

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.710/2019
In
CP(IB)No.416/07/HDB/2018

In the matter of:

M/s.Vinayak Steels Limited
5-4-83 to 85, 1st Floor, T.S.K.chambers,
M.G.Road, Secunderabad – 500003,
Telangana.

...Applicant/
(Resolution Applicant)

AND

1. Prudent ARC Ltd (assignment from IFCI & ARCIL during CIRP)
611, 6th Floor, D Mall, Plot No.A-1,
NetajiSubhash Place, Pitampura,
New Delhi West Delhi DL 110034 IN ...Respondent No.1
2. IFCI Ltd
IFCI Tower, 61,
Nehru Place,
New Delhi – 110 019 ...Respondent No.2
3. Asset Reconstruction Company (India)Limited (ARCIL) Limited
The RUBY, 10th Floor,
29 Senapati Bapat Marg,
Dadar(West),
Mumbai MH 400028 IN ...Respondent No.3
4. Stressed Assets Stabilization Fund (SASF)
3rd Floor, IDBI Tower,
WTC Complex, Cuffe Parade,
Mumbai – 400 005. ...Respondent No.4
5. International Reconstruction Co. Ltd.
A/601/602/605, 6th Floor,
215 Atrium Kanakia Spaces,
AndheriKurla Road, Andheri (E),
Mumbai – 400 093 India. ...Respondent No.5
6. Central Bank of India
Asset Recovery Branch,
Bank Street, Koti,
Hyderabad -500095. ...Respondent No.6
7. Mahalakshmi Profiles Private Limited (MPPL)
MPL House, H.No.13-6-439/1/A/111/10&11,
Balaji Nagar, Pillar No.75,
Mehidipatnam Ring Rd,
Hyderabad, TG – 500006 IN. ...Respondent No.7

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8. Resolution Professional to
M/s.Kumar's Metallurgical Corporation Limited
Resolution Professional (RP)
K MCL (Corporate Debtor) 402B,
4th Floor, Chikoti Gardens,
Begumpet, Hyderabad - 16 ...Respondent No.8
9. Axis Bank Limited
Corporate Banking Branch,
6-3-879/B, 1st Floor,
G.Pulla Reddy Building, Greenlands,
Begumpet Road,
Hyderabad - 500 016. ...Respondent No.9
10. B.C.Ganesh,
5-17, Post Office Road,
Fathe Nagar,
Balanagar, Moosapet,
Rangareddy, Telangana - 500 018. ...Respondent No.10

Order pronounced on: 04.08.2020

**Coram: K. Anantha Padmanabha Swamy, Member Judicial
Dr. Binod Kumar Sinha, Member Technical**

Parties/ Counsels Present:-

For the Applicant: Mr. Niranajan Reddy, Senior Counsel along with
Mr. G. Madhusudhan Rao, Counsel

For the Respondent No.1: Mr. Y. Suryanarayana, Counsel

For the Respondent No.6: Mr. Peri Rama Krishna, Counsel

For the Respondent No.7: Mr.Sanjay Kumar Sharda, Counsel

For the RP/Respondent No.8: Mr.V.V.S.N. Raju, Counsel
Mr. A.B.N.Raj, Counsel

For the Respondent No.9: Mr. Sri. Krishnudu, Counsel

For the Respondent No.10: Mr.Shabbeer Ahmed, Counsel

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

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1. The instant Application bearing IA No. 710/2019 is filed U/s.60(5) of the I&B Code 2016 and in terms of the Rule 11 of the NCLT Rules, 2016 by M/s. Vinayak Steels Limited, one of the Resolution Applicants in respect of the Corporate Debtor i.e., M/s. Kumar's Metallurgical Corporation Limited. The present Application is filed seeking following reliefs:
 - a. To stay the process of finalization of the Approval of the Resolution Plan submitted by the R 7 till the disposal of this IA.
 - b. To direct that Mr. B.C. Ganesh (R10), who is common witness in all agreements should submit all Bank Statements and Income Tax Returns for last five Financial Years and disclose true identity.
 - c. To direct Axis Bank Limited (R9) to submit notarized stamped affidavit disclosing the relationship between the Axis Bank Limited (R9) and Mr. B.C. Ganesh (R10).
 - d. To direct the Resolution Professional to provide the details of Resolution Plan consideration submitted by each of the Resolution Applicants from first time and every time revised Resolution Plan considerations by all the RAs till the finalization of the successful Resolution Applicant. This may be useful to understand how the successful resolution applicant has changed the consideration by using inside information from the Prudent ARC.
 - e. To direct to all CoC members to submit notarized stamped affidavit declaring that either directly or indirectly during the period of CIRP or three years prior to the CIRP commencement

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date has no connection with either the MPL or MPL's Directors or MPL Group i.e., any subsidiary or holding or associated company of the MPR or MPL's directors or MPL Group Companies Directors i.e., its holding or subsidiary or associated companies directors or any employees of the MPL or MPL Group companies employees.

Further need to be declared (Notarized stamped affidavit) that either directly or indirectly has not contacted (either in person or email or cell phones or land line) or passed any information relating to the Corporate Debtor to the Successful Resolution Applicant or its directors or any of the Group companies of the MPL or MPLs Directors or any employees of the MPL or MPL's Group Companies employees or to any other person with a view to make the MPL as Successful Resolution Applicant.

Further need to be declared(Notarized stamped affidavit) that in case of any proof contrary to the above notarized declaration, We are agreeing to withdraw from the voting and also agreeing for all legal actions including Civil & Criminal prosecution against us.

- f. To direct successful Resolution Applicant and its directors and its Group Companies and Group Company Directors to submit notarized stamped affidavit declaring that none of them have connection with the CoC members or its employees either directly or indirectly with any of the CoC members either during the CIR Process or three years prior to the CIRP Commencement date.

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Further need to be declared (Notarised Stamped Affidavit) that either directly or indirectly has not got any information from the any of the CoC member(s) or its directors or its employees or to either MPL or MPLs Director or MPL employees or to any of the MPL's Group Companies or MPLs Group Company Employees.

Further need to be declared (Notarized Stamped affidavit) that in case of any proof contrary to the above notarized declaration, they are agreeing to withdraw from Resolution Plan process.

- g. To pass an order declaring that the Respondent 1 should not participate into voting and evaluation of the Resolution Plans as he has conflict of Interest with Respondent 7.
- h. To pass an order declaring the Respondent 7 as ineligible Resolution Applicant.
- i. To pass an order to consider Resolution Plan consideration for Rs.27.00 Crores when 2nd time Applicant submitted the Revised Resolution Plan, wherein the mail from Resolution Professional said that CoC will negotiate with H1 bidder.
Since CoC negotiated with the applicant it is presumed that applicant was H1 bidder.
- j. To pass such other order(s) as this Adjudicating Authority may deem fit and proper in the facts and circumstance of the case.

2. Brief facts of the present case as stated by the Applicant are as under:-

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- a. That the Applicant has submitted its Resolution Plan as per the EoI and RFRP on 08.04.2019. That RP sent an e-mail dated 03.05.2019 and pursuant to that mail, Applicant had submitted revised Resolution Plan before 5:00 P.M of 07.05.2019. That the RP has sent an e-mail dated 09.05.2019 and Applicant was called for negotiation with CoC. The applicant attended the CoC meeting and clarified all the points raised by CoC. Accordingly, Applicant presumed that it was the H1 Bidder.
- b. It was found that CoC negotiated with other Resolution Applicants as well contradicting their own e-mail dated 03.05.2019.
- c. That with reference to e-mails dated 04.06.2019 and 10.06.2019 from RP, the Applicant has revised its Resolution plan and submitted its offer in a sealed envelope on 15.06.2019. That Applicant has further submitted its revised Resolution Plan in a Sealed Cover before 5:00 P.M on 25.06.2019.
- d. That Applicant had an apprehension that some inside information was made available to the other Resolution Applicants. Therefore, the Applicant has addressed a letter dated 25.06.2019 to Resolution Professional, stating as under:
"It has been found through market information/informed sources that one of the prospective Resolution Applicant acquired stake of two CoC members indirectly, by way of assignment of Debt to get the undue advantage in terms of

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pricing information and also to get their approval of their Resolution Plan."

"This appears to be a case of conflict of interest between the few CoC members and Prospective Resolution Applicants. Accordingly Applicant had asked the Resolution Professional (RP) to find out if the said Resolution Applicant is eligible to participate and also whether the few CoC members can be part of the committee."

- e. That in the CoC meeting held on 26.06.2019, the CoC members informed that in case if both the Applicants agreed they will go for *inter se* bidding. Though Applicant protested for the same, CoC without agreeing, opened both the Resolution Plans.
- f. That the Applicant was declared a H1 bidder and Applicant's Bid was far higher than the other Resolution Applicant. However, CoC started *inter se* bidding and declared the H2 as successful Resolution Applicant.
- g. That again vide letter dated 27.06.2019 to the Resolution Professional, the Applicant has stated as under:-

"It has been found through market information/informed sources that one of the prospective Resolution Applicant acquired stake of two CoC members indirectly by way of assignment of debt to get undue advantage in terms of pricing information and also to get their approval of their Resolution Plan."

"This appears to be a case of conflict of interest between the few CoC members and Prospective Resolution Applicants.

We had requested you to kindly examine whether the said Resolution Applicant is eligible to participate in the above plan

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and whether the said CoC members can be a part of the committee.

You would appreciate that the above due diligence on your part is very much essential for giving an equal, fair and transparent opportunity to other Resolution Applicants.

You are requested once again to kindly see that till the above due diligence is carried out no final decision should be taken."

h. That the R1, was pre-determined to declare H2 as the successful Resolution Applicant due to the following reasons:

i. That there are common Directors and Group Companies of the Successful Resolution Applicant:

Details of Directors between the M/s. Mahalakshmi Profiles Private Limited, Successful Resolution Applicant, (R7) and MPL Steel Industries Private Limited are as under:

S.No.	Names of the Directors on M/s.MAHALAKSHMI PROFILES PRIVATE LIMITED	Names of the Directors on M/s.MPL STEEL INDUSTRIES PRIVATE LIMITED
1	VINOD KUMAR AGARWAL	VINOD KUMAR AGARWAL
2	RAMNIRANJAN AGARWAL	RAMNIRANJAN AGARWAL
3	LAXMI LAVANYA KORINI	

In view of the above, both the companies i.e., M/s. Mahalakshmi Profiles Private Limited and M/s. MPL Steel Industries Private Limited are group companies under the same management.

ii. Common witness between the MPL steel Industries Ltd, Axis Bank Ltd, IFCI Ltd, Prudent ARC Ltd and ARCIL:

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- a. That the Memorandum of Deposit of Title Deeds executed between the MPL Steel Industries Private Limited and Axis Bank Ltd on 25.01.2019, where one of the witness is Mr. B.C. Ganesh.
 - b. That the Assignment Agreement executed between the IFCI Limited and Prudent ARC Limited on 12.02.2019, where one of the witness is Mr. B.C. Ganesh.
 - c. That the Assignment Agreement executed between the ARCIL and Prudent ARC Limited on 07.06.2019, where one of the witness is Mr. B.C. Ganesh.
 - d. That Mr. B.C. Ganesh is common person between the MPL Steel Industries Limited, Axis Bank Ltd, IFCI Ltd, Prudent ARC Ltd and ARCIL.
- iii. That R1 & R7 colluded as per the above information and also as per the market information. The R7 has indirectly acquired the debt of IFCI Limited and ARCIL through Prudent ARC Limited, R1, by paying Rs. 5 Crores to ARCIL and Rs.1.96 crores to IFCI Limited for stake of 52.50%. The undue benefits to the R7 are as under:
- a. Getting the Price sensitive Information.
 - b. To insist the Resolution Professional to call the revised
Resolution Plans till R7 becomes the Successful Resolution Applicant. This is seen from the fact that RP has called quotations for 5 times.

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c. Much lower effective Resolution Plan

Consideration due to indirect method:

i. For Example, in case the Resolution Plan consideration is Rs.43 Crores, the effective Resolution Plan Consideration for both the Resolution Applicants is as under:

Particulars	Applicant	Respondent No.7
Gross consideration	43.00	43.00
Less: Own Stake	0.00	22.575
Net consideration before the cost of Own Stake	43.00	20.43
Own stake consideration	0.00	6.96
Net Resolution Plan Consideration	43.00	27.39

ii. The Applicant has to pay Rs.15.62 Crores higher than the R7 which is 57.02% higher and this made the R7 in an advantageous position and undue advantage to price sensitive information from the Prudent ARC Limited.

i. In view of the above facts and circumstances, the Respondent No.1 voting should not be considered and also Respondent No.7 should not be considered as eligible to participate in to Resolution Process.

3. Counsel for the R1 filed counter and written submissions, *inter-alia*, stating as under:-

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- a. That the Applicant in its entire Application has made hypothetical, imaginary and wild allegations on the Respondent herein without any shred of evidence.
- b. That the Applicant was informed regarding the *inter-se* bidding process for the purpose of price discovery and maximisation of value of assets of the Corporate Debtor. The minutes of the 8th CoC meeting dated 26.06.2019, clearly establishes that the Applicant herein had participated in the *inter-se* bidding process proposed by the members of CoC. The Applicant herein had backed out/withdrawn after the bid of Rs.42.96 Crores made by R7, the successful Resolution Applicant. Therefore, the CoC members have in due compliance with the process of *inter-se* bidding shortlisted the R7 as the successful Resolution Applicant.
- c. The contention of the Applicant that the R1 is in collusion with R7 since one of the employees of R7 i.e., the R10 has signed as a witness to the Assignment Agreements entered between the R1, R2 and R3 is totally misconceived. The R10 has signed the Assignment Agreements as a witness and not as an authorised representative of any party. The mere act of signing as witness by R10 in no way can determine or establish collusion between two different entities.
- d. In *Smt. Chandrakantaben Etc vs Vadilal Bapalal Modi & Others*, the Hon'ble Supreme Court held that "*there is no presumption that an attesting witness of a document must be assumed to be aware of its contents.*" Further it is submitted that a witness attesting a document only means that the

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witness has seen the executant sign the document/instrument, it does not mean that the witness has the knowledge of the contents of the document/instrument. Therefore, the contention of the Applicant that R1 & R7 are acting in collusion stands defeated.

- e. That if all the allegations that the R1 was leaking information to the successful Resolution Applicant is true, then the successful Resolution Applicant should have always been the H1 bidder, but it is only when the interse bidding was called for in the 8th CoC meeting held on 26.06.2019, the successful Resolution Applicant has had a higher bid amount than the Applicant herein. Therefore, by any stretch of imagination the allegation that there was leakage of information because of which the successful Resolution Applicant took advantage of the information leakage is absolutely false.
- f. Further, without prejudice to the above submissions, even if the R7 had acquired the stake of two CoC members as alleged by the Applicant herein, the provisions of the Code debars neither a Financial Creditor nor a Resolution Applicant who has a connection with a financial creditor to submit a Resolution Plan in respect of a Corporate Debtor . There is no different procedure prescribed under the Code for approval of Resolution plan submitted by a Financial Creditor or by an entity connected with a Financial Creditor in respect of a Corporate Debtor. However, there is a bar on submission of a Resolution Plan by a person/entity connected with the Corporate Debtor in terms of Section 29A of the Code.

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- g. Reiterating above, Ld. Counsel for the R1 prayed to dismiss the instant Application as not maintainable in law and on facts.
4. Counsel for the R6 filed counter and written submissions inter-alia stating as under:-
- a. That the Applicant cannot compel the CoC to accept their bid of Rs.37.21 crores as against the bid of Rs.42.96 Crores offered by R7.
 - b. That the R8 has rightly and lawfully initiated action and taken steps for inter se bidding for maximizing the interest of the stakeholders after due approval of CoC and the Applicant cannot compel the CoC or R8 to accept the terms and conditions of the Applicant.
 - c. That the Successful Resolution Applicant is not a related party to Corporate Debtor. The Applicant has not proved or averred that the successful Resolution Applicant is a related party as per provisions of Section 29(A). Since the Applicant is not a related party to the Corporate Debtor as provided under section 29(A), acceptance of its highest bid by CoC is in accordance with the law. Thus the contention of the Applicant is not tenable.
 - d. That the Applicant has been given an opportunity to participate in the *inter se* bid and the *inter se* bid is valid for maximising the asset value of Corporate Debtor under CIRP. Applicant has not made out any case nor submitted the proof of violation of the provisions contained in Section 30(2).

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- e. That the Applicant cannot compel the CoC to accept its bid only, when its bid is lesser than the competitive bid offered by the Successful Resolution Applicant.
- f. That the Committee of Creditors approved the Resolution Plan as per Section 30(4) of IBC Code, 2016 and as such the Resolution Plan is validly approved by the CoC within the parameters of IBC Code. Thus the contention of Applicant is not tenable.
- g. That R6 places reliance on the following judgements:
- i. *Hon'ble National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT)(Insolvency)No.380 of 2018, In the matter of M/s.Bhaskara Agro Agencies Vs. M/s. Super Agri Seeds Pvt. Ltd.*
 - ii. *C.A.No.10719 of 2018, C.A.No.10971 of 2018 and io (C) No.29181 of 2018 in the matter of K. Sashidhar Versus Indian Overseas Bank & Ors vide*
 - iii. *Civil Appeal No.8766-67 of 2019 Diary No. 24417 of 2019; in the matter of Committee of Creditors of Essar Steel India Limited Through Authorised Signatory VS Satish Kumar Gupta & Ors.*
- h. Reiterating above, Ld. Counsel for the R6 prayed to dismiss the Application.
5. Counsel for the R7 filed its written submissions, *inter-alia*, stating as under:
- a. That Mahalakshmi Profiles Private Limited (R7) is the Successful Resolution Applicant and M/s.Vinayaka Steels Limited (Petitioner) is the Unsuccessful Resolution Applicant.

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b. That as per the EoI and RFRP dated 08.04.2019, Resolution Plans were submitted on various dates by the Resolution Applicants as follows:

Sl.No.	Date	Amount offered by MPPL	Amount offered by Vinayaka Steels Limited
1	08.04.2019	9.95	22.40
2	08.05.2019	24.11	27.00
3	27.05.2019	28.11	-
4	15.06.2019	28.11	30.20
5	21.06.2019	31.11	-
6	25.06.2019	34.11	37.21

c. That each of the plan submitted by Petitioner is more than that offered by R7. It is clear from the above that Applicant may be having some inside information, that all his plans are more than R7. If the R7 had any knowledge of the amount of bid by the Applicant, as alleged, its bid would have been higher than that of the R7.

d. That after the bids were submitted by the Applicant on 26.06.2019, Inter-se Bidding was conducted in which all the CoC members, Resolution Professional, Applicant and R7 were present. The Petitioner has participated in the inter-se bidding. The details of bidding are as follows:

(Rs.In Crores)

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Mahalakshmi Profiles Pvt. Ltd.,		Vinayak Steels Limited	
37.21+0.25	37.46	37.46+0.25	37.71
37.71+0.25	37.96	37.96+0.25	38.21
38.21+0.25	38.46	38.46+0.25	38.71
38.71+0.25	38.96	38.96+0.25	39.21
39.21+0.25	39.46	39.46+0.25	39.71
39.71+0.25	40.21	40.21+0.25	40.71
40.71+0.25	40.96	40.96+0.25	41.21
41.21+0.25	41.46	41.46+0.25	41.71
41.71+0.25	41.96	41.96+0.25	42.21
42.21+0.25	42.46	42.46+0.25	42.71
42.71+0.25	42.96	Backed out/withdrawn	

e. That from the above table, it is clear that the Applicant and R7 both have participated in the *inter-se* bidding. Once the bidding was over, 100% CoC members voted in favour of the highest bidder i.e., R7.

f. That Mr. B.C. Ganesh was just a part-time employee as on 13.12.2019. He had joined MPPL on 01.03.2008 and had retired as full-time employee on 01.03.2018. Till he was a full-time employee of MPPL, PF contributions were made and once he retired, there was no PF contribution to his account by MPPL.

g. That the Applicant has not been able to prove any relation between R7 and R1 other than market rumours.

h. Reiterating above, Ld. Counsel for R7 prayed to dismiss the instant Application.

6. Counsel for the R8 filed counter inter-alia stating as under:

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- a. That in the fourth CoC meeting held on 02.05.2019, the CoC members have observed the receipt of Six Potential Resolution Applicants, which were received in pursuance of the publication of Form-G, Invitation for Expression of Interest for Submission of Resolution Plans by the Resolution Applicants, which was published on 06.02.2019 in the respective newspapers with the deadline for submission of Resolution Plan from Prospective Resolution Applicants being on or before 07.04.2019. The list of PRAs is as follows:
- i. Vinayak Steels Limited
 - ii. Somani Ispat Private Limited
 - iii. Mahalakshmi Profiles Limited
 - iv. VBC Ferro Alloys Limited
 - v. Amaravathi Textiles Limited
 - vi. Prudent ARC Limited
- b. That among the Six(6) PRAs, one(1) PRA was declared ineligible by the Resolution Professional U/s. 29A of the Code and that only three PRAs have submitted their respective Resolution Plans. The Resolution Plans were submitted by the following PRAs:
- i. Vinayak Steels Limited
 - ii. Somani Ispat Private Limited
 - iii. Mahalakshmi Profiled Limited
- c. That in the 5th CoC meeting held on 10.05.2019, CoC members took note of the fact that the Resolution Plan submitted by Vinayak Steels Limited, the Applicant herein was conditional, i.e., the said condition was in respect of a title due

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diligence, to which the CoC opined that Vinayak Steels Limited, should have done the due diligence on the Corporate Debtor and submit the Resolution Plan and that the CoC further opined that the conditional clause was not acceptable to the CoC. Further, the CoC opined that they wanted to meet the Resolution Applicant and negotiate with the Resolution Applicant to remove/modify the clauses not acceptable to the CoC and also opined to meet other CoC members in the next CoC, further to which the CoC members met the team of Vinayak Steels Limited, the Petitioner herein and the CoC along with the RP had discussed on the Resolution Plan with the Applicant.

- d. That the Resolution Professional along with CoC members have met with Mahalakshmi Profiles Limited, another PRA, to understand the background and credentials of the Resolution Applicant, as to how the Resolution Plan is going to help the Company, improvement on the Resolution amount and on the availability of the funds, which was accordingly conducted.
- e. That at the 6th Meeting of CoC held on 16.05.2019 and 7th Meeting of COC held on 21.06.2019, the COC members *inter-alia*, took note of the discussions on the Resolution Plan submitted by Vinayak Steels Limited, wherein the amounts proposed in the Resolution Plans as submitted by the three PRAs were compared. It was seen that Vinayak Steels Limited, had submitted a bid of Rs.30.20 Crores, Somani Ispat Pvt Ltd. had submitted a bid of Rs.21.50 crores and Mahalakshmi Profiles Pvt Ltd had submitted a bid of Rs.28.11 Crores and

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that the evaluation matrix scores obtained were 89, 57 and 87 points, respectively. Further, the Resolution Professional placed a cover before CoC received from Mahalakshmi Profiles Pvt Ltd., just before the commencement of the meeting, which was opened in front of the CoC and the bid submitted by Mahalakshmi Profiles Pvt. Ltd. was Rs.31.11 Crores. A CoC member, Central Bank of India had raised an objection to the bid received from Mahalakshmi Profiles Private Limited and but the CoC members have opined that the objective of the CoC is maximization of the value and that since the said plan was received before starting of the meeting, it could be considered and further decided that an opportunity can be given to the other PRAs, with a time frame of about one or two days to increase the amount and was also decided that the RP shall receive the Resolution Plans in sealed cover only and that the Resolution Plans shall be opened only at the CoC meeting.

- f. That after the extensive deliberations by the CoC, it was concluded to send mails to Vinayaka Steels Limited and Mahalakshmi Profiles Limited to submit their revised bids in sealed covers on or before 25.06.2019 for consideration of the CoC and also that Vinayaka Steels Limited and Mahalakshmi Profiles Limited be present for discussion in the meeting and to have the next CoC meeting on 26.06.2019 and to open the sealed covers in the meeting. In this meeting the Prudent ARC Ltd, an existing CoC member had also informed that they

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have acquired the debt from ARCIL by way of an assignment, for which an Assignment Agreement was sought by the RP.

g. That, in the Eighth Meeting of CoC held on 26.06.2019, the CoC members took a note of the updated CoC composition, which reflected the Assignment of Debt from ARCIL to Prudent ARC Ltd by way of an Assignment Agreement dated 7.06.2019, which shows that the Prudent ARC holds the combined debt of IFCI Ltd. (earlier assignor) and ARCIL Ltd. (present assignor). It is submitted that the Resolution Professional had placed before CoC, a letter dated. 25.06.2019 received by the Resolution Professional, from Vinayak Steels Limited, the Petitioner herein, stating that they have some market information pertaining to acquisition of stake by a Resolution Applicant from two CoC members to get undue advantage in terms of pricing and to get approval of their Resolution Plan and requested the Resolution Professional to examine whether such applicant is eligible to participate in the submission of plan amongst others. The said letter dated 25.06.2019 was placed before consideration by CoC and was circulated amongst CoC and the Resolution Professional had sought declaration to disclose interest, if any with respect to prospective Resolution Applicant, to which a member of the CoC, Prudent ARC Limited had objected stating that the disclosure is bad in Law and also noted that the CoC and RP is running the CIRP process in a highly transparent process and also that the Resolution Applicant could approach this Adjudicating Authority in case of any such grievance.

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- h. It was also discussed that the Resolution professional has received one sealed cover each from two Resolution Applicants and that the Resolution Professional offered opening of the sealed covers in the CoC meeting. That the CoC's opinion was also sought, to which the Prudent ARC Ltd has expressed to seek consent of both the Resolution Applicants to participate in *inter-se* bidding and that the bids shall be opened only after taking the declarations from both the Applicants agreeing for *inter-se* bidding. That the bid covers shall be opened in front of the Applicants and the bid amount shall be increased by a minimum slab of Rs.10 Lakhs each time by each Resolution Applicant.
- i. The Resolution Professional called the representatives of both the Applicants and briefed them about the said CoC instructions, further to which Vinayak Steels Limited, the Petitioner herein objected to negotiations with H2 bidder and that the negotiations shall be only with H1 bidder, to which Prudent ARC Ltd has stated that it was within the right of the CoC to call for improvement bids from both the parties and the bids were opened in front of both the Applicants. The amount offered by Vinayak Steels Limited, the Applicant herein, stood at Rs. 37.21 Crores and bid amount offered by Mahalakshmi Profiles Private Limited stood at Rs. 34.11 Crores.
- j. That upon opening of the bids, after acceptance of the terms imposed and informed by the CoC, Vinayak Steels Limited, the Applicant herein, through its representatives became furious and expressed their strong resentment towards increasing of

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bidding prices by Vinayaka Steels Limited and Mahalakshmi Profiles Limited.

- k. That Prudent ARC Ltd had intervened and categorically informed the Applicant to refrain from using bad words and also that they are free to participate in the bidding or to withdraw, further to which both the Applicants have participated in fresh rounds of bidding with Rs. 25 Lakhs as minimum slab and that the Vinayak Steels Limited, has backed out and withdrawn, whereas the Applicant, Mahalakshmi Profiles Private Limited has emerged as the highest bidder with Rs. 42.96 Crores.
- l. That in the Ninth Meeting of CoC held on 06.08.2019, the CoC members took note of the fact that Vinayak Steels Limited, has filed an Application (the instant Application), challenging the CIRP Process. In this meeting, the CoC was informed about the updated Resolution Plan from Mahalakshmi Profiles Private Limited, wherein certain non-agreable clauses and other conditional clauses were found. These were also discussed in the said CoC meeting.
- m. That in the Tenth Meeting of CoC held on 19.08.2019, the CoC members took note of the Resolution Plan submitted by Mahalakshmi Profiles Private Limited and the CoC has approved the Resolution Plan for Rs. 42.96 Crores by way of unanimous voting by all the members of CoC.
- n. That the Resolution Professional has conducted all the meetings of the CoC in total compliance with the Code and Regulations thereunder.

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- o. That the Resolution Professional has at all times maintained a zero-deviance policy from the Legal Advice / opinions as sought from the Advocates, including the statutory compliances under the Code.
 - p. That there was no aspect of pre-determination of any Resolution Applicant as Successful Resolution Applicant at any point of time and only upon the last *inter-se* bidding, the H1 Bidder was declared as Successful Resolution Applicant and it is also submitted that, Vinayak Steels Limited did not submit the final bid amount after the *inter-se* bidding and did not participate in the CoC meeting pursuant to it.
 - q. Reiterating above, Ld. Counsel for the RP prayed to dismiss the Application.
7. Counsel for R9 filed counter inter-alia stating as under:
- a. That the instant Application before this Adjudicating Authority is between the other parties and the Axis Bank is not a necessary party in relation to the disputes.
 - b. That the R9 Axis Bank has no knowledge and is not aware of the various averments made by the Applicant. The only averment pertaining to the Respondent No.9 is that memorandum of deposit of title deeds executed between MPL Steel Industries Pvt. Ltd and Axis Bank Ltd on 25th January 2019, contains the signature of Mr. B.C. Ganesh as one of the witnesses and he is the common witness between M/s. MPL Steel Industries Pvt. Ltd., Axis Bank Ltd., IFCI Ltd., Prudent Arc Ltd., and ARCIL.

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- c. That M/s. MPL Steel Industries Pvt. Ltd., have availed loan facilities from Axis Bank Ltd., and the said company has created the mortgage in favour of the Bank to secure the said loan facilities and got the mortgage deed registered with concerned SRO. The said mortgage deed was executed by the mortgager and the same was witnessed by Sri B.C. Ganesh. The R9 Bank is not aware of the said Sri B.C. Ganesh and he is not a known party to the Bank. Hence, the Bank is not aware of the said Sri B.C. Ganesh and there is no relationship between Axis Bank Ltd and the said Sri B.C. Ganesh.
- d. That the R9 was unnecessarily impleaded in the above Application.
- e. Reiterating above, Ld. Counsel for the R9 prayed to dismiss the instant Application.
8. Counsel for Respondent No.10 (Mr. B.C. Ganesh) filed written submissions *inter-alia* stating as under:
- a. That Respondent No.10 is engaged in the business of rendering small-time liaison services for the Government related works and in works related to land for which he gets paid on assignment basis. Among various clients, he provides liaison services to Mahalaxmi Profiles Private Limited (R7) on call/per assignment basis and he does other liaisioning works for Prudent ARC (R1) as well. That as per his work, the R10 had signed as one of the witnesses to the Memorandum of Deposit of Title Deeds executed between MPL Steel and Axis Bank and some deed between IFCI/ARCIL and Prudent ARC Ltd.

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- b. That the R10 has not filed any Income tax returns due to low income and that the income of R10 has always been below the Taxable limit. All the allegations are false and baseless and except for signing as a witness and doing the liaison work for registration of documents at the concerned sub-registrar offices the R10 does not have any relationship or association to the subject transactions or working of the Companies. The Respondent No.10's signatures as a witness to various documents as mentioned in the above Company Application could be mere coincidence and does not reflect his association or the association between various companies as alleged in the Application.
9. R10 filed a memo stating that the R10 has quit employment of R7 Company in May 2018 while the subject documents of the above Company Application were executed and registered in the year 2019.
10. Counsel for the Applicant filed written submissions, *inter-alia*, stating as under:-
- a. That the R7 has not mentioned any specific reason in the first for increase of Resolution Plan consideration from Rs.9.95 Cr to Rs.24.11 Cr. immediately without any open bidding process which has been an increase in price by 142.31% i.e., Rs.14.16 Crores making the offer 242.31% of the initial Resolution Plan consideration offered by them.
- b. That the R7's have given an explanation that subsequent to identification of a Railway track available to Corporate Debtor, which was seen on factory visit and nowhere mentioned in the

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information Memorandum, they revised the Resolution amount to Rs. 28.11 Cr on 27.05.2019. However, the explanation given by the Resolution Applicant is completely wrong. The reasons are as under:

- i. The R7 has not mentioned any reasons for increase of the Resolution Plan consideration.
- ii. The Respondent7 has submitted two more times revised Resolution plans without the consent of Resolution Professional or after cut off dates. There was no reasons explained by the Successful Resolution Applicant. The date line of the Resolution amount submitted by Respondent No.7 clearly indicates that it had inside information regarding the bids submitted by the Petitioners.
- iii. The R1/one of the CoC Members was not interested to make any disclosure regarding relationship with respect to the Successful Resolution Applicant.
- iv. One of the CoC Members i.e., R1 and an employee of the Resolution Applicant completely executed or witnessed the three documents.

c. That the R7 told that Mr. B.C Ganesh (R10) is employed by him on part time basis and he is free to undertake any other liaison work. However, as per EPF records his date of joining in R7 i.e., Mahalaxmi Profiles Pvt. Ltd is 01.03.2008 and his member ID is APSID0032293000000117 and the Respondent No.7 had been continuously contributing to EPF. It cannot be coincidence that Mr. B.C. Ganesh/R10 who is a regular

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employee of R7 shall be a common witness of all the assignment deeds. It clearly establishes the R7's direct link in the assignment deeds.

d. That the R7 in their submissions have not mentioned the following points or explanations:-

i. Reasons for sudden increase of the Bid price from Rs.9.95 Cr to Rs.24.11 Cr, which is 242.31% of the initial Resolution Plan consideration. As R7 mentioned their bid is higher by only Rs. 25 lacs. No one in the world will increase 242.31% of initial bid in case the H1 bid is not known.

ii. The relationship between Mr. B.C Ganesh and Respondent 7.

iii. The relationship between the Respondent 1 & Respondent 7.

iv. No sources of funds/ proof shown at the time of approval of Resolution Plan by the CoC members and also there is a conditional bid.

v. Even now R7 has not submitted declaration as Applicant requested disclosing the relationship between Mr.B.C.Ganesh and R1 and other CoC members.

e. In view of the above, Applicant's prayers are just to protect the justice and prevent the malpractices by the CoC members and the Resolution Applicants only which is very much required otherwise in the present case the successful Applicant will be winner for Rs.9.95 crores as against the Rs.42.90 crores of final bid amount.

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f. That as per page no.26 of Counter of Resolution Professional (R8), the following are the details of date wise Resolution Plan consideration:

Sl.No.	Date of Resolution Plan	Vinayak Steels Limited	Somani Ispats Pvt Ltd	Mahalakshmi Profiles Pvt Ltd
1	8 th April 2019	22.40	15.21	9.95
2	7 th May 2019	27.00	18.18	24.11
3	27 th May 2019	-	-	28.11
4	15 th June 2019	30.20	21.51	28.11

g. That from the above the following points are very clear which deviated the total CIRP process by RP & CoC members:

- i. That the Applicant is H1 for four (4) times. The successful bidder has failed for four (4) times to become H1. That it is clear that they had the information about the H1 bidder and before or during the CoC meeting they have revised their bid more than H1 bidder to become H1. They have got the information about the H1 bid price through someone who knows the Resolution Plan Consideration i.e., either RP or any of the CoC members. Subsequently Applicant have understood that this is the

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plan of successful bidder with the help of Respondent 1
i.e. Prudent ARC Ltd only.

ii. That the cut-off date for submission of bid was 15.06.2019 and the Applicant was H1 at 30.20 Cr and Mahalaxmi Profiles was H2 at 28.11 cr. However, Mahalaxmi Profiles Pvt Ltd submitted their bid on 21.06.2019 at 31.11 Cr well after the cut-off date of 15.06.2019. This is evident that the Mahalaxmi Profiles Pvt. Ltd. revised its price after knowing our bid.

h. That one of the CoC Members, Central Bank of India pointed out that Mahalaxmi Profiles submitted the Resolution Amount after due date and should not be considered technically. However the above was over ruled by the Prudent ARC.

i. That even though the Resolution Plan submitted by Mahalaxmi Profiles was conditional plan, CoC was of the opinion that it should be decided by Adjudicating Authority. Even though it was conditional plan, still Mahalaxmi Profiles was asked to submit the bid in sealed cover and CoC negotiated also. Whereas the conditions put forwarded by Vinayak Steels Limited, were asked to be removed by the CoC (in the meeting on 10th May 2019) and the same was complied with by Vinayak Steels Limited.

j. That Applicant was asked to explain the source of funds and also CoC wanted the Bank sanction letter for proof of availability of the funds to be circulated and the same was compiled with whereas Mahalaxmi Profiles did not explain the

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source of funds and the CoC did not insist on proof of the same and accepted the Resolution Plan.

- k. That Applicant vide its letter dated 25.06.2019 stated that they have market information that one of the Resolution Applicant has acquired stake of two CoC members indirectly by way of assignment of debt to get undue advantage in terms of pricing and also get the approval of their Resolution Plan.
- l. That the above letter of Vinayaka Steels Limited was circulated by Resolution Professional to CoC members and Resolution Professional asked for declaration from CoC members to disclose their interest with the Resolution Applicant. That the Stressed Assets Stabilization Fund (R4) and International Asset Reconstruction Co Ltd (R5) have confirmed that they have no interest with any prospective Resolution Applicant. However Prudent ARC did not disclose and objected that disclosure is bad in law.
- m. That as decided by RP/CoC, the sealed covers submitted by Vinayak Steel Limited and Mahalaxmi Profiles Pvt. Ltd were opened by CoC on 26.06.2019 and the Applicant was H1 at 37.21 Cr and the Mahalaxmi Profiles Pvt Ltd had placed a bid of Rs.34.11 Cr.
- n. That it is evident that Prudent ARC was interested in voting in favour of Mahalaxmi Profiles even if it had submitted conditional Plan and had not submitted any proof of availability of the funds/ source of funds. All actions of Prudent ARC at various stages of the Resolution process

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clearly indicate its interest in the Resolution Applicant i.e.,
Mahalaxmi Profiles Pvt Ltd.

o. Reiterating above, Applicant prayed to allow the Application as
prayed for.

11. Heard both the sides and perused the record.
12. The instant application has been filed by one of the Resolution Applicants, who was H1 when the bids were opened, but for maximisation of value, the CoC wanted *inter se* bidding between H1 and H2 bidder M/s Mahalakshmi Profiles Pvt. Ltd . On the *inter se* bidding, however, the Applicant backed out and withdrew at a point when it was at H2 position and the other Resolution Applicant namely M/s Mahalakshmi Profiles Pvt. Ltd. was at H1 position. Consequently, the CoC declared M/s Mahalakshmi Profiles Pvt. Ltd. as the successful Resolution Applicant. The Resolution Plan submitted by the successful Resolution Applicant has been approved by the CoC with requisite majority of voting power and is pending for approval before this Adjudicating Authority.
13. The applicant has *inter-alia* levelled several allegations of bias and favouritism against CoC Members and the RP and has sought several directions to the respondents especially R1, R7, R8, R9, and R10 to reply on oath to these allegations. All these respondents have filed their counter affidavits against various allegations as already summarised in foregoing paragraphs. The Applicant has

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made three main prayers seeking relief from this Adjudicating Authority which are as hereunder:

(i). To pass an order declaring the Respondent 7 as an ineligible Resolution Applicant;

(ii). To pass an order to consider Resolution Plan consideration for Rs.27.00 Crores when 2nd time Applicant submitted the Revised Resolution Plan, wherein the mail from Resolution Professional said that CoC will negotiate with H1 bidder; and

(iii) To stay the process of finalization of the Approval of the Resolution Plan submitted by the R 7 till the disposal of this IA.

14. For seeking the above reliefs, the Applicant has alleged conflict of interest between Prudent ARC Ltd (R1) (who is one of the Financial Creditors and member of CoC) and the successful Resolution Applicant and for showing the connection between R1 and R7, it has been alleged that one of the employees of R7, Shri B C Ganesh (R10) has also signed as one of the witnesses the Memorandum of Deposit of Title Deeds executed between MPL Steel and Axis Bank and assignment deed between IFCI/ARCIL and Prudent ARC Ltd(R1). The Counter filed by R7 and R10 respectively, however, show that R10 was not an employee of R7 during the period he signed the above referred documents as one of the witnesses. Moreover, as held by Hon'ble Supreme Court in *In Smt. Chandrakantaben Etc vs Vadilal Bapalal Modi & Others*, "there is no

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presumption that an attesting witness of a document must be assumed to be aware of its contents." Thus signing a document as witness does neither prove that the witness is aware of the contents, nor establishes that he is an interested party involved in the relevant transaction.

15. It is further pertinent to note here that according to the provisions of S. 5 (25) of the Code, a resolution applicant has been defined as under:

"(25) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25".

16. Thus any person, either singly or jointly with any other person, may submit a resolution plan pursuant to an invitation published by the resolution professional. However Section 29A of the Code excludes certain persons from being eligible to be a Resolution Applicant :

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

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- (c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;
- (d) has been convicted for any offence punishable with imprisonment for two years or more;
- (e) is disqualified to act as a director under the Companies Act, 2013;
- (f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
- (h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

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(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation.— For the purposes of this clause, the expression "connected person" means— (i) any person who is the promoter or in the management or control of the resolution applicant; or (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this Explanation shall apply to— (A) a scheduled bank; or 54 of 2002. Ord. 7 of 2017. (B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or (C) an Alternate Investment Fund registered with the Securities and Exchange Board of India."

17. Since the Applicant has not brought on record any fact or evidence to show that the successful Resolution Applicant falls within any of the categories of the ineligible persons under Section 29A of the Code, the prayer made for declaring the successful Resolution Applicant as ineligible cannot be acceded to and is therefore negated.

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18. The Applicant's prayer for passing an order to consider its Resolution Plan with the consideration for Rs.27.00 Crores when it was the H1, is against the one of the prebled objectives of the IBC 2016, namely "maximisation of value" of stressed assets for resolving insolvency. In fact, the Applicant itself has been submitting revised Resolution Plans for Rs.30.20 Cr. on 15.06.2019 and for Rs.37.21 Cr. on 25.06.2019 respectively. Further, the Applicant also participated in *inter se* bidding with the successful Resolution Applicant wherein the Applicant itself made a bid for Rs. 42.71 Cr. It withdrew only after the successful Resolution Applicant made a bid for Rs.42.96Cr. Therefore, seeking a direction to consider it's Resolution Plan for Rs.27 Cr. at this stage is both unreasonable and against the tenets of IBC 2016. Therefore, this prayer is also negated.
19. The Applicant has also prayed to stay the process of finalization of the approval of the Resolution Plan submitted by the R 7 till the disposal of this IA.
20. According to the provisions of IBC, 2016 once a CIRP application is admitted, it is the duty of RP to constitute CoC and thereafter publish EoI, Information Memorandum and evaluation matrix on the basis of decisions taken in CoC meetings. Thereafter, upon receipt of EoI by potential Resolution Applicants, various Resolution plans are examined by the RP and the same are put up before the CoC for deliberations about each of those plans for considering their feasibility and reliability. In this regard, it is pertinent to note here that under

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the provisions of the Code, the commercial wisdom of the CoC has been given paramount status without any judicial intervention. As has been categorically held by Hon'ble Apex Court in *K.Shashidhar vs. Indian Overseas Bank & Ors* (2019)..... "There is an intrinsic assumption in the framework of the Code that that the Financial Creditor are fully informed about the viability of the Corporate Debtor and feasibility of the proposed Resolution Plan. They act on the basis of thorough examination of the proposed Resolution plan and the opinion expressed by them after due deliberations in the CoC meetings through voting, as per respective voting shares, is a collective business decision. The legislature, consciously has not provided any ground to challenge the 'commercial wisdom' of either the individual Financial Creditor or their collective decision before the Adjudicating Authority that is made non-justiciable."

21. In the recent judgement in *Arcelor Mittal India Pvt Ltd vs. Satish Kumar Gupta, 2019 2 SSC1*, Hon'ble Apex Court have laid down that a resolution applicant cannot claim a vested right that his Resolution plan be considered and therefore, no challenge can be preferred to the Adjudicating Authority at this stage. However, if on the other hand, a Resolution plan has been approved by the CoC and has passed muster before the Adjudicating Authority, this determination can be challenged before the NCLAT under section 61 or further challenged before the Supreme Court under section 62, if a question of law arises out of such order. In para 79 of the order, Hon'ble Supreme Court held as under:

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"79. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster."

In *JMF ARC vs. Welldo Holdings and Export Pvt Ltd* (Company Appeal (AT) No.134/2019) Hon'ble NCLAT made it clear that no Interlocutory Applications before the Adjudicating Authority would be maintainable during the period of submissions of a CoC approved Resolution Plan by the RP before the Adjudicating Authority for final determination of that proposed CoC approved Resolution Plan. Even after determination of the Resolution Plan by the Adjudicating Authority, no IAs would be maintainable before the Adjudicating Authority, but only an appeal may be filed against such determination before Hon'ble NCLAT or before Hon'ble Supreme Court under section 62 of the Code, if a question of law arises out of such order.

22. In the instant matter, the CoC have approved the Resolution Plan submitted by the successful Resolution Applicant as per their "commercial wisdom" in terms of Section 30(4) and the same is pending before this Adjudicating Authority for determination under Section 31 of the Code. As laid down by Hon'ble NCLAT and Hon'ble

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Apex Court in the judgements *supra* , no challenge by way of an IA before this Adjudicating Authority or even by way of a Writ Petition before a High Court is possible at this stage, as no rights are affected at this stage. Therefore, the Applicant's prayer for staying the process of approval/determination of the CoC approved Resolution Plan by this Adjudicating Authority cannot be acceded to.

23. With the above observations, the instant IA is dismissed as not maintainable.

24. No order as to costs.

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Dr. Binod Kumar Sinha
Member Technical

Rathi/Alekhya

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K. Anantha Padmanabha Swamy
Member Judicial