

**ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**CUTTACK BENCH**

**IA/(IB) No. 149/CB/2023, IA/(IB) No. 150/CB/2023 & IA/(IB) No.  
285/CB/2023**

in  
**[CP(IB) No. 111/CTB/2020]**

**IA/(IB) No. 149/CB/2023**

*(An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016)*

**State Bank of India**

Stressed Assets Management Branch-1  
12<sup>th</sup> Floor, Jawahar Vyapar Bhawan 1,  
Tolstoy Marg, New Delhi-110001  
Mail: [sbi.04109@sbi.co.in](mailto:sbi.04109@sbi.co.in)

**.....Applicant**

**Versus**

**M/s Indrani Patnaik**

A-6, Commercial Estate,  
Civil Township, Rourkela-769004  
Mail: ([rourkelaoffice@altradegroup.com](mailto:rourkelaoffice@altradegroup.com))

**.....Respondent No. 1**

**Indian Bank**

SAM Branch, 17 (First Floor)  
Parliament Street, New Delhi-110001  
Mail: [armbdelhi@indianbank.co.in](mailto:armbdelhi@indianbank.co.in)

**.....Respondent No. 2**

**UCO BANK**

FCC Branch (1945), UCO Bank Building,  
5 Parliament Street, New Delhi-110001  
Mail: [ndlfcc@ucobank.co.in](mailto:ndlfcc@ucobank.co.in)

**.....Respondent No. 3**

**Bank of Baroda**

Stressed Asset Management Branch,  
4th Floor, Rajendra Bhawan, Rajendra Palace,  
New Delhi-110008  
Mail: [samdel@bankofbaroda.co.in](mailto:samdel@bankofbaroda.co.in)

**.....Respondent No. 4**

**ICICI Bank Limited**

ICICI Bank Tower, NBCC Place,  
Bisham Pitamah Marg, Pragati Vihar,  
New Delhi-110003  
Mail: [saumya.nigam@icicibank.com](mailto:saumya.nigam@icicibank.com)

**.....Respondent No. 5**

**UNION Bank of India**

Stressed Asset Management Branch,  
Unit No. 603 B, Konnectus Tower,  
Bhav Bhuti Marg, Opp. New Delhi Railway Station,  
Ajmeri Gate Side, New Delhi 110001  
Mail: [ubin0906069@unionbankofindia.bank](mailto:ubin0906069@unionbankofindia.bank)

**.....Respondent No. 6**

**ASIA Opportunities (III) Mauritius Limited**

5, President John Kannedy Street,  
Rogers House, Port Louis, Mauritius  
Mail: [mjain@aressg.com](mailto:mjain@aressg.com)

.....Respondent No. 7

**Punjab National Bank**

Zonal Sastra Centre, 1st Floor,  
7 Bhikaji Cama Place,  
Africa Avenue, New Delhi-110066  
Mail: [zs8343@pnb.co.in](mailto:zs8343@pnb.co.in)

.....Respondent No. 8

**IA/(IB) No. 150/CB/2023**

*(An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016)*

**Indrani Patnaik**

At and from A-6, Commercial Estate,  
Civil Township, Rourkela,  
Odisha- 769004

.....Applicant

**-Versus-**

**OCL Iron and Steel Limited,**

Having its registered office at  
Lamloi Rajangpur,  
Sundargarh, Odisha- 770017

.....Respondent No. 1

**State Bank of India,**

Situated at 21st Floor, Maker Tower  
'E' Cuffe Parade, Mumbai- 400005 and  
at 2nd Floor, 'The Arcade World Trade Centre'  
Cuffe Parade, Mumbai- 400005

.....Respondent No. 2

**Punjab National Bank,**

Zonal Sastra Centre,  
1<sup>st</sup> Floor, 7 Bhikaji Came Place,  
New Delhi-110607

.....Respondent No. 3

**ICICI Bank,**

At ICICI Tower, NBCC Place,  
Pragati Vihar, Bhisma Pitamah  
Marg, New Delhi- 110003

.....Respondent No. 4

**UCO Bank,**

Situated at 5 Sansad Marg,  
Pandit Pant Marg Areas,  
New Delhi 110001

.....Respondent No. 5

**Bank of Baroda,**

Situated at 4<sup>th</sup> Floor Rajendra Bhawan,  
Rajendra Place, New Delhi- 110001

.....Respondent No. 6

**Union Bank of India,**

Situated at M-93, Connaught Circus,  
New Delhi-110001

.....Respondent No. 7

**Ganesh Ores Private Limited,**

Having its registered office At-LL-2, Manika Towers,  
3<sup>rd</sup> Floor, Civil Township, Rourkela,  
Sundargarh, Odisha-769004

.....Respondent No. 8

**Indian Bank**

**(erstwhile Allahabad Bank)**

Its Parliament Street Branch  
is Situated at New Delhi.

.....Respondent No. 9

**Asia Opportunities (III), Mauritius Ltd**

Having its registered office at Rogers House, 5  
President John Kennedy Street,  
Port Louis, Mauritius.

.....Respondent No. 10

**Shailesh Verma,**

**Insolvency Professional,**

Having his office at E1004,  
Vijaya Apartments, Mall Road,  
Ahinsa Khand 2, Near Shanti  
Gopal Hospital, Indirapuram,  
Ghaziabad, Uttar Pradesh- 201014

.....Respondent No. 11

**IA/(IB) No. 285/CB/2023**

*(An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016 for amendment of Interlocutory Application No. 149/KB/2023)*

**State Bank of India**

Stressed Assets Management Branch-1  
12<sup>th</sup> Floor, Jawahar Vyapar Bhawan 1,  
Tolstoy Marg, New Delhi-110001

.....Applicant

**Versus**

**M/s Indrani Patnaik**

A-6, Commercial Estate,  
Civil Township, Rourkela-769004  
Mail: ([rourkelaoffice@altradegroup.com](mailto:rourkelaoffice@altradegroup.com))

.....Respondent No. 1

**Indian Bank**

SAM Branch, 17 (First Floor)  
Parliament Street, New Delhi-110001  
Mail: [armbdelhi@indianbank.co.in](mailto:armbdelhi@indianbank.co.in)

.....Respondent No. 2

**UCO BANK**

FCC Branch (1945), UCO Bank Building,  
5 Parliament Street, New Delhi-110001  
Mail: [ndlfcc@ucobank.co.in](mailto:ndlfcc@ucobank.co.in)

.....Respondent No. 3

**Bank of Baroda**

Stressed Asset Management Branch,  
4th Floor, Rajendra Bhawan, Rajendra Palace,  
New Delhi-110008  
Mail: [samdel@bankofbaroda.co.in](mailto:samdel@bankofbaroda.co.in)

.....Respondent No. 4

**ICICI Bank Limited**

ICICI Bank Tower, NBCC Place,  
Bisham Pitamah Marg, Pragati Vihar,  
New Delhi-110003  
Mail: [saumya.nigam@icicibank.com](mailto:saumya.nigam@icicibank.com)

.....Respondent No. 5

**UNION Bank of India**

Stressed Asset Management Branch,  
Unit No. 603 B, Konnectus Tower,  
Bhav Bhuti Marg, Opp. New Delhi Railway Station,  
Ajmeri Gate Side, New Delhi 110001  
Mail: [ubin0906069@unionbankofindia.bank](mailto:ubin0906069@unionbankofindia.bank)

.....Respondent No. 6

**ASIA Opportunities (III) Mauritius Limited**

5, President John Kannedy Street,  
Rogers House, Port Louis, Mauritius  
Mail: [mjain@aresssg.com](mailto:mjain@aresssg.com)

.....Respondent No. 7

**Punjab National Bank**

Zonal Sastra Centre, 1st Floor,  
7 Bhikaji Cama Place,  
Africa Avenue, New Delhi-110066  
Mail: [zs8343@pnb.co.in](mailto:zs8343@pnb.co.in)

.....Respondent No. 8

**In the main matter of: [CP(IB) No. 111/CB/2020]**

*(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)*

**Indian Bank**

.....Financial Creditor

**Versus**

**OCL Iron and Steel Limited**

.....Corporate Debtor

**Order pronounced on:05-02-2024**

**Coram: P. Mohan Raj, Hon'ble Member (J)**

**Kaushalendra Kumar Singh, Hon'ble Member (T)**

**Appearance: (through hybrid Mode)**

For Applicant : Ld. Sr. Adv. Mr. Joy Saha a.w.  
Ld. Adv. Mr. Shantanu Das (IA 149 of 2023)  
Ld. Adv. Mr. Supriyo Gole (IA 150 of 2023)  
Ld. Adv. Mr. Shantanu Das (IA/285 of 2023)

For the Respondent : Ld. Sr. Adv. Gautam Mishra a.w.  
Ld. Adv. Mr. Sahasransu Saurov (IA/149 of 2023)  
(R- 2 to 7)  
Ld. Adv. Mr. Shantanu Das (IA/150 of 2023) (R-2)  
Ld. Adv. Mr. Sahasransu Sourav (IA/150 of 2023) (R- 4 to  
7, 9 & 10)  
Ld. Adv. Mr. Sahasransu Sourav (IA/285 of 2023)  
(R-2 to 7)

**ORDER**

1. The **IA/(IB) 149/CB/2023** has been filed by the State Bank of India, one of the Financial Creditors seeking appropriate orders for setting aside distribution of payments to dissenting Financial Creditors decided in the 4<sup>th</sup> Meeting of Monitoring Committee held on 04.05.2023 being void and contrary to the provisions of Section 30(2)(b) r.w. Section 53(1) of the IBC and to direct the Respondent Nos. 1 to 7 to make payment of the amount of Rs 64.74 crores to the applicant, dissenting Financial Creditor and also for granting certain other relief as stated in the application.

**IA/(IB) No. 150/CB/2023** has been filed by the M/s Indrani Patnaik, Successful Resolution Applicant, for a declaration that the applicant/Successful Resolution Applicant has complied with the resolution plan dated 27.05.2022 as modified by the Addendum dated 20.09.2022 and that the resolution plan stands implemented etc.

**IA/(IB) No. 285/CB/2023** is filed by the applicant/State Bank of India for the limited purpose of seeking leave of this Adjudicating Authority to amend IA/(IB) No. 149/CB/2023 so as to bring on record a copy of the resolution plan as approved by the Adjudicating Authority order dated 20.03.2023; and also the minutes of the meetings of the monitoring committee held on 27.03.2023, 02.05.2023, 3.05.2023 & 04.05.2023, stating therewith that those documents came into their possessions subsequent to the filing of IA/(IB) No. 149/CB/2023.

The issues being inter-connected, a common order is being passed hereunder in respect of these Interlocutory Applications.

2. The facts of the matter, as emerges from these applications are that one of the Financial Creditors, namely, Indian Bank had filed an application under section 7 of the IBC, 2016 for initiation of the CIRP against the corporate debtor OCL Iron and Steel Limited. The corporate debtor was admitted into the CIRP vide this Adjudicating Authority order dated 20.09.2021. Initially, Mr. Shiv Nandan Sharma was appointed as the IRP. However, thereafter, he was replaced on the appointment of Mr. Vijay Kumar V. Iyer as Resolution Professional vide order dated 25.11.2021. During the course of the CIRP proceedings, the CoC was reconstituted with the following composition.

<b>Sr. No.</b>	<b>Name of Creditor</b>	<b>Voting Share (%)</b>
1.	Asia Opportunities (III) Mauritius Limited (SSG)	36.22 %
2.	ICICI Bank	12.68 %
3.	State Bank of India	10.39 %
4.	Indian Bank	10.32 %
5.	UCO Bank	9.82 %
6.	Bank of Baroda	7.87 %
7.	Union Bank of India	7.11 %
8.	Punjab National Bank	0.63 %
9.	Ganesh Ores Private Limited	4.98 %

The resolution plan dated 27.05.2022 as modified by the Addendum dated 27.05.2022 of M/s Indrani Patnaik was approved by the CoC and later by the Adjudicating Authority vide order dated 20.03.2023. The issue now, before us is the amount payable to the applicant State Bank of India being dissenting Creditors in terms of the resolution plan and the provisions of section 30(2)(b) of the IBC. The applicant State Bank of India claims that the liquidation value payable to it in terms of section 30(2)(b) amounts to Rs 64.56 crores, whereas, the monitoring committee have paid them to the extent of Rs 35.20 crores, as

other lenders bank could not reach to consensus on distribution to dissenting Financial Creditors.

3. We have heard the learned Senior counsel, Mr. Joy Saha appearing for the applicant State Bank of India and also Mr. Gautam Mishra Senior advocate appearing for the lenders' bank, namely, Indian Bank, UCO Bank, Bank of Baroda, ICICI Bank Limited, Union Bank of India, Asia Opportunities (III) Mauritius Limited [being Respondent Nos. 2 to 7 in IA/(IB) No. 149/CB/2023 and IA/(IB) No. 285/CB/2023]. We have also heard Mr. Supriyo Gole advocate appearing for the Successful Resolution Applicant M/s Indrani Patnaik in IA/(IB) No. 150/CB/2023. We have also perused the relevant records/documents as placed in Interlocutory Applications (IA/(IB) No. 149/CB/2023 & IA/(IB) No. 150/CB/2023). We also note that the applicant State Bank of India vide its application in IA/(IB) No. 285/CB/2023 has sought to take on record a copy of the resolution plan as well as the minutes of the meetings of the monitoring committee held on 27.03.2023, 02.05.2023, 03.05.2023 & 04.05.2023 and to carry amendment accordingly in IA(IB)No. 149/CB/2023 by inserting certain paras and modifications thereof. We also note that these documents are already annexed in IA/(IB) No. 150/CB/2023. The applicant has obtained copies of all these documents subsequent to the filing of IA/(IB) No. 150/CB/2023 by the Successful Resolution Applicant. The respondent side, however, has opposed this application IA/(IB) No. 285/CB/2023 saying that the application for amendment is not maintainable both in facts and law and that if the amendment application is allowed, then the same would change the entire nature and character of IA/(IB) No. 149/CB/2023. In the event of such opposition, the applicant State Bank of India and the counsel appearing on their behalf did not pursue that amendment application and the learned Sr. counsel Mr. Joy Saha referred to those documents as placed in IA/(IB) No. 150/CB/2023 while advancing his arguments. In that view of the matter, the application IA/(IB) No. 285/CB/2023 seeking amendment has become **redundant/infructuous** and the same stands **disposed of** without any decision thereon.

4. As regards the main issue, which has been stated hereinabove, we note that as per the Addendum dated 20.09.2022 to the resolution plan, the Successful Resolution Applicant had offered upfront cash-payment of Rs 262.60 crores for distribution amongst the Financial Creditors. [In the Resolution plan dated 27.05.2022, this amount was only Rs 150 crores.] Learned Senior counsel, Mr. Joy Saha has drawn our attention to amended clause No. 4.1.5.2 and also clauses 4.1.5.3 & 4.1.5.6. of the resolution plan. For ready reference, these clauses from the resolution plan, being relevant are reproduced here as under:

**Clause No. 4.1.5.2:**

Resolution Applicant proposes to pay Rs 262.60 crore as upfront cash payment to the Financial Creditors within 45 days from the effective date, in accordance with section 30(2)(b) read with section 53 of the Code. Post the payment of the CIRP Costs in the manner set out above in this Resolution Plan and the ***Liquidation Value*** or the ***amount proposed under the Resolution Plan whichever is higher, due to Operational Creditors, Workmen and Employee and Dissenting Financial Creditors*** as per section 30(2)(b) read with section 53 of the Code, the admitted Debt of Financial Creditors ***shall be paid*** and the same shall be distributed in the proportion agreeable to the CoC, subject to the maximum consideration agreed to be paid by the Resolution Applicant.

**Clause No. 4.1.5.3:**

Additionally, the RA proposes to sell the auto division of the Corporate Debtor after implementation of the Plan. The entire sale proceeds shall be distributed between the assenting Financial Creditors.

**Clause No. 4.1.5.5:**

As per Regulation 38(1)(b) of the (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Financial Creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over Financial Creditors who voted in favour of the plan.

**Clause No. 4.1.5.6:**

In the event, some of the Financial Creditors out of the CoC are dissenting to the proposed Resolution Plan, such Financial Creditors shall be paid in accordance with section 30(2)(b) read with sub-section (1) of section 53 of the Code.

4.1 Learned Senior counsel, Mr. Joy Saha submitted that the said resolution plan has been approved by the CoC as well as by the Adjudicating Authority. The plan has provided for payment to the dissenting creditors in accordance with section 30(2)(b) read with sub-section 1 of section 53 of the Code, which entitles the dissenting creditor to be paid the 'Liquidation Value' in terms of section 30(2)(b) or the amount which otherwise would be payable to it as per plan (had it not dissented) whichever is higher.

In this context, the learned Senior counsel Mr. Joy Saha has also referred to the provisions of section 30 of the IBC, 2016. The relevant part of section 30 is reproduced for ready reference:

**Section 30 of the IBC:**

**30. (1)** x x x x x x x

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

(a) x x x x x x x

(b) Provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) x x x x x x

(ii) x x x x x x

whichever is higher, and **provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.**

**Explanation 1: -**

For the removal of doubts, it is hereby clarified that distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

x x x x x x x

4.2 The learned Senior Counsel, Mr. Joy Saha has also referred to the minutes of the 18<sup>th</sup> CoC meeting, 19<sup>th</sup> CoC meeting & 20<sup>th</sup> CoC meeting, which were conducted on 23.09.2022, 30.09.2022 & 07.10.2022, i.e. prior to the completion of E-voting of the resolution plan.

4.3 As noted from the relevant minutes, the CoC in its 18<sup>th</sup> meeting had decided the criterion for distribution of proceeds and had passed following resolution.

*“Resolved that approval of the committee of creditors is hereby accorded to approve the distribution mechanism/principal or formulae for payment to creditors proposed in the resolution plan(s) in the following manner:*

*The resolution plan proceeds attributable to the financial creditors to be distributed in the following manner:*

- (a) 1.992% shall be payable to the unsecured financial creditor from the upfront amount proposed under the approved resolution plan as the full and final settlement.*
- (b) From the remaining resolution plan proceeds attributable to the financial creditors, the amount shall be distributed within the secured financial creditors in the following manner:*
  - (i) Amount payable up to the liquidation value of the corporate debtor, as determined by the values, shall be distributed as per the share of liquidation value attributable to each of the secured financial creditors.*
  - (ii) Any amounts over and above the liquidation on the value of the corporate debtor, as determined by the valuers, shall be distributed between the CoC members on the basis of the voting share in the CoC, adjusted for the voting share of the unsecured financial creditor.”*

4.4 Then in the 19<sup>th</sup> CoC meeting, pursuant to detail discussions within the CoC members it had unanimously agreed to appoint M/s KG Somani and company LLP to calculate and determine the amount payable to each creditor as per the distribution mechanism/formulae. **Further, in that meeting, it was also clarified that in the case of any secured or unsecured financial creditors dissent to the resolution plan, they shall be paid the liquidation value attributable as per the provisions of the code.** The relevant part of the minutes (19<sup>th</sup> CoC meeting), as referred to the learned Senior counsel is reproduced herein under:

*“Pursuant to detailed discussion within the CoC members, it was unanimously agreed to appoint M/s K.G. Somani and Co. LLP, to calculate and determine the amount payable to each creditor basis the distribution mechanism/formulae.*

*On the issue of providing a clarification to the distribution mechanism, SSG sought the views of the CoC members on a clarification in the approved distribution mechanism/formulae that the amount of 1.992% i.e. payable to the unsecured financial creditor shall only be applicable in case of an unsecured assenting financial creditor. Further, in case any secured or unsecured financial creditor dissents to the resolution plan, they shall be paid the liquidation value attributable as per the provisions of the Code”.*

*Further, as regards the distribution mechanism already approved by the CoC in its 18<sup>th</sup> meeting held on 23<sup>rd</sup> September 2022, the members of the CoC discussed, reiterated and agreed upon as follows:*

- (a) In the scenario of the corporate debtor going into liquidation, the liquidation proceeds attributable to the secured financial creditors shall be distributed as per their share in security interest.*
- (b) In case of approval of the resolution plan, plan proceeds of the approved resolution plan as proposed to financial creditors shall be distributed based on the distribution mechanism as approved by the CoC in its 18<sup>th</sup> meeting held on 23.09.2022. Further,*
  - (i) Amount @ 1.992% payable to the unsecured financial creditor from the upfront amount as full and final settlement,*

*shall be payable only in case the unsecured financial creditor is an assenting financial creditor.*

- (ii) *From the remaining resolution plan proceeds attributable to the financial creditors, the amount payable up to the liquidation value of the corporate debtor, as determined by the valuers, shall be distributed among the secured financial creditors as per the share of liquidation value attributable based on the share in security interest. Any amounts over and above the liquidation value of the corporate debtor shall be distributed among secured financial creditors based on their voting share in the CoC, adjusted for the voting share of the unsecured financial creditor.*

4.5 In the 20<sup>th</sup> CoC meeting, it had further clarified that in the event of approval of the resolution plan, dissenting financial creditors will be paid as proposed under the respective resolution plan. The relevant part, as referred to by the learned counsel is reproduced herein:

*“Post detailed discussion, it was concluded that the suggestion by ICICI Bank vide email dated 4<sup>th</sup> October 2022, as regards the proposed distribution mechanism for dissenting financial creditors, the same may be clarified in the following manner”.*

**“.....in the event of approval of resolution plan, dissenting secured financial creditors will be paid as proposed under the respective resolution plan.”**

4.6 The learned Senior counsel also referred to the report dated 07.10.2022 & M/s K G Somani & Company LLP, who was appointed as **Evaluation Adviser**, whereby, the ‘Liquidation Value’ due to the applicant has been worked out at Rs 64.56 crores. This has been computed based on the Liquidation Value of the two divisions- (1) Steel Division & (2) Auto Division, which has been taken at Rs 286.63 crores and Rs 185. 28 crores respectively.

Then the learned Senior counsel, Mr. Joy Saha also referred to the minutes of the monitoring committee in order to demonstrate that the decision of the

monitoring committee is contrary to what was decided by the CoC in 18<sup>th</sup>, 19<sup>th</sup> & 20<sup>th</sup> CoC meetings and also as provided in the resolution plan.

4.7 During the arguments, the learned counsel referred to the discussion as records of the **minutes of the first meeting of the monitoring committee** under Agenda 8, which was to take note of the distribution mechanism for distributing resolution plan proceeds to the financial creditor, where the consultant Deloitte Team had apprised to members the resolution adopted by the CoC in the 18<sup>th</sup> CoC meeting and had also drawn the attention of the clarification referred in the minutes of 20<sup>th</sup> CoC meeting, whereby, it was clarified that in the event of approval of the resolution plan dissenting secured financial creditor will be paid as proposed under the respective resolution plan.

4.8 Learned counsel also referred to the **minutes of the Second monitoring committee meeting** wherein, it has been referred that:

*“The Chairperson apprised the MC members regarding the discussion held during the first meeting of the monitoring committee wherein, it was calculated that the lenders shall discuss the matter of treatment and distribution of the resolution plan proceeds to the dissenting financial creditor within themselves and the MC legal advisor shall their views on the said matter.*

*The Chairman sought the views of the MC members on the treatment for the dissenting financial creditor, as it was decided in the second MC that the MC members representing the lenders shall discuss the said matter within his and update the MC on the same.*

*The MC legal advisor presented their views to the MC members and occupied that in terms of the provisions of the note and prevailing law, the due of the dissenting financial creditor shall be treated in priority over other creditors under the provisions of the Code and the said amount shall be calculated on the basis of liquidation value allocated in terms of the security to each lender as per the provisions of the Code.*

*The India Bank agreed to the views of the MC legal advisor and mentioned that they have calculated the dues payable to each creditor considering the same approach. The working file shared by the Indian Bank as*

also annexed with the discussion note in Annexure No. 2 was presented in the meeting. The Indian Bank explained working to the MC members with the help of the Deloitte Team. Further, it was clarified that the Indian Bank has relied upon the calculations provided by the Evaluation Advisor appointed by the CoC Members during the CIRP period. However, the Indian Bank had considered the latest position of the CIRP cost in their calculation and accordingly, the revised share has been calculated for each creditor”.

4.9 Learned counsel also refers to the relevant part of the minutes of the 3<sup>rd</sup> monitoring committee meeting, wherein in reference to Agenda 4, which was to discuss the treatment and distribution of the resolution plan proceeds to the dissenting financial creditor, it has been recorded that

*“MC legal advisor stated that as per the prevailing law, the dissenting financial creditor are to be paid in priority to any amount to be paid to any other financial creditor. Further, the dissenting financial creditors are to be paid that share in the liquidation value and the treatment suggested by SSG shall not be in terms of the prevailing law”.*

*The Indian Bank mentioned that the said matter was discussed in detail during the lenders' meeting held on 3<sup>rd</sup> May 2023. However, a consensus has still not been formed within the lenders. Considering that there is no consensus yet and the matter shall be taken to litigation by some of the lenders at a later stage, the Indian Bank suggested that the amount to be paid out to dissenting financial creditors shall be kept assigned in the bank accounts of the corporate debtor and the balance amount shall be distributed amongst the assenting financial creditors. The SSG said that the amount shall be distributed to dissenting financial creditors to the extent decided on “**pari passu basis**” and the balance amount shall be kept aside in the account of the corporate debtor.*

4.10 Then, the learned senior counsel also referred to the minutes of the 4<sup>th</sup> monitoring committee wherein, in reference to Agenda 6, it has been recorded that the various lenders had come up with their own working onto the distribution amongst the secured financial creditor and in view of the difference of approach and working given by such lenders, the monitoring

committee had finally adopted the minimum proposed amount. The relevant table and the discussion as recorded therein is as under:

<b>Name of the Lender</b>	<b>ICICI proposal (A)</b>	<b>Indian Bank proposal (B)</b>	<b>SBI proposal (C)</b>	<b>BOB proposal (D)</b>	<b>UCO proposal (E)</b>	<b>Distribution proposed by SSG and Indian Bank (MC members) (F)</b>
State Bank of India	35.2	60.4	64.7	35.3	35.3	35.2
Indian Bank	35.0	30.8	30.1	35.1	35.1	30.1
UCO Bank	33.3	29.3	28.6	33.4	33.4	28.6
Bank of Baroda	26.7	23.5	22.9	26.7	26.7	22.9
Union Bank	24.1	21.2	20.7	24.2	24.2	20.7
PNB	2.1	3.7	3.9	2.1	2.1	2.1
Asia Opportunities (SSG)	74.8	65.5	63.9	74.5	74.5	63.9
ICICI Bank	26.2	22.9	22.4	26.1	26.1	22.4
To be held in designated bank account of the corporate debtor (which may be converted into an escrow account)						31.3
<b>Total (A+B)</b>	<b>257.4</b>	<b>257.4</b>	<b>257.4</b>	<b>257.4</b>	<b>257.4</b>	<b>257.4</b>

*SSG states that as there was no consensus formed without the lenders. SSG has collated all the proposals and suggested that the minimum of all the proposals shall be paid to all the financial creditors and the balance amount (as highlighted in the above calculation) i.e. INR 31.33 crores shall be held in the designated account of the corporate debtor and the said account may be converted into an escrow account, if required.*

**The MC legal advisor raised his objections against the distribution mechanism presented during the MC meeting as the same was not found to be in accordance with the provisions of the Code and stated that the proposal should be for the entire amount to be distributed i.e. INR 257.4 crores raised concerns regarding the balance amount i.e. INR 31.33 crores to be held designated account of the corporate debtor.**

*SSG stated that they have followed the same approach in few of their previous cases as well as mentioned that this is not their proposal they have only considered the minimum of all the proposals they have received from various lenders and have suggested to keep the remaining amount in an escrow account. Further, they mentioned that their view is in line with the proposal suggested by the Indian Bank in the above table i.e. Column B.*

**The Chairperson agreed with the views of the MC legal advisor and stated his concerns with respect to the distribution proposed. He further stated that in his view, the distribution should be on the basis of distribution mechanism already approved by the CoC during the CIRP and relevant legal provisions.**

*Post detailed deliberations in the meeting, SSG and Indian Bank suggested to put the proposal presented by SSG and Indian Bank (i.e. Column F) to vote by the MC members i.e. to distribute a minimum of the amount proposed by some of the tee lenders and keep their balance amount in designated escrow account.*

5. The learned Senior Counsel, Mr. Gautam Mishra appearing for Respondent Nos. 2 to 7 (other lenders bank), however, raised a preliminary objection saying that in IA/(IB) No. 149/CB/2023, the decision of the

monitory committee is under challenge, however, the monitory committee has not been impleaded as a party and thereby, he took the plea that the application itself is not maintainable. The learned counsel also stated that if the prayer of the SBI is allowed, it would rewrite the judgment of the **Hon'ble Supreme Court in Resurgence ARC (Pvt Ltd) Vs Amit Metaliks Limited 2021 SCC Online SC 409**. Learned counsel also submitted that the distribution mechanism which has been approved in the 18<sup>th</sup> and 19<sup>th</sup> CoC meetings is fair and equitable and is completely in sync with the law laid down by the Hon'ble Supreme Court, in the case of India Resurgence. He specially referred to para 17 & 21 of the judgment. He also relied on the judgment of Hon'ble NCLAT in the case of "**Indian Bank vs. Charu Desai 2022 SCC Online Hon'ble NCLAT 190**". He pleaded that the decision of the CoC and monitory committee provided for a distribution mechanism, which is fair and equitable to all the secured Financial Creditors as a single class and this approach cannot be faulted with and there is absolutely no violation of section 30(2)(b) and section 53 of the IBC in the present case.

6. As regards the preliminary objection raised by the learned senior counsel Mr. Gautam Mishra, we note that as per the minutes of the 4<sup>th</sup> monitoring committee meeting, the monitoring committee itself has been dissolved following the implementation of the plan. Further, we also note that the decision of the monitoring committee on the distribution to the dissenting creditors is based upon the views expressed by the lender banks, which have already been impleaded in the application and therefore, its contention that as the monitoring committee has not been impleaded as a party and thereby, the application is not maintainable is devoid of any merit and the same is therefore rejected.

7. Then, on the issue of the amount payable to the SBI being a dissenting financial creditor, we also note that the resolution plan has been approved by the Adjudicating Authority as being a complaint to the provisions of section 30(2)(b). The resolution plan clearly provides for payment to the dissenting financial creditor in accordance with the provisions of section 30(2)(b). It also provides for the payment in priority to the operational creditor, workman and employee and the dissenting financial creditor as per section 30(2)(b), and

then provides for distribution of the balance amount amongst the other financial (assenting) creditors as agreeable to the CoC subject of the maximum consideration agreed upon by the resolution applicant. **“Clause No. 4.1.5.2”**.

We also note that the inter se distribution criterion as agreed upon by the CoC in the 18<sup>th</sup> & 19<sup>th</sup> has also been clarified there in stating clearly that

**“.....in the event of approval of resolution plan, dissenting secured financial creditors will be paid as proposed under the respective resolution plan.”**

The resolution plan, as stated above, clearly provides for the payment to the dissenting financial creditors in accordance with the provisions of Section 30(2)(b). As such the share of dissenting creditors are to be computed with reference to the liquidation value of the corporate debtor keeping in view the security interest. For the remaining financial creditors, the CoC as per their commercial wisdom can provide for inter-se distribution criterion which has been done by the CoC in its 18<sup>th</sup> & 19<sup>th</sup> meeting.

8. We also note that the resolution plan provided for upfront payment of Rs 262.60 crores for distribution amongst the financial creditors and, further proceeds upon sale of the auto unit having liquidation value of 184.45 cores to the assenting financial creditors. As per proviso of the Code, the dissenting creditors are to be paid in priority and, therefore as against the entire plan value [ i.e. 262.60 crore plus proceeds upon sale of auto unit], the dissenting creditors are to be paid the liquidation value i.e. the amount which they will be entitled as per waterfall mechanism provided under section 53(1) in the event of the liquidation or the amount payable as per the common criterion adopted by the CoC for the distribution, whichever is higher, out of the upfront amount itself. We have also taken note of the fact that the liquidation value of the steel unit is Rs 284.47 crores and the auto unit is Rs 184.45 crores. The applicant SBI has an unsecured interest in the steel unit. As per the working based upon the liquidation value of the steel unit, the liquidation value payable to SBI has been computed by the Evaluation Advisor at Rs 64.56 crores, and this is in proportionate to the security interest of each of

the secured financial creditor. In view of the factual matrix as stated herein above and the relevant provisions of the Code, we are of the considered view that the decision of the monitoring committee, which has been on account of the difference of opinion among the other lenders and for the reason that those lenders could not arrive at a consensus on the distribution to the dissenting creditors, is not at all in accordance with the provisions of section 30(2)(b) as provided in the resolution plan.

9. The reliance of the Hon'ble counsel appearing for the respondent lender banks onto the decision of the *Hon'ble Supreme Court in Resurgence ARC (Pvt Ltd) (Supra) or the decision of the Hon'ble NCLAT in the case of Charu Desai* completely misplaced. The INDIA Resurgence case does not in any manner whatsoever provide that the provisions of section 30(2) of the IBC are not mandatory or they can be deviated from or that dissenting financial creditor can be paid less than its share of the liquidation value.

10. We accordingly, direct the respondent No. 1, the successful resolution applicant who has already taken over the control over the corporate debtor and the other lender banks who are respondent No. 2 to 7 in the application IA 149 of 2023 to ensure that the distribution to the SBI, being dissenting financial creditor, is made in accordance with the provisions of section 30(2)(b) as has been computed by the Evaluation Advisor. We note that the liquidation as computed by the Evaluation Advisor is Rs 64.56 crores which is slightly less than Rs 64.74 crores computed by the SBI itself. The computation of liquidation value as arrived by the Evaluation Advisor should be re-checked and payment to the SBI be made accordingly.

11. With these directions, all the three interlocutory applications i.e. **IA 149 of 2023, IA 150 of 2023 & IA 285 of 2023** stands **disposed of**.

**KAUSHALENDRA KUMAR SINGH** Digitally signed by  
KAUSHALENDRA KUMAR SINGH  
Date: 2024.02.05 14:50:14 +05'30'

**PANDIAN MOHAN RAJ** Digitally signed by PANDIAN  
MOHAN RAJ  
Date: 2024.02.05 15:23:17 +05'30'

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

**P. MOHAN RAJ**  
**MEMBER (JUDICIAL)**

Signed on this, 5<sup>th</sup> day of February, 2024.

*Neeraj Gupta/Stenographer*