limited to be ineligible to be the Resolution Applicant of the Corporate Debtor in terms of Section 29A of the IBC and the said Resolution Plan is contrary to the provisions of IBC;*
  - c. *Pass necessary orders prohibiting the sale of the Immovable Asset exclusively charged in favour of the Applicant/ Secured Creditor sitting outside the CoC, as per the terms of the Resolution Plan, in view of the Hon'ble Supreme Court judgment in the matter of Jaypee Kensington Boulevard Apartments Welfare Association &Ors. vs. NBCC (India) Ltd. &Ors. (Civil Appeal No. 3395 of 2020);*
  - d. *Pass necessary orders allowing the Applicant /Secured Creditor to enforce its exclusively charged security interest on the Immovable Asset outside the CIRP of the Corporate Debtor, as the same cannot be annulled/extinguished or included in terms of the Resolution Plan of the Corporate Debtor to the detriment of the Applicant/ Secured Creditor, as per the observations and findings of the Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association &Ors. vs. NBCC (India) Ltd. &Ors. (Civil Appeal No. 3395 of 2020);*

- e. Direct the initiation of Liquidation proceedings of the Corporate Debtor in terms of the IBC in view of the order allowing prayer (b);*
- f. Pass any such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.*

2. The submissions of the Applicant are as follows:

- 2.1. The present Application is being filed by “Edelweiss Asset Reconstruction Company Limited” (“Applicant”). The Respondent No. 1 herein is Mr. Anuj Jain, the Resolution Professional (“Respondent No. 1”/”RP”) and the Respondent No. 2 is the Committee of Creditors of the Corporate Debtor (“CoC”) i.e. Ballarpur Industries Limited (“Corporate Debtor”). The RP Was duly appointed by this Hon'ble Tribunal vide Order dated 27.05.2020 Replacing the erstwhile Interim Resolution Professional (IRP), Mr. Divyesh Desai.
- 2.2. The Applicant has filed the captioned Application primarily to seek relevant directions of this Hon'ble Tribunal to declare the revised Resolution Plan submitted by Finquest Financial Solutions Private Limited (“Finquest”) as illegal and blatantly contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC”), as Finquest is clearly ineligible and barred as a Resolution Applicant in terms of Section 29A of the IBC.
- 2.3. By way of the present application, the Applicant has highlighted the glaring violations of the IBC and this Hon'ble Tribunal's order by the Respondents to suit the vested interest of the Resolution Applicant i.e. Finquest Financial Solutions Private Limited. By virtue of this illegal revised Resolution Plan of Finquest, the exclusively charged asset is on the verge of being sold pursuant to a Public Notice dated 03.05.2022 issued by the Respondent No. 1/ RP in terms of the said plan whereby the proceeds will be solely distributed amongst the financial creditors/members of CoC, to the detriment of the Applicant/ Secured Creditor, causing severe financial loss and such an act is in violation of the settled

position of law by the Hon'ble Supreme Court in the judgment of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. (Civil Appeal No. 3395 of 2020), whereby it has been held that rights of secured creditors (who are not financial creditors) cannot be extinguished under a resolution plan by way of reliefs and concessions and such secured creditors would have to be paid in accordance with the value and priority of security held by them, or their security interest would need to be discharged in accordance with principles of law relating to discharge of security interest. Therefore, the immovable property exclusively charged in favour of the Applicant cannot be extinguished by way of sale in terms of the said revised Resolution Plan of Finquest.

2.4. Therefore, specific orders are sought by the Applicant from this Hon'ble Tribunal for prohibiting the sale of the Immovable Property exclusively charged in favour of the Applicant, which is sought to be sold/disposed in terms of the said revised resolution plan which has been illegally presented, considered and approved by the CoC/ Respondent No. 2, despite the passing of the liquidation order in respect of the Corporate Debtor by this Hon'ble Tribunal dated 25.01.2022. Consequently, the Applicant also seeks from this Hon'ble Tribunal to pass the order for liquidation of the Corporate Debtor, as per the IBC.

2.5. In terms of the present application, the Applicant would like to disclose all relevant facts and act as the whistle blower on the arbitrary and unlawful conduct of the RP and the CoC, in collusion with Finquest, while conducting the corporate insolvency resolution process ("CIRP") of the Corporate Debtor. Hence, the present application.

3. Submission of Respondent No.1 are as follows:

**a. Non-Joinder of Necessary Party i.e. Finquest.**

3.1. At the outset, Respondent No.1 i.e. The Resolution Professional submits that contentions and averments raised in the

Application, unless specifically admitted in the following paragraphs, may kindly be deemed to have been specifically traversed and denied.

- 3.2. The Respondent no. 1 further submits that the present application is liable to be rejected for non-joinder of necessary party. It is a settled position that necessary party is the person who ought to be joined as party and in whose absence an effective order cannot be passed by the court.
- 3.3. The Respondent submitted that general rule as regards impleadment of parties is that an applicant or a petitioner or a plaintiff, being dominus litis is entitled to array such parties as respondents against whom such applicant/petitioner/plaintiff desires to pursue the legal action. However, it is trite law that non-joinder of necessary party (such as Finquest in the present application) can be fatal to the proceedings. In this regard, reliance is placed upon the following precedents of the Hon'ble Supreme Court:

**(a) Public Service Commission Vs. Mamta Bista, [(2010) 12 SCC 204]:**

*“9. In case Respondent I wanted her selection against the reserved Category vacancy, the last selected candidate in that category was a Necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by Nearly a Constitution Bench of this Court in Udit Narain Singh Malpaharia v. Board of Revenue [AIR 1963 SC 786], wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called “CPC”) provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of*

*Gujarat [AIR 1965 SC 1153], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706 AIR 1974 SC 2105] and Sarguja Transport Service v. STAT [(1987) 1 SCC 5: 1987 SCC (Cri) 19: AIR 1987 SC 88].*

- (b) **Mumbai International Airport (P) Ltd. V. Regency Convention Centre & Hotels (P) Ltd., [(2010) 7 SCC 417]:**  
The Hon'ble Apex Court has held as follows:

*"14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

**15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed.** A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely. Effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the Decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/ interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

- 3.4. In light of the above, it is evident that the present Application suffers from vice of non-joinder of necessary party (i.e., Finquest) and therefore, the instant application is liable to be dismissed on this ground alone.

**b. Revised Resolution Plan has been considered within the permissible CIRP timeline as extended by the order of Hon'ble Appellate Tribunal and this Hon'ble Tribunal**

3.5. It is most humbly submitted that the submission made by the Applicant with regards to consideration of the Revised Resolution Plan beyond the expiry of the CIRP timelines are erroneous and misconceived. It is respectfully submitted that the Hon'ble National Company Law Appellate Tribunal ("Appellate Tribunal") vide its order dated 19.04.2022 ("NCLAT Order") passed in Company Appeal (AT) (Insolvency) No. 227 of 2022 was pleased to extend the CIRP period till 30.04.2022. The relevant excerpt of the NCLAT Order has been reproduced hereunder:

*"3. Subsequent to the Order of this Tribunal dated 07.03.2022 in the Affidavit which has been filed today, it has been pleaded that on 14.04.2022, the CoC after considering the feasibility and viability of the revised plan approved it with 88% majority.*

*4. In view of the aforesaid development, we are of the view that Order dated 25.01.2022, of the Adjudicating Authority allowing the Application for Liquidation deserves to be set aside and is hereby set aside.*

*5. The RP is at liberty to file an Application before the Adjudicating Authority for approval of the RP and take all other consequential steps.*

*The Appeal is disposed of accordingly.*

*6. In view of the aforesaid, we extend CIRP period till 30th April, 2022."*

3.6. It is respectfully submitted that the RP had filed the Application for approval of Revised Resolution Plan ("Plan Approval IA") before this Hon'ble Tribunal on 28.04.2022 under diary number 2709138/ 02390/ 2022. Evidently, even the Plan Approval IA had been filed by the RP, 2 days prior to the expiry of the CIRP timeline as set out in the NCLAT Order (i.e., 30.04.2022). Hence, the allegations of the Applicant as regards violations on part of the RP on account of receiving and considering the Revised

Resolution Plan beyond the expiry of the CIRP timeline deserve to be rejected on this ground alone.

**c. Eligibility of Finquest under Section 29A(f) of the IBC**

- 3.7. Subject to outcome of IA no. 496/2021 filed by the RP under Section 45 of the IBC against the Finquest, it is most respectfully submitted that the averments of the Applicant in respect of Finquest being ineligible under Section 29A of the IBC are untenable as on date. It is respectfully submitted that the Applicant has raised frivolous issues based on mere conjectures and surmises. In this regard it is pertinent to mention that Securities Exchange Board of India ("SEBI") vide its order ("SEBI Order") prohibited connected person(s) of Finquest from trading in securities. The said SEBI's Order was challenged before the Hon'ble Securities Appellate Tribunal, Mumbai ("SAT") in Appeal No. 154 of 2020 titled as Bharat J. Patel & Ors. vs. Securities & Exchange Board of India. The Hon'ble SAT vide order dated 08.09.2020 was pleased to quash the SEBI Order. The relevant excerpts of the order dated 08.09.2020 have been extracted hereunder:

***"d. In the circumstances, the appeal is allowed without any order as to costs. The impugned order passed against the present Appellants is thereby quashed and set aside."***

- d. Further, it is humbly submitted that the Respondent No. 1 had assessed the eligibility of Finquest under Section 29A of the IBC on two occasions through two different entities. Initially, RP had engaged an independent consultant i.e., BDO Valuation Advisory LLP ("BDO") to assess the eligibility of Finquest under Section 29A. BDO has provided its report (concluded on 19.09.2021) confirming that Finquest is not ineligible under Section 29A. Subsequently, when the Revised Resolution Plan was submitted, the same was to be read with the annexures previously submitted by Finquest with the

resolution plan dated 21.05.2021. Hence, as a prudent measure the ineligibility under Section 29A was re-checked by the RP before placing the Revised Resolution Plan before the CoC. RP had appointed Pipara & Co LLP (“PCO LLP”) to re-assess the eligibility of Finquest under Section 29A. PCO LLP has provided its report (concluded on 21.03.2022) confirming that Finquest is not ineligible under Section 29A to submit the Revised Resolution Plan for the Corporate Debtor. For the sake of brevity, the respective reports submitted by BDO and PCO LLP have not been placed on record, however, RP craves liberty to place the above said reports on record if deemed necessary or directed by the Hon’ble Tribunal.

- e. It is respectfully submitted that in light of the above, it is evident that the Applicant has made misconceived averments which are based on falsehood, with the ulterior intention of deceiving this Hon’ble Tribunal so as to declare Finquest as ineligible under Section 29A(f). Hence, contention of the Applicant as regards Finquest being ineligible under Section 29A(f) deserve to be rejected.

***f. RP has not extinguished the exclusive charge of the Applicant over the Immovable Assets.***

- 3.8. It is humbly submitted that before delving into the intricacy of this issue, it is imperative to understand the factual background in this regard. On 05.02.2020, Applicant had submitted its claim (“Form C”) amounting to Rs. 133.24 Crores to the Respondent. The said claim was in connection with a loan granted by Yes Bank (Applicant has acquired loan from Yes Bank) to Corporate Debtor’s affiliate company (“Loan”), namely BILT Graphic Paper Products Limited (“BGPPL”). Corporate Debtor had mortgaged its immovable assets i.e., Immovable Assets as security for the Loan availed by BGPPL. Additionally, the Corporate Debtor had also furnished a corporate guarantee as security for the Loan. The

Loan was assigned subsequently to Applicant by Yes Bank along with the security interest.

- 3.9. It is humbly submitted that since there was no default by BGPPL in the underlying financial facilities, the corporate guarantee provided by the Corporate Debtor was not invoked. Therefore, the RP admitted the claim of Applicant at notional value of Re. 1/- under the category of "Other Creditors/secured creditor". The said corporate guarantee has not been invoked till date.
- 3.10. In this context it is relevant to highlight that the Revised Resolution Plan seeks to extinguish the security of Applicant on the Immovable Assets [reference is invited to clause 4.13.1(a)(iii) of the Revised Resolution Plan]. Further, the Revised Resolution Plan proposes for sale of Immovable Assets along with certain other assets of the Corporate Debtor at an estimated amount of Rs. 277 Crores [reference is invited to clause 4.6.2.4 of the Revised Resolution Plan]. As per the Revised Resolution Plan, the abovementioned amount of Rs. 277 Crores will be paid to the Financial Creditors of the Corporate Debtor through appropriation towards the redemption of NCDs issued to the said Financial Creditors [reference is invited to clause 4.6.2(b)(i)(3) and note to clause 4.6.2.4(d) of the Revised Resolution Plan].
- 3.11. It is pertinent to mention that, the RP has admitted the claim of Applicant at the notional value of Re. 1/- under the category "Other Creditors/secured creditor" and Applicant is not a "Financial Creditor" of the Corporate Debtor. Therefore, as per the existing framework of the Revised Resolution Plan, it appears that the Applicant will not be entitled to receive any amount from the sale of Immovable Assets, however, the Applicant's security over the Immovable Assets will be extinguished.
- 3.12. In this regard, it is most respectfully submitted that the issue regarding extinguishing security interest of a third party (which is not directly related to a corporate debtor) through a resolution plan is yet to tested before the Hon'ble Tribunal Adjudication or

any other forum. The Applicant has relied upon decision of the Apex Court in the case of Jaypee Kensington Apartments v. NBCC & Ors. [Civil Appeal No. 3396 of 2020] (“Jaypee Case”) to state that the exclusive charge of Applicant cannot be extinguished. It is pertinent to the point out that in facts of the Jaypee Case, the default with respect to the security which was sought to be extinguished had occurred whereas in the present case there is no default by BGPPL in the underlying financial facilities, the corporate guarantee provided by the Corporate Debtor has not been invoked.

- 3.13. It is most respectfully submitted that in the prima facie opinion of the RP, in view of the Jaypee Case, the issue regarding extinguishing security interest of the Applicant in relation to Loan given to a group company after payment of certain consideration is yet to be settled by judicial authorities. The above said position was duly intimated to the CoC vide compliance report dated 22.03.2022. Thereafter, the said issue was considered by the CoC while evaluating the issue of distribution of proceeds of sale of Immovable Assets among the stakeholders and while assessing the commercial feasibility/ viability of the Revised Resolution Plan before voting upon the Resolution Plan.
- 3.14. At this stage, it is apposite to highlight the recent judgment dated 05.04.2022, passed by the Hon’ble Appellate Tribunal in Company Appeal No. 371 of 2022 titled as Shraavan Kumar Vishnoi vs Upma Jaisawal & Ors. (“Upma Jaiswal Case”). In Upma Jaiswal Case, the Hon’ble Appellate Tribunal has held that the RP cannot act as gate keeper and prevent resolution plans from being placed before the CoC for its consideration. The RP is merely required to form an opinion and the ultimate decision to accept or reject a resolution plan vests with the CoC. The relevant excerpts have been extracted hereunder:

*“7. The ratio of the judgment of the Hon’ble Supreme Court as is culled out from paras 80 & 81 is that the Resolution Professional*

*is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the Resolution Professional to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not the Resolution Professional can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not. In para 5 of the impugned order, we have noticed that the direction has been issued to the Resolution Professional to place all the Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law. The aforesaid direction clearly indicates that the Resolution Professional is free to submit his opinion with regard to contravention or otherwise of the various provisions of law. The aforesaid observations take care of the duties and responsibilities of the Resolution Professional. The Resolution Professional can give his opinion with regard to each Resolution Applicants and further steps are to be taken for the CoC as per the direction issued by the Adjudicating Authority.”*

- 3.15. Therefore, in alignment with the ratio laid by the Hon'ble Appellate Tribunal in Upma Jaiswal Case, the RP highlighted the abovementioned issues in its compliance report dated 23.03.2022 and the same placed for consideration of the CoC prior to the voting on the Revised Resolution Plan.
- 3.16. In addition to the above, the submission of the Applicant with respect to Applicant being coerced into bearing the security charges of INR 4 Lakhs, it is respectfully submitted that owing to acute financial conditions faced by the Corporate Debtor, all options to protect the assets of the Corporate Debtor were being explored by the Applicant under the supervision of CoC. Hence, with a view to protect the Immovable Assets, the Applicant was asked if security charges of INR 4 Lakhs would be funded by the Applicant. It was highlighted that amount paid by the Applicant

forms part of the CIRP cost. Hence, the cost incurred by the Applicant shall be reimbursed to the Applicant in priority to all other disbursements as provided under the Revised Resolution Plans.

3.17. In view of the foregoing, it is submitted that Application filed by the Applicant has become infructuous as the CIRP of the Corporate Debtor has failed. Therefore, it is most respectfully prayed that the reliefs sought by the Applicant in the instant Application may be denied and the same may be dismissed. The RP craves liberty to file detailed reply on merits if so deemed necessary by this Hon'ble Tribunal, which such contentions are not raised herein at this stage for the sake of brevity.

#### **FINDINGS**

4. Heard Mr. Zal Andjyarujina counsel appearing for the Applicant and Mr. Pradeep Sancheti counsel appearing for the Respondent No.1/ Resolution Professional and Mr. Ankur Mital counsel appearing for the Respondent No.2/ Committee of Creditors and perused the material available on records.
5. After hearing both the sides and upon perusing material available on record, this bench notes that on 05.02.2020, Edelweiss submitted its claim amounting to Rs. 133.24 crores to the RP. The said claim was in relation to loan granted by Yes Bank to to Corporate Debtor's affiliate company, namely BILT Graphic Paper Products Limited ("BGPPL"). Further the bench observes that the Corporate Debtor i.e., Ballarpur Industries Limited ("BILT") had mortgaged Chowdhar Land as security for the Loan availed by BGPPL and additionally, the Corporate Debtor had also furnished a corporate guarantee dated 22.06.2016 as security for the loan availed by BGPPL. Subsequently, by way of Assignment Agreement dated 30.09.2017, Yes Bank assigned the Loan (along with the security interest) to Edelweiss. Notably, BGPPL has not defaulted in re-servicing of the Loan and the corporate guarantee provided by BILT has not been invoked by Edelweiss (Applicant herein) till date.

6. It is not wrong to conclude that the financial exposure of the Applicant herein is absolutely safe since no default has occurred till date and the associate Company i.e BGPPL seems to be sound to continue servicing of the loan. It is a settled position of law that whenever any security interest is created by a borrower in favour of a lender in order to secure the loan granted by the lender and such security for any reasons suffers depreciation and or is extinguished then in such circumstances the Lender can seek for creation of additional security from the Borrower (BGPPL in the present case). Applying the same principle here we observe that the CoC in its commercial wisdom has rightly decided to deal with the assets of the Corporate Debtor in the manner as decided in the Revised Resolution Plan and has rightly decided to distribute the proceeds of sale of the assets to the Financial Creditors of the Corporate Debtor as per the Revised Plan.
7. The Bench further observes that the RP has admitted the claim of Edelweiss/Applicant at Notional value of Re. 1/- under the category of "Other Creditors/ Secured creditor" and the said decision of the RP has not being challenged by the Applicant. It is undisputed that no default is committed by the BGPPL in servicing its loan and thus no amount of default can be calculated and in fact the claim of the Applicant to the RP in the Form C seems to be pre mature. The Bench observes that for a claim to have been filed by the Applicant a default should have occurred and a default amount should have been arrived at. However, since no default has occurred the Applicant has no cause of action to proceed against BGPPL and thus has no cause of action to proceed against the security created in favour of Applicant in the assets of the Corporate Debtor. Even if we desire to consider the right of the Applicant then the same shall be restricted to the Notional value of Re. 1/- and as far as the expenses incurred by the Applicant to the amount of Rs. 4 lakhs is concerned, the CoC has fairly decided to reimburse the same to the Applicant. Thus, we do not find that the decision of the CoC suffers from any material defect which calls for our intervention. Without interfering much into the said decision of the CoC we conclude

that the rights of the Applicant will arise only on default by the BGPPL and only on such default the Applicant can exercise its rights. At the moment the Applicant can remedy any such condition by seeking additional security from the BGPPL since the assets of the Corporate Debtor is already dealt with in the revised Resolution plan which is approved by the required majority.

8. To buttress their argument the Applicant has relied upon *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors.* (Civil Appeal No. 3395 of 2020) (“**Jaypee Case**”). and *India Resurgence ARC Private Limited vs. Amit Metaliks Limited & Anr.* [2021 SCC Online SC 409] (“**Amit Metaliks Case**”).
9. Before delving into ratio/ observations of Jaypee Case and Amit Metaliks Case, it is imperative to highlight that the statutory framework of IBC mandates for a resolution plan provide for measures relating to modification/ satisfaction of security interest. In this regard, Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) is extracted hereunder:

**“37. [Resolution plan.**

**A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -**

*i. transfer of all or part of the assets of the corporate debtor to one or more persons;*

**ii. sale of all or part of the assets whether subject to any security interest or not;**

.....

**(d) satisfaction or modification of any security interest; ....”**

**b. From the perusal of the above, it emerges that:**

**i. Regulation 37(b) of the CIRP Regulations clearly provide that a resolution plan may specify sale/ partial sale of assets of a Corporate Debtor whether such asset is subject**

**to security interest or not.**

**ii. Regulation 37(d) of CIRP Regulations further provide for satisfaction/ modification of any security interest relating to the Corporate Debtor.**

**iii. Notably, the CIRP Regulations do not mandate seeking prior consent from the relevant secured creditor for providing for necessary measures in the resolution plan vis-à-vis sale of assets under security interest or satisfaction/ modification of security interest of a secured creditor.**

10. Given the above, we are satisfied that the contention of Edelweiss that the Final Plan cannot deal with the security interest of Edelweiss without prior consent is totally misconceived.

11. The Applicant has further contended that RP has challenged applicability of Jaypee Case on the fact that there is no default on part of principal borrower. Further, the Applicant has contended that occurrence of default and invocation of Corporate Guarantee has no nexus with right of Secured Creditor pursuant to the Jaypee Case. To deal with the same we have perused the Jaypee Case and we are of the view that the Jaypee Case does not state that a resolution plan cannot deal with the security interest of the Applicant without prior consent of the secured creditor. In the Jaypee Case, the findings of Hon'ble Supreme Court were anchored upon the fact that a security interest which was not even taken up as a part of CIRP cannot be extinguished *ipse dixit*. Relevant excerpt is as under:

**“259.1. This bank appears right in its contention that when the security in question was not even taken up as a part of the resolution process, it could not have been extinguished on the ipse dixit of the resolution applicant.**

*Unfortunately, adjudicating authority totally missed out the real issue before it in regard to this mortgage transaction because,....”*

12. Further, in Jaypee Case, the Supreme Court did not accept the manner in which the security interest was being dealt within the resolution plan. The reason for such non-acceptance was that on one

hand the security interest was not considered during the CIRP, whereas, on the other hand, the resolution plan plainly sought to annul the security interest without any specific clause on treatment of the security interest. Relevant excerpt is as under:

**“260. It cannot be denied that the claim of ICICI Bank pertaining to the said mortgage over 100 acres of land was not reckoned in the CIRP of JIL and without any specific provision in that regard, the resolution applicant merely suggested by way of Clause 23 of Schedule 3 as if such mortgage shall stand annulled and the land shall vest in the corporate debtor free from any encumbrances. To say the least, the said Clause 23 does not appear to be standing in conformity with any principle of law for discharge of a security interest, particularly of a third party who is not included in the insolvency resolution process of a corporate debtor. We would hasten to make it clear that the capacity of ICICI Bank in relation to the said mortgage of 100 acres of land of “Tappal Property 1” is entirely different than its status as the dissenting financial creditor of JIL, to the extent JIL directly owed a financial debt to it. Those aspects pertaining to its capacity as dissenting financial creditor, to the extent of its share of financial debt, have already been discussed in Point D hereinbefore ( see paras 148 to 173).”**

13. Considering the above, it emerges that a Security Interest which has duly been included/ considered as a part of CIRP can be specifically dealt with under the resolution plan without seeking any consent from the relevant Secured Creditor. In the present case at hand the security interest over the Chowdhwar Land has been duly considered and assessed by the RP. In fact Post verification of Form C filed by Edelweiss, the RP has admitted the claim filed by Edelweiss at notional value of Re. 1/- and has placed the Applicant in the category of Other Creditors. We further observe that the said treatment

provided by the RP was not been challenged by the Applicant at the relevant stage. Hence, the Final Plan accordingly provides for a treatment to the claim filed by Applicant in CIRP of BILT. Thus it is evident that the findings of the Jaypee Case cannot be simpliciter applied in the present case.

14. In facts of the Jaypee Case, the default with respect to the security which was sought to be distinguished had occurred whereas in the present case there is no default by BGPPL in the underlying financial facilities. Hence, the corporate guarantee provided by the Corporate Debtor has not been invoked. Since there are no amounts due and payable by BGPPL to the Applicant, allotment of any amount to the Applicant under the Final Plan would lead to an anomaly and unjust gain for the Applicant. The extinguishment of security interest of the Applicant is justified as the Resolution Applicant has to start on a clean slate. It is appropriate to mention here that the same principle of doctrine of clean slate has been upheld by the Hon'ble Supreme Court in *Ghanashyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd.* [(2021) 9 SCC 657] ("*Ghanashyam Mishra Case*").
15. The Hon'ble Supreme Court in the matter of *India Resurgence ARC Pvt. Ltd. Vs. Amit Metaliks Limited* [2021 SCC OnLine SC 409] wherein it is held that secured creditors cannot challenge resolution plan insisting the higher amount should be paid based on its security interest. Further, the Supreme Court has held that in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up a ground of appeal. The Supreme Court has further held that what amount is to be paid to different classes of subclasses or creditors in accordance with provisions of the Code and the regulated Regulations, is essentially the commercial wisdom of the Committee of Creditors, a dissenting Secured Creditor cannot suggest a higher amount to be paid to it with reference to the value of the security interest.

16. After listening to both the sides it is evident from the facts and the contentions raised from both the sides that the Resolution Plan was duly passed in the 26<sup>th</sup> CoC Meeting held on 23.03.2022, which is passed by 88% of the CoC Members which is well above the required voting percentage of 66% as per the Code. Further, this Bench derives from the above contentions that the Corporate Debtor is acting as a guarantor on behalf of the Corporate Debtor's affiliate company, which clearly shows that the Applicant is not a Financial Creditor to the Corporate Debtor, which makes the Applicant ineligible to raise objections to the Resolution Plan. And the Applicant wrongly relied on the judgement of Hon'ble Apex in *India Resurgence ARC Pvt. Ltd. Vs. Amit Metaliks Limited* whereas it has reaffirmed the supremacy of commercial wisdom of the CoC. Hence, the Applicant cannot raise objections to the approved Resolution Plan and is legally ineligible to file this Application. Therefore, this Bench finds no merit in admitting the above Interlocutory Application filed by the Applicant under Section 60(5) of the Code against the Resolution Professional and Committee of Creditors.
17. In view of the above observations and in the light of the case law discussed above, this bench is of the considered view that there is no merit in the above application filed by the Applicant and the same is liable to be rejected as devoid of merits.
18. Accordingly, the Interlocutory Application **1311/2022 is rejected and disposed of.**

**Sd/-**  
**MADHU SINHA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**