NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 917 of 2025

IN THE MATTER OF:

Exclusive Motors Pvt. Ltd. **...Appellant(s)**

Versus

Sapan Mohan Garg, RP
M K Overseas Pvt. Ltd. & Anr. **...Respondent(s)**

Present:

For Appellant :	Mr. Krishnan Venugopal, Sr. Advocate with Ms. Prachi Darji, Ms. Manvi Jain, Mr. Apoorv Agarwal, Mr. Avinash Mathews, Mr. Tushar Gadia, Ms. Astha Singh, Advocates
For Respondents :	Mr. Palash S Singhai, Mr. Harshal Sareen, Advocates for RP. Mr. Gaurav Mitra, Mr. Siddharth Garg, Mr. Himanshu Choubey, Mr. Srijan Sinha, Mr. Srajan Yadav, Ms. Lihzu, Ms. Trisha, Ms. Arushi, Advocates for R-2 (b).

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the Successful Resolution Applicant against the order dated 13.06.2025 under Section 61 of the Insolvency and Bankruptcy, Code, 2016 (In short 'Code') for setting aside the impugned order by which I.A No. 6038 of 2024 filed by the Appellant under Section 60(5) of the Code has been dismissed.

2. The facts of this case are that M/s Mayyoga Investments Ltd./ Respondent No. 2.e filed the application under Section 7 of the Code against M/s M K Overseas Pvt. Ltd. (CD) for the resolution of its debt before NCLT, New Delhi which was admitted on 19.09.2019 and Suresh Kr. Jain was

appointed as the IRP who was later on confirmed as RP on 23.10.2019 in the second meeting of the CoC.

3. The IRP, in compliance with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (in short 'Regulations'), made public announcement on 21.09.2019 about commencement of CIRP proceedings against the CD to invite the claim from the creditors of the CD.

4. After the claims were received, IRP/RP constituted the CoC with the following members (1) Venus India Asset Finance Pvt. Ltd. (2) HDFC Bank Ltd. (3) Yes Bank Ltd. (4) Drip Capital Pvt. Ltd. and (5) Mayoga Investments Ltd..

5. The RP published form G (invitation for Expression of Interest 'EOI') under Regulation 36A(1) of the Regulations in Financial Express and Jansatta (all edition) and Nawan Zamana (Punjab Edition). The last date for submission of the resolution plan was fixed as 10.10.2020 after extension.

6. The Appellant submitted its resolution plan on 10.10.2020 which was placed before the original CoC for its consideration in its 20th meeting held on 27.11.2020 and was approved by it on 02.12.2020 with voting share of 76.69%.

7. Out of the aforesaid five members of the CoC, Venus India Asset Finance pvt. Ltd. voted in favour of the resolution plan and became an assenting creditor whereas HDFC Bank and Yes Bank voted against it and became dissenting creditors.

8. After the plan was approved, the RP sent a letter of intent on 03.12.2020 to the Appellant which was acknowledged by it on 04.12.2020.

9. Thereafter, the RP filed an application i.e I.A No. 5534 of 2020 (Plan approval application) under Section 30(6) r/w Section 31(1) of the Code with Regulation 39(4) of the Regulations before the Tribunal for approval of the plan submitted by the Appellant.

10. Meanwhile, I.A (IB) No. 3757 of 2022 was filed by Venus India Asset Finance Ltd. on behalf of the CoC for appointment of new RP, namely, Sapan Mohan Garg but the said application was dismissed by the Tribunal on 14.10.2022. The appeal, i.e. CA (AT) (Ins) No. 1395 of 2022, filed by Venus India Asset Finance Ltd. before the Appellate Tribunal against the order dated 14.10.2022 was allowed and Sapan Mohan Garg, who is Respondent No. 1 in this appeal as RP of the CD, was appointed in place of Suresh Kr. Jain (erstwhile RP).

11. The Tribunal dismissed the application bearing I.A No. 5534 of 2020 vide its order dated 08.07.2024 and remitted the plan back to the CoC for reconsideration in the light of the following observations:-

i. The requirement under Section 30(2)(b)(ii) of the Code which requires for an equitable treatment to the creditors belonging to the same class is not complied with.

ii. The non-deposit of performance security by the SRA (the Appellant herein) is violative of Regulation 36B(4A) of the CIRP Regulations, and thereby is in contravention of Section 30(4) of the Code.

iii. Clause 11.8.1 of the Resolution Plan makes the Plan conditional and hence, it fails the test of 'feasibility and viability as laid down under Section 30(4) of the Code.

iv. The SRA has failed to disclose the source of funds that are required to be infused for the resolution of the Corporate Debtor.
v. The plan should contain provisions for effective implementation of plan.

12. Although, it is alleged that the Tribunal, vide its order dated 08.07.2024, remitted the resolution plan to the CoC for reconsideration on certain specific observations mentioned herein above which implies that the remaining plan was found in compliance with the provisions of the Code and no further modifications, beyond the scope of the said observations, were warranted yet Respondent No. 1/RP, acting beyond the order dated 08.07.2024, sent an email dated 16.11.2024 to the Appellant seeking changes contrary to the observations made by the Tribunal. The changes sought by the RP are as follows :-

> This is with reference to the Revised Resolution Plan dated 16.09.2024 ("Plan") submitted by Exclusive Motors Pvt. Ltd. ("RA") in the matter of MK Overseas Private Limited. During the review and compliance check of the Plan, several preliminary observations and queries have been noted regarding IBC compliances, RFRP requirements and other related aspects.
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> Kindly review the following points and provide appropriate responses, clarifications and required documents:
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> 1. The Plan must take into account for the dues pending towards the Employees Provident fund, Gratuity, ESIC, in light of the judgments such as Jet Airways and Mosarbaer Karamchari Sangh and the same has to be paid in full.
>
> 2. As per Regulation 39 of the CIRP Regulations, the RA must submit:
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> a. A current dated affidavit stating that it is eligible under section 29A to submit resolution plans;

b. An undertaking that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

3. Definition of Upfront Amount at Clause 2.1.82 (pg no. 15) should match with the definition of upfront payment to creditors mentioned at pg. no. 5.

4. Clause 5.6.3 provides that INR 3.5 Crore in full satisfaction of all admitted statutory dues and other operational creditor. Please clarify as to bow distribution between statutory dues and other operational creditors will be made.

5. As per Clause 5.11 regarding source of funds, the RA has mentioned credit ratings, Net worth certificate, liquidity, enterprise value and audited financial statements. RA shall provide fresh documents and figures for source of funds including latest net worth certificate, credit rating and audited financial statements for FY March 2024, 2023 and 2022. Further, please note that Wave Refund has been received. Please update the clause accordingly.

6. As per clause 8.2 read with 10.1.2 of plan, RA has mentioned that any actions u/s 28 of IBC, sale of assets, all major business decisions impacting shareholder's value etc. shall require prior written consent of the RA, which is against the letter and spirit of IBC.

7. The RA, at clause 5.14.2 of the plan has provided an undertaking for unconditional implementation of Resolution Plan, however, termination at 11.8 clearly violates the previous clause. Kindly clarify.

8. In the plan obligations, liabilities, etc. shall not survive till the date of handover which is against the spirit of IBC. It should be "effective date". Please clarify.

9. At pg. no. 63 of the plan, it has been mentioned that any modifications as may be imposed or directed by the Hon'ble

NCLT shall become operative from the closing date. Change this to "effective date".

10. Clause 6.7: Implementation schedule: Steps 3, 4, 5, 7, 8 and 9 of Clause 6.7 are stringent and impractical. Please amend these timelines to ensure effective implementation.

11. Clause 7.1: Clause 7.1 does not specify the decision-making process in the monitoring Committee. Please clarify.

12. RFRP related issues/ observations

a. Annexures to RFRP:

i. RA should undertake that APPENDIX 5: Undertaking by Resolution Applicant(s)", "APPENDIX 6: Format for Power of Attorney", "APPENDIX 6B: Format for Board Resolution", remains unchanged and valid as on date of submission of resolution pan dated 16.09.2024.

ii. Please provide updated "APPENDIX 9: Composition and Ownership Structure of the Resolution Applicant(s)"

iii. Please provide updated "APPENDIX 10: format of 29A Affidavit"

iv. Please provide updated "APPENDIX 11: Covering Letter for Submission of Resolution Plan"

b. Other points related to RFRP:

i. In terms of clause 1.7.11 of RPFRP, the RP shall contribute, bold and maintain 51% or more of the shares and voting rights of the Corporate Debtor, with a minimum lock in period of 3 (three) years, and control the management and affairs of the Corporate Debtor.

ii. In terms of clause 1.12.6 of REFRP, RA should undertake and confirms that the Resolution Professional, the members of CoC, Resolution Process Advisor, employees, and agents are indemnified for all acts done in good faith in respect of matters arising out of or in relation to the Resolution Plan Process. The indemnity will survive beyond the CIRP period.

iii. In clause 1.9.1 read with 1.10 and 2.1.7 of RFRP, Performance Bank Guarantee needs to be provided after the approval by CoC.

iv. In terms of clause 4.1.1. of RFRP read with Regulation 38 for CIRP Regulations, 2016, the RA should undertake that it has provisions for approvals required and the timeline for implementation of resolution plan and RA shall be responsible for obtaining all the required approvals proposed by it in the Resolution Plan or required under the Applicable Law for implementation of Successful Plan, within 1 (one) year from the date of approval of Resolution Plan by the Adjudicating Authority or within such period as provided for in the law, whichever is later.

13. For 29.A compliance check, please provide the following as on submission of revised plan:

a. Corporate structure of the resolution applicant, group companies, affiliates, parent company, and the ultimate parent, as per attached format. Kindly note that these preliminary observations are on the basis of prima facie review of the plan. Additional queries or clarifications, if any, will be communicated to you in due course....

13. The Appellant responded to the email dated 16.11.2024 sent by the RP by way of a reply dated 20.11.2024 accepted the changes suggested by the Respondent. The relevant extract from the Appellant's mail dated 20.11.2024 is reproduced as under:-

"This is in reference to your email dated 16.11.2024 whereby certain clarification has been sought from our side. In this regard, we would to reiterate that the revised resolution plan is one and the same as that of earlier plan, the modifications have been made strictly

in accordance with the observations made by Hon'ble Adjudicating Authority vide order dated 08.07.2024 and the said judgment doesn't call for reappraisal of the Resolution Plan and the COC is required to consider the Resolution Plan strictly in accordance with the observations made thereunder in the said judgment.

However, without prejudice to the above as well our rights and contentions, the para wise response to your email is as under:

1. *That we are ready and willing to comply with the law laid down with regard to payment of EPF, gratuity and ESIC. As per the list of creditors provided by you, the admitted claim of EPF is Rs.41,33,558/- and ESIC claim is Rs. 11,00,013/. We propose to pay the said admitted amount in priority over other dues without prejudice to our rights and contentions as may be available under law.*

2. *Affidavit and Undertaking is attached.*

3. *In this regard, please refer to table of payment mentioned at Clause 5.11.3 and the total upfront payment shall be read in accordance with the same at every other places.*

4. *The distribution pattern qua clause 5.6.3 shall be made on pro rata basis.*

5. *The latest balance sheet as well as net worth certificate are attached for your reference. Further, in so far as wave refund is concerned, the same has been duly taken care in clause 5.11.3 of the Resolution Plan.*

6. *The bare perusal of clause 8.2 provides for "consultation" and not "consent". As the RA has given his Resolution Plan on the basis of assets available on the date of submissions, therefore, it is all more important that RA is required to informed about any decision which shall have bearing on the Resolution Plan. Thus, it is required to read and understood accordingly.*

7. *A bare perusal of clause 11.8 would show that it is a subject to applicable law and approval of NCLT. Thus, the clauses of the resolution plan is required to be read in harmony.*

8. *Request you to point out at the particular clause you are mentioning in this regard.*

9. *The mention of Closing date may be read as "effective date or such other date as may be allowed by Hon'ble NCLT".*

10. Request you to clarify this point and specifically point out your objections qua the timeline.

11. The Monitoring Committee shall act on the basis of consensus subject to any law contrary to it in this regard.

12.

a. Ownership Structure and Section 29A affidavit is attached.
b. And d. – Undertaking attached
c. Refer to clause 5.19
d. Refer to clause 5.14.2(xiii)

13. *Corporate structure of the resolution applicant, group companies, affiliates, parent company, and the ultimate parent, as per attached format is attached."*

14. In the meanwhile, Respondent No. 1 sent an email to the Appellant dated 04.12.2024 by which the Appellant was informed that HDFC Bank had assigned its debt to JC Flowers Asset Reconstruction Company (JCFARC). The CoC of the CD was thus revised comprising the following members (1) JCFARC (ii) Standard Capital Markets Ltd. and (iii) VSJ Investments Pvt. Ltd.

15. In view of the assignments, JCFARC acquired the debt of HDFC Bank, a dissented creditor and stepped into its shoes and assuming the same status in the CoC and Debt of Yes Bank was assigned to Standard Capital Markets Ltd. and Venus India Asset Finance Ltd. assigned its debt to VSJ Investment Pvt. Ltd. (VSJIPL). These assignees entered into shoes of their assignors after approval of the plan by their assignors.

16. It is also pertinent to mention that VSJIPL having 74.55% voting share also assigned its rights by way of agreement dated 01.10.2024 to JCFARC.

17. In simple words, at the time when the CoC was first constituted the following were the members with voting share (i) Venus India Asset Finance Pvt. Ltd. having 74.55% (ii) HDFC Bank having 12.02% voting share (iii) Yes Bank Ltd. having 11.29 % voting share (iv) Drip Capital Pvt. Ltd. having 2.05% voting share and (v) Mayoga Investments ltd. having 0.09% voting share.

18. The plan was approved by this CoC on 02.12.2020 with 76.69% voting share.

19. After approval of the plan by the aforesaid CoC and submission of the application by the RP to the Tribunal for approval of the plan, HDFC Bank assigned its 12.02% voting share to JCFARC and Yes Bank limited assigned its 11.29% voting share to Standard Capital Markets Ltd. The position of the CoC after the first assignment or the composition of the second CoC is as under :-

i. VSJ Investments Pvt. Ltd. having 74.55% voting share

ii. JCFARC having 12.02% voting share

iii. Standard Capital Markets Ltd. having 11.29% voting share

iv. Dirp Capital Pvt. Ltd. having 2.05% voting share

v. Mayoga Investments Ltd. having 0.09& voting share

20. However, VSJIPL which had the highest voting share of 74.55% and was an assenting creditor in the CoC meeting held on 27.11.2020 in which the plan submitted by the Appellant on 10.10.2020 was voted in its favour on 02.12.2020 with voting share 76.69% also assigned its debt to JCFARC by way of an assignment.

21. After the assignment by VSJIPL to JCFARC, the composition of the CoC is now as under:-

i. JCFARC having the voting share of VSJIPL of 74.55% and HDFC Bank of 12.02%
ii. Standard Capital Markets Ltd. having 11.29%
iii. Drip Capital Pvt. Ltd. having 2.05%
iv. Mayoga Investments Ltd. having 0.09%

22. Pursuant to the direction issued by the Tribunal vide order dated 08.07.2024, the Appellant submitted a duly revised plan on 23.11.2024 alongwith addendum dated 06.12.2024. In the revised plan, the shortcomings identified by the Tribunal in its order were answered / addressed. The Appellant has provided a comparative chart highlighting the rectifications made vis a vis the earlier resolution plan dated 10.10.2020, for a quick reference:-

Sr. No.	The Resolution Plan dated 10.10.2020 (revised on 23.11.2020)	Objections raised by the Hon'ble NCLT vide Order dated 08.07.2024	The revised Resolution Plan dated 23.11.2024
1.	a) The unsecured financial creditors belonging to the same class were allocated a fixed percent whereas, secured financial creditors have been allocated different percentage of their admitted claim amount. b) Venus India Asset-Finance Pvt. Ltd. is allocated 73.07% of their admitted claim, HDFC Bank is given 83.41% of the	The requirement under Section 30(2)(b)(ii) of the Code which requires for an equitable treatment to the creditors belonging to the same class is not complied with.	a) The Revised Resolution Plan submitted by the Applicant has rectified the error and now the secured financial creditors have been allocated same percentage of their admitted claim amount. b) Venus India Asset-Finance Pvt. Ltd., HDFC Bank and Yes Bank is

Sr. No.	The Resolution Plan dated 10.10.2020 (revised on 23.11.2020)	Objections raised by the Hon'ble NCLT vide Order dated 08.07.2024	The revised Resolution Plan dated 23.11.2024
	admitted claim in case of the assent and 48.47% of the admitted claim in case of dissent, whereas, Yes Bank is allocated only 27.90% of their admitted claim whether it assents or dissents to the Plan.		allocated 73.03% of their admitted claim **(Refer to Paras No. 5.3.3.1 @ Pg No. 33, 5.3.4.1 and 5.3.3.1 @ Pg No. 34 of the Revised Resolution Plan).**
2.	In terms of Clause 5.20.3 of the Plan, the Applicant proposed to continue with EMD of INR 10 crores deposited as performance security after approval by CoC.	The non-deposit of performance security by the SRA is violative of Regulation 36B(4A) of the CIRP Regulations, and thereby is in contravention of Section 30(4) of the Code.	The Applicant undertakes to give Performance Guarantee in accordance with Clause 1.9.1 of the RFRP. **(Refer to Clause 5.19 @ Pg No. 59 of the Revised Resolution Plan)**
3.	Clause 11.8.1 of the Plan empowers the Applicant to terminate the Plan in case the reliefs and concessions sought by it, in clauses 5.15.2 of the Plan are not granted by this Adjudicating Authority, which makes the plan conditional.	Clause 11.8.1 of the Resolution Plan makes the Plan conditional and hence, it fails the test of 'feasibility and viability' as laid down under Section 30(4) of the Code.	Clause 11.8.1 has been modified and the Revised Resolution Plan is in compliance with Section 30(4) of the Code. **(Refer to Clause 11.8 @ Pg No. 74-75 of the Revised Resolution Plan)**
4.	.	The SRA has failed to disclose the source of funds that are required to be infused for the resolution of the Corporate Debtor	The Revised Resolution Plan outlines the sources of funds to be infused for fulfilling the payments specified under the Revised Plan. **(Refer to Clause 5.11 @ Pg No. 52-53 of the Revised Resolution Plan)**

23. However, despite the amendments and submission of the revised plan dated 23.11.2024 alongwith addendum dated 06.12.2024, the Respondent No. 1 vide its mail dated 09.12.2024 informed the Appellant that the new CoC has not approved the plan with 97.87% voting share but no reasons were provided about the rejection.

24. The Appellant, taken surprise, was constrained to file I.A No. 6038 of 2024 (subject matter of this appeal) for direction against the Respondent No. 1 to conduct re-voting on the resolution plan dated 23.11.2024 alongwith addendum dated 06.12.2024 solely based on the observations dated 08.07.2024 of the Tribunal and not the entire resolution plan as has been done by the CoC.

25. This application has been dismissed by the Tribunal on the ground that the new CoC had the jurisdiction to reconsider the entire plan instead of considering the issues relating to remand and dismissed the application.

26. Counsel for the Appellant has submitted that the new CoC has exceeded its mandate in disregard to the limited scope of remand and asked for changes from the Appellant beyond the specific observations noted by the Tribunal in its order dated 08.07.2024. It is submitted that the Appellant was obligated to make modifications in the plan only to the extent as directed by the Tribunal. The Appellant submitted a revised plan dated 23.11.2024 alongwith addendum dated 06.12.2024 fully addressing all the five observations made by the Tribunal but in the meantime, the RP reconstituted the CoC due to assignments of the debts by Venus India Asset Finance Pvt. Ltd., HDFC Bank and Yes Bank who had arbitrarily rejected the revised plan and addendum. It is submitted that the original CoC in which Venus India Asset Finance Ltd. had the majority voting share gave its assent to the plan of the Appellant. VSJIPL after taking the rights of Venus by way of assignment only stepped into shoes after the plan was approved as assignor and JCFARC further taking the rights of VSJIPL stepped into its shoes or the shoes of Venus which was the assenting creditor and could not have voted

against the plan after the reconstitution of the CoC on assignments because once the plan has been approved by the creditor it cannot be rejected by same creditor or its assignee after the plan is remanded because the plan once approved is binding on the members of the CoC and assignee in whose favour debt was assigned by the original member of the CoC and cannot be permitted to reconsider qua the assent given by original members of the original CoC otherwise it would undermine the sanctity of the plan. The Appellant has further submitted that once the order was passed by the court and the matter is remanded on a particular issue by the Appellate Court, the original court has to deal with the issues on which the order has been passed and it cannot reopen the entire decision. In this regard, reliance has been placed upon a decision of the Hon'ble Supreme Court in the case of Ebix Singapore Pvt. Ltd. Vs. CoC of Educomp Solutions Ltd. & Anr., Civil Appeal No. 3224 of 2020 in which it has been held that "the AA can only direct the CoC to reconsider certain elements of the resolution plan to ensure compliance under Section 30(2) of the Code, before exercising its powers of approval or rejection as the case may be under Section 31". It is further submitted that the Tribunal has relied upon a decision in the case of Ebix Singapore (Supra) and observed that "this AA finds sufficient and significant grounds as aforesaid which shows that the resolution plan did not meet the parameters laid down under Section 30(2) of the Code, therefore, in the light of the decision of the Hon'ble Supreme Court in the Prabhjit Singh (Supra) and Ebix (Supra) and in the light of the observations made hereinabove, this AA deems fit to send the matter back to the CoC for reconsideration". It is also submitted that the Tribunal could have rejected the plan and sent back to the CoC for its decision i.e. either to call for a fresh resolution plan or liquidation but once it has found that there are some shortcomings in the resolution plan, it can send the plan for reconsideration on such specific parameters and the CoC does not have the jurisdiction to reconsider the entire plan except for such specific parameters on which the remand was ordered. It is submitted that the Tribunal cannot pass the order of fresh consideration of the plan as a whole in view of the law laid down by the Hon'ble Supreme Court in the case of Ebix Singapore (Supra) and on remand by the Tribunal, the commercial wisdom of the assenting financial creditors, in the present case, Venus India Asset, who had 74.55% voting share and assented to the plan, which was approved by 76.69% voting share, could not have been changed by the assignees with the same voting share, after stepping into the shoes of Venus India Asset, the original assignor. It is further submitted that alleged lack of satisfaction with the source of funds by the CoC is misplaced and contrary to the material placed on record. It is argued that even if it is assumed, without admitting, that the CoC had reservations regarding the letters issued by ICICI Bank Ltd. and Garware Finance Corporation Ltd. yet it failed to consider that Lucky Holdings Pvt. Ltd., a well capitalized non-banking financial company (NBFC) registered with the RBI, Kolkata, had issued an unconditional comfort letter dated 05.12.2024 undertaking to provide inter corporate deposit to the tune of Rs. 250,00,00,000/- in favour of the Appellant for implementation of the plan. It is submitted that as per clause 1.12.4 of the RFRP, the Resolution applicant was required to satisfy the CoC that they have necessary financial resources available for supporting the plan. The

Appellant, to support the financial capability provided a networth certificate of its director of Rs. 151.47 Cr. as on 30.09.2024 and its networth certificate of Rs. 156.59 Cr. as on same date. It is further submitted that in the 31st meeting of the CoC held on 04.12.2024 in which a concern was raised regarding source of funds and at the time of conclusion of the meeting it was agreed that the resolution applicant shall provide an addendum addressing all compliance issues by 2PM, 05.12.2024. The RA was to provide comfort letter or sanction letter for funding. In this regard, it is submitted that additional comfort letter from Lucky Holdings was placed before the CoC. It is submitted that the discussion regarding the supporting document to the CD was prior to the admission of the representative of the appellant in the meeting held on 05.12.2024. It is also submitted that the Appellant had no access to the minutes of the meeting of the CoC till it is annexed with the reply dated 16.01.2025 filed by JCFARC. It is argued that Lucky Holdings Pvt. Ltd. had liquid assets and legal capability of extending an inter corporate deposit of Rs. 250 Cr. which is evident from the balance sheet of Lucky Holdings Pvt. Ltd. as per which it had liquid assets of Rs. 371.86 Cr. as on 31.03.2024 which was attached with the additional affidavit. Counsel for the Appellant has further argued that the decision of the CoC to liquidate the CD is against the principle of the Code which prefers resolution over liquidation. In this regard, the Appellant has also given the potentiality of the CD and submitted that the Corporate Debtor is a company of considerable scale and economic relevance. The Corporate Debtor is a leading enterprise engaged in the processing, manufacturing, and export of raw, processed, and frozen meat, with a long-standing presence in the sector since its incorporation in 1987. The Corporate Debtor's operations span multiple processing units located across Sahibabad (U.P.), Derabassi (Punjab), and Tajola (Maharashtra), reflecting the pan-India scale of its business. As per the Information Memorandum, the installed meat processing capacity across these units, as of March 2019, stood at over 91,000 metric tonnes, with substantial bone processing capacity as well. Prior to the initiation of the CIRP, the Corporate Debtor reported a turnover of Rs. 1,41,508.39 Lakhs in the financial year 2016-17 and Rs. 1,16,932.54 Lakhs in FY 2017-18, reflecting its significant contribution to the national export and food processing sectors. Despite temporary setbacks, the Corporate Debtor has consistently demonstrated the potential to generate considerable revenue. Its contribution extends beyond commercial value, by supporting trade, employment, and the ancillary livestock and agriculture economy. Further, as per the disclosure in the Information Memorandum, the Corporate Debtor employed over 165 workers and employees across its units. Even during the CIRP, claims from approximately 160 employees were received, indicating the substantial livelihood base connected with the company's operations. The business not only sustains direct employment but also supports a broad ecosystem of suppliers, farmers, logistics service providers, and exporters. Given the above, it is evident that liquidation of the Corporate Debtor at this juncture would result in loss of significant economic value and dislocation of livelihoods. The company has the infrastructure, operational experience, and market presence required for revival.

27. Counsel for Respondent No. 1 has submitted that the plan was not remitted to the CoC for reconsideration rather it was sent for fresh

consideration. It is further submitted that after the remand for reconsideration, any proceedings carried out in respect of earlier plan became redundant and voting was required in the revised plan of the Appellant. It is further submitted that the Tribunal had never restrained reconsideration of the entire plan with any specific requirement rather the entire plan was sent for fresh reconsideration which allowed Respondent No. 1 to verify the compliances and CoC to reconsider the feasibility and viability of the same. He has further submitted that the Hon'ble Supreme Court in the case of K. Sashidhar Vs. Indian Overseas Bank & Ors. (2019) 12 SCC 150 has held that the commercial wisdom of the CoC shall prevail and it is non-justiciable. He has also submitted that in the case of Jaypee Kensington Boulevard Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors., 2021 SCC OnLine 253 it has been held that in case a resolution plan requires modification, the AA must send back the plan to the CoC to consider the modification so as to afford an opportunity to resolution applicant to modify the plan and CoC may then reconsider the plan and vote upon the same. He has also relied upon a decision of this Court in the case of Bank of Maharashtra Vs. Videocon Industries Ltd., CA (AT) (Ins) No. 503 of 2021 to contend that the decision of the CoC is a commercial decision which has to prevail.

28. Counsel for Respondent No. 2.b has submitted that it holds 86.75% voting share in the CoC. It is submitted that the revised plan continued to remain non-compliant on the point on which it was sent back for reconsideration on 08.07.2024. He has referred to paras 12 and 13 of the order dated 08.07.2024 and submitted that it was clear from it that the CoC

had to examine afresh the comfort letters submitted by the Appellant in respect to availability of funds for implementation of the resolution plan. It is further submitted that in the revised plan submitted by the Appellant for reconsideration, it was stipulated in clause 5.11.3 that Rs. 204.65 Cr. shall be brought in by the Appellant as loan from banks and financial institution and submitted two comfort letters of different dates, submitted earlier to the Tribunal pursuant to the order dated 14.09.2023 i.e a non-binding comfort letter dated 16.09.2024 from Garware Finance Corporation Ltd. for an inter corporate deposit of Rs. 100 Cr. and a non-binding indicative term sheet from ICICI Bank Ltd. with stamp and sign of 23.04.2024 for 150 Cr.. It is submitted that doubts were raised in respect of the non-binding comfort letter issued by Garware Finance Corporation on its capacity to extend a loan which was almost 5 times of its value in its balance sheets and in respect of ICICI Bank, objection was raised by the CoC that the same was a non-binding letter and also there was a cross default clause in the said letter, wherein it was stated that any default by M/s Sulojay Reality Pvt. Ltd. a subsidiary of Appellant shall be deemed to be an event of default by the Appellant. It is submitted that CP (IB) No 69/KB/2024 was filed under Section 7 of the Code against Sulojay Reality Pvt. Ltd. and CIRP was initiated against it. It is also submitted that a specific concern was raised regarding M/s Lucky Holdings Pvt. Ltd. regarding the supporting document and proof of fund because it had only filed a comfort letter, however, the Appellant has placed before this Court the financial statement of Lucky Holdings Pvt. Ltd. by way of an additional affidavit. It is also submitted that the CoC has taken into consideration the FIR against the director of the

Appellant. It is further submitted that the plan was sent for reconsideration before the CoC and that the Appellant has offered differential treatment to the same class of creditors but it is not denied that in the revised plan the appellant has given same treatment to the financial creditors whereby the claim of HDFC Bank was reduced.

29. In rebuttal, Counsel for the Appellant has submitted that against the order of admission against Sulojay Realty Pvt. Ltd. dated 14.03.2024, appeal was filed in which the IRP was directed not to take any further steps except for collation of claims received subject to deposition of the entire amount claimed. Pursuant to order dated 18.12.2024, Sulojay Realty had deposited the entire amount claimed with the Registrar of the NCLAT and hence the CIRP of Sulojay is stayed. Besides this, it is submitted that a letter dated 04.07.2025 was issued by ICICI Bank stating that instalments of the loan extended to Sulojay were being paid regularly and conduct of the account is satisfactory. It is submitted that Respondent No. 1, in his argument, has submitted that the Tribunal has remanded the case for reconsideration which is contrary to the law laid down by the Hon'ble Supreme Court in the case of Ebix Singapore (Supra) and that Respondent No. 2.b has not denied this fact that the Tribunal does not have the jurisdiction to remand the plan for a reconsideration.

30. We have heard Counsel for the parties and perused the record with their able assistance.

31. Although we have given the facts in detail in earlier paragraphs yet it is pertinent to mention that at the time when the CoC was originally constituted, Venus India Asset Finance Pvt. Ltd. was having the highest

voting share with 74.55%, HDFC Bank was having 12.02% and Yes Bank was having 11.29%. It is not in dispute that the plan submitted by the Appellant was approved in the 20th CoC meeting held on 27.11.2020 with voting share of 76.69%. It is however pertinent to mention that Venus India Asset was the assenting creditor, HDFC Bank and Yes Bank were the dissenting creditors. It is also not in dispute that after the approval of the plan by the CoC, Respondent No. 1 came into picture after replacement, filed I.A No. 5534 of 2020 for approval of the resolution plan. The Tribunal vide order dated 08.07.2024 raised five issues of concern and remanded the plan back to the CoC for reconsideration. The said five issues may be reproduced again :-

> i. The requirement under Section 30(2)(b)(ii) of the Code which requires for an equitable treatment to the creditors belonging to the same class is not complied with.
> ii. The non-deposit of performance security by the SRA (the Appellant herein) is violative of Regulation 36B(4A) of the CIRP Regulations, and thereby is in contravention of Section 30(4) of the Code.
> iii. Clause 11.8.1 of the Resolution Plan makes the Plan conditional and hence, it fails the test of 'feasibility and viability as laid down under Section 30(4) of the Code.
> iv. The SRA has failed to disclose the source of funds that are required to be infused for the resolution of the Corporate Debtor.
> v. The plan should contain provisions for effective implementation of plan.

32. It is also not in dispute that in the interregnum there were changes in the CoC because, firstly, JCFARC purchased the rights of HDFC Bank having voting share 12.02% and Standard Capital Markets Ltd. purchased the rights of Yes Bank having 11.29% by way of assignment.

33. It is also pertinent to mention that right of Venus India Asset (major creditor) were taken over by VSJIPL with 74.55% voting share and that

right of VSJIPL were taken over by JCFARC with the same percentage of voting share.

34. In this game of musical chair, the faces of the members of the CoC kept on changing but the fact remains that they entered into shoes of original members of the CoC who had approved the plan on 27.11.2020 by 76.69% voting share.

35. Since the Tribunal had some reservations on some issues, therefore, it remanded the case back to the CoC, following the decision of the Hon'ble Supreme Court in the case of Ebix Singapore (Supra) and Prabhjit Singh (Supra) in which it has been categorically held that the AA can only direct the CoC to reconsider certain elements of the resolution plan to ensure compliance under Section 30(2) before exercising its powers of approval or rejection as the case may be but in essence, the Tribunal has no jurisdiction to remand or remit the plan for a total reconsideration as it goes against the law laid down by the Hon'ble Supreme Court in the case of Ebix Singapore (Supra) because the Tribunal has the jurisdiction either to approve the plan or reject the same and call for a fresh plan but the entire plan cannot be sent back for reconsideration.

36. In the present case, the Tribunal precisely following the dicta of Ebix Singapore (Supra) sent the plan back with certain queries which according to the Appellant were duly complied with as has been explained by the Appellant and depicted by a chart mentioned herein before.

37. The submission of the RP/Respondent No. 1 that the Tribunal had sent the plan for reconsideration would mean that the entire plan was to be reconsidered by the fresh CoC which would rather be against the decision

of the Hon'ble Supreme Court in the case of Ebix Singapore (Supra). After the remand, the RP asked for various changes to which reply was filed and the CoC rejected the plan in toto though the CoC, after having approved the plan could not have touched other part of the plan except for the issues raised by the Tribunal which was the cause of concern for it to be addressed by the Appellant.

38. The Appellant has not only submitted revised plan but also addendum. It had also submitted comfort letters not only issued by ICICI Bank and Garware Finance Corporation Ltd. but also Lucky Holdings Pvt. Ltd. which is the NBFC and had undertaken to provide Inter Corporate Deposit of Rs. 250 Cr.

39. Clause 1.12.4 of the RFRP provides that resolution applicant was required to satisfy the CoC that they have necessary financial resources available for supporting the resolution plan but it does not say that it had to substantiate it as submitted, however, in the present case, the Appellant has substantiated the same by producing the financial statements of Lucky Holdings Pvt. Ltd.

40. In so far as the issue raised by the Respondent qua the sister concern of the Appellant i.e. Sulojay Realty is concerned, the appeal against it is pending before this court and letter has been issued by the ICICI Bank that the instalments of the loan extended to Sulojay were being paid regularly and conduct of the account is satisfactory.

41. Although we have discussed various aspects of the matter in this case but the most important issue involved is as to whether the plan which has been placed before the Tribunal for its approval, having approval of the CoC,

can be remitted back by the Tribunal for its entire reconsideration or on certain elements of the plan. In this regard, we are totally guided by the decision of the Hon'ble Supreme Court in the case of Ebix Singapore (Supra) and Parabhjit Singh (Supra). However, the CoC has failed to appreciate this fact and voted upon the entire plan and not on specific queries raised by the Tribunal and the application filed by the Appellant in this regard in which they have asked for a direction to conduct a re-voting on the resolution plan dated 23.11.2024 alongwith the addendum dated 06.12.2024 solely based on the observations made by the Tribunal and not the entire plan has wrongly dismissed by the Tribunal.

42. Therefore, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the Tribunal to decide the matter afresh in accordance with law and keeping in view the law laid down by the Hon'ble Supreme court in the case of Ebix Singapore (Supra). The parties are directed to appear before the Tribunal on 27th October, 2025. It is made clear to the parties and the Tribunal that observations made herein above are only for the disposal of this appeal. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
24th September, 2025
Sheetal