

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) (INS) NO.1382 OF 2024

In the matter of:

Pioneer Engineering Industries

Appellant

Vs

Anjali Capfin Pvt Ltd & Ors

Respondent

For Appellant:Mr. Nakul Sachdeva, Mr Karandeep Singh and Mr Abhinandan Sharma, Mr Sagar Arora, Advocates.

For Respondent:Mr Abhijeet Sinha, Sr Advocate, Mr Abhishek Anand, Mr Karan Kohli, Ridhima, Advocates

Mr Sanyam Goel, RP in person.

Mr Ankur Goel Mr Saket Singh, Advocates for R1.

Mr Mohit, Mr Gupta, Advocates

Mr Shalya Agarwal, Mr Sandeep Vij, Ms Ritika Gaur, Mr Neeraj, Advocates.

With

COMPANY APPEAL (AT) (INS) NO.1384 OF 2024

In the matter of:

Pioneer Engineering Industries

Appellant

Vs

Anjali Capfin Pvt Ltd & Ors

Respondent

For Appellant:Mr. Nakul Sachdeva, Mr Karandeep Singh and Mr Abhinandan Sharma, Mr Sagar Arora, Advocates.

For Respondent:Mr Abhijeet Sinha, Sr Advocate, Mr Abhishek Anand, Mr Karan Kohli, Ridhima, Advocates

Mr Sanyam Goel, RP in person.

Mr Ankur Goel Mr Saket Singh, Advocates for R1.

Mr Mohit, Mr Gupta, Advocates

Mr Shalya Agarwal, Mr Sandeep Vij, Ms Ritika Gaur, Mr Neeraj, Advocates.

With

COMPANY APPEAL (AT) (INS) NO.1486 OF 2024

In the matter of:

Pioneer Engineering Industries

Appellant

Vs

Primus Pipes & Tubes Ltd & Anr

Respondent

For Appellant:Mr. Nakul Sachdeva, Mr Karandeep Singh and Mr Abhinandan Sharma, Mr Sagar Arora, Advocates.

For Respondent:Mr Abhijeet Sinha, Sr Advocate, Mr Abhishek Anand, Mr Karan Kohli, Ridhima, Advocates

Mr Sanyam Goel, RP in person.

Mr Ankur goel Mr Saket Singh, Advocates for R1.

Mr Mohit, Mr Gupta, Advocates

Mr Shalya Agarwal, Mr Sandeep Vij, Ms Ritika Gaur, Mr Neeraj, Advocates.

With

COMPANY APPEAL (AT) (INS) NO.1596 OF 2024

In the matter of:

Anjali Capfin Pvt Ltd

Appellant

Vs

Sanyam Goel & Ors

Respondent

For Appellant:Mr. Nakul Sachdeva, Mr Karandeep Singh and Mr Abhinandan Sharma, Mr Sagar Arora, Advocates.

For Respondent:Mr Abhijeet Sinha, Sr Advocate, Mr Abhishek Anand, Mr Karan Kohli, Ridhima, Advocates

Mr Sanyam Goel, RP in person.

Mr Ankur Goel Mr Saket Singh, Advocates for R1.

Mr Mohit, Mr Gupta, Advocates

Mr Shalya Agarwal, Mr Sandeep Vij, Ms Ritika Gaur, Mr Neeraj, Advocates.

With

COMPANY APPEAL (AT) (INS) NO.1597 OF 2024

In the matter of:

Anjali Capfin Pvt Ltd

Appellant

Vs

Sanyam Goel & Ors

Respondent

For Appellant: Mr. Nakul Sachdeva, Mr Karandeep Singh and Mr Abhinandan Sharma, Mr Sagar Arora, Advocates.

For Respondent: Mr Abhijeet Sinha, Sr Advocate, Mr Abhishek Anand, Mr Karan Kohli, Ridhima, Advocates

Mr Sanyam Goel, RP in person.

Mr Ankur goel Mr Saket Singh, Advocates for R1.

Mr Mohit, Mr Gupta, Advocates

Mr Shalya Agarwal, Mr Sandeep Vij, Ms Ritika Gaur, Mr Neeraj, Advocates.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (Judicial)

These are five appeals against two orders both of 4th June, 2024 passed by the Ld. NCLT.

2. Company Appeal (AT)(Ins) No.1382/2024 challenges an order dated 04.06.2024 passed by Ld. Adjudicating Authority in IA No.30/2023 and whereas Company Appeal (AT)(Ins) No.1384 and 1486 of 2024 challenges order dated 04.06.2024 passed in IA No.568/2023. Company Appeal (AT)(Ins) No.1596 and 1597 of 2024 challenges both the orders dated 04.06.2024 passed in IA No. 30/2023 and 568/2023 viz approval of the Resolution Plan.

3. The issue in three appeals viz. Company Appeal (AT)(Ins) No.1382, 1384 and 1486/2024 is the Ld. NCLT has no power to modify the resolution plan. The resolution plan submitted worth Rs.18 crores was got approved by the CoC by 79.10% of votes. The CoC Members included Kotak Mahindra Bank having 79.10% of the votes; Bank of Baroda with .72% votes and Anjali Capfin Pvt Ltd held balance of voting power.

4. The learned counsel for the appellant referred to various paras of resolution plan to show how some conditions, envisaged in the resolution plan, stood modified by the Ld. Adjudicating Authority and thus acted beyond its jurisdiction. The said relevant para of the resolution plan are as under:-

"19.1 That pursuant to the approval or the Resolution Plan, if any property' or asset or the Corporate Debtor is acquired in accordance with law by either the State Govenmlent, Central Government, or any statutory authority, then the compensation received in respect of such acquisition will solely accrue to the Corporate Debtor (managed by the Resolution Applicant). It is clarified that no creditor (financial, operational or any other creditor) will have any right on the said compensation (by whatever name called).

44. TREATMENT OF AVOIDANCE TRANSACTION UNDER CHAPTER-II That from the Effective Date the Resolution Applicant will take necessary steps for impleadment of itself as the applicant in respect of all avoidance transactions filed by the Resolution Professional during the CIRP. That any proceeds arising out from the favourable decision in the matter of any avoidance transaction shall be split proportionately between the Resolution Applicant and the unsecured financial creditors, in proportion of the legal cost of carrying on such litigation qrta the avoidance transaction being borne by the Resolution Applicant and the unsecured financial creditors. In the event the unsecured financial creditors fail or refuse to contribute to the cost of the said litigation, then the Resolution Applicant shall have the sole right on the entire proceeds arising out from the favourable decision in the matter of any avoidance transaction.

11 . ..Effective Date" means any of the following concluding event. whichever is later:

I. The 7th day from the Day from the date of approval of this plan by Hon'ble NC:LT in the event no appeal is filed by any party against the resolution plan before the Hon'ble NCLAT: or

II. The 7th day from the 31st day from the date of order of "Hon'ble NCLAT. provided no appeal is pending before the Hon'ble NCLAT and no appeal is filed by any party against the resolution plan before the Hon'ble Supreme Court; or

Ill. The 7th day from the date of final order by Hon'ble Supreme Court, provided no other appeal is pending before the Hon'ble Supreme Court.

5. Heard.

6. Admittedly, while disposing of Respondent No. 1's application *viz* IA No.30/2024, the Ld. NCLT has wrongly recorded the fact the Resolution Plan submitted by the Appellant does not account for the appropriation of any purported compensation that may be received from the acquisition of any part of the Corporate Debtor's land and has imposed the following condition: “

...The acquisition process, covered under N.H.A.I's notification, is stalled due to the moratorium under Section 14 of the Code. Once completed, the compensation is to be retained by the Resolution Applicant, and the current plan does not account for this amount. However, we have decided this aspect in IA No. 568/2023 for approval of resolution plan that if the compensation is received, it will be distributed amongst all the Creditors according to Section 53 of the Code, after satisfying the claims admitted by the RP/COC.”
(“Modification”).

7. Pertinently, by way of the Plan Approval Order, the Ld. NCLT has observed that, “...37. *After hearing, we therefore observe that this amount of Rs. 10 crore is to be distributed amongst all the Creditors in accordance with the provisions of Section 53 of the Code, subject to the satisfaction of the claim lodged and admitted by the RP/COC.*”. Notably, the referred parts of the Plan Approval Order have also been impugned by the Appellant by way of Company Appeal (AT) (Ins.) No. 1384 of 2024.

8. Now the Impugned Order, to the extent it imposes the Modification, is erroneous and contrary to settled principles of law as the Ld. NCLT has failed to consider that Clause 19(l) of the Resolution Plan specifically provides for

the same and states, "...pursuant to the approval of the Resolution Plan, if any property or asset of the Corporate Debtor is acquired in accordance with law by either the State Government, Central Government, or any statutory authority, then the compensation received in respect of such acquisition will solely accrue to the Corporate Debtor (managed by the Resolution Applicant). It is clarified that no creditor (financial, operational or any other creditor) will have any right on the said compensation...".

9. Thus even if we assume the said event of the purported acquisition of the Corporate Debtor's land has already taken place, any compensation that may be received in the future from the said event of acquisition shall continue to vest with the Corporate Debtor as the same would constitute 'receivables' of the Corporate Debtor. Notably, the appropriation of the same has been specifically provided for in Clause 28 of the Resolution Plan which relates to 'Acquisition of Assets'. Therefore, it is evident the Resolution Plan has specifically provided for all eventualities relating to the subject matter of the modification in the present case.

10. Further it be noted a perusal of the minutes of the 8th CoC meeting and 10th CoC meeting it appears, till date, no notification has ever been issued by the appropriate government authority for the purported acquisition of the Corporate Debtor's land and the said fact was also well within the knowledge of the dissenting financial creditor i.e., Respondent No. 1. Therefore, there is no intelligible rationale for imposing the instant modification.

11. Further a bare perusal of the minutes of the 5th CoC meeting clearly evince the fact the Appellant's earlier Resolution Plan which included an upfront payment of INR 7 Crores and a contingent amount of *INR 10 Crores*, accounting for any future compensation for any acquisition of the Corporate Debtor's land, was rejected by the CoC (including Respondent No. 1) on the grounds of, inter alia, the same contains the said contingency and not being commercially viable. Subsequently, the Appellant, based on its commercial understanding and risk appetite, had submitted a fresh Resolution Plan (with an upfront payment of INR 18 Crores) which accounted for the accrual of any future compensation that may occur due to the possible acquisition of the land of the Corporate Debtor. Thus, it is clear the Ld. NCLT has erred by materially altering the Resolution Plan of the Appellant and ignoring the fact the Resolution Plan had already accounted for the subject matter of the said modification.

12. The letter dated 03.05.2018 issued by the U.P. State Highway Authority to the Ld. District Magistrate, Fatehpur merely reflects the fact that acquisition of the Corporate Debtor's land may occur in the future. The said letter dates back to the year 2018 and it is a matter of record even after the passage of more than six years, no notification for the acquisition of the Corporate Debtor's land has been issued by any appropriate state instrumentality. Moreso the said letter was never brought on record by Respondent No. 1 before the Ld. NCLT.

13. Moreso by imposing the said modification, the Ld. NCLT has failed to consider the said modification amounts to a material alteration of the terms

of the Resolution Plan and goes against the commercial risk assumed by the Appellant (the Successful Resolution Applicant) and the commercial wisdom of the CoC, which is impermissible in law.

14. It is trite law that approval of a resolution plan is exclusively in the domain of the commercial wisdom of the CoC and the extent of judicial review is limited by the provisions outlined in Section 31 of the Code, concerning the Ld. NCLT's approval of a Resolution Plan. The limited judicial review available to the Ld. NCLT, in terms of Section 31 of the Code, lies within the four corners of Section 30(2) of the Code.

15. The Ld. Adjudicating Authority under sub-section (2) of Section 31 of the Code, can reject the Resolution Plan, if the same is not in conformity with the requirements as referred to in sub-section (1) of Section 31 of the Code. However, there is no provision for making an alteration or modification in the Resolution Plan approved by the CoC. In other words, the Adjudicating Authority, of its own accord, cannot make any modification to the resolution plan.

16. The powers of the Ld NCLT with respect to the approval of the Resolution Plan does not extend to examine the commercial wisdom of the CoC and once it is found all the mandatory requirements have been duly complied with and taken care of by the Resolution Applicant, the process of judicial review under Section 31 of the Code cannot be stretched to carry out quantitative analysis concerning a particular creditor. Admittedly, the Resolution Plan has been approved by the CoC with 79.10% voting share after taking into account the *feasibility* and *viability* of the Resolution Plan.

Reliance to the said propositions is placed on paragraph no. 273.1 of the Hon'ble Supreme Court's decision in Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited [(2022) 1 SCC 401]; paragraph nos. 21-23 of the Hon'ble Supreme Court's decision in SREI Multiple Asset Investment Trust Vision India Fund v Deccan Chronicle Marketeers and Others [Civil Appeal No. 1706 of 2023]; paragraph nos. 114-116 of the Hon'ble Supreme Court's decision in State Bank of India and Others v The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr. [Civil Appeal Nos. 5023-5024 of 2024] and paragraph nos. 31-32 of this Hon'ble Tribunal's decision in Deccan Chronicle Marketeers and others v Deccan Chronicle Holdings Ltd. and others [C.A. (AT) (Ins.) No. 982 of 2019].

17. Thus the Ld. NCLT also does not have any jurisdiction to specifically direct and/or impose a condition for the distribution of an amount that may be received and/or recoverable by Corporate Debtor amongst the creditors while approving the Resolution Plan. In JSW Steel Ltd. v Ashok Kumar Gulla and Ors. [Company Appeal (AT) (Insolvency) No. 467 of 2019] this Tribunal has held that, inter alia, "... We agree with the submissions made on behalf of the Appellant that the Adjudicating Authority has no jurisdiction to impose such conditions with regard to amount as may be recoverable by the 'Corporate Debtor' in future."

18. Furthermore, in paragraph nos. 28 and 31 of the Impugned Order, the Ld. NCLT has itself observed it has *limited jurisdiction* to only *approve* or *reject* the Resolution Plan and the commercial wisdom of the CoC is paramount. Therefore, it is clear the modification imposed by the Ld. NCLT in the

Impugned Order is against the express provisions of the Code and settled law, as postulated by the Hon'ble Supreme Court and this Tribunal.

19. Therefore, in view of the above, the Adjudicating Authority has no jurisdiction to enter into the commercial aspects of the resolution plan and to interfere with the wisdom of the CoC. It is a settled law the Adjudicating Authority cannot sit in appeal with respect to financial implications as considered by the CoC.

20. In view of the above-mentioned facts and legal position, the modification made to the resolution plan are set aside, and hence these three appeals are thus allowed.

Company Appeal (AT)(Ins) No.1596 and 1597 of 2024

21. The Company Appeal (AT)(Ins) No.1596 and 1597 of 2024 challenges the orders dated 04.06.2024 passed in IA No.30/2023 and IA No.568/2023, relating to the approval of Resolution Plan.

22. The contentions as raised by the Learned counsel for the Appellant in these appeals are as follows:-

a) The Resolution Plan of the SRA is nothing more than a real estate transaction as the Corporate Debtor's land is in the process of land acquisition whereby compensation of more than 10 Crores shall accrue to the Corporate Debtor. It is further alleged the resolution plan value is lesser than the liquidation value of the Corporate Debtor as the value of the said compensation related to the purported land acquisition has not been taken into account;

- b)** The Ld. NCLT has approved the Resolution Plan of the Corporate Debtor without taking into consideration the fact that no new valuation report was obtained by the Resolution Professional at the time of consideration of the Resolution Plan dated 09.10.2023. The Appellant has also alleged the valuation of the land carried out by the Resolution Professional was lesser than the actual circle rate notified for the land parcel owned by the Corporate Debtor;
- c)** any proceeds that may arise from any recovery on account of the pending PUFE applications [*I.A. No. 299 of 2022 and I.A No. 444 of 2022*] have not been factored in while arriving at the liquidation value. It is further argued the SRA has not only proposed to take control of these PUFE applications but has also asked for a share in any recovery made thereof. It is further argued the Resolution Plan also does not specify the exact share of such recovery;
- d)** the Ld. NCLT has approved the Resolution Plan of the Corporate Debtor without due consideration of the fact the Resolution Plan was in violation of clause 1.8.1 and 1.9 of the Request for Resolution Plan (**"RFRP"**);
- e)** the Addendum dated 21.10.2023 to the Resolution Plan is defective as, *inter alia*, there is mismatch in the dates contained in the said Addendum;
- f)** the Resolution Plan submitted by the SRA is in violation of Regulation 39(1A) of the Regulations as the Resolution Plan has been modified on multiple occasions and lastly,

g) the Resolution Plan penalizes the Appellant for not assenting to the same as it mandates the leftover amount allocated towards the CIRP cost would be retained by the SRA in the event the Appellant does not assent to the Resolution Plan.

23. Now we proceed to decide the issues raised by the appellant herein:

As regard contention **(a)** The Resolution Plan in its entirety, is *feasible* and *viable* in terms of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) and so is held by the Ld. NCLT in paras 38-45 of the Plan Approval Order dated 04.06.2024 in I.A. No. 568 of 2023. Further the Resolution Plan is a prerogative of the Resolution Applicant and is drafted as per its commercial understanding and risk appetite. Furthermore, it is a matter of record that, till date, no prescribed notification for the acquisition of any part of the Corporate Debtor’s land has been issued by any appropriate state instrumentality or is placed on record and even the Resolution Professional, in the 10th CoC meeting dated 13.10.2023 has stated no land acquisition notification has ever been published by the appropriate authorities for the purpose of the alleged acquisition of the Corporate Debtor’s land and further any future purported compensation that may accrue to the Corporate Debtor has been accounted for in the instant Resolution Plan submitted by the Respondent. Clause 19(l) of the Resolution Plan duly accounts/provides for the said contingency of any future acquisition of the land of the Corporate Debtor. Now it cannot be expected from a Resolution Applicant to account for all future contingencies into the Resolution Plan, especially since the Appellant has failed to produce

any concrete evidence to support the existence of the alleged acquisition. Furthermore, if the said land is to be acquired in the prospective future, the said contingency cannot be taken into account on the date of the submission of the Resolution Plan, as the same is based on the information provided under the Information Memorandum itself. Moreover, once the Resolution Plan is approved, the rights over the assets of the Corporate Debtor vest exclusively with the Resolution Applicant through the new management.

Further we may note that in accordance with the mandate of Regulations 27 and 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations of 2016 (“**Regulations**”), the liquidation value of the assets of the Corporate Debtor is based upon the reports submitted by the IBBI registered valuers, which have been duly appointed and ratified by the CoC. As far as the allegation that the actual Liquidation Value of the assets of the Corporate Debtor is greater than the Resolution Plan Value is concerned, the said contention cannot be raised by the Appellant at this stage, after it has duly admitted, in the 5th CoC meeting dated 02.01.2023 that the Resolution Plan Value (Rs. 17,00,00,000/-) of even the earlier Resolution Plan submitted by the Answering Respondent was greater than the Liquidation Value of the Corporate Debtor. Furthermore, no plausible explanation has been provided by the Appellant for the sudden change of stance. Therefore, it is evident the Appellant is approbating and reprobating as per its own convenience. Nevertheless, the Resolution Plan value is indubitably greater than the Liquidation Value of the

Corporate Debtor. Nevertheless, there is no provision in law mandates that the Resolution Plan Value cannot be less than the Liquidation Value of the Corporate Debtor as held in **Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors.** [Civil Appeal No. 4242 of 2019] *[Paragraph No.26]*.

Now the powers of the Ld. Adjudicating Authority with respect to the approval of the Resolution Plan does not extend to examine the commercial wisdom of the CoC and once it is found all the mandatory requirements have been duly complied with and taken care of by the Resolution Applicant, the process of judicial review under Section 31 of the Code cannot be stretched to carry out quantitative analysis concerning a particular creditor.

24. *Qua* contention **(b)** we may note the valuation of the assets of the Corporate Debtor has been carried out by independent registered valuers, in compliance with Regulations 27 and 35 of the Regulations. Admittedly the Appellant had duly participated in all the CoC meetings leading up to the final Resolution Plan and has been an active participant in all key decisions taken in the insolvency proceedings in the instant case. It is matter of record the Appellant has never raised any such objections in any of the CoC meetings. It is clear the same is being raised at such a belated stage, as a mere afterthought, by the Appellant to maliciously derail the instant insolvency proceedings. Now the Ld. Adjudicating Authority, by way of the Impugned Order has duly recorded the fact the valuation of the Corporate Debtor carried out by the registered valuers is in compliance with the provisions of the Code. Furthermore, by way of the Impugned Order and the Plan Approval Order

dated 04.06.2024 in I.A. No. 568 of 2023, the Ld. NCLT has held the Resolution Plan is in compliance with Section 30(1), Section 30(2) and Section 31 of the Code as well as Regulations 37, 38 and 39 of the Regulations.

25. Coming to contention **(c)** we find Clause 44 of the Resolution Plan provides for the treatment of the said pending PUFE applications. The same provides any proceeds arising out from any favorable decision in the matter of any avoidance transaction shall be split proportionately between the Resolution Applicant and the unsecured financial creditors, in proportion of the legal cost borne by the said parties while carrying on such litigation. The referenced clause further mandates in the event the unsecured financial creditor fails to contribute to the cost of the said litigation, then the Resolution Applicant shall have the sole right on the entire proceeds arising out of such pending PUFE applications. It is further clarified Regulation 38(2)(d) of the Regulations specifically mandates the Resolution Plan shall provide for the manner in which proceedings in respect of any pending PUFE applications shall be pursued and the manner in which the proceeds emanating from the same shall be distributed. The statement made by the Authorized Representative of the Respondent in the 11th CoC Meeting does not amount to a modification to the Resolution Plan, as alleged. The Respondent, in the 11th CoC meeting, has merely provided a clarification, as sought by the Appellant *qua* the treatment of pending PUFE applications. From a perusal of the minutes of the 11th CoC meeting, it is crystal clear the Respondent had merely clarified the expenses for pursuing the pending PUFE applications shall ideally be split equally between the Appellant and the Respondent. The Respondent further undertook the said clarification would be binding upon

the Respondent as the statement of the Respondent was being encapsulated in the minutes of the 11th CoC meeting. Pertinently, other members of the CoC (including the Appellant) also concurred with the views of the Respondent. Thus the terms of the Resolution Plan are in compliance with the provisions of the Code

26. Coming to contention **(d)** the appellant has alleged the Resolution Plan submitted by the Answering Respondent is in violation of the clauses of RFRP but has failed to sufficiently establish the fact the Resolution Plan is in violation of a single clause of RFRP. In terms of Clause 1.8.1 of the RFRP, a Resolution Applicant was required to submit a Binding Submission Bank Guarantee as Earnest Money Deposit ("**EMD**"), which was duly submitted by the Respondent with its first Resolution Plan dated 23.10.2022. However, the said Resolution Plan was rejected and the EMD was returned. Thereafter, in the 7th CoC Meeting dated 04.08.2023, wherein the Respondent was permitted to re-submit the Resolution Plan, the RP requested the Respondent to submit the copy of the Performance Bank Guarantee of Rs. 3,60,00,000/- directly with Resolution Plan in order to gain the confidence of the CoC. The Authorized Representative of the Respondent specifically sought confirmation of the fact the said action was not violative of the RFRP. Even otherwise, the EMD amounting to Rs. 10,00,000/- was for the purpose of gauging the seriousness of the SRA and the said object was duly fulfilled by the PBG deposited by the Respondent. Therefore, there is no material breach of Clause 1.8.1 of the RFRP, as alleged by the Appellant

The Appellant has also alleged the PBG is in violation of Clause 1.9 as the same has been issued by an associate entity i.e., M/s Pioneer

Project, in which the sole proprietor of the Resolution Applicant is a partner. However, we find there is no breach of Clause 1.9 of the RFRP as, *inter alia*, Clause 1.9.4 of the RFRP itself provides for the payment of the PBG by a Parent Company. The Respondent *vide* its email dated 02.09.2023 to the RP, clarified the said concerns regarding the PBG. Despite ample opportunity, the Appellant failed to raise any objection *qua* the PBG at that point of time

27. *Qua* contention **(d)** we note the Appellant, being dissatisfied with the distribution under the Resolution Plan, has attempted to challenge the Resolution Plan indirectly by raising entirely baseless objections. The Addendum dated 21.10.2023 is a valid addendum and the objection so raised by the Appellant is merely a clerical error which does not warrant any judicial interference by this Tribunal. A bare perusal of the said Addendum would reveal it is nothing but merely a clerical defect and the same being raised as an objection to the Resolution Plan to get such Resolution Plan rejected, which otherwise is a *feasible* and *viable* plan in terms of the Code and the regulations thereunder. Moreover, the Appellant duly attended the 11th CoC meeting dated 27.10.2023 but failed to raise any such objection with respect to the Addendum dated 21.10.2023. Therefore, it does not lie in the mouth of the Appellant to raise such frivolous issues at a belated stage

28. *Qua* contention **(f)** we note the Resolution Plan dated 19.08.2023 has not been revised more than once. The Resolution Plan, upon the specific concerns raised by the CoC, including the Appellant, has only been revised once by way of revised Resolution Plan dated 09.10.2023 and thereafter, pursuant to the 10th CoC meeting and RP's email dated 14.10.2023, the

Respondent submitted an Addendum dated 21.10.2023. Now the Resolution Plan(s) dated 23.10.2022, submitted by the Respondent and another PRA, were rejected by the members of the CoC at the very threshold and no discussion and/or negotiations *qua* the terms of the said previous Resolution Plan(s) were undertaken by the members of the CoC. Therefore, the Resolution Plan dated 19.08.2023, as submitted by the Respondent, was a fresh Resolution Plan and the same was not in furtherance of the earlier Resolution Plan dated 23.10.2022. Moreover, after the submission of the Revised Resolution Plan dated 09.10.2023, the Appellant never raised any similar objection even in the 10th CoC meeting dated 13.10.2023, and further deliberated upon the changes to be carried out in the submitted Resolution Plan. The RP, in the 10th CoC meeting, duly apprised the CoC members since the Resolution Plan has already been revised once on 09.10.2023, the changes suggested by the CoC members, including the Appellant, can only be carried out by way of an addendum. In light of the same, the Appellant, having failed to raise any protest to the same in any of the CoC meetings, cannot be permitted to raise this objection at this stage, especially when the revised Resolution Plan and the Addendum thereof were submitted at the instance of the suggestions put forth by the members of the CoC. including the Appellant.

29. Lastly *qua* contention **(g)** we find the Respondent has given due treatment to the Appellant in the Resolution Plan, as mandated by the Code. Now subject to the payments to the creditors, as mandated under the Code, it is the prerogative of a Resolution Applicant to decide the distribution of excess/unutilized amount amongst the creditors. The Resolution Plan

provides for a total payment of Rs. 1,04,23,940/- towards CIRP cost. In case, the said amount is not fully utilized towards CIRP cost, the balance payment will be paid to the assenting unsecured financial creditor of the Corporate Debtor. Hence, the Respondent has incorporated these considerations, in accordance with its commercial understanding and wisdom, and such incorporation has received due approval from the CoC. Consequently, the Appellant lacks merit to challenge the Resolution Plan, which has been duly approved by the CoC. Admittedly, the Appellant has not alleged the Resolution Plan is in violation of the *Section 30(2) (b)(ii)* read with Section 53 of the Code. Therefore, at best, the said distribution can be termed as an incentive mechanism adopted by the Answering Respondent.

30. Section 61(3) of the Code, it outlines the grounds for challenging an order approving a resolution plan, and it read: -

61(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:-

- (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*
- (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;*
- (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*
- (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or*
- (v) the resolution plan does not comply with any other criteria specified by the Board.*

31. It is pertinent to note that Section 61(3) of the Code is framed in negative language, and time and again, this Tribunal, as well as the Hon'ble Supreme Court, has held the scope of interference with regards to an order approving the Resolution Plan in very limited. Such an order can be set aside only if the Appellant is able to demonstrate its case falls within the grounds enumerated in Section 61(3) of the Code. In *Ngaitlang Dhar v. Panna Pragati Infrastructure (P) Ltd.*, (2022) 6 SCC 172, the Hon'ble Supreme Court has succinctly encapsulated the said principle as follows: -

32. *It is trite law that “commercial wisdom” of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by IBC. It has been consistently held that it is not open to the adjudicating authority (NCLT) or the appellate authority (Nclat) to take into consideration any other factor other than the one specified in Section 30(2) or Section 61(3) IBC. It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that the decision of the CoC's “commercial wisdom” is non-justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) IBC. This position of law has been consistently reiterated in a catena of judgments of this Court, including:*

(i) K. Sashidhar v. Indian Overseas Bank and Others (2019) 12 SCC 150

(ii) Committee of Creditors of Essar Steel India Limited Through Authorized Signatory v. Satish Kumar Gupta and Others (2020) 8 SCC 531

(iii) Maharashtra Seamless Limited v. Padmanabhan Venkatesh and others (2020) 11 SCC 467

(iv) Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another (2021) SCC OnLine SC 204

(v) Ghanashyam Mishra and Sons Private Limited Through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through the Director & Ors. (2021) 9 SCC 657

(emphasis supplied)

32. Furthermore, this Tribunal in the case titled ***Sita Chaudhary v. Haryana Telecom Ltd., 2023 SCC OnLine NCLAT 2212***, while considering the aforementioned principle, categorically held an approved resolution plan can only be set aside when cogent grounds have been established in terms of Section 61(3) of the Code.

33. It is apposite to note no averments have been made the Appellant in the instant Appeal as to how its case falls under the grounds stipulated under Section 61(3) of the Code.

34. Further the Appellant, being the dissenting financial creditor of the Corporate Debtor, does not have the requisite locus to challenge the Resolution Plan as duly approved by the members of the CoC. In ***DBS Bank Ltd. v. Ruchi Soya Industries Ltd., (2024) 242 Comp Cas 441***, wherein the Hon'ble Supreme Court categorically held a dissenting financial creditor does not have any say when the Resolution Plan has been approved by a two-third majority of the CoC and a dissenting financial creditor can only object to the distribution of the proceeds under the Resolution Plan, when the proceeds are less than what the dissenting financial creditor would be entitled to in terms of Section 53(1) of the Code. It is not the case of the Appellant that it has been paid less than it is entitled to under Section 53(1) of the Code under the Resolution Plan. As such, the Appellant is precluded from raising objections to the Resolution Plan.

35. Thus the Appellant has failed to raise any cogent ground that may warrant the setting aside of the Resolution Plan. Admittedly the Appellant has duly participated in all the CoC Meetings till the approval of the Resolution Plan and has indulged in extensive deliberations and negotiations

with regards to the terms of the Resolution Plan. Therefore, it is clear the Appellant has preferred these Appeals as an afterthought.

38. Thus there is no merit in these two appeals and thus are dismissed.

39. Pending applications, if any, are also disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated:07-02-2025

BM