IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH

IA 1783/2021 & IA 2048/2021 in C.P.(IB)-2469/MB/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of

Uco Bank …… Petitioner/
Financial Creditor

V/s

PMT Machines Ltd
……. Respondent/
Corporate Debtor

In the matter of

IA 1783/2021 filed by
L&T Finance Limited
….. Applicant
Vs

Ram Ratan Kanoongo & Anr
….. Respondents

And in the matter of

IA 2048/2021 filed by
L&T Finance Limited
….. Applicant
Vs

Ram Ratan Kanoongo
….. Respondent

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH

IA 1783/2021 & IA 2048/2021 in C.P.(IB)-2469/MB/2018

Order delivered on : 02.05.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing) :

For the Applicant:	Mr. Venkatesh Dhond a/w Ms Vinodini Srinivasan.
For the Respondent:	Mr. Mustafa Doctor for Respondent No.1, Resolution Professional, a/w Mr Shyam Kapadia, Counsel, PCA Ayush J Rajani, Mrs Khushboo Shah Rajani and Counsel for Respondent No.2, Mr. Amir Arsiwala a/w Adv. Abdulla Qureshi.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. **IA 1783/2021** has been filed by L&T Finance Limited who is the Financial Creditor of the Corporate Debtor and is a member of the CoC with an admitted claim of Rs.51.28 crore and having a 10.44% voting strength in the CoC. The Applicant as per the Resolution Plan approved by the CoC will receive a sum of Rs.5.40 crore on the basis of distribution mechanism under the approved Resolution Plan. The IA 1783/2021 was filed on 03.08.2021 i.e., prior to the closure of e-voting window for the approval of the Resolution Plan. The IA 1783/2021 has been filed by the Applicant challenging the Resolution Professional's computation of liquidation value and the decision taken by the CoC at its 29th meeting with respect to the distribution of the proceeds of the Resolution Plan.

2. The Bench notes that after filing the IA 1783/2021 on 03.08.2021 the Applicant M/s L&T Finance Limited on

09.08.2021 voted in favour of the Resolution Plan which has been passed by 91.46% of the total voting share of the CoC.

3. **IA 2048/2021** has been filed by the same Applicant, M/s L& T Finance Limited on 31.08.2021 after having voted in favour of the Resolution Plan. The reliefs sought in IA 2048/2021 are the same as it had sought in IA 1783/2021. The fundamental grievance of the Applicant is that Section 30(2) of the IBC read with Section 52 and 53 of the Code has been ignored by the Resolution Professional. It is an admitted fact that the Applicant L&T Finance Limited is the subservient charge-holder holding 10.44% of the CoC of the Corporate Debtor.

4. The Applicant, after challenging the decision of the CoC by its first Application, i.e. IA 1783/2021, has somersaulted and exercised its option in favour of the Resolution Plan. Therefore, the Bench notes that as the Applicant exercised its option and opted in favour of the Resolution Plan, the conclusion of the Resolution Professional (RP) is that both the aforesaid Applications are not liable to be maintained. In this regard, the Resolution Professional has referred to the judgment of Hon'ble NCLAT dated 12.02.2021 in the case of *India Renewable Energy Development Agency Ltd vs. Bhuvesh Maheshwari and Ors [Company Appeal (AT) No. 971 of 2020]* which reads as under:-

> *"…12. Having heard Counsel for both sides, we have laid out as above the arguments in details and the above laying out of the details of the arguments itself makes the issue clear and it can be seen that the arguments of the learned Counsel for Respondents are well founded and based on law. The juxtapose of the arguments for Appellant, with the arguments of Respondents itself wanes the case of the Appellant.*

Admittedly, the Appellant was part of COC and the COC had in 9th Meeting deliberated and unanimously agreed that distribution of the proceeds under the Resolution Plan to the Financial Creditors shall be in proportion to the share of the voting rights of the relevant Financial Creditors in the COC. In the e-voting which came to be held, the Appellant had consented to the Resolution Plan which even specifically stated the specific amounts which will be given in the distribution. Having agreed to such Resolution Plan, the Appellants needs to be estopped from questioning the same.... .... The Appellant could see the options open to it and chose one. The Appellant took informed decision to vote in favour. Having done so, the Appellant needs to be estopped from questioning the Resolution Plan with regard to the manner of distribution."

(emphasis supplied)

5. The judgment of the Hon'ble NCLAT is squarely applicable to the present case in which, the Hon'ble NCLAT has held that the party after choosing the option and voting in favour of the Resolution Plan can no longer question the same either in respect of the manner or distribution or otherwise. The Hon'ble NCLAT in the above judgment has clearly mentioned that the principle of estoppel becomes applicable in such case. The Applicant during the hearing contended that it voted for the plan without prejudice and/ or reserving its right to challenge the plan. In this regard the Bench is of the view that if parties are permitted to vote in favour of the Resolution Plan and then come before this Tribunal and challenge the very same plan where they have voted in favour of, then it will never lead to any finality of any Resolution Plan and the parties would be encouraged to misuse and abuse the process. It is for this reason that the IBC law required the parties to commit their position and held that party who have

approved the plan are estopped from challenging the distribution mechanism provided under that plan.

6. Be that as it may, the entire case of the Applicant is based on the provision of Section 52 and 53 of the Code which has no application to the resolution process under Section 30 and 31 of the IBC. The entire basis of the Applicant's case is that it should be treated at par with the first charge holder with respect to the distribution mechanism under the approved Resolution Plan. This argument is founded on the provisions of Section 52 and 53 of the IBC. The Applicant's arguments for parity with first charge holders stems from the provisions of Section 52 and 53 of IBC which is part of Chapter III of the IBC Act which deals with liquidation process. Here the Bench would like to remind that we are dealing with Section 30 and 31 i.e., 'Resolution' process and not the 'liquidation' process. The Applicant's case is purely hypothetical scenario based on the hypothesis that in the event of theoretical case of liquidation assuming that the Applicant and other secured creditors were to all relinquish their respective security, the Applicant's liquidation value would be different from what has been calculated as its liquidation value for the purpose of distribution mechanism as envisaged under the approved Resolution Plan.

7. This hypothetical scenario is contrary to the factual position in the present case where the Resolution Plan has already been approved by the CoC members including the Applicant. Both the CoC as well as the present Applicant voted in favour of the Resolution Plan and decided upon the distribution mechanism and approved the distribution mechanism including the amount which it would be getting in that distribution i.e., Rs.5.40 crores. However, now the Applicant

is seeking to question the CoC's decision including the payment of Rs.5.40 crore proposed to be paid to him.

8. The Bench here would also like to refer to the Hon'ble NCLAT judgment of 12.02.2021 in the case of ***India Renewable Energy Development Agency Ltd Vs Bhuvesh Maheshwari and Ors [Company Appeal (AT) No. 971 of 2020*** *is directly relevant. The NCLAT has referred to the judgment of the Supreme Court in the case of and reproduced Paragraph 92 of that judgment which reads as under:-*

> *"92.* ***The other argument of Shri Sibal that Section 53 of the Code would be applicable only during liquidation and not at the stage of resolving insolvency is correct.*** *Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of creditors, but only to provide for a minimum payment to operational creditors. However, this again does not in any manner limit the Committee of Creditors from classifying the creditors as financial or operational and as secured or unsecured. Full freedom and discretion has been given, as has been seen hereinabove, to the Committee of Creditors to so classify creditors and to pay secured creditors amounts which can be based upon the value of their security, which they would otherwise be able to realize outside the process of the Code, thereby stymying the corporation resolution process itself."*
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> (emphasis supplied)

9. It is clear from the above judgment that Section 53 of the Code is applicable only during liquidation and not at the stage of resolving insolvency. The Applicant being a subservient charge holder cannot seek any parity at the resolution stage with the first and second charge holders who are themselves taking substantial haircuts. In this regard the Bench would like to refer to the Hon'ble Supreme Court judgment in the matter of *Committee of Creditors of Essar*

*Steel India Ltd v. Satish Kumar Gupta & Ors.(2020) 8 SCC 531 ("**Essar Case**")* in which it has been categorically held that it is commercial wisdom of the CoC which is free to determine as to what amount are to be paid to different class or sub-class of creditors. It was also held in the "*Essar*" case that there is no residual jurisdiction not to approve the Resolution Plan on the ground that it is unfair or unjust to the class of creditors so long as the interest of each class has been looked into and taken care.

10. The Bench feels that while computing the liquidation value, the liquidation value of all the assets of the Corporate Debtor has to be taken into account and not just the liquidation value as sought by the Applicant in a manner which is satisfying to the Applicant ignoring the other assets and charges of the creditors. The Bench also notes that this liquidation value has been finalised as far back as in March 2019 and has never been called into question by any of the creditors including the Applicant. While voting on the Resolution Plan the Applicant has never objected to the distribution mechanism and proceeded and voted in favour of the Resolution Plan. It, however, cannot now contend that the distribution mechanism is arbitrary and not fair. It is a settled law that once Resolution Plan has been approved by the CoC based on the commercial wisdom of the Members, the decision of the CoC members becomes non-justiciable.

11. The role of the judicial intervention is only in compliance with the provisions of Section 32 of the Code read with Regulation 37 and 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Any tampering with the commercial wisdom of the CoC and modifying the Resolution Plan is contrary to the provisions of the Code. The

Bench here would also like to refer to the extract from the judgment of the Hon'ble Supreme Court dated 13 May 2021 in the case of *India Resurgence Arc Private Limited vs Amit Metaliks Limited and Ors [Civil Appeal 1700 of 2021] reported in [2021] 167 SCI. 223 (SC)* is relevant:

> ***"11. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal."***

(**emphasis supplied**)

12. In view of the above, the Bench is of the view that the objections raised by the Applicant through the present Applications are misconceived and liable to be rejected by imposing costs for the reasons mentioned above, as there is no legal infirmity in the decision taken by the CoC while approving the Resolution Plan. In view of this, both the IAs, **IA 1783/2021** and **IA 2048/2021** filed in CP(IB)-2469/(MB)/2018 are "**dismissed**" with costs of Rs 1 Lakh each payable to Prime Minister's National Relief Fund within two weeks. The imposing of cost is to discourage filing up of such frivolous application more so by such responsible Organization.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
H V Subba Rao
Member (Judicial)