

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - IV**

**I.A. No. 2794 of 2023**

IN

C.P. (IB) No. 893/MB/2021

*(Filed u/s. 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016)*

**Mr. Ashish Arjunker Rathi**

Resolution Professional of  
*SKS Power Generation Chhattisgarh Ltd.*

***...Applicant***

**ALONG WITH**

**I.A. No. 3336 of 2023**

IN

C.P. (IB) No. 893/MB/2021

*(Filed u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w.  
Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016)*

**Vantage Point Asset Management Pte. Ltd.**

***... Applicant***

*v/s.*

**Mr. Ashish Arjunker Rathi**

Resolution Professional of  
*SKS Power Generation Chhattisgarh Ltd. & Ors.*

***... Respondent***

**ALONG WITH**

**I.A. No. 3399 of 2023**

IN

C.P. (IB) No. 893/MB/2021

*(Filed u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w.  
Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016)*

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**Torrent Power Limited**

*... Applicant*

*v/s.*

**Mr. Ashish Arjunker Rathi**  
Resolution Professional of  
*SKS Power Generation Chhattisgarh Ltd. & Ors.*

*... Respondent*

**ALONG WITH**

**IVN. P. No. 40 of 2024**

IN

**C.P. (IB) No. 893/MB/2021**

*(Filed u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w.  
Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016)*

**Jindal Power Limited**

*... Applicant*

*v/s.*

**Mr. Ashish Arjunker Rathi**  
Resolution Professional of  
*SKS Power Generation Chhattisgarh Ltd. & Ors.*

*... Respondent*

**ALONG WITH**

**IVN. P. No. 41 of 2024**

IN

**C.P. (IB) No. 893/MB/2021**

*(Filed u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w.  
Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016)*

**Sarda Energy and Minerals Limited**

*... Applicant*

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v/s.

**Vantage Point Asset Management Pte. Ltd.**

*... Respondent*

**ALONG WITH**

**I.A. No. 3654 of 2024**

IN

**C.P. (IB) No. 893/MB/2021**

*(Filed u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w.  
Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016)*

**Guangzhou Green Science Energy  
Treatment and Technology Co. Ltd.**

*... Applicant*

v/s.

**Mr. Ashish Arjunker Rathi**  
Resolution Professional of  
*SKS Power Generation Chhattisgarh Ltd. & Ors.*

*... Respondent*

**ALONG WITH**

**I.A. No. 3286 of 2024**

IN

**C.P. (IB) No. 893/MB/2021**

*(Filed u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w.  
Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016)*

**AgriTrade Power Holding Mauritius Ltd.**

*... Applicant*

v/s.

**Mr. Ashish Arjunker Rathi**  
Resolution Professional of  
*SKS Power Generation Chhattisgarh Ltd. & Ors.*

*... Respondent*

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**IN THE MATTER OF**

**C.P. (IB) No. 893/MB/2021**

**Bank of Baroda**

*... Financial Creditor*

*v/s.*

**SKS Power Generation**

**(Chhattisgarh) Limited**

*...Corporate Debtor*

**Order Pronounced on: 13.08.2024**

***Coram:***

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

***Appearances:***

**I.A. No. 2794 of 2023**

For the Applicant RP : Mr. Ravi Kadam (Sr. Counsel), Mr. Pradeep Sancheti (Ld. Sr. Counsel) *a/w.* Mr. Somesh Srivastava, Mr. Ramakant Rai *i/b.* Trilegal, Ld. Counsels for the Applicant RP.

For the CoC : Mr. Chetan Kapadia (Sr. Counsel) *a/w.* Mr. Rohan Agarwal, Mr. Madav V. Kanoria, Ms. Srideepa Bhattacharyya, Mr. Harsh Rathi and Ms. Ayushee Singh *i/b.* CAM, Ld. Counsels for the CoC.

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For the SRA : Mr. Gaurav Joshi (Sr. Counsel),  
Mr. Ashish Kamat (Sr. Counsel)  
*a/w.* Ms. Pooja Mahajan, Mr.  
Manu Krishnan, Mr. Nishant  
Souani, Mr. Saunar Mahajan, Mr.  
Saurabh Bachhawat and Ms.  
Priyanka Pandey *i/b.* Chandihok &  
Mahajan, Ld. Counsels for the  
SRA.

**I.A. No. 3336 of 2023**

For the Applicant : Mr. Vikram Nankani (Sr. Counsel)  
*a/w.* Mr. Yash Momaya, Mr. Zaid  
Mansuri *i/b.* DSK Legal, Ld.  
Counsels for the Applicant.

**I.A. No. 3399 of 2023**

For the Applicant : Mr. Janak Dwarkadas (Sr. Counsel)  
*a/w.* Mr. Ameya Gokhale, Mr.  
Rishabh Jaisani, Ms. Namrata  
Vinod, Mr. Harit Lakhani *i/b.* SAM  
& Co. , Ld. Counsels for the  
Applicant.

**I.A. No. 3286 of 2024**

For the Applicant : Mr. Dharam Jumani *a/w.* Mr.  
Rohit Agarwal, Mr. Munaf Virjee,  
Ms. Nehal Shah and Mr. Akash  
Agarwal *i/b.* AMR Law, Ld.  
Counsels for the Applicant.

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**I.A. No. 3654 of 2024**

For the Applicants : Mr. Umesh Balaram *a/w.* Ms. Vashita Sharma, Ld. Counsels for the Applicant.

For the Respondent/ RP : Mr. Somesh Srivastava *a/w.* Mr. Ramakant Rai and Ms. Apoorva Chadrachur, Ld. Counsels for the Respondent.

**IVN. PETN. No. 40 of 2024** : Ms. Gauri Rasgotra *a/w.* Ms. Shruti Sardesai and Mr. Gaurav Sawant, Ld. Counsels for the Intervenor.

**IVN. PETN. No. 41 of 2024** : Mr. Gaurav Joshi (Sr. Counsel), *a/w.* Ms. Pooja Mahajan, Mr. Nishant Souani, Mr. Savar Mahajan, Mr. Saurabh Bachhawat and Ms. Priyanka Pandey *i/b.* Chandihok & Mahajan, Ld. Counsels for the Intervenor.

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## **ORDER**

1. The Interlocutory Application(s) bearing I.A. Nos. 2794 of 2023, 3336 of 2023 and 3399 of 2023 are being heard consequent to Order *dated 10.05.2024*, passed by the Hon'ble NCLAT (“**NCLAT Order**”) in *Sarda Energy and Minerals Limited v. Ashish Arjankumar Rathi & Ors. [Company Appeal (AT)(Ins) No. 1395-1397 of 2023]*. The said Company Appeal was filed pursuant to the (*now set-aside*) Order of this Tribunal *dated 06.10.2023* (“**NCLT Order**”). In disposing-of the Company Appeal that arose pursuant to the said NCLT Order, the Hon'ble NCLAT has considered it fit to remand the afore-mentioned IAs for our fresh consideration.
2. For the convenience of exposition, the Interlocutory Applications bearing I.A. Nos. 2794 of 2023, 3336 of 2023 and 3399 of 2023, which are in consideration hereto pursuant to the said NCLAT Order, broadly entail the following:

### **2.1 I.A. No. 2794 of 2023**

The captioned application has been filed by the Applicant RP herein *u/s*. 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) for approval of Resolution Plan (*as amended on 28.04.2023*) *a/w*. Addendum *dated 10.05.2023*, in the Corporate Insolvency Resolution Process (“CIRP”) of **SKS Power Generation Chhattisgarh Limited** (“Corporate Debtor”).

### **2.2 I.A. No. 3336 of 2023**

The instant application has been filed by one of the Prospective Resolution Applicant(s) *viz.* **Vantage Point Asset Management Pte. Ltd.** against the Resolution Professional (“RP”) and Committee of Creditors of the Corporate Debtor (“CoC”) seeking intervention and impleadment in the captioned application, along-with directions to the Resolution Professional for provision of relevant documents.

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### **2.3. I.A. No. 3399 of 2023**

The instant application has been filed by one of the Resolution Applicant *viz.* **Torrent Power Limited** against the RP and the Successful Resolution Applicant (“SRA”) seeking an abeyance on the captioned application along-with directions to the Resolution Professional for provision of a copy of plan approval application to enable the Applicant herein to file its objection(s).

### **BACKGROUND OF CIRP**

3. We deem it fit to draw reference to the factual matrix leading up to the CIRP of the Corporate Debtor herein. In the interest of brevity, the same has been extracted from the NCLAT Order passed in reference to *Company Appeal (AT)(Ins) No. 1395-1397 of 2023* preferred by the Successful Resolution Applicant *viz.* **Sarda Energy and Minerals Limited** (“SEML”/ “SRA”) pursuant to the NCLT Order dated 06.10.2023, as hereunder:

“

[...]

***4. Brief facts of the case necessary to be noticed for deciding the appeals are:***

- i. Corporate Insolvency Resolution Process (CIRP) was initiated against the SKS Power Generation Chhattisgarh Limited, the Corporate Debtor vide order dated 29.04.2022.*
- ii. Resolution Professional (RP) published ‘Form-G’, inviting Expression of Interest (EoI) from Prospective Resolution Applicants (PRA).*
- iii. On 12.08.2022, RFRP, Information Memorandum, and access to Virtual Data Room was provided to PRA.*
- iv. Timeline for submission of Resolution Plan was extended upto 30.12.2022.*
- v. 7 Resolution Applicants **including** the Appellant, Vantage Point Asset Management Pte. Ltd. And Torrent Power Limited submitted their Resolution Plan.*



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- vi. Resolution Applicants were called for discussions and negotiations. Revised Resolution Plan was submitted by the Appellant, Vantage Point Asset Management Pte. Ltd., Torrent Power Limited, NTPC & Jindal.*
- vii. RP apprised Resolution applicant that inter-se bidding process shall be conducted on 19.04.2023 as per Process Note, which was issued on 13.04.2023.*
- viii. On 19.04.2023, inter-se bidding process was conducted and concluded after four rounds.*
- ix. The Resolution Applicants were asked to submit the revised Resolution Plan to the RP incorporating the financial proposals submitted during the inter-se bidding.*
- x. By 28.04.2023, all five Resolution Applicants who participated in the inter-se bidding submitted their revised Resolution Plan.*
- xi. 29<sup>th</sup> Committee of Creditors (CoC) Meeting held on 06.05.2023, CoC directed the RP to seek clarifications from some of the Resolution Applicants without any change in commercial terms.*
- xii. RP sought clarification from Jindal, Torrent Power Ltd., Vantage Point Asset Management Pte. Ltd. and Appellant – SEML.*
- xiii. Clarifications were submitted by 10.05.2023 in form of an addendum to Plan as was required by the email of RP dated 08.05.2023.*
- xiv. 31<sup>st</sup> CoC Meeting held on 16.05.2023, CoC discussed distribution of proceed and the Resolution of the Resolution Plan. 7 Plans were put for voting. E-voting was conducted for approval of the Plan from 28.05.2023 to 08.06.2023. On voting result dated 08.06.2023, the Resolution Plan of SEML as amended read with addendum dated 10.05.2023 was approved with **100%** vote shares.*
- xv. On 08.06.2023, RP issued a Letter of Intent (LoI) to SEML who was called upon to submit Performance Guarantee of INR 150 Crores.*
- xvi. On 12.06.2023, SEML unconditionally accepted the LoI and submitted Performance Guarantee of INR 150 Crores in favour of Bank of Baroda (BoB).*

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- xvii. On 17.06.2023, RP filed an I.A. No. 2794/2023 before the Adjudicating Authority for approval of SEML Plan as approved by the CoC.*
- xviii. On 20.06.2023, RP informed Torrent Power Ltd. and other Resolution Applicants about the approval of the Resolution Plan by the CoC.*
- xix. The Earnest Money Deposit (EMD) received from other Resolution Applicants were **refunded by the RP.***
- xx. I.A. 2794/2023 was heard by the Adjudicating Authority and by order dated 10.07.2023, reserved for orders.*
- xxi. On 01.08.2023, I.A. 3336/2023 was filed by Vantage Point Asset Management Pte Ltd., an unsuccessful Resolution Applicant praying for various reliefs in the application.*
- xxii. On 03.08.2023, I.A. 3399/2023 was filed by Torrent Power Limited, an unsuccessful Resolution Applicant seeking various prayers.*
- xxiii. On 07.08.2023, I.A. 3336/2023 and I.A. 3399 of 2023 were heard and reserved for orders.*
- xxiv. By order dated 07.08.2023, Adjudicating Authority also directed the RP to place on record the correspondence with Resolution Applicant and Minutes of the Meetings.*
- xxv. The Torrent Power Ltd. also filed a further Affidavit sworn on 06.09.2023 in I.A. 3399/2023 which was filed on 07.09.2023 before the Adjudicating Authority.*
- 5. Adjudicating Authority by the impugned order dated 06.10.2023 allowed I.A. 3399/2023 partly. I.A. 3336/2023 was dismissed, in consequence of order passed in I.A. 3399/2023 and I.A. 3336/2023, the Resolution Plan pending for approval in I.A. 2794/2023 was remitted back to the CoC and I.A. 2794/2023 was disposed of accordingly.*
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{emphasis applied}

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4. We hereby find it germane to draw reference to Para Nos. {9} and {10} of the (now set-aside) NCLT Order dated 06.10.2023, whereby I.A. Nos. 2794 of 2023, 3336 of 2023 and 3399 of 2023 had been disposed-of in consonance with the terms as extracted hereunder:

“  
[...]

9. *This Bench takes note of legal proposition that the Adjudicating Authority cannot interfere with the commercial wisdom of CoC, however, this bench feels that the decision taken by CoC on the basis of incomplete financial data placed before it for such decision making process by the legal advisor, process advisor and RP, makes such decision making process perverse and amenable to interference by this bench. Though, this bench cannot allow the prayer for supply of the resolution plan of SEML and an opportunity to file objection to these two applicants in IA-279/2023, this bench consider it appropriate to remit the Resolution Plan of SEML, which is pending for final orders in IA-2794/2023, to the committee of creditors for their re-consideration of all the plans, found feasible and viable by the Process Advisor, in the light of the above observations.*

10. *With the above directions, the IA-3399/2023 is partly **allowed** and IA-3336/2023 is **dismissed**. In consequence of these orders, the Resolution Plan pending for approval in IA-2794/2023 is **remitted back to CoC** and IA-2794/2023 is **disposed of accordingly**.*

[...]  
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{emphasis supplied}

5. As laid out in Para [3] of this Order; The SRA viz. SEML sought to challenge the said NCLT Order dated 06.10.2023 before the Hon'ble NCLAT. We hereby deem it fit to draw reference to the specific observation(s) and direction(s) apropos the same, as extracted hereunder from the said NCLAT Order dated 10.05.2024, passed in *Company Appeal (AT)(Ins) No. 1395-1397 of 2023*:

“

[...]

52. *We have noticed that in the I.A. 3399/2023 filed by the Torrent Power Limited, there was no pleading with regard to the treatment of Bank Guarantee and value to the 10% of equity upside offered by two Resolution Applicants and the Adjudicating Authority had jumped to the conclusion that decision based on incorrect data is found to be perverse and not fair. The discussion in the impugned order clearly indicates that the **decision is based on factors which were not pleaded** in the I.A. 3399/2023 filed by Torrent Power Limited.*

53. *In this context, we may also notice the Reply which was filed by RP in this appeal. It has been pleaded by RP in paragraph 10 of the reply that at the time of hearing conducted of the Plan approval application or the I.A. filed by Torrent Power Limited and Vantage Point Asset Management Pte. Ltd., scoring as per the Evaluation Matrix and the analysis of BG Margin were never raised. It is useful to extract para 10 of the Reply of the RP which is as follows:*

*“10. It is humbly submitted that the Hon’ble Tribunal while making observations against the Respondent No. 1 and the legal advisor of the Respondent No. 1 did not provide any opportunity to the Respondent No. 1 or the legal advisor of the Respondent No. 1 to clarify the correct factual position. The issues pertaining to treatment of BGs/ Margin Money, scoring as per the evaluation matrix and the analysis of BG margin were never raised argued upon or tested before the Hon’ble NCLT during the hearings conducted in the Plan Approval IA or in the application filed by TPL and Vantage. No clarifications were sought by the Hon’ble NCLT from the RP or the CoC in this context. Thus, the observations made by the Hon’ble NCLT in this context have not been made in accordance with law.”*

54. *The CoC has also filed a detailed Reply to the appeal. CoC in its Reply filed in SEML’s appeal, has also pleaded that the **findings in the impugned order are***

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***without any foundation in the written or oral pleadings made by the parties.***

*In paragraph 10.4, 10.4.1, 10.4.2 and 10.4.3 following has been pleaded:*

***“10.4 The findings in the Impugned Order are patently illegal as they have been passed without any foundation in the written or oral pleadings made by the parties.***

***10.4.1 It is submitted that the findings of the Ld. Adjudicating Authority are illegal and without any basis in the pleadings. In fact, the findings are completely de hors the grounds set out and the reliefs sought for in the Applications filed by the unsuccessful Resolution Applicants and the oral submissions made by the parties on August 7, 2023. It seems as though while passing the Impugned Order, the Ld. Adjudicating Authority assumed the role of CoC itself by substituting its own ‘wisdom’ in place of the CoC’s commercial wisdom and undertook an exercise de hors the pleadings and arguments made before it and without even bothering to seek any clarification on this issue by the CoC or the RP.***

***10.4.2 The Impugned Order is therefore in violation of settled principles of law as per which a court or tribunal cannot go beyond the pleadings of the parties in passing its order and that a decision should not be based on grounds outside the pleadings of the parties. By way of the Impugned Order, the Ld. Adjudicating Authority has embarked on the process of making out a case suo motu, without any pleadings in that regard and therefore passed the Impugned Order in complete violation of well settled principles of law. It is submitted that the Ld. Adjudicating Authority did not even seek any clarification on the treatment of the margin money in respect of the BGs from the RP or the CoC before passing the Impugned Order on entirely erroneous understanding and venturing into the domain of commercial***

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*evaluation which is exclusively within the purview of the CoC as per several judicial precedents and the scheme of the Code and the regulations made thereunder.*

**10.4.3** *Contrary to the aforesaid principle, in the present case, Ld. Adjudicating Authority has returned findings and made observations without them having any foundation whatsoever in the written or oral pleadings of the parties. The Ld. Adjudicating Authority erred in coming to a finding that certain information was not placed before the CoC while approving the resolution plan of the Appellant without even asking for any such clarification from the parties before it and the Ld. Adjudicating Authority, merely on the basis of certain assumptions and presumptions came to an incorrect finding of fact and consequently on the basis of that incorrect finding rejected the application for approval of Resolution Plan under Section 31 of the Code. The issue was neither highlighted in any of the pleadings nor argued before the Ld. Adjudicating Authority. Even IA 3399 merely states Torrent’s allegation that it was offering the highest upfront amount without going into the issues relating to treatment of margin money, bank guarantee or equity upside.”*

**55.** *From the materials on record and pleadings of the party as noted above, it is clear that order passed by the Adjudicating Authority on 06.10.2023 is on the findings which are not based on any pleadings raised by Torrent Power Limited and Vantage Point Asset Management Pte. Ltd. in their application. Torrent Power Limited and Vantage Point Asset Management Pte. Ltd. were unsuccessful Resolution Applicants and they filed the applications subsequent to the order was reserved in the Plan approval application. Before the Adjudicating Authority for the first time the applications I.A. 3336/2023 & I.A. 3399/2023 listed on 07.08.2023 and on the same day, orders were reserved on the said applications, neither any notice was issued in the application nor any opportunity was given to*

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*file a Reply to the applications by the RP, CoC or SRA. The basis of the order of the Adjudicating Authority is that incomplete data was provided to the CoC by the RP and its Process Advisor, hence the decision of the CoC is perverse.*

*56. The grounds which were taken by the Adjudicating Authority were **neither pleaded** by the application filed by the Torrent Power Limited and Vantage Point Asset Management Pte. Ltd. **nor they were addressed at the time of hearing of the application** on 07.08.2023, as pleaded by the RP and CoC. It was incumbent on the Adjudicating Authority to give opportunity to the RP, CoC and SRA before coming to a finding that incomplete financial data was provided to the CoC.*

*57. It is to be noted that the Adjudicating Authority after hearing on 10.07.2023 and 07.08.2023 did not ask for any clarification from CoC, RP or SRA but made following adverse interference in para 8.15 of the order:*

*“8.15 ...From the perusal of the records, we could only infer, in the absence of any clarification on this aspect, that this difference of Rs. 78.56 Crores pertains to the difference between the amount of cash margin against all the bank guarantees amounting to Rs.180.31 and the amount of cash margin require for replacing existing bank guarantees of Rs.103.83. This further validates our conclusion at para.8.13 above that the amount of the cash margin of Rs. 58.08 Crores (based on these numbers) releasing on replacement of guarantees was not accruing to the Financial Creditors.”*

*(Underlined by us)*

*58. The Adjudicating Authority did not give any opportunity to explain the financial data or any other issue with regard to which Adjudicating Authority had any doubt but observed that “in absence of any clarification”, which could have been observed when any clarification is asked for.*

*59. It is also to be noticed that after closing of the hearing on 07.08.2023, the Adjudicating Authority directed the RP to file the process note, Minutes and*

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*correspondence. An Affidavit was filed by the RP dated 20.08.2023, with regard to which there was no opportunity to any other party to make their submission or response.*

*60. As noted above, both Torrent Power Limited and Vantage Point Asset Management Pte. Ltd. has filed Additional Affidavit in their application on 06.09.2023 and 04.09.2023, which is apparent from the record, which affidavits were filed after closing of the hearing on 07.08.2023. The process adopted by the Adjudicating Authority was not in consonance with the Principles of Natural Justice. Consideration of any material subsequent to closing of the hearing without giving opportunity to other side to comment or to give a response is bound to prejudice the interest of other sides.*

*61. Thus, we find substance in the submission of the Counsel for the Appellant that process adopted by the Adjudicating Authority in proceeding to allow I.A. 3399/2023 has violated the Principles of Natural Justice. No notice was issued in the application, no reply was called on the applications and while allowing the said application the entire plan which was approved has been remitted for reconsideration.*

*62. We are thus satisfied that the impugned order deserves to be set aside on the ground of violation of Principles of Natural Justice.*

**\*\***

*83. .. We having already taken a view that the impugned order passed by Adjudicating Authority dated 06.10.2023 deserves to be set aside, on the violation of principles of natural justice, consequent to which order, the matter needs to go back to the Adjudicating Authority for fresh consideration. We in view of the aforesaid, refrain ourselves from recording any findings on the respective submissions of the parties regarding incomplete data or perversity in the process, as sought to be contended on behalf of the Torrent Power Limited.*

**\*\***



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- 87.** *As observed above, we have already taken a decision to set aside the order and remitting the matter for fresh consideration, it is not necessary for us to return a finding on the various contentions raised by the parties on merits of the decision and the grounds. We are of the view that the Adjudicating Authority may take a fresh decision on the Plan approval Application as well as the Application filed being IA No.3336 of 2023 and IA No.3399 of 2023. We having noticed that no opportunity was given to the SRA, RP and CoC in respect of the IA Nos.3336 and 3399 of 2023, to obviate the delay in disposal of the matter, we allow two weeks' time to the SRA, RP and CoC to file their reply along with relevant materials to the I.A. 3336/2023 and I.A. 3399/2023 before the Adjudicating Authority.*
- 88.** *Coming to the IA filed by Jindal Power, we notice that Jindal Power, who had not filed any Application before the Adjudicating Authority and has filed IA in the present Appeal and prayed for certain reliefs, no reliefs can be granted to the Intervenor - Jindal Power Limited, in the present Appeal.*
- 89.** *In view of the foregoing discussions, we dispose of all these Appeals in following manner:*
- (i) The impugned order dated 06.10.2023 passed in IA No.2794 of 2023, IA No.3336 of 2023 and IA No.3399 of 2023 is set aside.*
  - (ii) The Plan approval Application, i.e., IA No.2794 of 2023 and other two Applications, i.e. IA No.3336 of 2023 and IA No.3399 of 2023 are revived before the Adjudicating Authority for fresh decision.*
  - (iii) The Plan approval Application is pending from June 2023, we request the Adjudicating Authority to dispose of the Plan approval Application and other two Applications at an early date, preferably within a period of 60 days from today.*

*No order as to costs.*

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{emphasis applied}

6. In furtherance of the afore-stated, this Tribunal *vide* its Order *dated* 03.06.2024, directed the following:

“

*4. In view of the Hon'ble NCLAT judgement dated 10.05.2024, the Registry is directed to list the IA-2794/2023, IA-3336/2023 & IA-3399/2023 for fresh hearing on 26.06.2024. Meanwhile, **two weeks' time is granted to the SRA, RP and CoC to file their reply along with relevant materials to the IA-3336/2023 and Ia-3399/2023. Parties are directed to complete the pleadings and exchange copies thereof before the next date of hearing.***

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{emphasis applied}

In compliance with the afore-stated Order, the parties to I.A. Nos. 2794 of 2023, 3336 of 2023 and 3399 of 2023 and more specifically so, the SRA, Resolution Professional and Committee of Creditors of the Corporate Debtor, have been heard at length during the course of multiple hearings in consonance with the directions issued by Hon'ble NCLAT.

#### **SCOPE FOR DETERMINATION**

7. With due regards to the NCLAT Order *dated* 10.05.2024, we have taken note of the specific observations in Para Nos. {55}, {56} and {89} thereto, as afore-extracted above. In compliance with the same, this Tribunal has duly accorded an opportunity to:

##### **7.1. PART-I**

The Applicant in Interlocutory Application bearing I.A. No. 3336 of 2023 to plead its case, and for the RP, CoC and the SRA to file their respective Replies, in due consonance with paras {87} *r/w.* {89} of the NCLAT Order. The same has been dealt at Page No. [20] of this Order hereto.

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**7.2. PART-II**

The Applicant in Interlocutory Application bearing I.A. No. 3399 of 2023 to plead its case, and for the RP, CoC and the SRA to file their respective Replies, in due consonance with paras {87} r/w. {89} of the NCLAT Order. The same has been dealt at Page No. [40] of this Order hereto.

**7.3. PART-III**

To allow the RP, CoC and SRA to submit on the limited aspect of provision/ non-provision of the requisite financial data to the CoC in relation to the CIRP of the Corporate Debtor, to suffice the specific observation in para {56} r/w. {83} of the NCLAT Order. The same has been dealt at Page No. [55] of this Order hereto.

**7.4. PART-IV**

To consider the captioned application viz. I.A. No. 2794 of 2023 *apropos* the Resolution Plan in the matter of the Corporate Debtor herein, in due consonance with paras {87} r/w. {89} of the NCLAT Order. We have further deemed it fit to additionally consider two Interlocutory Applications (*bearing I.A. Nos. 3286 of 2023 and 3654 of 2023*) and two Intervention Petitions (*bearing IVN. P. 40 of 2024 and 41 of 2024*), filed during the pendency of the afore-mentioned I.A. Nos. 2794 of 2023, 3336 of 2023 and 3399 of 2023. The captioned application has been dealt at Page No. [80] of this Order hereto.

We further make it patently clear that all the relevant materials have been duly taken on record as on 04.07.2024, and form part of the records for our material consideration hereto.

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----- **PART-I** -----

**I.A. No. 3336 of 2023**

8. The instant application bearing I.A. No. 3336 of 2023 has been filed on 01.08.2023, by **Vantage Point Asset Management Pte. Limited** (“VPAM”) against the Resolution Professional *viz.* Respondent No. 1 herein (*Applicant RP in the captioned application*) and the Committee of Creditors of Corporate Debtor (CoC) *viz.* Respondent No. 2 herein. The Applicant in the instant application has sought for the following:

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- A) *This Tribunal be pleased to allow the Applicant to intervene in Interlocutory Application No. 2794 of 2023 and be impleaded therein as a party-Respondent;*
- B) *That this Tribunal be pleased to defer the hearing of Interlocutory Application No. 2794 of 2023 till such time as this Application is heard and disposed finally;*
- C) *That this Tribunal be pleased to order and direct the RP to supply a copy of Interlocutory Application No. 2794 of 2023 together with the details, particulars and relevant documents with regard to the Resolution Plan approved by the CoC, and allow the Applicant to file its affidavit to oppose the Interlocutory Application No. 2794 of 2023;*
- D) *In the alternative to Prayer B, that this Tribunal be pleased to permit the Applicant to file Affidavits/pleadings and make submissions at the time of hearing of Interlocutory Application No. 2794 of 2023;*
- E) *Pending the hearing and final disposal of this Application, this Hon’ble Tribunal be pleased to stay the proceedings in Interlocutory Application No. 2794 of 2023;*

”

9. In compliance with the observations of Hon’ble NCLAT *vide* its Order dated 10.05.2024, and in consonance with the Order of this Tribunal *dated* 03.06.2024; The Respondent(s) *viz.* RP, SRA and CoC have sought to file their

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Replies on 24.05.2024 for our material consideration hereto, as aforementioned in para [7.1] of this Order.

- 9.1.** We further note that during the course of oral arguments in the instant application, the Applicant has sought to file and rely upon its Rejoinder(s) dated 26.06.2024 in response to the Affidavits-in-Reply filed by Respondent No. 1 and 2 hereto, whereby the Applicant has sought to raise new and substantive grounds which have not been pleaded in the instant application. We however opine that the pleadings in the instant application concluded with the filing of Affidavits-in-Reply by Respondent No. 1 and 2, along-with the SRA in consonance with the categorical directions by the Hon'ble NCLAT. In the absence of any leave sought by the Applicant to file its Rejoinder(s), nor any permission granted by this Bench to the same effect; Order VIII Rule 9 of the Code of Civil Procedure, 1908, expressly prohibits any pleading(s) subsequent to the written statement of a Defendant (*viz. Respondent herein*), except by the leave of the Court. Upon a careful perusal of the Rejoinder(s), it is noticed that the Applicant has attempted to surreptitiously amend the Original I.A., in the veil of Rejoinder(s), by raising new and substantive grounds therein which have not been pleaded in the instant application, and which the Code of Civil Procedure, 1908, does not warrant for.
- 9.2.** The Applicant has evidently overlooked the cardinal legal position that subsequent pleading(s) cannot supplant the original pleading(s), and that, plea(s) inconsistent with the plea(s) taken in original pleading(s) cannot be permitted to be taken in subsequent pleading(s). Accordingly, this Bench has decided not to take cognizance of the Rejoinder(s) dated 26.06.2024 filed by the Applicant in the instant application.

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9.3. On this aspect, this Bench has been guided by the legal position laid down by Hon'ble Supreme Court of India, by a Coram of three-judge Bench headed by the Hon'ble Chief Justice of India, in *Sheik Noorul Hassan v. Nahakpam Indrajit Singh & Ors.* [Civil Appeal 1389 of 2024], whereby the Apex Court has affirmed the afore-stated position of law, as extracted hereunder:

“

9. Before we deal with the aforesaid issue, it would be useful to refer to the provisions of the CPC in relation to pleadings. Order VI Rule 1 of the CPC declares that pleading shall mean a plaint and a written statement. Rule 9 of Order VIII specifically edicts that no pleading subsequent to the written statement of a defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court. Though, however, the Court may at any time require a written statement or additional written statement.

10. In *Anant Construction (P) Ltd. v. Ram Niwas*<sup>8</sup>, High Court of Delhi, in an exhaustive judgment authored by R. C. Lahoti, J, as His Lordship then was, dealt with the terms 'Replication' and 'Rejoinder', as is commonly used for subsequent pleadings, as also as to when leave for filing subsequent pleading may be granted by the Court. After referring to various legal texts including *Corpus Juris Secundum*, it was observed:

“12. [...]

13. Decided cases in India use the term rejoinder loosely for a reply or replication filed by the plaintiff in answer to the defendant's plea. Strictly speaking a reply filed by the plaintiff (when permissible) is a replication. A pleading filed by the defendant subsequent to replication is a rejoinder.

14. A replication is not to be permitted to be filed ordinarily, much less in routine. A replication is permissible only in three

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*situations: (1) when required by law; (2) when a counter-claim is raised by the defendant; (3) when the court directs or permits a replication being filed. The court may direct filing of a replication when the court having scrutinised the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement. The plaintiff may also feel the necessity of joining additional pleading to put forth his positive case in reply to the defendant's case but he shall have to seek the leave of the court by presenting the proposed replication along with an application seeking leave to file the same. The court having applied its mind to the leave sought for, may grant or refuse the leave. Ordinarily the necessity of doing so would arise only for 'confession and avoidance.'*

*Having observed so, a distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by way of a replication was noticed as under:*

*“17. A distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by replication shall have to be kept in view. A plea which essentially constitutes the foundation of a claim made by the plaintiff or which is essentially a part of plaintiff's cause of action cannot be introduced through a replication. As already stated replication is always a defensive pleading in nature. It is by way of confession and avoidance or explanation of a plea raised in defence. It will be useful to quote from Halsbury's Laws of England (Volume 36, para 62, page 48):-*

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**62.** *Necessity for amendment. The fact that a party may not raise any new ground of claim, or include in his pleadings any allegation or fact inconsistent with his previous pleadings, has been considered elsewhere. In order to raise such a new ground of claim, or to include any such allegation, amendment of the original pleading is essential.”*

**17.1** *In MSM Sharma versus Sri Krishna Sinha, AIR 1959 SC 395, their Lordships refused to consider a plea raised in rejoinder for the first time, observing:*

*“The case of bias of the Chief Minister (respondent No.2) has not been made anywhere in the petition and we do not think it would be right to permit the petitioner to raise this question, for it depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondent had no opportunity to reply.*

*Finally, the Court summed up its conclusions as under:*

**“24.** *To sum up:*

- (1) ‘Replication’ and ‘rejoinder’ have well defined meanings. Replication is a pleading by plaintiff in answer to defendant’s plea. ‘Rejoinder’ is a second pleading by defendant in answer to plaintiff’s reply i.e. replication.*
- (2) To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy of the I.A. to the counsel for opposite party is a notice of application. Reply, if any, may be*



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*filed in between, if the time gap was reasonable enough, enabling reply being filed.*

- (3) *I.A.s which do not involve adjudication of substantive rights of parties and / or which do not require investigation or inquiry into facts are not supposed to be contested by filing written reply and certainly not by filing replication.*
- (4) *A replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. A replication is permissible in three situations: i. when required by law; ii. when a counter claim is raised or set off is pleaded by defendant; iii. when the court directs or permits a replication being filed.*
- (5) *Court would direct or permit replication being filed when having scrutinised plaint and written statement the need of plaintiff joining specific pleading to a case specifically and newly raised in written statement is felt. Such a need arises for the plaintiff introducing a plea by way of ‘confession and avoidance’.*
- (6) *A plaintiff seeking leave of the Court has to present before it the proposed replication. On applying its mind the court may grant or refuse the leave.*
- (7) *A mere denial of defendant’s case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue.*
- (8) ***Subsequent pleadings are not substitute for amendment in original pleadings.***
- (9) ***A plea inconsistent with the plea taken in original pleadings cannot be permitted to be taken in subsequent pleadings.***

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*(10) A plea which is foundation of plaintiff's case or essentially a part of cause of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected, cannot be introduced for the first time by way of replication.*

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{emphasis applied}

**10.** The **Applicant** in the instant application contends that, with regards to CIRP of the Corporate Debtor, a Process Note was shared at the behest of CoC by the RP *apropos* the inter-se bidding process to be undertaken for the same, and accordingly, the Applicant submitted its revised Resolution Plan on 28.04.2023.

**10.1.** The Applicant submits that in furtherance of maximization of value and “*..with the recent economic developments in the power sector*”, it sought to revise its Resolution Plan by increasing its offer by an amount of INR 50 Crores, and submitted the same to the RP and CoC *vide* E-mails dated 14.06.2023 and 16.06.2023, respectively. The Applicant however submits that it was informed by the RP *vide* E-Mail dated 20.06.2023, that the CoC had approved the Resolution Plan of another Resolution Applicant (*i.e. SRA in the captioned application*) and had sought to reject its (revised) Resolution Plan after considering all material facts and circumstances.

**10.2.** The Applicant submits that despite its revised Resolution Plan ensuring maximization of value by offering the best possible value for all stakeholders of the Corporate Debtor and protecting their interests after incorporating its increased offer of INR 50 Crores, it was not considered by CoC which has *allegedly* acted in “*..entirely pedantic and hyper-technical manner*”. The Applicant further claims that it has acted in due consonance with the eligibility criteria for PRAs as determined by the

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RP in consultation with CoC, and that the events constitute “..*illegal, arbitrary, unreasonable and colorable actions on part of the RP, Respondent No. 1 and the CoC, Respondent No. 2*” and are in gross violation to the object of the Code, and has re-iterated the same *vide* its Affidavit dated 04.09.2023.

- 10.3. The Applicant has placed principal reliance upon the judgement of Hon’ble Supreme Court in ***M.K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr.*** [Civil Appeal Nos. 1682-1683 of 2022] and submits that, “.. *even while respecting the commercial wisdom of a committee of creditors, this Hon’ble Tribunal has to evaluate whether a resolution plan contravenes any requirements of applicable laws in light of Section 30(2)(e) of the IBC, and may proceed to reject such approved resolution plan for such contravention of applicable laws.*”
11. In contradistinction to the afore-stated contentions by the Applicant in the instant application, the **RP viz. Respondent No. 1** herein, *vide* its Reply dated 24.05.2024, has raised the following averments:
- 11.1. The RP submits that the Applicant’s principal objection vis-à-vis maximisation of value of assets of Corporate Debtor having a bearing on approval of proposed Resolution Plan, does not stand the test of law as “..*CIRP process is not akin process of sale or auction of the Corporate Debtor.*” The RP has placed reliance on various judgements *viz. Benani Industries Limited v. Bank of Baroda & Anr.* [2018 SCCOnline NCLAT 521], *Shrawan Kumar Agrawal v. Rituraj Steel Private Limited* [2020 SCCOnline NCLAT 380], *K Sashidhar v. Indian Overseas Bank* [(2019) 12 SCC 150] to substantiate its contention that submission of highest commercial offer by a Resolution Applicant “..*does not per-se guarantee that such resolution applicant will emerge as the SRA.*”

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**11.2.** The RP further submits that that the (revised) Resolution Plan submitted by the Applicant in the instant application on 14.06.2023, which although suffers from belated and unsolicited submission in light of SEML being declared the SRA on 08.06.2023 itself, was however duly considered and rejected thereto by the CoC. Due reliance has been placed on various judgements *viz. Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd.* [(2022) 2 SCC 401], *Union Bank of India v. Kapil Wadhwan & Ors.* [Judgement dated 27.01.2022 passed in Comp Appl (AT)(Ins) No. 370, 376 & 393 of 2021], *Express Resorts and Hotels Ltd. v. Amit Jain, RP, Neesa Leisure Ltd.* [Judgement dated 09.03.2023 in C.A. (Ins) 1158 of 2022] and *Renganayaki Agencies v. Sreenivasa Rao Ravinuthala* [2021 SCCOnline NCLAT 136] to substantiate the afore-stated averment in relation to scope for further negotiations between the (unsuccessful) resolution applicants and CoC after approval of a resolution plan and primacy to the timelines of the negotiation process.

**11.3.** The RP has further pressed upon the primacy of ‘commercial wisdom’ of CoC in light of the judgement of Apex Court in *K. Sashidhar* (supra) to claim that the “..successful resolution plan should conform to subjective satisfaction of the CoC and such subjective satisfaction is arrived at on basis of diverse parameters *viz. feasibility and viability of the resolution plan, the financial projections set out in the resolution plan and capability of the resolution applicant to deliver upon the speculative projections set out in the resolution plan.*” The RP has further cited the judgements of Hon’ble Supreme Court in *Maharashtra Seamless Limited v. Padmanabhan Venkatesh* [(2020) 11 SCC 467] and *Vallal RCK v. Siva Industries Holdings Ltd.* [(2022) 9 SCC 803] to submit that quantitative analysis of a resolution plan cannot supersede the commercial wisdom of CoC.

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**12.** The **Respondent No. 2** herein *viz.* **CoC** of the Corporate Debtor, *vide* its Reply dated 24.05.2024, submits that the (revised) Resolution Plan submitted by the Applicant in the instant application was taken up during the 30<sup>th</sup> and 31<sup>st</sup> Meeting of CoC, and was considered with all the resolution plans, along with addendums received till 10.05.2023.

**12.1.** The CoC submits that the same is in due consonance with Clauses {2.9.4}, {4.18}, {4.1.11} of the RFRP dated 12.08.2022, and Clauses {9(c)}, {9(d)} and {9(e)} of the Process Note issued at its behest on 13.04.2023, and in compliance with Regulation 39(3) of CIRP Regulations. The CoC further refutes the Applicant's contention(s) in relation to its revised offer, by submitting that its “..belated and unsolicited” resolution plan was duly taken up during its 32<sup>nd</sup> Meeting dated 17.06.2023, whereby it was “..duly considered, assessed and rejected by the CoC by 100% voting share, in exercise of its commercial wisdom” and the same was accordingly communicated to the Applicant.

**12.2.** The CoC submits that the CIRP has been run in a fair and transparent manner, and that the Resolution Applicants (*including the Applicant in the instant application*) were provided with equal opportunity, “..and a level playing field to submit their best offer through their resolution plan and the Applicant has admitted to the same”. The CoC has further raised the following averments through its Reply apropos the veracity of the process undertaken in this regard:

“

(a) *All the resolution applicants, including Vantage, were provided equal opportunity and a level playing field to submit their best offer through their resolution plan.*

(b) *The CoC has evaluated all the 7 (seven) resolution plans received during the resolution process.*

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- (c) *Professional experts were appointed for commercial evaluation of all the resolution plans.*
- (d) *The CoC has undertaken detailed discussions and negotiations with all the resolution applicants and have deliberated on the feasibility and viability of all the resolution plans during the 30<sup>th</sup> and 31<sup>st</sup> meeting of the CoC.*
- (e) *All the factors were discussed and considered before approving the resolution plan of the successful resolution applicant and rejecting the resolution plan of all the other resolution applicants with 100% voting.*
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**12.3.** The CoC has further placed reliance upon the judgements of:

- *K Sashidhar v. Indian Overseas Bank [(2019) 12 SCC 150]* and *Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee) [(2021) 10 SCC 623]* apropos non-justiciability of the commercial decision of CoC;
- *Shrawan Kumar Agrawal Consortium and Ors. v. Rituraj Steel Private Limited and Ors. [Comp App (AT) (Ins.) Nos. 1490 of 2019, 78 of 2020 and 184 of 2020]* apropos the power which vests with this Adjudicating Authority to direct re-bidding at the backdrop of an approved Resolution Plan on the ground that another resolution applicant is willing to invest a higher amount in the Corporate Debtor;
- *IMR Metallurgical Resources AG v. Ferro Alloys Corpn. Ltd. [2020 SCC OnLine NCLAT 1213]* and *PNC Infratech Limited v. Deepak Maini [Comp App (AT)(Ins) No. 143 of 2020]* apropos commercial wisdom of the CoC while awarding marks on the evaluation matrix;
- *Unicorn Buildtech PRA v. Aishwarya Mohan RP [Comp. App (AT)(Ins) Nos. 517 of 2021]* apropos Resolution applicant not having a vested right to have its resolution plan approved;

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- *M.K. Rajagopalan v. S. Rajendran, Resolution Professional Vasan Health Care Pvt. Ltd. [Comp. appl. (AT)(CH)(INS) No. 58 of 2023]* apropos unsuccessful resolution applicant not being a stakeholder in the insolvency resolution process of the Corporate Debtor; and
  - *Chhattisgarh Distilleries Ltd. v. Dushyant Dave Resolution Professional of Anand Distilleries Pvt. Ltd. & Others [2020 SCC OnLine NCLAT 1078]* apropos the power with this adjudicating authority to direct the CoC to consider any resolution applicant even if it is offering more amount than the SRA.

13. Apropos the instant application, an Intervention Petition bearing **IVN. P. No. 41 of 2024** has been filed on 11.06.2024 by the Successful Resolution Applicant in the captioned application *viz.* **SEML** against the Applicant in I.A. No. 3336 of 2023 *viz.* VPAM, seeking impleadment and intervention in I.A. No. 3336 of 2023 as a Respondent pursuant to the same being remanded back to this Tribunal for fresh consideration by Hon'ble NCLAT *vide* its Order dated 10.05.2024, and to treat this instant intervention petition as a Reply in the afore-stated I.A. We have thereby deemed it fit to dispose-of the instant intervention petition, on account of the SRA being accorded an opportunity to make its submissions apropos the instant application, in purview of the NCLAT Order.

13.1. The SRA submits that pursuant to its Resolution Plan being voted upon by the CoC in its 31<sup>st</sup> Meeting held on 16.05.2023 with 100% voting share, and it being declared as 'SRA' following the same; The increased offer of VPAM via its *unsolicited* E-mail was taken up by the CoC, and the latter decided not to reopen the process when a resolution plan had already been approved. The SRA submits that the same was duly communicated to VPAM, and the latter collected back its Earnest Money Deposit accordingly, before filing the I.A. No. 3336 of 2023.

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Express reliance has been placed on various judgements viz. *Ebix Singapore* (supra), *Steel Strips Wheels Ltd. v. Shri Avil Menezes, RP, AMW Motors [CA (Ins) 89/22]*, *Express Resort & Hotel Ltd. v. Amit Jain, RP, Neesa Leisure Ltd. [CA (Ins) 1158/2022]* and *Nagaitlang Dhar* (supra) in furtherance of its afore-stated contention on the scope left to challenge a resolution plan which has been approved by the CoC in exercise of its commercial wisdom.

13.2. Pursuant to the NCLT Order and the NCLAT Order remanding the matter-back for this Tribunal's fresh consideration, the SRA submits that it is a necessary and proper party to I.A. No. 3336 of 2023, and thereby deserves impleadment as a Respondent in the same. The SRA further submits that in so far as the reliefs in the said I.A. are concerned, the contents of the resolution plan are confidential in nature and it is thus not agreeable to sharing it with the unsuccessful resolution applicant(s) (including VPAM). Express reliance has been placed on two judgements of Hon'ble NCLAT viz. *Rajputana Properties Pvt. Ltd. v. UltraTech Cement Ltd. [Comp App (AT)(Ins) No. 188 of 2018]* and *Meenakshi Energy Ltd. v. Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P. Ltd. [Comp. App (AT)(CH)(Ins) No. 166 of 2021]* in furtherance of its afore-stated contention in relation to (non) provision of a Resolution Plan to competing Resolution Applicant(s).

13.3. The SRA has further sought to place material reliance on Scope of Remand by the Hon'ble NCLAT and issues open for our determination herewith in light of the NCLAT Order, in addition to placing reliance on RFRP, Process Note (a/w. Appendix I to Process Note) to refute the Applicant's contentions with regards to alleged 'material irregularity' in the process.



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14. We have perused the materials which form part of the record hereto in the instant application, and have heard the parties, and more specifically so, the RP, CoC and the SRA, at length during the course of multiple hearings.

14.1. At the outset, we make it expressly clear that the scope of remand by the Hon'ble NCLAT *vide* its Order *dated* 10.05.2024, is limited in nature and the finding(s) of this Tribunal apropos the instant application shall be read concomitant to the views already expounded by the Hon'ble NCLAT in its afore-mentioned Order *dated* 10.05.2024.

14.2. We note that the Hon'ble NCLAT in its Order *dated* 10.05.2024, has exhaustively dealt with the guardrails of '*commercial wisdom*' which this Tribunal ought to bind itself with, and the Hon'ble NCLAT has taken due note of various judgements in its Order *dated* 10.05.2024, while considering various facets of a Resolution Plan, in addition to the stipulations under Section(s) 30(2) and 31(1) of the IBC, 2016. It is further trite in law that this Adjudicating Authority has been endowed with limited jurisdiction in this regard, and cannot sit in appeal over such matters concerning the exercise of '*commercial wisdom*' of the CoC, as the same is paramount and non-justiciable. The Apex Court, in *Ngaitlang Dhar v. Panna Pragati Infrastructure Private Limited* [CA No. 3665-3666 of 2020] has succinctly encapsulated the afore-stated aspect as follows:

“

*31. It is trite law that 'commercial wisdom' of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the IBC. It has been consistently held that it is not open to the Adjudicating Authority (the NCLT) or the Appellate Authority (the NCLAT) to take into*

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*consideration any other factor other than the one specified in Section 30(2) or Section 61(3) of the IBC.*

*It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that decision of the pf the CoC's 'commercial wisdom' is non-justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) of the IBC. This position of law has been consistently reiterated in a catena of judgements of this Court, including:*

- i. K. Sashidhar v. Indian Overseas Bank*
- ii. Committee of Creditors of Essar Steel India Limited through authorized signatory v. Satish Kumar Gupta,*
- iii. Maharashtra Seamless Limited v. Padmanabhan Venkatesh,*
- iv. Kalpraj Dharamshi v. Kotak Investment Advisors Limited,*
- v. Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director.*

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This aspect, in so far as the Scope and Jurisdiction of this Tribunal *vis-à-vis* a Resolution Plan is concerned, has been comprehensively dealt with in **Part-III** of this Order hereto.

**14.3.** In the instant application, the principal contention of the Applicant pertains to its resolution plan *supposedly* ensuring maximization of value of assets of the Corporate Debtor, and that the same ought to have been ‘considered’ for the said reason. We however opine that at the backdrop of the CoC of the Corporate Debtor comprising of two of the largest public sector banks in India *viz.* Bank of Baroda and State Bank of India; The materials on record clearly demonstrate that the said CoC had *in-fact* deliberated at length upon the feasibility and viability of the

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Resolution Plan(s) submitted by the respective Resolution Applicant(s), including that of the Applicant in the instant application, and it is not open for this Tribunal to undertake any (quantitative) analysis apropos the same. It was only after such examination that the Resolution Plan(s) (*including that of the Applicant hereto*) were put up for voting during the 31<sup>st</sup> Meeting of the CoC. Furthermore, the Apex Court in *Essar Steel India (supra)* has categorically observed the following:

*“46 ... There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are Also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a*

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*resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”*

*{emphasis applied}*

**14.4.** We further note that the CoC has duly considered the Resolution Plan, which albeit has been belatedly submitted by the Applicant in the instant application, and same is reflected from the minutes of the 32<sup>nd</sup> Meeting of CoC dated 17.06.2023. During the discussion on the agenda apropos the same, titled ‘**TO DISCUSS ON THE EMAIL RECEIVED FROM VANTAGE POINT ASSET MANAGEMENT PTE LIMITED (“VPAM”)**’, we seek to extract the relevant observations of CoC in relation to the said agenda as hereunder:

“

*The Representative of BoB stated that **all the resolution applicants, including VPAM were provided equal and ample opportunity to submit their resolution plans and then the Resolution Plans were placed for voting. After which, the unsolicited offer has been received at a stage where the Resolution Plan of the SRA has already been voted upon. Further, all the Resolution Plans were discussed in the CoC meetings with detailed justifications for each parameter of evaluation. Also, in case of VPAM, the shortcomings were also pointed out by the advisors appointed by the lenders to evaluate the plans. The CoC, considering the interests of all stakeholders, in a fair and transparent manner, deliberated and considered each Resolution Plan holistically before making its decision and had exercised their commercial wisdom. In view of the same, considering that the Resolution Plan of the SRA has been voted with 100% majority, he expressed that there is no justification for accepting the***

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*request of VPAM, while it is also not legally possible as pointed out by the legal counsels.*

*The views of SBI were also sought on this matter, and SBI representative stated that they concur with the views of BoB and the Legal Counsels.*

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{emphasis applied}

**14.5.** In so far as prayer clause (C) in the instant application is concerned whereby the Applicant has sought the copy of the resolution plan in consideration hereto; We are of the principal view that the same cannot be granted, in light of the judicial position, as enunciated in judgements cited in para [12.2] of this Order by the SRA. In the interest of finality, we seek to extract the relevant paras of the said judgements by Hon’ble NCLAT as hereunder:

- ***Rajputana Properties Pvt. Ltd. v. UltraTech Cement Ltd.*** [Comp App (AT)(Ins) No. 188 of 2018], wherein the Hon’ble NCLAT held:

“

*9. [...] According to us, the resolution plan submitted by one or other Resolution Applicant being confidential cannot be disclosed to any competitor Resolution Applicant nor any opinion can be taken or objection can be called for from other Resolution Applicants with regard to one or other resolution plan.*

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{emphasis applied}

- ***Meenakshi Energy Ltd. v. Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P. Ltd.*** [Comp. App (AT)(CH)(Ins) No. 166 of 2021], wherein the Hon’ble NCLAT held:

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111. In fact, the ‘Resolution Plan’ furnished by one or the other ‘Resolution Applicant’ is a ‘confidential’ one and it cannot be disclosed to any ‘Competing’ ‘Resolution Applicant’ nor any view can be taken or objection can be asked for from other ‘Resolution Applicants’ in regard to one or the other ‘Resolution Plan’.

[...]

”

{*emphasis applied*}

14.6. In the interest of totality, we further wish to place reliance on the Apex Court’s judgement in *Vallal RCK v. M/S Siva Industries And Holdings Limited And Others* [Civil Appeal Nos. 1811-1812 Of 2022], wherein the Apex Court has observed hereunder:

“

21. *This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors 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 assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. Sashidhar v. Indian Overseas Bank and Others<sup>2</sup>, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others<sup>3</sup>, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others<sup>4</sup>, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another<sup>5</sup>, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others<sup>6</sup>.*

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[..]

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another**<sup>7</sup> :

“95. ....However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

”

{emphasis supplied}

14.7. In view of the afore-stated discussion, we are thus not inclined to grant the prayers sought by the Applicant in the instant application *viz.* **I.A. No. 3336 of 2023 and the same deserves to be Dismissed. Ordered accordingly.**

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----- **PART-II** -----

**I.A. No. 3399 of 2023**

15. The instant application has been filed on 03.08.2023, by **Torrent Power Limited** against the Resolution Professional *viz.* Respondent No. 1 herein (*Applicant RP in the captioned application*) and the Successful Resolution Applicant in the captioned application *viz.* Respondent No. 2 herein. The Applicant in the instant application has sought for the following reliefs:

“

- a. *Pass an order directing the First Respondent to serve a complete copy of the Plan Approval Application, along with all the annexures to the Applicant;*
- b. *Defer the pronouncement of orders in the Plan Approval Application until the adjudication and disposal of the present Application;*
- c. *Grant liberty to the applicant to file its objections in the Plan Approval Application, if any, pursuant to reviewing the Plan Approval Application;*
- d. *Keep the Plan Approval Application in abeyance until the applicant has reviewed the Plan Approval application and filed its objections (if any) in the said application;*
- e. *Pass such other orders as deemed fit in the interests of justice and equity in the facts and circumstances of the matter.*

”

16. In compliance with the observations of Hon'ble NCLAT *vide* its Order dated 10.05.2024, and in consonance with the Order of this Tribunal *dated* 03.06.2024; The Respondent(s) *viz.* RP, SRA and CoC have sought to file their Replies on 24.05.2024 for our material consideration hereto, as aforementioned in para (7.2) of this Order;



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- 16.1.** We further note that during the course of oral arguments in the instant application, the Applicant has sought to file and rely upon its Rejoinder(s) *dated* 25.06.2024 in response to the Affidavits-in-Reply filed by Respondent No. 1 and 2 hereto, whereby the Applicant has sought to raise new and substantive grounds which have not been pleaded in the instant application. We however opine that the pleadings in the instant application concluded with the filing of Affidavits-in-Reply by Respondent No. 1 and 2, along-with the SRA in consonance with the categorical directions by the Hon'ble NCLAT. In the absence of any leave sought by the Applicant to file its Rejoinder(s), nor any permission granted by this Bench to the same effect; Order VIII Rule 9 of the Code of Civil Procedure, 1908, expressly prohibits any pleading(s) subsequent to the written statement of a Defendant (*viz. Respondent herein*), except by the leave of the Court. Upon a careful perusal of the Rejoinder(s), it is noticed that the Applicant has attempted to surreptitiously amend the Original I.A., in the veil of Rejoinder(s), by raising new and substantive grounds therein which have not been pleaded in the instant application, and which the Code of Civil Procedure, 1908, does not warrant for.
- 16.2.** The Applicant has evidently overlooked the cardinal legal position that subsequent pleading(s) cannot supplant the original pleading(s), and that, plea(s) inconsistent with the plea(s) taken in original pleading(s) cannot be permitted to be taken in subsequent pleading(s). Accordingly, this Bench has decided not to take cognizance of the Rejoinder(s) *dated* 26.06.2024 filed by the Applicant in the instant application. The same is in light of positions laid down by the Apex Court, as afore-extracted in para [9.3] of this Order hereto.

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**17.** The **Applicant** in the instant application contends that pursuant to circulation of the Process Note *dated* 13.04.2023 and at the end of four rounds of the negotiation process carried out amongst the PRAs;

**17.1.** The PRAs submitted their revised resolution plans after incorporating the respective last commercial proposal(s) in Appendix-I, in accordance with provisions of the Process Note. Subsequent to the same, certain clarifications were sought by the RP *vide* E-Mail *dated* 08.05.2023, regarding the Resolution Plans submitted by the PRAs and the same was admittedly submitted by the Applicant *via* an Addendum *dated* 10.05.2023. The Applicant contends that despite the same, its Resolution Plan was not voted upon by the CoC and that, the RP addressed a letter to the PRAs (*including the Applicant herein*) to intimate the approval of the Resolution Plan submitted by SRA *viz.* Respondent No. 2 in the instant application.

**17.2.** The Applicant has further sought to rely upon a *certain* newspaper report to gather that it stood second-highest in the competitive offer for the Corporate Debtor after the Applicant in I.A. No. 3336 of 2023 *viz.* Vantage Point Asset Management Pte. Ltd. Apropos the same, the Applicant contends that the Respondent No. 2 herein *viz.* SRA “*..at best offered the third highest offer in terms of the Key Commercial Terms submitted by it during the course of the Negotiation Process*” and that, the Applicant submitted the highest upfront cash payment to the creditors of the Corporate Debtor after incorporating the observations of the RP and CoC. The Applicant thereby contends that owing to its highest proposed upfront payment, it ought to have been declared as the Successful Resolution Applicant and not the Respondent No. 2 which, per its contentions, had lower qualitative and quantitative credentials than the Applicant herein.

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- 17.3.** The Applicant has further sought to claim that the RP has deviated from the terms of RFRP and the Process Note by *allegedly* giving additional opportunities to the Respondent No. 2 herein to further improve its resolution plan by allowing modification(s) in its key commercial terms, and without providing similar opportunities to other Resolution Applicants and that the same is discriminatory. Hence, the instant application.
- 17.4.** In addition to the afore-stated averments raised by the Applicant in the instant application; The Applicant, *vide* an Additional Affidavit *dated* 06.09.2023, claims that the Respondent No. 1 *viz.* RP failed to adhere with this Tribunal’s directions apropos furnishment of certain documents, to make good the allegations levelled by Applicant(s) in the instant application and I.A. No. 3336 of 2023 *vide* Order *dated* 07.10.2023. The Applicant thus seeks further directions against the alleged non-compliance with the directions of this Tribunal *vide* the afore-mentioned Order, a copy of Appendix-I submitted by the SRA pursuant to the negotiation process, extracts of resolution plan, critical CoC minutes, and clarifications between the first and second respondents in the instant application.
- 18.** The **Respondent No. 1** herein *viz.* **RP**, *vide* its Affidavit-in-Reply *dated* 24.05.2024, has raised several averments in contradistinction to the contentions raised by the Applicant herein;
- 18.1.** On the aspect of discrimination alleged by the Applicant in the instant application, the RP submits that the said issue has been duly adjudicated by the Hon’ble NCLAT in its Order *dated* 10.05.2024 in para {82} thereto, and that the averments raised by the Applicant in relation to the same “..are mere conjectures and surmises without any

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*substantive proof thereof.*” The RP further submits that the Applicant’s contention, in so far as the aspect of upfront payment envisaged by the CoC and inexplicable selection of the Respondent No. 2 as SRA in the captioned application is concerned, the same has been dealt conclusively in the said NCLAT Order in para {86} thereto. Further reliance has been placed on *K. Sashidhar* (supra) and *Vallal RCK* (supra) to substantiate its afore-stated contentions apropos paramountcy to commercial wisdom and scope of judicial intervention in the same.

**18.2.** The RP further submits that in compliance with the (*now set-aside*) NCLT Order dated 06.10.2023, 34<sup>th</sup> Meeting of the CoC was conducted on 19.10.2023 wherein, the CoC sought to re-assess the financial data and various other aspects of the Resolution Plans received apropos CIRP of the Corporate Debtor herein, and the minutes as against the said CoC Meeting “*..categorically reflect that, the CoC after deliberating upon the commercial aspects of the resolution plans affirmed that no information had been incorrectly or incompletely placed before the CoC while consideration of the resolution plans in the CIRP of SKS.*”.

**18.3.** The RP has further sought to re-iterate that unsuccessful resolution applicant does not have a vested right for consideration/ approval of its resolution plan and reliance has been placed on the judgements of *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.* [(2019) 2 SCC 1] and *Jaydip Ghosh v. Niraj Agarwal* [Comp app (AT)(Ins) 839 of 2022] to substantiate the same.

**19.** The **Respondent No. 2** herein *viz.* **SRA** in the captioned application, *vide* its Reply dated 24.05.2024, has challenged the maintainability of the instant application at the outset. The SRA contends that no grounds for interference of this Tribunal have been made out as the clarifications sought (*and provided*)

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apropos the RP and CoC *vide* E-Mail dated 08.05.2023, do not constitute any change in key commercial terms by the SRA. The SRA has further pressed upon the commercial wisdom of the CoC, role of this Adjudicating Authority apropos consideration of a resolution plan approved by the former with requisite voting share, scope of remand in so far as express observations on ‘*perversity*’ / ‘*incomplete financial data*’ apropos the NCLAT Order is concerned, and has placed material reliance on various judgements *viz. Ebix Singapore Pvt. Ltd. v. CoC Educomp Solutions Ltd. & Anr.* [(2022) 2 SCC 401], *Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr.* [(1999) 5 SCC 590], *PNC Infratech Ltd. v. Deepak Mainin & Ors.* [CA (Ins) 143/2020], *Jaydip Ghosh v. Niraj Agarwal* [CA (Ins) 839/ 2022], *M.K. Rajagopalan v. S. Rajendra* [CA (Ch)(Ins) 58/2023], *IMR Metallurgical Resources AG v. Ferro Alloys Corporation Ltd.* [CA 272/2020], *CoC, Associated Décor v. Svamitva Landmarks & Ors.* [CA (Ins) 159/2021], *Nagaitlang Dhar v. Panna Pragati & Anr.* [(2022) 6 SCC 172], *Shrawan Kumar Consortium v. Rituraj Steel Pvt. Ltd.* [CA (Ins) 1490/2019], *Express Resort & Hotel Ltd. v. Amit Jain, RP, Neesa Leisure Ltd.* [CA (Ins) 1158/2023], *Steel Strips Wheels Ltd. v. Shri Avil Menezes, RP, AMW Motors* [CA (Ins) 89/2022], *Pioneer Rubchem Pvt. Ltd. v. Vivek Raheja & Ors.* [CA (Ins) 706/2020] and *Chhattisgarh Distilleries Ltd. v. Dushyant Dave* [CA (Ins) 461/2019] to further substantiate its afore-stated averments, in addition to re-iterating the factual tenet of the Applicant taking back its EMD on 27.01.2023.

20. In due compliance of the NCLAT Order dated 10.05.2024, this Bench accorded an opportunity to the CoC of the Corporate Debtor in the captioned application, to place on record its Affidavit-in-Reply dated 24.06.2024. The CoC submits that it has deliberated extensively on the feasibility and viability of the resolution plans submitted by all the resolution applicants (*including that of the Applicant herein*) and has accordingly voted upon the Respondent No. 2 in the instant application *viz.* SEML as the SRA.

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**20.1.** The CoC has sought to press upon the irreproachability of the process followed in relation to CIRP of the Corporate Debtor “*..without any bias as favouritism as alleged by Torrent*” and has placed express reliance on clauses {2.9.4}, {2.9.4(c)}, {2.9.7}, {2.9.9}, {2.9.9(d)(ii)}, {2.16.7}, {2.18.5(t)}, {4.1.5}, {4.1.11} and {4.1.18} of the RFRP, and clauses {9(c)}, {9(d)} and {9(q)} of the Process Note apropos the scope of its ‘commercial wisdom’ and the procedure to be followed vis-à-vis the Resolution Plan, and has further stressed upon its averment of it not being bound to approve any such resolution plan which has scored the highest as per the Evaluation Matrix. On the latter aspect, the CoC has sought to submit that, “*..the plans were evaluated on the basis of various parameters mentioned in the Evaluation Matrix. In addition to the same, the CoC considered several other factors such as the treatment of as avoidance application and receivables in pending litigation as well as the overall qualitative factors while examining the feasibility and viability of the resolution plans and deciding as to which resolution plan is to be approved*” and that a ‘commercial decision’ apropos the same is “*..neither a judicial nor a quasi-judicial or an administrative exercise. It is purely a business decision taken by the CoC in its commercial wisdom.*”

**20.2.** The CoC contends that the Resolution Applicant(s) had the option to offer payments either as upfront or deferred and that, there was no mandatory requirement that only Resolution Applicant(s) giving upfront payment will be considered. To substantiate the same, reliance has been placed on communication(s) by the RP at the behest of CoC dated 28.01.2023 and 09.03.2023, and on the specific observations of Hon’ble NCLAT in its Order dated 10.05.2024 apropos the same. On the said aspect, the CoC has sought to reiterate that, “*..none of the Resolution Applicant was ever communicated by the RP or the CoC that the*

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*resolution plan should offer only upfront payments or the plan with highest upfront payment will be approved by the CoC. Even the letters dated January 28, 2023 and March 9, 2023 expressly state that all the compliant resolution plans will be placed for approval of the CoC and the resolution plan which is found to be most commercially acceptable will be approved by the CoC in its commercial wisdom.”*

- 20.3.** The CoC has further stressed upon the scope of this tribunal apropos appealability of an Order of Remand, and has sought to rely upon the judgements of *Kaluram & Anr. v. Mehtab Bai & Anr.* [1958 SCC OnLine MP 85] and *Kuber Singh & Anr. v. Drigvijai Singh & Ors.* [1966 SCCOnLine All 366] to substantiate the same.
- 20.4.** The CoC has further placed express reliance on the judgements of *ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta* [(2019) 2 SCC 1], *Ebix Singapore* (supra) and *Dhansagar Dealers Pvt. Ltd. v. Mr. Anubrata Gangoly, RP of Carnation Industries Limited (In CIRP) and Anr.* [I.A. (IB) No. 969/KB/2024 in C.P. (IB) No. 12/KB/2021] in relation to locus of unsuccessful resolution applicant(s) and, *Committee of Creditors of Meenakshi Energy Ltd. v. consortium of Prudent ARC Limited & Vizag Minerals and Logistics P Ltd.* [Comp App (AT)(CH)(Ins) No. 166 of 2021] and *Rajputana Properties Pvt. Ltd. v. UltraTech Cement Ltd. & Ors.* [Comp App (AT)(Ins) No. 188 of 2018] in relation to confidentiality of the Resolution Plan(s).
- 21.** We have perused the materials which form part of the record hereto in the instant application, and have heard the parties, and more specifically so, the RP, CoC and the SRA, at length during the course of multiple hearings.

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**21.1.** At the outset, we make it expressly clear that the scope of remand by the Hon'ble NCLAT *vide* its Order *dated* 10.05.2024, is limited in nature and the finding(s) of this Tribunal apropos the instant application shall be read concomitant to the views already expounded by the Hon'ble NCLAT in its afore-mentioned Order.

**21.2.** The principal contention of the Applicant in the instant application is on the aspect of modification in the key commercial terms of the resolution plan by the SRA (*allegedly*) in the garb of clarification sought by RP from the Resolution Applicants and the perversity and discrimination emanating from the same. Further, we note that the Hon'ble NCLAT, *vide* its Order *dated* 10.05.2024, has already made the following observations in this regard:

“

*82. Shri Kapil Sibal, learned Senior Counsel has submitted that in the present case, discrimination was made qua the other Resolution Applicant, since the Appellant Sarda was given an opportunity in guise of seeking clarification to pay Rs.240 crores upfront payment, which was earlier not proposed. The said submission of discrimination was also pressed before the Adjudicating Authority at the time of hearing of the Application. The RP and the CoC have pleaded in their replies that under the decision of the CoC, a clarification was asked from four Resolution Applicant by email dated 08.05.2023 to give certain clarification. The email itself contemplated that clarification should be given by way of an Addendum. The Resolution Applicants, who were asked the clarification, had provided the clarification. The CoC during submission has rightly submitted that the said clarification was asked under the directions of the CoC, which is fully permissible as per the provisions of RFRP and Process Note, which empowers the CoC to ask for clarification from any Resolution Applicant. It is submitted that*



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*clarification was asked from all Resolution Applicants and there cannot be any modification of any financials by clarification and no modification was made to the earlier Resolution Plan. It is relevant to notice that the said argument was considered and did not find favour with the Adjudicating Authority. This clarification was not asked only from the Appellant – Sarda, rather, the said clarification was asked from all other Resolution Applicants. In paragraph 8.2, the Adjudicating Authority has noticed that email dated 08.05.2023 was sent to each Resolution Applicant to clarify and such clarification was sought in accordance with the decision taken in the CoC Meeting. We do not find any substance in the submission on behalf of Torrent Power Limited that any discrimination was made with other Resolution Applicants by calling clarification from Appellant – Sarda.*

*[...]*

*85. The law laid down by the Hon'ble Supreme Court above, clearly indicate that distinction has to be maintained while terming a decision as perverse. A minor infraction of procedural or any other similar reasons are not sufficient to term a decision as perverse. We have already noticed the judgment of the Hon'ble Supreme Court in M.K. Rajagopalan (supra), where Hon'ble Supreme Court has observed that commercial wisdom of CoC would come into existence and operation only when all the relevant information is available before it and is duly deliberated upon by all its Members. Thus, in event, all relevant materials are available before the CoC, which is deliberated, no perversity can be imputed in the decision. As noted above, the ground to interfere with the approval of Resolution Plan by the CoC by Adjudicating Authority are circumscribed by virtue of Section 31, sub-section (1). Thus, a fault can be found in the decision only when there is serious error in the decision-making process and by which error, the CoC is unable to take its commercial decision.*

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*86. One more submission, which was pressed by learned Counsel for the Torrent Power Limited was that under the email dated 28.01.2023 all Resolution Applicants were required to give their offer of payment of upfront and it was obligatory for all Resolution Applicants to give only upfront payment, in violation of which, the Appellant having not given entire amount as upfront, his Plan was liable to be not considered. The CoC in its reply has clearly explained that the said email was issued for eliciting the best offer from the Resolution Applicants. However, the email itself provided that it is the CoC, which has ultimate power to take a decision. It is further relevant to notice that much after email dated 28.01.2023, Process Note was issued on 12.04.2024, which Process Note envisaged payment of both upfront and deferred and Resolution Applicants were required to submit their proposal in the format set out in Appendix-1 (Identified Criteria). The Appendix-1, clearly indicated both upfront as well as deferred payment. Thus, in view of the Process Note of Appendix-1, the submission cannot be accepted that all amounts were to be offered upfront. The learned Counsel for the Appellant has also relied on Clause 4.1.8 of RFRP, which clearly provided that the CoC is under no obligation to any of the Resolution Applicant to approve the Resolution Plan, which has secured the highest value as per the Evaluation Matrix and any Resolution Plan shall be approved solely on the basis of CoC's commercial wisdom. To the same effect is Clause-9(c) and 9(d) of the Process Note dated 12.04.2023, where the CoC has reserved its right to evaluate the compliances of Resolution Plans and accept or reject the Resolution Plans.*

”

{emphasis supplied}

**21.3.** We further note that this Bench, *vide* Order dated 07.08.2023, had issued the following directions to the RP *viz.* Respondent No. 1 in the instant application:

“

- A. To submit a brief note on the corporate insolvency resolution process (“CIRP”) conducted by the RP.
- B. To indicate pages of IA for approval of resolution plan filed by the RP (i.e. I.A. No. 2794 of 2023) wherein the relevant minutes of meeting of the Committee of Creditors (“CoC”) evidencing consideration of commercial offers by the CoC are annexed.
- C. To place on record the communication exchanged between the RP and resolution applications with respect to submission of updated resolution plan consequent to discussions with the CoC before all the resolution plans were put to vote.

”

In compliance with the afore-extracted directions and in contradistinction to the averments raised by the Applicant in the instant application *via* Para [15.4] of this Order hereto; The RP has sought to place Affidavit(s) dated 10.08.2023 and 20.08.2023 in furtherance of compliance of the said Order of this Tribunal, and the said Affidavit(s) are hereby taken on record for our material consideration in the instant application.

- 21.4.** Upon a full-bore consideration of Replies filed by CoC, SRA and RP and on the express tenets of the RFRP and Process Note pertaining to the averments raised in this regard, coupled with the Hon’ble NCLAT already having made categorical observations to the same effect in para {82} and {86} as afore-extracted; We are of the considered view that the clarification sought by the RP *apropos* the SRA (*and all the other Resolution Applicants, including the Applicant in the instant application*) *vide* E-Mail(s) dated 08.05.2023, thereby does not constitute discrimination *qua* the Applicant as clarification was sought from all the resolution applicant(s). Further, we note that on a conjoint reading of the terms of Process Note and RFRP, and more specifically so, in light of clauses

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9(a) to 9(e) of the Process Note, and clauses {2.16.7}, {2.18.5(t)}, {2.9.7(d)}, {4.1.5}, {4.1.8} and {4.1.11} of RFRP, that these clauses essentially empower the CoC to seek clarification(s) from one/ all resolution applicant(s) and give effect to its ‘commercial wisdom’. We have duly perused the afore-mentioned clauses and have noted the said E-Mail(s) dated 08.05.2023, and have juxtaposed the same with the ‘Process’ that has been followed. Additionally, we have duly perused the clauses which provide for upfront and deferred payment, as set out in Appendix I of the Process Note dated 13.04.2024. We therefore opine that clarification(s) sought does **not** constitute any modification on behalf of the SRA in its resolution plan. We further opine that there has been no dereliction in the ‘Process’ (*which ought to be read in conjunction with the tenets of RFRP and the Process Note*). Moreover, in light of Hon’ble NCLAT already having given its categorical finding(s) in para {82} holding that “..We do not find any substance in the submission on behalf of Torrent Power Limited that any discrimination was made with other Resolution Applicants by calling clarification from Appellant – Sarda”, we are of the considered view that we need not dwell further on this issue-at-hand.

21.5. Further, the contention regarding perversity and/or discrimination *allegedly* meted out to other Resolution Applicant(s) (*including the Applicant in the instant application*) in relation to the same is merely conjectural in nature, as has been categorically affirmed by the Hon’ble NCLAT in para {82} its Order dated 10.05.2024. We further find no merits in the repeated reliance and a constructive-credence apropos an *alleged* newspaper report, and the same has no bearing on the merits of the resolution process and/or the application-at-hand whatsoever. We have further exhaustively dealt on the issue apropos the Scope and Jurisdiction of this Tribunal *vis-à-vis* a Resolution Plan, in **Part-III** of

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this Order hereto. On this aspect, we re-iterate the observations of the Apex Court in *Vallal RCK v. M/S Siva Industries And Holdings Limited And Others* [Civil Appeal Nos. 1811-1812 Of 2022], as cited at Para [14.6] of this Order, and more specifically so on para (27) of the said judgement as extracted hereunder:

“

*27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another 7 :*

*“95. ....However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”*

”

{emphasis supplied}

**21.6.** In so far as prayer clause (A) in the instant application is concerned whereby the Applicant has sought the copy of the resolution plan in consideration hereto, and in addition to the prayers for provision of information/ documents *vide* the Applicant’s Additional Affidavit dated 06.09.2023 (as referred to in para [17.4] of this Order); We are of the

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principal view that the same cannot be granted, in light of the judicial position, as enunciated in judgements of the Hon'ble NCLAT *viz. Rajputana Properties Pvt. Ltd. v. UltraTech Cement Ltd. [Comp App (AT)(Ins) No. 188 of 2018]* and *Meenakshi Energy Ltd. v. Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P. Ltd. [Comp. App (AT)(CH)(Ins) No. 166 of 2021]* as extracted hereunder:

- *Rajputana Properties Pvt. Ltd. v. UltraTech Cement Ltd. [Comp App (AT)(Ins) No. 188 of 2018]*, wherein the Hon'ble NCLAT held:

“

*9. [...] According to us, the resolution plan submitted by one or other Resolution Applicant being confidential cannot be disclosed to any competitor Resolution Applicant nor any opinion can be taken or objection can be called for from other Resolution Applicants with regard to one or other resolution plan.*

”

*{emphasis applied}*

- *Meenakshi Energy Ltd. v. Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P. Ltd. [Comp. App (AT)(CH)(Ins) No. 166 of 2021]*, wherein the Hon'ble NCLAT held:

“

*111. In fact, the 'Resolution Plan' furnished by one or the other 'Resolution Applicant' is a 'confidential' one and it cannot be disclosed to any 'Competing' 'Resolution Applicant' nor any view can be taken or objection can be asked for from other 'Resolution Applicants' in regard to one or the other 'Resolution Plan'. [...]*

”

*{emphasis applied}*

**21.7. We are thus not inclined to approve the instant application *viz.* I.A. No. 3399 of 2023, and the same deserves to be Dismissed.  
Ordered accordingly.**

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----- **PART-III** -----

22. The limited aspect of ‘incomplete financial data placed before the CoC of the Corporate Debtor’ in the decision-making process while approving the resolution plan, emanates from the (*now set-aside*) NCLT Order dated 06.10.2023 and the resultant categorical observation(s) of Hon’ble NCLAT in para {56} of its Order dated 10.05.2024, whereby it sought to observe that “*It was incumbent on the Adjudicating Authority to give opportunity to the RP, CoC and SRA before coming to a finding that incomplete financial data was provided to the CoC.*” This categorical observation by Hon’ble NCLAT, is pursuant to its discussion in Para Nos. {50}, {51} and {52} and {55} of the said Order and the same has been extracted overleaf:

“

*50. When we look into the impugned order passed by the Adjudicating Authority, it is clear that Adjudicating Authority has proceeded to evaluate the treatment of Bank Guarantee by all the Resolution Applicants and further noticed that as BDO has not assigned any financial value to the 10% equity upside offered of the SRA in two cases to Financial Creditors.*

*51. In paragraph 8.17.1, 8.19, 8.20 and paragraph 9 following observations have been made:*

*“8.17.1 We are of the considered view that after taking into account the amounts, which got omitted by the Process Advisor, the above scores would also undergo change. Accordingly, any decision based on incorrect data is bound to be perverse and not fair, notwithstanding, that the COC may have decided exactly what they decided, even if updated financial numbers would have been placed before them.*

*8.19 This Bench could not find the rationale for not including the fair market value of upside equity in the financial proposals placed before CoC before the*

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*voting, and why the value of upside equity website was not considered as a part of upfront amount while the valuation criteria considered the equity upside offered to the financial creditor within 6 months as upfront cash.*

*8.20 We find that the BDO has considered amount paid towards replacement of BGs as money being offered to Secured Financial Creditors, which is not in conformity with the minutes of meeting dated 06.05.2023, which recorded the deliberations taken place at that meeting as “The representative of SBI mentioned that all the Bank Guarantees are secured by 100% cash margin. Bank Guarantees do not form part of the claim since the guarantees are not considered exposure on the company because of 100% cash margin available to secure the BGs. While submitting the claim to RP, SBI has duly mentioned this fact in the claim form. In addition, there are a number of judgements and as per which, as long as the liability of BG issuing bank remains, no one can lay it’s claim against the margin money”. We feel that the amount offered towards replacement of the BG cannot form part of the upfront amount offered to the financial creditor and considered as such in the analysis. Nonetheless, we find that the total Bank Guarantees, required to be replaced to keep the Corporate Debtor is Rs. 103.83 crores, and the margin money against remaining Bank Guarantees is free cash available to the Corporate Debtor, except margin money against Bank Guarantees to the lenders of the associate company of the Corporate Debtor which was to go to such lenders in terms of RFRP.*

*9. This Bench takes note of legal proposition that the Adjudicating Authority cannot interfere with the commercial wisdom of CoC, however, this bench feels that the decision taken by CoC on the basis of incomplete financial data placed before it for such decision making process by the legal advisor, process advisor and RP, makes such decision making process perverse and amenable to interference by this bench. Though, this bench cannot allow the prayer for supply of resolution plan of SEML and an opportunity to file objection to these*



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*two applicants in IA-2794/2023, this bench consider it appropriate to remit the Resolution Plan of SEML, which is pending for final orders in IA 2794/2023, to the committee of creditors for their re consideration of all the plans, found feasible and viable by the Process Advisor, in the light of the above observations.”*

*52. We have noticed that in the I.A. 3399/2023 filed by the Torrent Power Limited, there was no pleading with regard to the treatment of Bank Guarantee and value to the 10% of equity upside offered by two Resolution Applicants **and the Adjudicating Authority had jumped to the conclusion that decision based on incorrect data is found to be perverse and not fair. The discussion in the impugned order clearly indicates that the decision is based on factors which were not pleaded in the I.A. 3399/2023 filed by Torrent Power Limited.***

[...]

*55. From the materials on record and pleadings of the party as noted above, it is clear that order passed by the Adjudicating Authority on 06.10.2023 is on the findings which are **not based on any pleadings** raised by Torrent Power Limited and Vantage Point Asset Management Pte. Ltd. in their application. Torrent Power Limited and Vantage Point Asset Management Pte. Ltd. were unsuccessful Resolution Applicants and they filed the applications subsequent to the order was reserved in the Plan approval application. Before the Adjudicating Authority for the first time the applications I.A. 3336/2023 & I.A. 3399/2023 listed on 07.08.2023 and on the same day, orders were reserved on the said applications, **neither any notice was issued in the application nor any opportunity was given to file a Reply to the applications by the RP, CoC or SRA. The basis of the order of the Adjudicating Authority is that incomplete data was provided to the CoC by the RP and its Process Advisor, hence the decision of the CoC is perverse.***

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{emphasis applied}

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**23.** In consonance with the NCLAT Order *dated* 10.05.2024, we had duly accorded an opportunity to the Respondent(s) *viz.* RP, SRA and CoC to file their respective Replies in the captioned application. Upon perusal of the same and at the backdrop of having heard the Respondent(s) at length during the course of oral hearings on the limited aspect of ‘incomplete financial data placed before the CoC of the Corporate Debtor’ in the decision-making process while approving the resolution plan;

**23.1.** The **RP** submits that the unsuccessful resolution applicant is attempting to exercise a vested right for approval of the resolution plan on a ground that Torrent Power Limited (*viz. Applicant in I.A. No. 3399 of 2023*) has purportedly offered highest upfront payment. The RP has placed material reliance on the 34<sup>th</sup> Meeting of CoC *dated* 19.10.2023, wherein “.. *the CoC re-assessed the financial data and various other aspects of the resolution plans received in the CIR Process of SKS. The minutes of the 34<sup>th</sup> CoC meeting dated 19.05.2023 categorically reflect that, the CoC after deliberating upon the commercial aspects of the resolution plans affirmed that no information had been incorrectly or incompletely placed before the CoC while consideration of the resolution plans in the CIRP of SKS.*” The RP thus re-iterates that “..*there is an intrinsic assumption that financial creditors are aware about the viability of the corporate debtor and the feasibility of proposed resolution plan.*”

**23.2.** The **SRA** submits that all resolution applicants were given ample opportunity to revise their bids from time to time by the CoC and RP and that, “..*there was no change in the key commercial terms by the SRA*” pursuant to the provision of response(s) to clarifications sought by the RP and the CoC (*for which, the SRA has sought to rely upon its Addendum in relation to its response to the clarifications sought for by the RP, which forms part of the record hereto*) , and on account of its resolution plan being approved by 100% voting share, the commercial wisdom of CoC

apropos the same is thereby non-justiciable. The SRA further contends that no grounds for interference has been made out by the Applicant(s), and more specifically so in relation to the contentions of Torrent Power Limited (viz. Applicant in I.A. No. 3399 in 2023), this adjudicating authority “.. cannot defer consideration of a duly approved Resolution Plan merely on the basis of conjectures and surmises drawn by an unsuccessful resolution applicant basis newspaper report and its own assumptions and presumptions.”

**23.3.** The CoC submits that the resolution plan of the SRA was commercially the best as far as treatment of bank guarantee(s) is concerned as it was offering the entire amount of 180.4 Cr to the benefit of CoC, and that it was CoC’s commercial wisdom to consider the same for its evaluation in different resolution plans after thorough negotiations held with the resolution applicants. To substantiate the same, the CoC has sought to rely upon the following table, in relation to the different treatment provided by all the resolution applicants including SRA, TPL and VPAM:

(INR in Cr)

Table 1: Summary of BGs with treatment given by RA

S.no	Beneficiary of the BG	Amount of BG	JPL	NTPC Limited	SEML	TPL	VPAM
1	South Eastern Coal Fields (SECL)	36.3	0.0	0	36.3	27	0
2	Rajasthan discoms (Ajmer, Jodhpur & Jaipur)	30.0	0	0	30.0	23	0
3	Powergrid Corporation of India Limited (PGCIL)	37.5	0	0	37.5	38	0
4	Customs & Excise BGs* (exclusive margin for the benefit of erstwhile consortium)	18.4	0	0	18.4	18	0
5	Customs & Excise BGs* (other than exclusive margin)	58.2	0	0	58.2	58	0
6	Lumpsum amounts being offered to FCs in lieu of BG margin	-	83*	-	-	-	50
<b>TOTAL</b>		<b>180.4</b>	<b>83.0</b>	<b>0.0</b>	<b>180.4</b>	<b>163.9</b>	<b>50.0</b>

\*Note: The JPL Resolution Plan provides that in lieu of the underlying margin money accruing solely for the benefit of the Corporate Debtor, contribution on an ex-gratia basis for an amount of INR 100.10 Crore was proposed towards various payouts under the Resolution Plan, of which INR 83 Crore was proposed for financial creditors.

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Furthermore, on the aspect of equity value apropos the resolution plans, the CoC submits that the scoring was in due consonance with the Evaluation Matrix and that the it has confirmed the veracity of same in its subsequent meetings, as shall be dealt with in the later part of this Order.

- 24.** Before embarking upon the afore-stated, we deem it fit to expand upon the Scope and Jurisdiction of this Tribunal *vis-à-vis* a Resolution Plan. It is trite in law that the Adjudicating Authority, while deciding on the viability of a Resolution Plan, must conform to the metes and bounds of Section(s) 30(2) and 31(1) of the IBC, 2016, as extracted hereunder:

“

**30. (2)** *The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
- (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;*
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*
- (d) the implementation and supervision of the resolution plan;*
- (e) does not contravene any of the provisions of the law for the time being in force;*
- (f) conforms to such other requirements as may be specified by the Board.*

**31 (1)** *If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its*

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*employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.*

[...]  
”

25. We further note that Hon’ble NCLAT *vide* its Order dated 10.05.2024, has exhaustively dealt with this aspect in-toto, and the relevant paras apropos the same have been extracted hereunder:

“

[...]

65. *The submissions advanced by learned Counsel for the Appellant is that the jurisdiction of the Adjudicating Authority to interfere with the approval of Resolution Plan in commercial wisdom of CoC is confined to Section 30, sub section (2). It is submitted that no other ground is available for the Adjudicating Authority to interfere with the approval of Resolution Plan by the CoC. The learned Counsel submits that under Section 31, sub-section (1), the Adjudicating Authority jurisdiction is only to satisfy itself that Plan as approved by CoC under sub-section (4) of Section 30 meets the requirement of Section 30, sub-section (2) of the Code. It is submitted that if the Plan is approved by the CoC, there is no discretion left in the Adjudicating Authority to reject the Plan unless the Plan violates Section 30(2). The learned Counsel appearing for Torrent Power Limited, Shri Kapil Sibal refuting the submission submits that the Adjudicating Authority has rightly passed order, since incomplete data was placed before the CoC. The Adjudicating Authority has also rightly observed that it has jurisdiction to interfere with the Plan approved by the CoC, if there is discrimination or perversity. The learned Counsel for both the parties in support of their submissions have placed reliance on various judgments of Hon’ble Supreme Court and this Tribunal, which shall be noticed hereinafter.*

66. *We may first notice the judgments relied by the Appellant in support of its submission. The first judgment, which is relied by the Appellant is judgment of the Hon’ble Supreme Court in K. Sashidhar vs. Indian Overseas Bank & Ors. – (2019)*

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**12 SCC 150.** *It is submitted that the Hon'ble Supreme Court has held that there is intrinsic assumption that Financial Creditors are fully informed about the viability of the Corporate Debtor and feasibility of the proposed Resolution Plan. Reliance is placed on paragraphs 52 and 64, which are as follows:*

*“52. As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors 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 assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial*

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*wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.*

*64. Suffice it to observe that in the I&B Code and the regulations framed thereunder as applicable in October 2017, there was no need for the dissenting financial creditors to record reasons for disapproving or rejecting a resolution plan. Further, as aforementioned, there is no provision in the I&B Code which empowers the adjudicating authority (NCLT) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under Section 30(4) of the I&B Code. At best, the adjudicating authority (NCLT) may cause an enquiry into the “approved” resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors — be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the appellate authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial creditors albeit by requisite per cent of voting share to approve the resolution plan; and in the process authorise the adjudicating authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of jurisdiction vested in the adjudicating authority under Section 31 of the I&B Code dealing with approval of the resolution plan.”*

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**67.** Next judgment relied by learned Counsel for the Appellant is **Pratap Technocrats Pvt. Ltd. vs. Monitoring Committee of Reliance – (2021) 10 SCC 623**, wherein the Hon’ble Supreme Court in paragraph 44 laid down following:

*“44. These decisions have laid down that the jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the adjudicating authority or the appellate authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.”*

**68.** Next judgment relied on is **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Limited & Ors. – (2022) 1 SCC 401**, wherein in paragraph 107.1, following has been laid down:

*“107.1. Such limitations on judicial review have been duly underscored by this Court in the decisions aboveresferred, where it has been laid down in explicit terms that the powers of the adjudicating authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to adjudicating authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for : (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.”*



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69. *The Hon'ble Supreme Court further in Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Profession of ACIL Limited & Anr., Civil Appeal No.1527 of 2022 again reiterated that Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives power not to approve the Plan, only when the Resolution Plan does not meet the requirements of the Code. In paragraph-31, following has been laid down:*

*“31. It is worthwhile to note that the Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives power not to approve only when the Resolution Plan does not meet the requirement laid down under Section 31(1) of the Code, for which a reasoned order is required to be passed. We may state that the NCLT’s jurisdiction and powers as the Adjudicating Authority under the Code, flow only from the Code and the Regulations thereunder. It has been held in Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited, (2022) 1 SCC 401:*

*‘273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its adjudicating limited jurisdiction, authority finds the any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.’*

*(emphasis supplied)”*

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70. In *Kalparaj Dharamshi v. Kotak Investment Advisors Ltd. – (2021) SCC OnLine SC 204*, again the same proposition has been reiterated by the Hon’ble Supreme Court, which is as follows:

“172. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, Nclat was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form ‘G’, in the event he found, that the proposals received by it prior to the date specified in last Form ‘G’ could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of “commercial wisdom”, Nclat was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.”

71. Judgment of this Tribunal in *Express Resorts and Hotels Ltd. v. Amit Jain, Resolution Professional of Neesa Leisure Limited – Company Appeal (AT) (Insolvency) No.1158 of 2022* has been relied, where in paragraph 25, following has been laid down:

“25. The present is not a case where in the process, which was completed by approval of the Resolution Plan by the CoC any breach has been committed. When after following the provisions of the Code and Regulations, the

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*Resolution Plan has been approved by the Adjudicating Authority, the said approval by the CoC has to be respected and cannot be interfered with in exercise of judicial review by the Adjudicating Authority. More so, when there is no such ground that the Plan approved, violates any of the provisions of Section 30, sub-section (2). The object of IBC is to revive the Corporate Debtor and put it again on the track. When a Resolution Plan, has been approved after due deliberations, in exercise of commercial wisdom of the CoC, it has to be accepted that Corporate Debtor was decided to be revived by the Resolution Plan. The mere fact that certain other offers have been received after the approval of the Resolution Plan, CoC cannot have a change of heart and start clamoring before the Adjudicating Authority that they have no objection to sending back the Resolution Plan for reconsideration. This will be permitting an unending process, since by passing of time situation keeps on changing. After coming to know about the financial offer in a Plan, which has been approved by the CoC, any subsequent offer by any entity, who did not participate in the process earlier, cannot be entertained.”*

**72.** *Learned Counsel for the Appellant further relied on the judgment of this Tribunal in **PNC Infratech Limited vs. Deepak Maini and Ors. – Company Appeal (AT) (Insolvency) No.143 of 2020**, where this Tribunal held that there is no mechanism under the Code that gives right to the Unsuccessful Resolution Applicant to challenge the decision of CoC, unless the Plan is in contravention of any law being in force or there is material irregularity in the powers exercised by the RP. In paragraph 39, following has been held:*

*“39. Further, there is no such mechanism under the Code that gives the right to the Unsuccessful Resolution Applicant to challenge the score granted as per the evaluation matrix prepared by the CoC and the Resolution Professional as per the provisions of CIRP Regulations. Though, Section 61 of the Code provides Appeals against the orders of the Adjudicating Authority and Sub-*

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*section (3) thereof provides an Appeal against an order approving a Resolution Plan under Section 31 which may be filed on the following grounds namely:*

- (i) The approval resolution plan is in contravention of the provisions of any law for the time being enforce.*
- (ii) There has been material irregularity in exercise of the powers by the Resolution Professional during the Corporate Insolvency Resolution Period.*
- (iii) .....*
- (iv) .....*

*It is unequivocal, in preferring the Appeal by the aggrieved person under the above provision more particularly sub-section (3)(i) of Section 31 thereof which specifically provides that the approved Resolution Plan can be questioned / challenged on the ground that the plan is in contravention of the provisions. This Tribunal in clear terms observes and holds that there is no contravention in approving the Resolution Plan either by the CoC or by the Adjudicating Authority. The plan approved is in accordance with law and there is no material irregularity and cannot go into the technical issues with regard to evaluation and score matrix which is in the exclusive domain of the CoC.”*

**73. The judgments of the Hon’ble Supreme Court and this Tribunal as noted above, thus, clearly lays down jurisdiction of the Adjudicating Authority under Section 31, sub-section (1). The Adjudicating Authority in event when the Resolution Plan complied with the provisions of Section 30, sub-section (2), has to approve the Resolution Plan.**

”

{emphasis supplied}

26. We further note that pursuant to, and during the extant operation of, the NCLT Order dated 06.10.2023; The CoC of the Corporate Debtor sought to conduct its 34<sup>th</sup> Meeting dated 19.10.2023, with the principal agenda viz. **TO**

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**DISCUSS THE NEXT STEPS IN THE CIRP OF THE CORPORATE DEBTOR WITH RESPECT TO THE ORDER OF THE NCLT DATED 06.10.2023'** and further corroborated on factual aspects “*..by perusing the relevant portions of the Resolution Plans and the clarifications and Addendums submitted by the respective Ras, in order to ensure that the facts are reviewed in detail yet again.*” The record also indicates that Hon’ble NCLAT has also taken note of the same in para {31} of its Order dated 10.05.2024.

**26.1.** Apropos the same, the CoC sought to have an express discussion on various aspects emanating from the (*now set-aside*) NCLT Order dated 06.10.2023. The CoC recorded three observations pursuant to the said Order in the afore-mentioned meeting of the CoC, as extracted hereunder:

“

*4.1.3.4 Upon the request of the CoC, the RP and his Counsel summarized the major findings in the order that have been relied upon by NCLT, as follows:*

**4.1.3.4.1 OBSERVATION 1:**

***Amounts offered to Financial Creditors in lieu of Bank Guarantee (BG) replacement and release considered is incorrect.***

*The bench is of the opinion that SEML has offered lower amounts to the Financial Creditors than Torrent Power Limited (TPL) and VPAM, out of the BG margins released.*

**4.1.3.4.2 OBSERVATION 2:**

***Non-inclusion of equity upside in the upfront values while scoring the plans***

*The bench is of the opinion that equity offered by Jindal Power Limited (JPL) and VPAM should have been valued and added to upfront amounts and scoring should have been then arrived at with the inclusion.*

**4.1.3.4.3 OBSERVATION 3:**

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***Inclusion of the amounts offered to Financial Creditors in lieu of BG replacement in both Parameter 7 & Parameter 1 of Evaluation Matrix, and subsequent scoring arrived at basis this treatment is incorrect***

*The bench is of the opinion that addition of the amounts being offered to Financial Creditors via the BG replacement route ought not to have been added to the upfront amounts.*

”

{emphasis supplied}

**26.2.** In relation to the afore-stated Observations of the CoC in its 34<sup>th</sup> Meeting dated 19.10.2023, the minutes of the same reveal that the CoC has sought to individually assess the resolution plans submitted by all the resolution applicants (*including the SRA herein*) in Clauses (4.1.4.1) to (4.1.4.11) thereto, apropos its observations as encapsulated hereunder:

- The Observation Nos. 1 and 3, as afore-cited in Para No. [21.6] above, have been discussed by the CoC in the said 34<sup>th</sup> Meeting, and the portion of the minutes of the said CoC Meeting reflecting a discussion on the aspect of Bank Guarantee(s) apropos all Resolution Applicants, and more specifically so, the SRA herein, have been extracted hereunder:

“

**4.1.4 OBSERVATION 1 & 3**

*TO DETERMINE THE POSITION REGARDING REPLACEMENT/CONTINUATION OF BANK GUARANTEES AND RELEASE OF UNDERLYING MARGIN MONEY BY THE RESOLUTION APPLICANTS AND SUBSEQUENT CONSIDERATION BEING OFFERED TO THE COC IN LIEU OF THE BANK GUARANTEE MARGIN MONEY AND TO CONSIDER THE OBSERVATIONS AS REGARDS SCORING OF THE SAME IN THE EVALUATION MATRIX.*

[...]

**4.1.4.1** *The RP briefed the CoC that as on the date of submission of the Resolution Plans, the Bank Guarantees (BGs) amounted to INR 180.49 Cr, which were backed by 100% margin. The BGs were issued by State Bank of India and he presented the following summary of the BGs for the benefit of the CoC, with the treatment accorded by each of the RAs who submitted the final Resolution Plans indicated against each category of the BG*

(INR in Cr)

**Table 1: Summary of BGs with treatment given by RA**

S.no	Beneficiary of the BG	Amount of BG	JPL	NTPC Limited	SEML	TPL	VPAM
1	South Eastern Coal Fields (SECL)	36.3	0.0	0	36.3	27	0
2	Rajasthan discoms (Ajmer, Jodhpur & Jaipur)	30.0	0	0	30.0	23	0
3	Powergrid Corporation of India Limited (PGCIL)	37.5	0	0	37.5	38	0
4	Customs & Excise BGs* (exclusive margin for the benefit of erstwhile consortium)	18.4	0	0	18.4	18	0
5	Customs & Excise BGs* (other than exclusive margin)	58.2	0	0	58.2	58	0
6	Lumpsum amounts being offered to FCs in lieu of BG margin	-	83*	-	-	-	50
<b>TOTAL</b>		<b>180.4</b>	<b>83.0</b>	<b>0.0</b>	<b>180.4</b>	<b>163.9</b>	<b>50.0</b>

[...]

**4.1.4.7 REVIEW OF THE RESOLUTION PLAN OF SEML**

**(a)** *The RP apprised the members of the CoC that as per the terms of the SEML Resolution Plan, SEML has offered the entire amount of margin money of INR 180.49 Cr (inclusive of exclusive margin of INR 18.4 Cr dealt as per RFRP) as consideration to the Financial Creditors towards BG margin and have also proposed to continue/replace all the existing bank guarantees to the tune of INR 1 80.49 Cr. Accordingly, the maximum score of 5 was allotted for Parameter 7 and scoring was also done in Parameter 1 (upfront amounts) for the amounts being offered to financial creditors.*

**(b)** *The terms of the SEML Resolution Plan (alongwith the clarifications thereto) were presented and read out for the benefit of the*

*CoC members, including Clauses 6.3.13 to Clauses 6.3.16 which deal with Bank Guarantees. [...]*

*(c) Thereafter, Annexure 3 of the Resolution Plan that listed down the BGs was also presented for the benefit of the CoC, and has also been reproduced here for ease of reference. The attention of the CoC was brought to the fact that BGs listed at Item no 1 to Item no 5 in the table in Annexure 3 have been termed as “Relevant BGs” by SEML and have been considered as one category of BGs in the Resolution Plan and BGs listed at Item no 6 and Item no 7, being the customs and excise BGs inclusive of the exclusive margin money BGs have been considered as another category of the BGs in the Resolution Plan.*

ANNEXURE 3: BANK GUARANTEES (as on 28 FEBRUARY 2023)

S. No.	Name of the Beneficiary	Amounts (in Crores)	Remarks
1.	Power Grid Corporation of India Limited	37.50	A claim has been filed by PGCIL for this amount which has been duly admitted by the RP.
2.	South Eastern Coal fields Limited	36.33	This was provided under the Coal Supply Agreement.
3.	Ajmer Vidyut Vitran Nigam Limited (Rajasthan PPA)	8.14	Issued to Rajasthan Discom
4.	Jaipur Vidyut Vitran Nigam Limited (Rajasthan PPA)	12.08	Issued to Rajasthan Discom
5.	Jodhpur Vidyut Vitran Nigam Limited (Rajasthan PPA)	9.78	Issued to Rajasthan Discom
6.	Excise Department	69.77	
7.	Customs	6.89	
TOTAL		180.05	

*[...]*

*However, the treatment for the margin money for BGs listed at Item no 6 and Item no 7 was not clear and hence the RP, as guided by the CoC, sought a clarification from SEML. It was highlighted that similarly clarifications were sought from JPL, TPL and VPAM for the clauses which were not clear in their respective Resolution Plans {as detailed below).*



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[...]

*In view of the review of the terms of the **SEML Resolution Plan** and after detailed deliberations with the Counsels, the CoC members were of the view that the observations of the Hon'ble NCLT appears to be at variance from the terms of the SEML Resolution Plan and further seems to be factually incorrect, as SEML is offering an amount of INR 180 Cr to the financial creditors and is also replacing/continuing the BG margin for the whole of the INR 180 Cr. Out of the INR 180 Crore, INR 162 Crore will be to the members of the CoC and INR 18.14 Crore in respect of exclusive margin money will be treated in accordance with the RFRP. Accordingly, the scoring as well on Parameter 1 and Parameter 7 of the Evaluation Matrix seems to be appropriate.*

”

{emphasis applied}

- The Observation No. 2, as afore-cited in Para No. [21.6] above, has been discussed by the CoC in Clauses (4.1.5) to (4.1.5.7) in the said 34<sup>th</sup> Meeting of the CoC dated 19.10.2023. The portion of the minutes of the said CoC Meeting reflecting the same, has been extracted hereunder:

“

**4.1.5 TO DETERMINE THE POSITION REGARDING EQUITY OFFERED BY JPL AND VPAM TO CONSIDER THE OBSERVATIONS AS REGARDS SCORING OF THE SAME IN THE EVALUATION MATRIX.**

[...]

**4.1.5.5** *The RP briefed the CoC that, as seen in the extracts of the Resolution Plan and clarifications of JPL and VPAM, in case of JPL, the buy back value was determined at INR 27 Crore. However, in case of VPAM, the buyback value was not identified. The same was noted by all present.*

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**4.1.5.6** *The CoC members stated that in view of the above, it becomes clear that the **Evaluation Matrix** requires that amounts considered in one category cannot be considered for any other category. In view of this, the observation of NCLT in the order that the **equity upside** which has already been scored on Parameter 4 (Equity upside) of the Evaluation Matrix should also have been valued and included in upfront amount scoring in Parameter 1 seems to be at variance with the terms of the Evaluation Matrix. In view of the above, score was allotted to the RAs for giving of equity upside. However, valuation of that equity and inclusion and upfront amount would not be correct in terms of the evaluation matrix, and would result in double counting and hence it was not done. This understanding was confirmed by the CoC counsel and the RP counsel.*

**4.1.5.7** *The representative of BoB opined that while the above treatment is in line with the Evaluation Matrix, the **Evaluation Matrix** only serves as a guidance to the CoC and ultimately it is the commercial wisdom of the CoC members to decide on the approval of a resolution plan in accordance with the provisions of the **IBC**. Also, while there may be no scoring allocated for NPV, the amounts being offered towards equity, contingent receivables were also factored in the decision making process by the CoC. The representative of SBI concurred with the same.*

”

{emphasis applied}

**26.3.** In consonance with the discussion on the afore-stated aspects in the 34<sup>th</sup> Meeting of the CoC dated 19.10.2023, we now find it germane to extract the Conclusion(s) and/or further Observation(s) of the CoC following the said CoC Meeting, as hereunder:

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“

4.1.6. **CONCLUSION**

*The RP then stated that as all the major three major observations of the NCLT Order have been discussed at length, the relevant facts have been reviewed and rechecked, it is understood that there is no additional information that emerges from the review of the Resolution Plans and the clarifications submitted by the RAs. He checked this understanding with the Counsels and the CoC members, who concurred with this. Hence, it may be reasonably concluded that **there is no information that was incorrectly or incompletely considered in the decision-making process by the CoC.***

*The RP also apprised the members of the CoC that NCLT has included a remark in the order that incorrect financial information has been placed by the legal advisors, process advisor and the RP before the CoC. In so far as the remark concerning RP is concerned, **the RP stated that all the information available with the RP was presented to the CoC for its decision making and to the best of his knowledge no incorrect information has been provided and that the process has been conducted in a transparent manner, details in relation to which is a matter of record. Both BoB and SBI representatives concurred with this.** The counsel of the RP added that the RP might consider filing an appeal to get these remarks expunged. The same was noted by all present.*

*In view of the same, the RP invited the views of the CoC and the counsels of the way forward in light of the NCLT Order.*

*The CoC counsel apprised the CoC members that the observations made by the Hon'ble NCLT (including in paragraph 8.13.1 and 8.17) have been reconsidered by the CoC members during the course of the meeting in light of the terms of the Resolution Plans submitted by JPL,*

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*VPAM, SEML and TPL alongwith the clarifications and Addendum submitted by the respective RAs. In light of such reconsideration of each of the Resolution Plans (as detailed above), there seems to be no variance from the earlier factual position decided by the CoC members during the 30<sup>th</sup> and 31<sup>st</sup> CoC meetings and the decision arrived at by the CoC members seems to be unaltered.*

*[...]*

*After discussions and deliberations, the representative of BoB stated that it emerged that:*

- 1) The observations made by the Hon'ble NCLT were in variance with the terms of the resolution plans (as discussed in detail above) and therefore factually incorrect;*
- 2) The grounds upon which the Hon'ble NCLT relied to remit the matter back to CoC, were never argued, neither was a clarification sought by NCLT in these matters.*
- 3) The CoC in the present meeting had a detailed review of the documents, and has not found any factual inaccuracies referred to by the Hon'ble NCLT, and it has emerged that all numbers were considered correctly by the CoC and its advisors.*
- 4) Evaluation matrix is only a guiding factor for decision making, and that there are other parameters also which CoC looks at while evaluating the Resolution Plans.*

*In conclusion, the representative of the **BoB** stated that after due reconsideration of the terms of the Resolution Plans **and** clarification, he was of the view **the earlier finding were in order.***

*The representative of **SBI** concurred with the views.*

*[...]*

”

*{emphasis supplied}*

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27. In consonance with the said agenda(s) and on the limited aspects ‘incomplete financial data placed before the CoC of the Corporate Debtor’ in the decision-making process while approving the resolution plan, the Hon’ble NCLAT in its Order dated 10.05.2024, has made the following fundamental observations:

“

*31. In accordance with the impugned order the Resolution Plans received by the RP were reviewed by the CoC in 34th CoC Meeting dated 19.10.2023 wherein CoC has affirmed the said position and has re-verified the numbers and affirmed that RP did not place incorrect or incomplete Financial Data before the CoC.*

[..]

*77. The CoC being led by two leading Banks, i.e., Bank of Baroda and State Bank of India, having vote share of 92.77% and 7.23% respectively was well aware of the financial intricacies and there has to be intrinsic assumption that the Financial Creditors were well aware of all financials of each Resolution Plan.*

*78. In Civil Appeal No. 2801/2020 in the matter of ‘Deccan Value Investors L.P. & Anr.’ Vs. ‘Dinkar Venkatasubramanian & Anr.’, the Hon’ble Supreme Court in the above case was considering the appeal against an order of this Tribunal, which has set aside an order of Adjudicating Authority approving a Resolution Plan. In the above case, Hon’ble Supreme Court has observed that financial statements and data are examined by domain and financial experts. It was further observed that it is rather strange to argue that the super specialists and financial experts were gullible and misunderstood the details, figures or data. Following observations were made by the Hon’ble Supreme Court in para 15:*

*“15. Resolution plans are not prepared and submitted by lay persons. They are submitted after the financial statements and data are*

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*examined by domain and financial experts, who scan, appraise evaluate the material as available for its usefulness, with caution and scepticism. Inadequacies and paltriness of data are accounted and chronicled for valuations and the risk involved. It is rather strange to argue that the superspecialists and financial experts were gullible and misunderstood the details, figures or data.....”*

”

{emphasis applied}

28. On a conjoint reading of the afore-extracted paras of the NCLAT Order dated 10.05.2024, and upon perusal of materials hereto; We are of the shared view that the averments raised by the Applicant(s) in their Oral submissions, though not pleaded in their IAs bearing 3336 of 2023 and/or 3399 of 2023, have been adequately addressed at the behest of CoC as noted in para [26.3] of this Order, and affirmed by Hon’ble NCLAT at para [27] of this Order. As afore-stated, the Scope and Jurisdiction of this Tribunal while examining various tenets of a Resolution Plan, has to be conformed within the guard-rails of Section 30(2) and 31 of IBC, 2016. We have further taken note of the judgements cited by the Hon’ble NCLAT in its Order in this regard, and are in principal agreement with the same.
29. To contextualise further, the scope of inquiry endowed to this Adjudicating Authority is apropos the (complete) financial data to be placed before CoC for it to arrive at a considered view in exercise of its commercial wisdom. The tenets of bank guarantee(s), margin money infusion, and the treatment of equity, which are essentially a stratum of ‘financial data’, have been thoroughly examined by the CoC, in its afore-stated discussion. We re-iterate that it is neither open for this Tribunal to venture into probing about the interpretation of such financial data, nor can it assume to itself powers of a court of equity in this limited regard. We further note that the CoC in its 34<sup>th</sup>

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meeting has thoroughly gone into various aspects raised leading up to (*and pursuant to*) the (*now set-aside*) NCLT Order and has affirmed on record that it has carried out its due diligence while following Due 'Process', as set out by the RFRP read in conjunction with Process Note.

30. Upon having factored-in all the relevant materials cited above, and averments raised by the parties hereto; We are of the considered view that, nothing emerges from the submissions and/or materials forming part of the record herein, to demonstrate any deviation in the 'process' (*as set out in the RFRP read in conjunction with Process Note*) or that relevant 'financial data' was not placed before the CoC for its principal consideration. The afore-extracted minutes of the 34th Meeting of the CoC dated 19.10.2023 clearly affirm that the CoC has re-checked the factual (*including the financial*) tenets by categorically affirming that “*..all numbers were considered correctly by the CoC and its advisors.*”, more specifically so *in relation to* Clauses (6.3.13), (6.3.14), (6.3.15) and (6.3.16) of the resolution plan of the SRA herein as noted by the CoC, and has further sought to delve into the findings of the (*now set-aside*) NCLT Order and has thereby re-iterated its earlier position in this regard that “*..there seems to be no variance from the earlier factual position decided by the CoC members during the 30<sup>th</sup> and 31<sup>st</sup> CoC meetings and the decision arrived at by the CoC members seems to be unaltered.*”
31. Upon conflating and being bound by the nature (*and scope*) of jurisdiction exercisable by this Adjudicating Authority in this regard, more specifically so, in light of the Apex Court's judgement in *Ngaitlang Dhar v. Panna Pragati Infrastructure Private Limited* [CA No. 3665-3666 of 2020] and *Vallal RCK v. M/S Siva Industries And Holdings Limited And Others* [Civil Appeal Nos. 1811-1812 Of 2022] as afore-extracted respectively in para nos. [14.2] and [14.6] of this Order, concomitant to observations of Hon'ble NCLAT in this regard in para {73} of its Order dated 10.05.2024 and from a perusal of materials (*including*

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*the minutes of 34<sup>th</sup> CoC Meeting dated 19.10.2023*) relied upon the parties herein; We are of the shared view that the CoC has adequately dealt with the issue apropos ‘incomplete financial data placed before the CoC of the Corporate Debtor in the decision-making process while approving the resolution plan’ and has categorically affirmed that it “*..has not found any factual inaccuracies referred to by the Hon’ble NCLT, and it has emerged that all numbers were considered correctly by the CoC and its advisors.*”. We are therefore of the principal view that in light of the afore-stated, it is not open for this Adjudicating Authority to undermine the commercial wisdom of CoC by acting as a court of equity, and that the objectives of the Code warrant due primacy to the commercial and/or business decisions taken in this regard. **We are thus not inclined to consider the contention that complete financial data has not been placed before the CoC of the Corporate Debtor in the decision-making process, while approving the resolution plan, in consideration hereto.**

----- **PART-IV** -----

32. In consonance with the NCLAT Order, and after having dealt with the aforementioned IAs, we now find it germane to turn to the captioned Interlocutory Application bearing I.A. No. 2794 of 2023, filed by the Applicant RP in the matter of the Corporate Debtor herein.
33. During the pendency of the captioned application and in consonance with established tenets of judicial prudence; We have further deemed it fit to additionally consider two Interlocutory Applications and two Intervention Petitions, as detailed hereunder:
- 33.1. Two Interlocutory Applications bearing I.A. Nos. 3654 of 2024 and 3286 of 2024 are being dealt hereto in relation to the matter-at-hand, as encapsulated hereunder:



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- 33.1.1.** The Interlocutory Application bearing I.A. No. 3654 of 2024 has been filed by **Guangzhou Green Science Energy Treatment Engineering and Technology Company Limited** against the RP and the SRA in the matter of the Corporate Debtor in the captioned application. In relation to an Arbitration Award, passed in favour of the Applicant as against the Corporate Debtor, which is admittedly pending adjudication before the Hon'ble High Court of Chhattisgarh; The Applicant in the instant application seeks admission of its claim *apropos* the said Arbitral Award, and for directions to the RP in furtherance of the same. The said Application has been dealt at Page No. [82] hereto.
- 33.1.2.** The Interlocutory Application bearing I.A. No. 3286 of 2024 has been filed by **Agitrade Power Holding Mauritius Ltd.** against the RP and the Successful Resolution Applicant (*viz.* SEML) seeking a stay on the captioned application, along-with directions to the Resolution Professional for fresh consideration of all Resolution Plans submitted by the respective PRAs. The said Application has been dealt at Page no. [86] hereto.
- 33.2.** Further, two Intervention Petitions bearing IVN. P. Nos. 40 of 2024 and 41 of 2024 have been filed in relation to the matter-at-hand, as encapsulated hereunder:
- 33.2.1.** The Intervention Petition bearing IVN. P. 40 of 2024 has been filed on 06.02.2024 by one of the Resolution Applicant *viz.* **Jindal Power Ltd.** against the Resolution Professional (Applicant RP) seeking intervention in the approval of the

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captioned application along-with directions to the Resolution Professional and the Committee of Creditors apropos re-evaluation of Resolution Plans submitted by PRAs in furtherance of identification of H1 bidder on NPV basis and alternatively, for conducting another round of auction. The said Application has been dealt at Page no. [88] hereto.

**33.2.2.** The Intervention Petition bearing IVN. P. 41 of 2024 has been filed by the SRA in the captioned application *viz.* SEML, against the Applicant in I.A. No. 3336 of 2023 *viz.* Vantage Point Asset Management Pte. Ltd. seeking dismissal and intervention of/in I.A. No. 3336 of 2023 and alternatively, impleadment as a Respondent in the afore-mentioned I.A.

**Upon** due perusal of the records and after duly hearing the Applicant in the instant intervention petition, we are of the shared view that the impleadment hereto need not be pressed for as, the Hon'ble NCLAT *vide* its Order dated 10.05.2024, has expressly warranted for the SRA to be heard in this regard. The said IVN. P. bearing 41 of 2024 has already been dealt with in PART-I of this Order hereto, and is resultantly, **Disposed-Of**.

**I.A. No. 3654 of 2024**

**34.** The instant application has been filed on 25.05.2024 by one internationally-incorporated firm *viz.* **Guangzhou Green Science Energy Treatment Engineering and Technology Company Limited** against the Resolution Professional *viz.* Respondent No. 1 herein, and the Corporate Debtor in the captioned application *viz.* Respondent No. 2 herein. The Applicant has sought for directions to the Respondent No. 1 herein, for admission of its claim.

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- 34.1.** The Applicant submits that the Corporate Debtor in the captioned application is an ‘Award Debtor’ in relation to an Arbitral Award passed against the latter bearing Arbitration Ordinance (*CAP 609*) under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of the New York Convention, *dated* 02.10.2018, pronounced by Mr. Andrew Aglionby under the 2013 HKIAC Administered Arbitration Rules.
- 34.2.** The Applicant submits that it filed and registered an Execution Petition *dated* 06.06.2019 before the Hon’ble High Court of Chhattisgarh bearing ARBAP No. 8 of 2019. The Applicant submits that the Hon’ble High Court of Chhattisgarh, *vide* Order *dated* 22.10.2021, had directed the concerned Registry to fix the matter before the appropriate bench, and the same is pending execution.
- 34.3.** The Applicant contends that in the events leading to admission of the Corporate Debtor in CIRP, the latter has allegedly sought to conceal material facts and information in its Balance Sheets for F.Y. 2018-19 and 2019-20, and that the same constitutes ‘fraud’ in consonance with Section 447 of the Companies Act, 2013. The Applicant further contends that the RP failed to intimate the Applicant about the initiation of CIRP of the Corporate Debtor contrary to mandate of IBBI (CIRP) Regulations, 2016, and that the Public Announcement by the latter could not be accessed on account of it being located in a foreign country (*viz. Hong Kong*). The Applicant thus contends that the same constitutes inaction on part of the Resolution Professional, and in the eventuality of the resolution plan not being approved yet, its claim therefore is still admissible.
- Hence, the instant application.

35. During the course of hearing on 23.07.2024, the RP has sought to refute the averments by the Applicant herein. To substantiate its contentions, the RP sought to place material reliance upon the judgement of the Hon'ble Supreme Court in *RPS Infrastructure Limited v. Mukul Kumar & Anr.* [(2023) 10 SCC 718] whereby, while adjudicating on a similar issue, the Apex Court opined the following:

“

[...]

18. *We have examined the aforesaid submissions. The only issue before us is whether the appellant's claim pertaining to an arbitral award, which is in appeal under Section 37 of the said Act, is liable to be included at a **belated stage** – i.e. after the resolution plan has been approved by the COC.*
19. *It is undisputed that the process followed by respondent no. 1 was not flawed in any manner, except to the extent of whether an endeavour should have been made by respondent no. 1 to locate the liabilities pertaining to the said award from the records of the Corporate Debtor.*
20. *If we analyse the aforesaid plea, it is quite obvious that respondent no. 1 did what could be done to procure the Corporate Debtor's records by even moving an application under Section 19 of the IBC. That it was not fruitful is a consequence of the Corporate Debtor not making available the material. It is thus not even known whether there was a reflection in the records on this aspect or not.*
21. *The second question is **whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient***

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***on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.***

22. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. ***This would constitute deemed knowledge on the appellant.*** In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.
21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in *Essar Steel*,<sup>8</sup> the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.
22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

[...]  
”

{emphasis applied}

36. Upon perusal of records that form part of the instant application, and pursuant to having heard the parties hereto during the course of hearing on 23.07.2024; We are of the considered view that the Applicant's claim pursuant to the International Commercial Arbitration Award dated 02.10.2018, has been filed at a hopelessly belated stage *vis-à-vis* approval of the Resolution Plan by the CoC of the Corporate Debtor on 08.06.2023, and without seeking a requisite condonation apropos the same.

36.1. We further find it opportune to draw reference to the observations of Hon'ble Supreme court in *Committee of Creditors of Essar Steel India*

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***Limited through Authorised Signatory v. Satish Kumar Gupta and Ors.***

reported in (2020) 8 SCC 534 :

*“A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a **hydra head popping up** which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

**36.2.** In the matter-at-hand, the Corporate Debtor was admitted into CIRP *w.e.f.* 29.04.2022, and the records clearly reveal that Respondent No. 1 (*Applicant RP in the captioned application*) duly carried out the public announcement(s) in the manner as stipulated by the Code *viz.* IBC, 2016. The Applicant’s disregard of the same is tantamount to its own lackadaisical approach in this regard, and thereby does not warrant our intervention in the same. We further place reliance on the afore-stated judgement of ***RPS Infrastructure Limited (supra)*** to substantiate the afore-stated. **The instant application deserves to be Dismissed. Ordered accordingly.**

**I.A. No. 3286 of 2024**

**37.** The instant application has been filed on 06.06.2024 by **Agritrade Power Holding Mauritius Ltd.** against the Resolution Professional *viz.* Respondent No. 1 herein (*Applicant RP in the captioned application*) and the CoC of the Corporate Debtor *viz.* Respondent No. 2 herein. The Applicant herein seeks impleadment and intervention in the captioned application (*and alternatively, in*

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*the captioned company petition bearing C.P. No. 893 of 2021), bearing I.A. No. 2794 of 2023.*

- 37.1.** The Applicant is admittedly a holder of 38,05,576 Compulsory Convertible Debentures (“CCD”) of Corporate Debtor, with a face value of INR1000 each, carrying interest @11.5% p.a. The Applicant contends that the Corporate Debtor *allegedly* owes a sum of INR 5.17 Crores to the Applicant, which per the Applicant, constitutes a ‘financial debt’.
- 37.2.** The Applicant submits that on account of its submission of Form-C to the RP on 13.05.2022 and furnishment of clarification(s)/ information from time to time apropos the same; The status of Applicant as ‘financial creditor’ was confirmed by this Tribunal *vide* Order *dated* 17.03.2023, in I.A. No. 2551 of 2022.
- 37.3.** The Applicant contends that while remitting back the Resolution Plan in the captioned application by way of NCLT Order *dated* 06.10.2023, the Adjudicating Authority *purportedly* failed to remit the Resolution Plan submitted by one of the PRAs *viz.* Vantage Asset Management Pte. Ltd. (“VPAM”). The Applicant claims that VPAM’s plan provides the highest value and best pay out to all stakeholders/ creditors. Per the application, the same has *allegedly* not been considered by the CoC, and question has been raised on the legibility of the process that was ensued in this regard by the Applicant herein and the CoC’s role apropos the same. To substantiate its afore-stated averments, the Applicant has sought to place reliance upon the judgements of *Essar Steel* (supra), *M.K. Rajagopalan* (supra), and *Kalinga Allied Industries India Pvt. Ltd. v. CoC (Bindals Sponnge Industries Limited) [Comp App (AT)(Ins) No. 689 of 2021]*.

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38. Upon perusing the materials which form part of the record hereto, including the judgements cited in support of the Applicant's contentions herewith; We are of the considered view that the records undisputably reveal the CoC's due consideration of the Resolution Plan filed by Vantage Point Asset Management Pte. Ltd., and clarifications on the aspect of its viability could only be sought consequent to the afore-stated. It is trite in law that the Commercial Wisdom of CoC takes primacy in consideration of Resolution Plan(s) apropos (*but not limited to*) the Quantitative and/or Qualitative Parameters set out in this regard. Further, the Applicant's claim has been admitted as 'Financial Creditor' by this Tribunal *vide* Order dated 17.03.2023, as afore-mentioned in para (37.2) of this Order. Furthermore, the limited scope of Remand *via* the NCLAT Order dated 10.05.2024, is in relation to the Resolution Plan of the SRA in the captioned application. We are thus of the shared view that **the instant application** does not warrant for our intervention in this regard, and thereby **deserves to be Dismissed. Ordered accordingly.**

**IVN. P. 40 of 2024**

39. Before embarking with the instant intervention petition, we draw reference to Para {88} of the NCLAT Order dated 10.05.2024, whereby Hon'ble NCLAT has made the following observation:

“

*88. Coming to the IA filed by Jindal Power, we notice that Jindal Power, who has not filed any application before the Adjudicating Authority and has filed IA in the present Appeal and prayed for certain reliefs, no reliefs can be granted to the Intervenor-Jindal Power Limited, in the present Appeal.*

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In light of the afore-stated, we hereby deem it fit to adjudicate upon the instant intervention petition, and consider it afresh herein.



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**40.** The instant intervention petition has been filed on 02.06.2024 by one of the Resolution Applicant(s) *viz.* **Jindal Power Limited** against the Resolution Professional *viz.* Respondent No. 1 herein, CoC of the Corporate Debtor *viz.* Respondent No. 2 herein and the SRA in the captioned application (*i.e.* SEML) *viz.* Respondent No. 3 herein, seeking intervention in the captioned application and further directions to RP and CoC for re-evaluation of resolution plan(s) submitting by the respective PRAs for identification of H1 bidder on NPV basis.

**40.1.** The Applicant submits that pursuant to circulation of Process Note *dated* 13.04.2023 in furtherance of carrying out the negotiation process with the PRAs to maximise the value of the Corporate Debtor; The Applicant submitted its revised resolution plan to the RP *vide* E-Mail *dated* 28.04.2023. Certain clarification(s) were subsequently sought at the behest of the CoC, and the Applicant sought to submit an Addendum to the same effect *vide* E-Mail *dated* 10.05.2023. Discussions and deliberations ensued thereupon, and the Applicant thereafter was communicated about SEML *viz.* Respondent No. 3 herein, being voted as the SRA by the CoC.

**40.2.** The Applicant contends that, from the date of NCLT Order in the captioned application and two objection IAs *viz.* I.A. No. 3336 of 2023 and I.A. No. 3399 of 2023, and the resulting NCLAT Order disposing- of the Company Appeal(s) arising pursuant to the same, certain material irregularities in the plan approval process have come to its notice. Acting upon the same, the Applicant, *vide* its Letter *dated* 09.02.2024, sought to request the RP and CoC to conduct another round of auction in order to eliminate *alleged* ambiguities in the evaluation process.

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- 40.3.** The Applicant has sought to rely upon the finding(s) in the NCLT Order *dated* 06.10.2023, in relation to ‘perversity in the process’. The Applicant further contends that the bid evaluation process suffers from want of transparency and that, the Respondent No. 3 *viz.* SEML was allowed to change its commercials from deferred to upfront payment “..which led to SRA having an unfair advantage over other bidders.” The Applicant has further raised questions on the conduct of RP in the afore-stated regard, and has sought to place reliance on judgements of *Ngaitland Dhar v. Panna Pragati Infrastructure (P) Ltd. [(2022) 6 SCC 172]*, *Ebix Singapore (P) Ltd.* (supra), *M.K. Rajagopalan* (supra) and *PRIO S.A. v. Pravin R. Navandar [Comp App (AT)(Ins) No. 1650 of 2023]* to further substantiate its afore-stated claims. Hence, the intervention petition.
- 41.** The **RP** *viz.* Respondent No. 1 in the instant intervention petition, has sought to raise contentions in contra-distinction to that of the applicant hereto, *vide* its Affidavit-in-Reply *dated* 14.06.2024;
- 41.1.** The RP submits that the Applicant in the instant intervention petition did not raise any objection at the relevant stage and had belatedly attempted to participate in the judicial proceedings qua approval of resolution plan when the Appeals were being considered by Hon’ble NCLAT and that for the same reason, its intervention petition was rejected by Hon’ble NCLAT (*as afore-extracted in Para (31) of this Order hereto*) *vide* its Order *dated* 10.05.2024. The RP contends that the scope of remand for the consideration of this Tribunal is limited *vis-à-vis* the observations in the NCLAT Order apropos the captioned application, and the two I.A. bearing I.A. Nos. 3336 of 2023 and 3399 of 2023. The RP thus claims that the Applicant in the instant intervention petition does not have locus to challenge the approved resolution plan at this juncture.

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- 41.2.** The RP further refutes the alleged material irregularities in the negotiation process, and submits that the clarification(s) was sought from all participating PRAs at the behest of CoC, and that the same has been expressly opined by Hon'ble NCLAT in para (82) of the said NCALT order. The RP has further placed reliance on judgements of ***K Sashidhar*** (supra) and ***Vallal RCK*** (supra) in so far as the 'commercial wisdom' of CoC is concerned in this regard.
- 42.** The **Respondent No. 3** viz. SEML (*SRA in the captioned application*), vide its Affidavit-in-Reply dated 20.06.2024, has sought to challenge the maintainability of the instant intervention petition, and has principally relied upon the belated filing of the same by the Applicant herein. The SRA further contends that there is no ambiguity in the evaluation process, and that in light of RP and CoC confirming that correct scoring was accorded for the equity provided by the resolution applicants, its resolution plan was approved in due consonance with the commercial wisdom of CoC. The SRA has sought to place further reliance on terms of RFRP and Process Note to substantiate its afore-stated contentions.
- 43.** Upon perusal of materials which form part of the record hereto, and after having heard the parties at length in the instant intervention petition; We are of the shared view that the issues raised herein, in so far as 'modification in the garb of clarification' by the SRA is concerned and the alleged material irregularity in the 'process', has been succinctly dealt with in this Order. The Intervenor herein is an unsuccessful resolution applicant, and it is a trite position of law that an unsuccessful resolution applicant does not have a vested right in approval of its resolution plan. The records further indicate that the Intervenor herein has not raised its objection(s) at the relevant stage, and that the commercial wisdom of CoC takes due primacy, more specifically so, at the backdrop of the CoC having re-considered the Intervenor's resolution

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plan at the backdrop of the financial aspects provided therein, during its 34<sup>th</sup> Meeting dated 19.10.2023. The Conclusion of the said discussion (*at sub-clauses (a) to (f)*) in clause (4.1.5) of the minutes of the 34<sup>th</sup> meeting, are extracted herein to warrant for the same:

“

*(f) In view of the review of the terms of the JPL Resolution Plan and after detailed deliberations with the Counsels, the CoC members were of view that the observations of the Hon’ble NCLT appears to be at variance from the terms of the JPL Resolution Plan and further seems to be factually incorrect, as JPL is offering an amount of INR 101.1 Cr, out of which INR 83 Cr is towards financial creditors and the aforementioned paras deal with the scoring of the BGs as well. It was further noted that, the facts and numbers considered by the CoC in the evaluation of the JPL Resolution Plan were accurate and the scoring as per the evaluation matrix is appropriate.*

”

**44. We are thus of the shared view that the instant Intervention Petition deserves to be Dismissed. Ordered accordingly.**

#### **SALIENT FEATURES OF THE RESOLUTION PLAN**

**45.** We now deem it appropriate to delve into the captioned application *viz.* I.A. No. 2794 of 2023, filed *u/s.* 30(6) of IBC, 2016, for approval to the Resolution Plan. The Applicant RP submits that the Resolution Plan has been filed on behalf of the Successful Resolution Applicant *viz.* **Sarda Energy and Minerals Limited** (*viz.* the “SRA”). The SRA is admittedly a listed public company incorporated under Companies Act, 1965, having its registered office at Nagpur (MH), and has a sizeable presence in the steel and ferro-alloys industry of India. The SRA, *via* the said resolution plan, has proposed a payment of INR 2560.81 Crores/-, in the manner as encapsulated overleaf:

Stakeholder	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)	Timing of Payments
CIRP Costs	NA	Outstanding CIRP Costs will be paid as per actuals on priority basis.	Transfer Date
Interim Management Costs	NA	Outstanding Interim Management Costs to be paid as per actuals.	Transfer Date
Secured Financial Creditor	1,876.32 Crores	1,793 Crores <i>Plus Surplus Cash Plus Margin Money (in accordance with clause 6.3.14 to 6.3.16).</i>  In addition, Litigation Benefits, Avoidance Benefits and Interest on Deferred Amount (if any) (Subject to Clause 6.3.2(b)).	Transfer Date (except Avoidance Benefits and Litigation Benefits and Deferred Amount and Interest on Deferred Amount (if any) (Subject to Clause 6.3.2(b)), which will be paid after the Transfer Date as per the terms of this Chapter)
Unsecured Financial Creditor	108.92 Crores	Nil	NA
Operational Creditors (Employees and Workmen)	2.73 Crores	2.73 Crores	Transfer Date
Operational Creditors (other than Employees and Workmen and Government Dues)	137.14 Crores	9.27 Crores <i>Plus pro-rata Additional OC Amount (if any).</i>	Transfer Date

Operational Creditors (Government Dues)	435.70 Crores		
Existing shareholders	NA	NIL	
<b>TOTAL</b>	<b>2,560.81 Crores</b>	<b>1,805 Crores</b> <i>Plus CIRP Cost, IMC Cost, Surplus Cash, Margin Money (in accordance with clause 6.3.14 to 6.3.16), Interest on Deferred Amount (if any) (Subject to Clause 6.3.2(b)), Litigation Benefits, and Avoidance Benefits</i>	

46. The Successful Resolution Applicant has proposed to implement the said Resolution Plan in consonance with the payment schedule, as extracted herein under:

Steps	Activity	Indicative Timeline
1.	COC Approval Date	X
2.	Effective Date	Y
3.	Formation of Monitoring Committee	Y
4.	Appointment of the Monitoring Professional, Monitoring Agency and Interim Accounting Agency	Y
5.	Funding of Escrow Account	Y + 45
6.	Transfer Date	Y + 47 (Z)
7.	Instructions to release outstanding CIRP Costs	Z
8.	Instructions to release outstanding Interim Management Costs	Z

9.	Instructions to release amounts to Operational Creditors from the Escrow Account, in accordance with Chapter VI.	Z
10.	Issuance of NCDs	Z
11.	Instructions to release payments to Secured Financial Creditors (who have provided Deposit Documents) from the Escrow Account in accordance with Chapter VI	Z
12.	Escrow Agent shall provide Deposit Documents to the Resolution Applicant	Z
13.	Extinguishment of existing shareholding of the Company	Z
14.	Issuance of New Equity Shares to the Resolution Applicant and its nominees	Z
15.	Automatic vacation of office by the Monitoring Committee and the Monitoring Professional, and appointment of directors of the Corporate Debtor as nominated by the RA, in case the Appointed Date is later than the Transfer Date	Z
16.	Amalgamation of the Corporate Debtor with the Resolution Applicant	Z or later
17.	Instructions to release payments to Secured Financial Creditors (who did not provide Deposit Documents earlier) from the Escrow Account in accordance with Chapter VI as and when the Deposit Documents are provided	NA
18.	Redemption of NCDs	Z+3 years

47. The Successful Resolution Applicant *viz.* Sarda Energy and Minerals Limited, has further confirmed that it is eligible to submit the Resolution Plan in consonance with Section 29A of IBC, 2016.

#### **VIABILITY OF THE RESOLUTION PLAN**

48. The Applicant RP hereby submits that the Resolution Plan approved by the CoC is in compliance with the legal requirements as mandated under IBC, 2016. At this juncture, we find it germane to the extension(s) granted apropos

the captioned application. The same has been tabulated overleaf in the interest of brevity:

<b>Order/ IA Details</b>	<b>Particulars of Extension</b>
Order dated 10.10.2022 passed in IA NO. 2872 of 2022	<b>90 days extension</b> beyond the deadline of 180 days (expiring on 26.10.2022) was granted. The CIRP deadline stood extended to <b>24.01.2023</b> .
Order dated 24.01.2023 passed in IA No. 258 of 2023	<b>60 days extension</b> beyond the deadline of <b>270 days</b> (expiring on 24.01.2023) was granted. The CIRP deadline stood extended to <b>25.03.2023</b> (i.e., till expiry of <b>330 days</b> ).
Order dated 17.03.2023 passed in IA No. 970 of 2023.	<b>60 days extension</b> days for conclusion of CIRP was granted. Thus, CIRP period stood extended from till <b>25.05.2023</b> .
Order dated 01.06.2023 passed in IA No. 2221 of 2023	<b>30 days extension</b> conclusion of CIRP was granted. Thus, CIRP period stood extended from till <b>25.06.2023</b> .

49. As per the Applicant RP, the requisite Fair Value and Liquidation Value, provided as averages by two registered valuers in FORM-H, are as hereunder:

Fair Value:

INR 2769.5 Crores

Liquidation Value:

INR 1768.5 Crores

50. The Learned Counsel for the Applicant Resolution Professional has duly annexed a certificate of the FORM-H to the Application, *vide* Affidavit dated 03.07.2023, under Regulation 39(4) of the CIRP Regulations, 2016, to certify that the Resolution Plan approved by the CoC meets all the requirements of the IBC, 2016, as extracted hereunder:



**FORM H**  
**COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

- I, **Ashish Arjankumar Rathi**, an insolvency professional enrolled with Indian Institute of Insolvency Professionals of ICAI and registered with the Board with registration number **IBBI/IPA-001/IP-P00568/2017-2018/11010**, am the resolution professional for the corporate insolvency resolution process (CIRP) of SKS Power Generation (Chhattisgarh) Limited (**CD**).
- The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	SKS Power Generation (Chhattisgarh) Limited
2	Date of Initiation of CIRP	29.04.2022
3	Date of Appointment of IRP	29.04.2022
4	Date of Publication of Public Announcement	02.05.2022
5	Date of Constitution of CoC	17.05.2022.
6	Date of First Meeting of CoC	23.05.2022
7	Date of Appointment of RP	28.05.2022
8	Date of Appointment of Registered Valuers	<p><b>Valuer No. 1:</b></p> <p><b>(a) Financial Assets:</b> Mr. Dharmesh Lal Trivedi was appointed on <b>15.06.2022</b>.</p> <p><b>(b) Land &amp; Building and Plant &amp; Machinery:</b> Kanti Karamsey &amp; Co. was appointed on <b>15.06.2022</b>.</p> <p><b>Valuer No. 2:</b></p> <p>GAA Advisory LLP was appointed on <b>15.06.2022</b> for all classes of the asset.</p>
9	Date of Issue of Invitation for EoI's	12.07.2022
10	Date of Final List of Eligible Prospective Resolution Applicants	22.08.2022
11	Date of Invitation of Resolution Plan	11.08.2022

12	Last Date of Submission of Resolution Plan	<p>28.04.2023</p> <p><i>[Note: In this context, kindly note the following:</i></p> <ol style="list-style-type: none"> <li>1) <i>As per the EoI the last date for submission of resolution plan was notified to be 11.09.2022.</i></li> <li>2) <b>First Extension:</b> <i>On 22.09.2022, 7<sup>th</sup> CoC meeting was conducted. Pursuant to request for extension made by the prospective resolution applicants (PRAs), the CoC in its commercial wisdom extended the deadline till 17.10.2022.</i></li> <li>3) <b>Second Extension:</b> <i>On 14.10.2022, in the 8<sup>th</sup> CoC meeting, the timeline for submission of the resolution plans was further extended till 25.11.2022, on account of request to this effect received from PRAs</i></li> <li>4) <b>Third Extension:</b> <i>On 23.11.2022, in the 10<sup>th</sup> CoC meeting, the timeline for submission of the resolution plans was further extended till 09.12.2022, on account of request to this effect received from PRAs.</i></li> <li>5) <b>Fourth Extension:</b> <i>On 08.12.2022, 12<sup>th</sup> CoC meeting was conducted wherein the CoC extended the deadline for submission of resolution plans till 30.12.2022, on account several requests for extension made by the, PRAs.</i></li> <li>6) <b>Submission of Resolution Plan:</b> <i>On 30.12.2022, 7 PRAs submitted the resolution plans (First Plan).</i></li> <li>7) <b>Negotiation on First Plan:</b> <i>Further to the negotiations with the CoC, the COC called for the amended resolution plans to be submitted by 03.03.2023 and extended the timelines till 17.03.2023 and subsequently till 21.03.2023, upon requests received from the PRAs. The amended resolution plans were submitted on 21.03.2023, by the PRAs.</i></li> </ol>

		<p>8) <b>Inter-se Bidding Process:</b> Subsequent thereto, on 19.04.2023, an inter-se bidding process was conducted to maximize the value for the stakeholders.</p> <p>9) <b>Submission of Final Plans:</b> The final amended resolution plans were submitted on 28.04.2023, for consideration of the CoC.</p> <p>10) <b>Clarifications sought by CoC:</b> CoC in the 29<sup>th</sup> CoC meeting dated 06.05.2023 in its commercial wisdom decided that certain clarifications on the revised resolution plans (received on 28.04.2023), will be required.</p> <p>11) On 09.05.2023, pursuant to the request received from certain PRAs, the deadline to provide clarifications was extended till 10.05.2023.</p> <p>12) <b>Addendum dated 10.05.2023 submitted by the Resolution Applicants:</b> Consequently, on 10.05.2023, the RAs provided the necessary clarifications required to enable a comprehensive evaluation of the amended resolution plans through an addendum to the resolution plan.</p> <p>13) On 16.05.2023, 31<sup>st</sup> CoC meeting was conducted wherein the Resolution Plans submitted till 28.04.2023 by all the PRAs along with respective addendum dated 10.05.2023 (if any) (<b>Final Plans</b>) were placed for e-voting.]</p>
13	Date of Approval of Resolution Plan by CoC	<p>08.06.2023</p> <p><b>Note (1):</b> Agenda for approval of Final Plans was placed before CoC in 31st CoC meeting dated 16.05.2023).</p> <p><b>Note 2:</b> E-Voting process was concluded after receiving confirmation from all the members of the CoC that the respective votes have been casted.</p>

14	Date of Filing of Resolution Plan with Adjudicating Authority	16.06.2023
15	Date of Expiry of 180 days of CIRP	26.10.2022
16	Date of Order extending the period of CIRP	<p><b>A) FIRST EXTENSION ORDER:</b></p> <p>(i) <b>Order dated 10.10.2022</b> passed in <b>IA No. 2872 of 2022.</b></p> <p>(ii) <b>90 days extension</b> beyond the deadline of 180 days (expiring on 26.10.2022) was granted.</p> <p>(iii) The CIRP deadline stood extended to <b>24.01.2023.</b></p> <p><b>B) SECOND EXTENSION ORDER:</b></p> <p>(i) <b>Order dated 24.01.2023</b> passed in <b>IA No. 258 of 2023.</b></p> <p>(ii) <b>60 days extension</b> beyond the deadline of <b>270 days</b> (expiring on 24.01.2023) was granted.</p> <p>(iii) The CIRP deadline stood extended to <b>25.03.2023</b> (i.e., till expiry of <b>330 days</b>).</p> <p><b>C) THRID EXTENSION ORDER:</b></p> <p>(i) <b>Order dated 17.03.2023</b> passed in <b>IA No. 970 of 2023.</b></p> <p>(ii) <b>60 days extension</b> days for conclusion of CIRP was granted.</p> <p>(iii) Thus, CIRP period stood extended to <b>25.05.2023.</b></p> <p><b>D) FOURTH EXTENSION ORDER:</b></p> <p>(i) <b>Order dated 01.06.2023</b> passed in <b>IA No. 2221 of 2023.</b></p> <p>(ii) <b>30 days extension</b> conclusion of CIRP was granted.</p>

		(iii) Thus, CIRP period stood extended to <b>24.06.2023</b> .
17	Date of Expiry of Extended Period of CIRP	24.06.2023**
18	Fair Value	Average of values attributed by the two registered valuers: <b>INR 2769.5 Crores</b>
19	Liquidation value	Average of values attributed by the two registered valuers: <b>INR 1768.5 Crores</b>
20	Number of Meetings of CoC held	32 Meetings

*Note 1\*\*:* For ready reference of the Hon'ble Tribunal, the details of the extensions granted by the Hon'ble Tribunal have been tabulated hereunder:

Order/ IA Details	Particulars
Order dated 10.10.2022 passed in IA NO. 2872 of 2022	<b>90 days extension</b> beyond the deadline of 180 days (expiring on 26.10.2022) was granted. The CIRP deadline stood extended to <b>24.01.2023</b> .
Order dated 24.01.2023 passed in IA NO. 258 of 2023	<b>60 days extension</b> beyond the deadline of <b>270 days</b> (expiring on 24.01.2023) was granted. The CIRP deadline stood extended to <b>25.03.2023</b> (i.e., till expiry of <b>330 days</b> ).
Order dated 17.03.2023 passed in IA No. 970 of 2023.	<b>60 days extension</b> days for conclusion of CIRP was granted. Thus, CIRP period stood extended to <b>25.05.2023</b> .
Order dated 01.06.2023 passed in IA No. 2221 of 2023	<b>30 days extension</b> conclusion of CIRP was granted. Thus, CIRP period stood extended to <b>25.06.2023</b> .

3. I have examined the Resolution Plan dated 30.12.2022 (as mended on 21.03.2023 and 28.04.2023) along with Addendum dated 10.05.2023 received from Resolution Applicant i.e., Sarda Energy & Minerals Limited (**SEML**) and approved in the Thirty First (31<sup>st</sup>) meeting of CoC of SKS Power Generation (Chhattisgarh) Limited held on 16.05.2023 and e-voting completed on 08.06.2023 (**Successful Plan**).
4. I hereby certify that-
  - (i) the Successful Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
  - (ii) the Resolution Applicant Sarda Energy & Minerals Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit Approved Plan. The contents of the said affidavit are in order.

*[Note: SEML has submitted an affidavit dated 21.03.2023, confirming eligibility under Section 29A of IBC as per the requirement of Section 30(1) of the IBC. Thereafter, the RP had engaged an independent consultant i.e., Nangia & Co. LLP (NCL) to assess the eligibility of SEML under Section 29A of IBC. NCL vide report dated 13.04.2023 has concluded/ confirmed that SEML is not ineligible under Section 29A of IBC to submit the Successful Plan for the Corporate Debtor. In the prima facie opinion of the RP, SEML appears to be eligible under Section 29A. The abovementioned opinion is based upon the review of the available documents/ material and the report dated 13.04.2023 submitted by NCL.]*

(iii) the Successful Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Successful Plan has been approved by **100 %** of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

*[Note: In the 31<sup>st</sup> CoC meeting dated 16.05.2023, the RP apprised the CoC members e-voting lines for voting shall commence after the circulation of the minutes of 31<sup>st</sup> CoC meeting (i.e., on 18.05.2023/ 19.05.2023). On 08.06.2023, the electronic voting process was concluded after receiving confirmation from all the members of the CoC that the respective votes have been casted. Thus, electronic voting system which was kept open at least for 24 hours as per the regulation 26.]*

5. The list of financial creditors of the **SKS Power Generation (Chhattisgarh) Limited** being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Bank of Baroda	92.77%	Voted for
2.	State Bank of India	7.23%	Voted for
		100%	

6. The Successful Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Successful Plan is as under:

(Amount in Rs.

crores)

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	Amount resolved to be distributed by the CoC.***	Amount to be distributed to amount admitted (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	Amount resolved to be distributed by the CoC.***	Amount to be distributed to amount admitted (%)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21.						
		(b) Other than (a) above:						
		(i) who did not vote in favour of the resolution plan	NIL	NIL	Liquidation values as per Section 53 of IBC	NA	NA	NA
		(ii) who voted in favour of the resolution plan***	1876.33	1876.33	1876.33	100%	1821.91	97.1%
		<b>Total[(a) + (b)]</b>	<b>1876.33</b>	<b>1876.33</b>	<b>1876.33</b>	<b>100%</b>	<b>1821.91</b>	<b>97.1%</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	763.56	245.65	NIL	0.00%	0.00%	0%

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	Amount resolved to be distributed by the CoC.***	Amount to be distributed to amount admitted (%)
		(b) Other than (a) above:	NIL	NIL	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution plan	NIL	NIL	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL	NIL	NIL
		<b>Total [(a) + (b)]</b>	<b>763.56</b>	<b>245.65</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>	<b>0%</b>
3	Operational Creditors	(a) Related Party of Corporate Debtor	0.19	0.19	0.027	14.25%	0.047	24.49%
		(b) Other than (a) above:	<b>610.64</b>	<b>575.37</b>	<b>90.53</b>	<b>14.83%</b>	<b>144.92</b>	<b>25.19%</b>
		(i) Government	199.04	197.71	28.37	14.25%	48.42	24.49%
		(ii) Workmen	10.19	2.73	2.73	27%	2.73	100%
		(iii) Employees						
		(iv) Operational	398.75	372.34	56.840	14.25%	91.18	24.49%



Sl. No .	Category of Stake holder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	Amount resolved to be distributed by the CoC.***	Amount to be distributed to amount admitted (%)
		(v) Operational Creditors (ranking <i>pari-passu</i> with financial creditors)###	2.66	2.59	2.59	97%	2.59	100%
		<b>Total[(a) + (b)]</b>	<b>610.83</b>	<b>575.56</b>	<b>90.56</b>	<b>14.83%</b>	<b>144.97</b>	<b>25.17%</b>
4	Other debts and dues	(i) Creditors in a class who have not submitted their claims	NIL	NIL	NIL	0.00%	0.00%	NIL
		(ii) Other creditors who have not submitted their claims	(i) On basis of the trade payable figures as on the insolvency commencement date, 300 creditors totaling to INR 26.58 Crores have not submitted their claim with the Resolution Professional.  (ii) Further, upon perusal of the retention amounts held by the Corporate Debtor it emerges that an amount of INR 138 Crores has not been claimed. This comprises majorly of:  a) INR 126 Crores by an entity currently undergoing liquidation against which the Corporate Debtor has claimed				(iii)	(iv)

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	Amount resolved to be distributed by the CoC.***	Amount to be distributed to amount admitted (%)
					damages and has invoked bank guarantees amounting to ~INR 186 Crores. The matter is currently sub-judice before the Hon'ble Supreme Court of India.			
					b) INR 8 Crores pertains to Doshi Ion Private Limited. The Corporate Debtor has filed a counter claim in the matter of ~INR 9 Crores with Doshi Ion Private Limited (under CIRP), which has been admitted.			
					c) The balance pertains to 52 other entities, which have not been claimed.			
<b>Grand Total</b>			<b>3250.72</b>	<b>2697.54</b>	<b>1966.89</b>	<b>61%</b>	<b>1966.89</b>	<b>73%</b>

# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

###The claim pertains to the Chhattisgarh VAT authority, which in view of the judgement of the Hon'ble Supreme Court passed in State Tax Officer v. Rainbow Papers Limited CA No. 2568 of 2022, has been considered at par with Secured Financial Creditors.

\*\*\* As per clause 6.1 of the Successful Plan an amount of INR 1793 Crs. plus margin money amounting to INR 161.89 Crs aggregating to 1954.89 Crs. has been provided to the Secured Financial Creditors, against the admitted debt of INR 1876.33 Cr. However, Clause 6.5.12 of the Successful Plan, as amended vide addendum dated 10.05.2023, states that –

*"On the Transfer Date, the Monitoring Professional shall determine the total amount actually payable to the Secured Financial Creditors under the Resolution Plan from various sources ("**SFC Plan Amount**"). Subject to the compliance of the Code and CIRP Regulations, **in the event the amounts payable to the Secured Financial Creditors from such sources on the Transfer Date is more than the admitted claims of the Secured Financial Creditors, the difference between of the SFC Plan Amount and the admitted claims of the Secured Financial Creditors, except as otherwise decided by the COC, shall be paid to the Operational Creditors (firstly to Employees and Workmen in case their***

**admitted claims have not been paid in full and then to other categories of Operational Creditors) in addition to the amounts allocated towards them by the Resolution Applicant on the Transfer Date"**

In view of the above, the additional amount accruing to the Secured Financial Creditors over and above the admitted claim amount, i.e. INR 78.56 Cr (INR 1954.89 Crs. less INR 1876.33 Crs.) was to be distributed to the operational creditors and the employees in proportion to their admitted debt. Thus, as per the Successful Plan the amount proposed to be paid payable to Operational Creditors was INR 90.56 Crore. **In this context, it is relevant to highlight that the in 31<sup>st</sup> CoC meeting dated 16.05.2023, the CoC has resolved to distribute an enhanced sum of INR 139.65 Crs. (instead of INR 90.56 Crs. as proposed in the Successful Plan) to the Operational Creditors. In view thereof, a summary of distribution of amounts approved by CoC has been tabulated below:**

S.no	Class of creditor	Admitted Claim (INR in Cr)	Amount to be distributed (INR in Cr)	% recovered (Amount distributable/ Amount Claimed)
1	Secured financial creditors	1876.3265	1821.9143	97.10%
2	Operational creditors (Workmen & Employees)	2.7341	2.7341	100.00%
3	Secured operational creditors	2.5908	2.5908	100.00%
4	All other Operational Creditors	570.2621	139.6508	24.49%
	<b>TOTAL</b>	<b>2451.9135</b>	<b>1966.8900</b>	<b>-</b>
	<b>Total FC</b>		<b>1821.9143</b>	<b>-</b>
	<b>Total OC</b>		<b>144.9757</b>	<b>-</b>
	<b>TOTAL OC + FC</b>		<b>1966.8900</b>	<b>-</b>

**Payouts provided in the Successful Plan:** The table below represents total value offered/ payout provided under the Successful Plan:

Particulars	Amount (INR in Crores)	Relevant Clause of Successful Plan.
CIRP Cost**	190	Clause 6.2.1 to Clause 6.2.5
Workmen Liquidation dues	2.73	Clause 6.4
Employees dues		Clause 6.4
Financial Creditors	1876.33	Clause 6.3
Operational creditors (Excluding employees and Workmen)	87.83	Clause 6.5
Infusion for working capital and capex	501	Clause 2.1. Point No. 4
<b>Total Financial Outlay</b>	<b>2657.9</b>	Clause 2.1. Point No. 1
Funding commitment for additional CIRP cost, if required.	At actuals	Clause 6.2.3
<b>Total commitment of Financial Outlay<sup>%</sup></b>	<b>2657.9</b>	Clause 2.1. Point No. 1

\*\*CIRP cost has been assumed at INR 190 Cr, basis current estimates, SEML has undertaken to provide at actuals. Clause 6.2.1. of the Successful Plan states that -

*“Unpaid CIRP costs outstanding as on the NCLT Approval Date (“Outstanding CIRP Costs”) shall be paid on actuals, in priority to any payments to any creditor, on the Transfer Date”*

% any addition to the CIRP cost over and above the estimated amounts shall also be added to the Total Commitment of financial outlay.

8. The interests of existing shareholders have been altered by the Successful Plan as under:

S. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	35,07,57,537	35,07,57,537	100%	100%
2	Preference <sup>#</sup>	NIL	NIL	NIL	NIL

*<sup>#</sup>However, the records of the MCA reflect an older status as on 31.03.2019 on account of the last filed financials with the MCA being of the FY 2018-19. The status has since undergone a change. The status above is the current status as on the date of filing of Form-H with this Hon’ble tribunal.*

9. The compliance of the Successful Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	-	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	-	Yes  SEML has submitted an affidavit dated 21.03.2023, confirming eligibility under Section 29A of IBC as per the requirement of Section 30(1) of the IBC.  Thereafter, the RP had engaged and independent consultant i.e., Nangia & Co. LLP to assess the eligibility of SEML under Section 29A of IBC.  Nangia & Co. LLP vide report dated 13.04.2023 has concluded/ confirmed

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
			that SEML is not ineligible under Section 29A of IBC to submit the Successful Plan for the Corporate Debtor.  In the prima facie opinion of the RP, SEML appears to be eligible under Section 29A. The abovementioned opinion is based upon the review of the available documents/ material and the report dated 13.04.2023 submitted by Nangia & Co. LLP.
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes  <i>SEML has submitted an affidavit dated 21.03.2023, confirming eligibility under Section 29A of IBC as per the requirement of Section 30(1) of the IBC.</i>
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause 6.2.1 to Clause 6.2.5	Yes
	(b) provides for the payment to the operational creditors?	Clause 6.4.2 and Clause 6.4.4(b) read with Clause 6.5.2 and Clause 6.5.4(b).	Yes
	(c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan.	Clause 6.3.17	Yes  <i>Successful Plan provides for payment in accordance with Section 30(2)(b) read with Section 53 of the IBC to the financial creditors who did not vote in favor of the Successful Plan (“Dissenting FCs”) in priority to financial creditors who have voted in favor of the Approved Plan (“Assenting FCs”).</i>

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
	(d) provides for the management of the affairs of the corporate debtor?	<b>Chapter IX</b> Clause 9.2.2 to Clause 9.2.8, Clause 9.3.  <b>Chapter X</b> Clause 10.2.4.2 and Clause 10.4	Yes
	(e) provides for the implementation and supervision of the resolution plan?	<b>Chapter IX</b> Clause 9.2.2 to Clause 9.2.8, Clause 9.3.  <b>Chapter X</b> Clause 10.2.4.2 and Clause 10.4	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Clause 12.13	No
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	Clause 5.5 and clause 12.6	Yes  Successful Plan has been determined to be feasible and viable by the CoC.  In the 31 <sup>st</sup> CoC meeting dated 16.05.2023, various resolution plans submitted in CIRP of Corporate Debtor were discussed and deliberated. Thereafter, the said plans were placed for e-voting.  On 08.06.2023, the CoC, after considering the feasibility and viability of the various resolution plans, has approved the agenda for approval of the Resolution Plan dated 30.12.2022 (as amended on 21.03.2023 and

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
			<p>28.04.2023) along with addendum dated 10.05.2023 submitted by SEML with <b>100%</b> majority.</p> <p>The agenda for approval has been extracted hereunder:</p> <p><i>“RESOLVED THAT pursuant to sub-section (4) of Section 30 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 (Code), as amended, and the rules and regulations thereunder including the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as amended, taking into account the discussions and deliberations on the feasibility and viability of the revised resolution plan submitted by Sarda Energy &amp; Minerals Limited on 28th April 2023 [read along with the addendum issued on 10th May 2023] (“Final Plan”) be and is hereby approved by the CoC”</i></p>
	(b) has been approved by the CoC with 66% voting share?		<p>Yes</p> <p>In the 31<sup>st</sup> CoC meeting dated 16.05.2023, various resolution plans submitted in CIRP of Corporate Debtor were discussed and deliberated. Thereafter, the said plans were placed for e-voting. On 08.06.2023, the CoC, after considering the feasibility and viability of the various</p>

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
			resolution plans, has approved the agenda for approval of the Resolution Plan dated 30.12.2022 (as amended on 21.03.2023 and 28.04.2023) along with addendum dated 10.05.2023 submitted by SEML with <b>100%</b> majority.
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	<b>Chapter IX</b> Clause 9.2.2 to Clause 9.2.8, Clause 9.3.  <b>Chapter X</b> Clause 10.2.4.2 and Clause 10.4	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	-	Yes  On 09.03.2023, the RP filed an application (IA No. (diary) 2709138020972023) under Section 66 of the IBC before the Hon'ble NCLT against the directors of the Corporate Debtor and Berrio Global Mauritius Limited. The transaction audit report dated 25.02.2023, highlights that through securities purchase agreement dated 22.08.2019, the Corporate Debtor had transferred compulsorily convertible debentures (“CCDs”) to Berrio Global Mauritius Limited (“BGML”) at a lower consideration. The CCDs of INR 137 crores had been transferred to BGML at a severely undervalued price of INR 71.36 lakhs.



Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 6.4.2 and Clause 6.4.4(b) read with Clause 6.5.2 and Clause 6.5.4(b).	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 2.2.8 read with clause 6.1	Yes
Regulation 38(1B)	(a) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Clause 12.6	No
	(b) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?		N/A
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Clause 10.1 read with Clause 10.4	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Chapter IX – Clause 9.2.2 to Clause 9.2.8, Clause 9.3.  Chapter X – Clause 10.2.4.2 and Clause 10.4	Yes
	(c) adequate means for supervising its implementation?	Chapter IX – Clause 9.2.2 to Clause 9.2.8, Clause 9.3.  Chapter X – Clause 10.2.4.2 and Clause 10.4	Yes
	(d) manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or	Clause 6.3.5	Yes

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
	wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed		
38(3)	Whether the resolution plan demonstrates that –		Yes
	(a) it addresses the cause of default?	Clause 4.6	Yes
	(b) it is feasible and viable?	Clause 5.5 and clause 12.6	Yes  In the 31 <sup>st</sup> CoC meeting dated 16.05.2023, various resolution plans submitted in CIRP of Corporate Debtor were discussed and deliberated. Thereafter, the said plans were placed for e-voting. On 08.06.2023, the CoC, after considering the feasibility and viability of the various resolution plans, has approved the agenda for approval of the Resolution Plan dated 30.12.2022 (as amended on 21.03.2023 and 28.04.2023) along with addendum dated 10.05.2023 submitted by SEML with <b>100%</b> majority.
	(c) it has provisions for its effective implementation?	Chapter IX – Clause 9.2.2 to Clause 9.2.8, Clause 9.3.  Chapter X – Clause 10.2.4.2 and Clause 10.4.	Yes
	(a) it has provisions for approvals required and	Clause 7.3 and Clause 10.2	Yes

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
	the timeline for the same?		
	(a) the resolution applicant has the capability to implement the resolution plan?	Clause 5.1 read with Clause 5.5 read with Chapter III.	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		<p style="text-align: center;">Yes</p> <p>On 09.03.2023, the RP filed an application (IA No. (diary) 2709138020972023) under Section 66 of the IBC before the Hon'ble NCLT against the directors of the Corporate Debtor and Berrio Global Mauritius Limited.</p> <p>The transaction audit report dated 25.02.2023, highlights that through securities purchase agreement dated 22.08.2019, the Corporate Debtor had transferred compulsorily convertible debentures (“CCDs”) to Berrio Global Mauritius Limited (“BGML”) at a lower consideration. The CCDs of INR 137 crores had been transferred to BGML at a severely undervalued price of INR 71.36 lakhs.</p>
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		<p style="text-align: center;">Yes</p> <p>Bank Guarantee No. 01390100001267 dated 12.06.2023 for a sum of 150,00,00,000/- (Indian rupees one hundred and fifty crores) has been issued by SEML in favour of Bank of Baroda. The said bank guarantee is valid 08.06.2023 and the claim period is valid till 08.06.2025.</p>

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	29.04.2022
Regulation 6(1)	Publication of Public Announcement	T+3	02.05.2022
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	13.05.2022
Regulation 13(1)	Verification of Claims	T+21	20.05.2022
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	19.05.2022
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	23.05.2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	25.02.2023 <i>[Kindly refer to Sr. No. 14A below]</i>
Regulation 27	Appointment of two Registered Valuers	T+47	15.06.2022
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	22.06.2022
Regulation 36A	Invitation of EoI	T+75	12.07.2022
	Publication of Form G	T+75	12.07.2022
	Provisional List of Resolution Applicants	T+100	07.08.2022
	Final List of Resolution Applicants	T+115	22.08.2022
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	12.08.2022
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	16.06.2023*
Section 31(1)	Approval of Resolution Plan	T=180	Approval is awaited. <i>[Kindly note that the Hon'ble Tribunal passed 4 orders granting extension in the timelines for conclusion of CIRP process as tabulated below]</i>

\*The details regarding extensions granted by the Hon'ble Adjudicating Authority have been tabulated below:

Order/ IA Details	Particulars
Order dated 10.10.2022 passed in IA NO. 2872 of 2022	<b>90 days extension</b> beyond the deadline of 180 days (expiring on 26.10.2022) was granted. The CIRP deadline stood extended to <b>24.01.2023</b> .
Order dated 24.01.2023 passed in IA NO. 258 of 2023	<b>60 days extension</b> beyond the deadline of <b>270 days</b> (expiring on 24.01.2023) was granted. The CIRP deadline stood extended to <b>25.03.2023</b> (i.e., till expiry of <b>330 days</b> ).
Order dated 17.03.2023 passed in IA No. 970 of 2023.	<b>60 days extension</b> days for conclusion of CIRP was granted. Thus, CIRP period stood extended to <b>25.05.2023</b> .
Order dated 01.06.2023 passed in IA No. 2221 of 2023	<b>30 days extension</b> conclusion of CIRP was granted. Thus, CIRP period stood extended to <b>25.06.2023</b> .

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	Competition Commission Approval	Competition Act, 2002	Competition Commission of India	As per clause 10.2.3.2 of the Successful Plan states that acquisition of Corporate Debtor would fall within the scope of <i>de minimis</i> exemption and would not require approval from the CCI.

12. The Successful Plan is not subject to the any contingencies.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	None	None	None	None

14. The Successful Plan is being filed 7 days before the expiry of the period of CIRP provided in section 12 of the Code.

14A. Whether the resolution professional has, in accordance with regulation 35A-

- (a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date: No]

**[Note:**

- (1) *The transaction in question was complex in nature involving a foreign entity, an amalgamation of the Corporate Debtor with its holding entity with retrospective effect, significant sums (INR 136 Crores), issue of complex instruments and also involved a management change and invocation of pledge of shares.*
  - (2) *These factors complicated the data collation, determination and formation of opinion on the transaction. Further, since the transaction was complex, the information and clarifications required to examine the transactions was also available with a significant delay.*
  - (3) *The formation of opinion and subsequent filing took significant efforts and time, as the RP is duty bound to ensure that relevant information and documents are available before the NCLT that meet the rigour of the requirements of Section 66 of Insolvency and Bankruptcy code, 2016 to be classified as a fraudulent transaction.*
  - (4) *The transaction audit report was submitted by the auditor on 25.02.2023.]*
- (b) filed Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: No]

**[Note:**

- (1) *The transaction in question was complex in nature involving a foreign entity, an amalgamation of the Corporate Debtor with its holding entity with retrospective effect, significant sums (INR 136 Crores), issue of complex instruments and also involved a management change and invocation of pledge of shares.*
- (2) *These factors complicated the data collation, determination and formation of opinion on the transaction. Further, since the transaction was complex, the information and clarifications required to examine the transactions was also available with a significant delay.*
- (3) *The formation of opinion and subsequent filing took significant efforts and time, as the RP is duty bound to ensure that relevant information and documents are available before the NCLT that meet the rigour of the requirements of Section 66 of Insolvency and Bankruptcy code, 2016 to be classified as a fraudulent transaction.*
- (4) *The transaction audit report was submitted by the auditor on 25.02.2023.]*

15. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	NA	NA	NA
2	Undervalued transactions under section 45	NA	NA	NA
3	Extortionate credit transactions under section 50	NA	NA	NA

4	Fraudulent transactions under section 66	IA No. 2580 of 2023 filed on 06.05.2023	Since the applications are pending adjudication, no order has been passed by the Adjudicating Authority.	Since the applications are pending adjudication, no order has been passed by the Adjudicating Authority.
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15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- i. Estimated liquidation cost: No
- ii. Estimated liquid assets available: No
- iii. Contributions required to be made: No
- iv. Financial creditor wise contribution is as under: No

Sl. No.	Name of financial creditor	Amount to be contributed, if any
1		
2		

15B. The committee has recommended under regulation 39C as under:

- i. Sale of corporate debtor as a going concern: No
- ii. Sale of business of corporate debtor as a going concern: No

*[Note: The CoC has declined the respective agenda with respect to the abovementioned issues in 31<sup>st</sup> CoC meeting dated 16.05.2023]*

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D. – No.

*[Note: The CoC has declined the relevant agenda in 31<sup>st</sup> CoC meeting dated 16.05.2023]*

16. I, Ashish Arjunkumar Rathi hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

(Signature)

Name of the Resolution Professional: **Arjunkumar Rathi,**

IP Registration No: **IBBI/IPA-001/IP-P00568/2017-2018/11010**

Address as registered with the Board:

Email id as registered with the Board: **irp.skspower@gmail.com**

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### **Findings of this Tribunal**

51. In the circumstances mentioned hereinabove, the Applicant Resolution Professional has filed this Application seeking approval of this Tribunal on the Resolution Plan, submitted by the Resolution Applicant *viz.* 'Sarda Energy and Minerals Limited' stating that the plan is in accordance with Section 30(2) of IBC, 2016, and other provisions laid thereunder.
52. Upon perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- ii.* Payment of CIRP Cost as specified *u/s.* 30(2)(a) of the Code.
  - iii.* Repayment of Debts of Operational Creditors as specified *u/s.* 30(2)(b) of the Code.
  - iv.* For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified *u/s.* 30(2)(c) of the Code.
  - v.* The implementation and supervision of Resolution Plan by the RP and the CoC as specified *u/s.* 30(2)(d) of the Code.
53. The Applicant RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) of IBC, 2016, and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP Regulations.
54. The Applicant RP has filed the Compliance Certificate in FORM-H along with the plan, *vide* Affidavit dated 03.07.2023. Upon perusal, the same is found to be in order. The Resolution Plan has been approved by the members of CoC in the 31<sup>st</sup> Meeting of CoC, which was held on 08.02.2023, with a voting percentage of 100%.
55. On a further perusal, we note that an application *u/s.* 66 of IBC, 2016 in relation to fraudulent transaction has been filed *via* I.A. No. 2580 of 2023, and



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the same is admittedly pending adjudication. We make it expressly clear that the approval of the Resolution Plan will not ipso-facto amount to abatement of applications, if any, apropos fraudulent transactions *u/s.* 66 of the Code and the same may be carried forward independently by the Secured Financial Creditor notwithstanding the same. The same is in due consonance with Item {6.3.5 (c)} of the Resolution Plan in consideration hereto. We have further taken note that the Resolution Plan provides for a Scheme of Amalgamation of the Corporate Debtor herein, with the SRA “*..upon the Corporate Debtor becoming a WOS of the Resolution Applicant.*” We make it clear that the same may be subject to necessary procedure(s), as enshrined under applicable law.

56. The Resolution Applicant has additionally sought certain Reliefs and Concessions per Chapter {11} of the Resolution Plan. We make it expressly clear that no reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted hereto, and the same shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any. Be that as it may, the Learned Counsel for the Applicant RP, during the course of hearing on 04.07.2024, has categorically affirmed that the implementation of the Resolution Plan is not conditional or contingent upon grant of any or all of such reliefs, concessions and dispensations by this Tribunal.
57. In the case of *K Sashidhar (supra)* the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2).

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58. In *CoC of Essar Steel (supra)* the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar (supra)**.”*

59. In view of the afore-stated discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is thus not in contravention with any of the provisions of the Code, and is in accordance with law. The same needs to be approved.

60. The present Application bearing **I.A. No. 2794 of 2023** in C.P. (IB) No. 893/MB/2021 is hereby **Admitted**. The Resolution Plan annexed to the Application (*a/w. Addendum dated 10.05.2023*) is hereby approved. It shall become effective from this date and shall form part of this Order.

60.1. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

60.2. At the risk of re-iteration, the approval of this resolution plan shall not be construed as waiver of any statutory obligations of the Corporate

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Debtor, and the same shall be dealt by the appropriate authorities in accordance with law.

- 60.3.** Further in terms of the judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited*; On the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- 60.4.** The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record.
- 60.5.** The Moratorium *u/s.* 14 of IBC, 2016, shall cease to have effect from the date of pronouncement of this Order.
- 60.6.** The Applicant shall supervise the implementation of the Resolution Plan and shall effectively file status of its implementation before this Tribunal from time to time without fail, preferably every quarter.
- 60.7.** The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Insolvency and Bankruptcy Board of India, along-with the copy of this Order for requisite information.
- 60.8.** The Applicant shall forthwith send a Certified Copy of this Order to the CoC and the Successful Resolution Applicant, for necessary compliances thereof.

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**61.** Apropos the **approval** of the Resolution Plan herewith in the captioned application *viz.* I.A. No. 2794 of 2023, the Applications filed as Objection(s)/ Intervention(s) to the Resolution Plan in consideration hereto, stand Disposed-of in the following terms:

**61.1.** I.A. No. 3336 of 2023: **Dismissed.**

**61.2.** I.A. No. 3399 of 2024: **Dismissed.**

**61.3.** I.A. No. 3654 of 2024: **Dismissed.**

**61.4.** I.A. No. 3286 of 2024: **Dismissed.**

**61.5.** IVN. PET. No. 40 of 2024: **Rejected.**

**61.6.** IVN. PET. No. 41 of 2024: **Allowed and Disposed-of.**

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

**13.08.2024**

*Aditya Kalia*

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**

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