THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No. 47/2020 and 581/2021
in
CP (IB) No.312/Chd/Hry/2018
(Admitted)

In the matter of:

Punjab National Bank
(Erstwhile Oriental Bank of Commerce) ….Petitioner-Financial Creditor

Versus

M/s Gupta Exim (India) Pvt. Ltd. …Respondent-Corporate Debtor

And in the matter of:-
IA No.47/2020 **Under Section 60(5) of IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016**
Vivek Raheja, Resolution Professional
of M/s Gupta Exim (India) Pvt. Ltd. ….Applicant/Resolution Professional
Vs.
Small Industries Development
Bank of India (SIDBI) ….Respondent

And in the matter of:-
IA No.581/2021 **Under Section 60(5) of IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016**
Small Industries Development
Bank of India (SIDBI) ….Applicant
Vs.

1. Vivek Raheja, Resolution Professional
   of M/s Gupta Exim (India) Pvt. Ltd.
2. Punjab National Bank ….Respondents

Order delivered on: 17.03.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:
For the Applicant/Resolution Professional
in IA No.47/2020 : Mrs. Munisha Gandhi, Senior Advocate
Mr. Harsh Garg, Advocate
Mr. Pulkit Goyal, Advocate

For the Respondent in
IA No.47/2020 : Mr. Deepender Singh, Advocate

For the Applicant/SIDBI
in IA No.581/2021 : Ms. Radhika Suri, Senior Advocate
Mr. Dharam Paul Garg, Advocate

For the Respondent No.1/Resolution Professional
in IA No.581/2021 : Mrs. Munisha Gandhi, Senior Advocate
Mr. Harsh Garg, Advocate
Mr. Pulkit Goyal, advocate

For the Respondent No.2/PNB : Mr. R.S. Bhatia, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

That the CIRP in the case in hand has been initiated by Oriental Bank of Commerce (Now Punjab National Bank) by filing an application under Section 7 of IBC, 2016. The aforesaid application was admitted by this Adjudicating Authority vide order dated 29.10.2019. The Resolution Professional constituted the Committee of Creditors (CoC) as per provision of Section 21 of the IBC, 2016 consisting of two financial creditors or corporate debtors i.e. Oriental Bank of Commerce (Now Punjab National Bank) and Small Industries Development Bank of India (SIDBI), holding 97.7% and 2.03% voting share in CoC respectively.

IA No.47/2020

The present application is filed under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 for directions to Respondent (SIDBI) to hand over the possession of the assets belonging to the corporate debtor which had taken over by the respondent vide possession noticed dated 10.01.2017 issued u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002.

2. It is submitted by the applicant that amongst the other members of CoC, the respondent is one of the members, who had filed its claim with the applicant on 14.11.2019 for an amount of Rs.12,95,33,923/-. The corporate debtor while availing financial facilities from the respondent had mortgaged two landed properties. The respondent had issued a possession notice dated 10.01.2017 while taking physical possession of the said properties mortgaged with it belonging to the corporate debtor.

3. It is averred by the applicant that for taking control/possession of the same above-said properties, the applicant had written a request letter on 30.11.2019 to the respondent for cancellation of the possession notice dated 10.01.2017 and to hand over the possession of the same to the Applicant-IRP/RP in view of the provisions of the IBC, 2016.

4. It is alleged by the applicant that the respondent replied back to the applicant/RP vide letter dated 22.01.2020 and refused to hand over the possession on the ground that the moratorium under IBC does not affect the existing rights of the respondent but only has an effect on suspension/abeyance to take any action for enforcement of such rights and stated that the possession over the above-mentioned properties of the corporate debtor were taken by the respondent on 10.01.2017 i.e. prior to the commencement of CIRP.

5. It is contended by the applicant that though the respondent had taken possession of the properties under SARFAESI Act, 2002 prior to the admission order dated 29.10.2019, the title of the same still vests with the corporate debtor.

Moreover, SARFAESI Act, 2002 being an existing law, Section 238 of IBC would prevail over any of the provisions of SARFAESI Act, if it is inconsistent with any of the provisions of the IBC, 2016. Therefore, the meaning of Section 18 of the IBC, 2016 would prevail over the provisions of the SARFAESI Act.

6. The applicant in its submissions filed vide Diary No.01879/3 dated 07.02.2022 relied on the judgment passed by Hon'ble NCLAT, New Delhi in ***Company Appeal (AT) (Ins.) No.736 of 2020 titled as Indian Overseas Bank Vs. M/s RCM Infrastructure Ltd. and another,*** whereby it has been held that in view of Section 238 of the IBC, 2016, the IBC has an overriding effect over the other laws and including the SARFAESI Act, 2002.

7. The respondent (SIDBI) stated in its written submission filed by Diary No.01879/2 dated 07.02.2022 that consequent upon default in repayment of the Terms Loans sanction/disbursed by SIDBI to M/s Gupta Exim (India) Pvt. Ltd. (Corporate Debtor) the loan accounts were declared as NPA on 09.04.2016.

8. It is submitted by the respondent that SIDBI vide demand notice dated 19.07.2016 under Section 13(2) of SARFAESI Act demanded an amount of Rs.9,92,34,617/- as on 19.07.2016 together with interest thereon till payment. The respondent has taken over actual possession of the mortgaged properties on 10.01.2017 under the provisions of Section 13(4) of SARFAESI Act.

9. It is further submitted that mortgaged properties are in possession of SIDBI and their title stands vested in the bank by virtue of Section 13(6) of SARFAESI Act for which it has relied on the decision of the Hon'ble Supreme Court in a case titled as ***M/s Transcore V/s Union of India & Another 2008(1) SCC 125.***

10. It is averred by the respondent that the moratorium in the present case came into effect on 29.10.2021. The physical possession of the secured assets as envisaged under Section 13(4) of SARFAESI Act was taken on 27.12.2017 i.e. much before the commencement of the moratorium. Therefore, in the present case, the respondent-SIDBI has not violated any process envisaged during the moratorium under Section 14 of the IBC, 2016.

11. We have carefully perused the records available and the submissions made by the learned counsel for the applicant and respondent.

12. In the present case, the issue for consideration is whether the possession of the impugned property should be handed over to the Applicant/Interim Resolution Professional/Resolution Professional under the provisions of the IBC, 2016. It is a trite law that the IBC has an overriding effect over the other laws, including the SARFAESI Act, 2002. The law on this issue has been clearly laid down in the following extract from the decision from the Hon'ble NCLAT in the aforementioned case of ***Indian Overseas Bank Vs. M/s RCM Infrastructure Ltd. and another (supra)*** and relied upon by the applicant.

> *"29. ……….<u>We are of the view that the Appellant Bank lost sight of the fact that IBC is a complete Code itself and Section 238 of IBC has overriding effect over all other laws including SARFAESI Act, 2002.</u> The paragraph-11 of the Judgment of the Hon'ble Apex Court in the matter of "Anand Rao Korada, Resolution Professional Vs. Varsha Fabrics (P) Ltd. and Others" is reproduced hereunder:*
>
> *...*
>
> *"11. Section 238 gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. Section 238 reads as follows:*
>
> *"238. Provisions of this Code to override other laws:-*
>
> *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the*

time being in force or any instrument having effect by virtue of any such law."

...

30. The Hon'ble Supreme Court in paragraph-10 of the aforesaid judgment in - "Anand Rao Korada, Resolution Professional Vs. Varsha Fabrics (P) Ltd. and Others" held as under:

...

"10. Section 14 provides that on the insolvency commencement date, the Adjudicating Authority shall by order, declare a moratorium prohibiting the institution of suits, or continuation of pending suits or "proceedings" against the corporate debtor, including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or any other authority."

..

31. The Hon'ble Supreme Court held that Section 14 IBC on the insolvency commencement date, the Adjudicating Authority shall by order, declare a moratorium prohibiting the institution of suits, or continuation of pending suits or "proceedings" against the corporate debtor, including execution of any judgment, decree or order in any Court of law, tribunal, arbitration panel, or any other authority. Further, the Hon'ble Supreme held that Section 238 IBC give an overriding effect to the IBC over all other laws.

32. The Hon'ble Supreme Court at paragraph-14 of the aforesaid judgment in - "Anand Rao Korada, Resolution Professional Vs. Varsha Fabrics (P) Ltd. and Others" clearly held that once the proceeding under IBC had commenced and an order declaring moratorium was passed by NCLT, on 04.06.2019, the High Court was not justified in passing the order dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent i.e., Corporate Debtor before the NCLT.

33. We are of the view that imposition of moratorium as per Section 14 of IBC is to protect the interest of the Corporate Debtor by protecting the assets of the Corporate Debtor for the sole objective to maximisation the value of assets. This Tribunal in the matter of "Encore Asset Reconstruction Company Pvt. Ltd. Vs. Charu Sandeep Desai and Others" also held that Section 238 of IBC will prevail over any of the provisions of the SARFAESI Act, 2002 if it is inconsistent with any of the provisions of IBC. Paragraphs 12, 14 & 15 of the said judgment is reproduced here at:

...

"12. From the explanation below Section 18, it is clear that the terms "assets" do not include the assets owned by a third party in possession of the 'Corporate Debtor'.

14. Decision in "Transcore v. Union of India" was rendered in the year 2008 when the 'I & B Code' was not in existence. The 'I & B Code came into force w.e.f. 1st December, 2016 and Section 238 read as follows: "238. Provisions of this Code to override other laws:- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

15. 'SARFAESI Act, 2002' being an existing law, Section 238 of the 'I & B Code' will prevail over any of the provisions of the 'SARFAESI Act, 2002' if it is inconsistent with any of the provisions of the 'I & B Code.'"

...

34. From the above judgment of the Hon'ble Supreme Court it is clear that when the Adjudicating Authority commences the CIRP proceeding and imposes moratorium, no proceeding shall be continued or commenced and not to carry out any auction of the assets of the Corporate Debtor. Therefore, in the facts of the present case and upon deliberating the issues as framed in paragraph 22 above, we hold that:

1) When the moratorium was imposed by the learned Adjudicating Authority, receipt of the balance sale consideration is illegal and the learned Adjudicating Authority rightly set aside the sale transaction.

2) Further Section 238 of IBC, have overriding effect over other laws as held by the Hon'ble Apex Court, and this Tribunal in Encore Asset Reconstruction Company Ltd."

(emphasis supplied)

13. It is also clear that the decision in the case of ***M/s Transcore V/s Union of India & Another 2008(1) SCC 125 (supra)*** relied upon by the respondent is of no help to it, as this decision was rendered in the year 2008 when the I&B Code was not in existence. It is pertinent to note that this decision in the case ***M/s Transcore Vs. Union of India & Another (Supra)*** has been considered in the aforementioned decision of the Hon'ble NCLAT and observations are underlined in the foregoing Paragraph 12.

14. In view of this, this Bench directs the Respondent (SIDBI) to hand over the possession of the assets belonging to the corporate debtor which were taken over by them vide possession notice dated 10.01.2017 issued u/s 13(4) of the SARFAESI Act, 2002 within one month. The IA No.47/2020 is allowed and disposed of accordingly.

IA No.581/2021

The present application is filed under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 for directions to respondent No.1 to distribute the proceeds of the resolution plan to the applicant for an amount of Rs.5,64,97,893/- in priority as per Section 30(2)(b), Section 30(4) and Section 53(1) of IBC, 2016 as applicable to dissenting financial creditor.

2. In the present matter, in view of the application of Form G on 21.02.2021, the Resolution Professional had received three resolution plans from respective resolution applicants which were put to voting before the CoC in its 16th meeting held from 30.07.2021 to 05.08.2021. In the same meeting, the resolution plan submitted by M/s Lotus Textiles and Mijayant Mittal was approved by the majority of CoC by more than 66% as per the provisions of the IBC, 2016 and as such making them the Successful Resolution Applicant.

3. The applicant submitted that all the three resolution plans shared by respondent No.1 did not contain any clarity on the amount payable to the dissenting member. In this regard, a series of e-mails were exchanged with respondent No.1, whereby the concerns of the applicant were not addressed.

4. It is submitted by the applicant that the liquidation value of securities exclusively charged to SIDBI is Rs.5.64/- Crores which is equivalent to 6.93% of the liquidation value of the asset of the corporate debtor as against a voting share of 2.03%. Further, the applicant being a dissenting creditor is proposed to be paid Rs.1,65,47,078/- as per voting share being 2.03% instead of Rs.5,64,97,893/- as per security interest of 6.93%, thus causing a loss of Rs.3,99,50,815/- to the applicant and undue gain to respondent-Punjab National Bank.

5. It is averred by the applicant that dissenting financial creditor should have been paid at least liquidation value of assets charged to the specific financial creditor in terms of Section 30(2) and Section 53 of IBC, 2016 along with a priority of payment over assenting members in terms of Regulation 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

6. The applicant has relied upon a decision dated 05.01.2022 of the Hon'ble NCLAT in the matter of ***Bank of Maharashtra & Ors.,*** whereby it is submitted that NCLAT has remitted the matter to CoC for consideration in view of the resolution plan being non-compliant as it provided for less than the liquidation value to the dissenting members and was in contravention of Section 30 of the IBC, 2016.

7. The Respondent No.1/Resolution Professional in its reply filed vide Diary No.01276/01 dated 29.11.2021 states that CoC in its commercial wisdom approve the plan submitted by the Successful Resolution Applicant in its 16th CoC meeting. Once a resolution plan has been approved by the CoC, the dissenting financial creditor cannot challenge the same on the basis of the

mere distribution of the proceeds of the resolution plan not being as per the security interest holding/share of the Financial Creditor. It is submitted that the applicant cannot suggest a higher amount to be paid to it with reference to the value of the security interest. The same has been held by the Hon'ble Supreme Court of India in the matter of ***India Resurgence Arc Pvt. Ltd. Vs. M/s Amit Metaliks Ltd. and Another in Civil Appeal No.1700 of 2021 decided on 13.05.2021.***

8. Whereas the applicant is in its rejoinder filed vide Diary No.01276/2 dated 03.02.2022 denied the averments made by Respondent No.1/Resolution Professional.

9. We have carefully perused the records available and the submissions made by the learned counsel for the applicant and respondents.

10. In the present case, the issue of whether the distribution of the assets in the resolution plan which is not as per the security interest holding/share of the financial creditor will be valid under the IBC is closely linked with the status of the decision of the CoC under the Code. The law in this regard has been clearly laid down by the Hon'ble Supreme Court in the cases mentioned below along with relevant extracts for the sake of clarity.

1. ***Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta and Ors. (2020) 8 SCC 531:***

   "7. It is abundantly clear that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors. Such considerations, being relevant only for purposed for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61(3) of I&B Code. xx xx xx xx

   xx xx xx xx xx xx xx xx

However, such business decision taken in exercise of commercial wisdom of Committee of Creditors would not warrant judicial intervention unless creditors belonging to a class being similarly situated are not given a fair and equitable treatment."

2. ***India Resurgence ARC Pvt. Ltd. Vs. M/s Amit Metaliks Ltd. & Anr, Civil Appeal No.1700 of 2021 judgment dated 13.05.2021:***

"12.The provisions of amended Sub-Section (4) of Section 30 of the Code, on which excessive reliance is placed on behalf of the appellant, in our view, do not make out any case for interference with the resolution plan at the instance of the appellant. The purport and effect of the amendment to sub-section (4) of Section 30 of the Code, by way of sub-clause (b) of Section 6 of the Amending Act of 2019, was also explained by this Court in Essar Steel (supra), as duly taken note of by the Appellate Authority (vide the extraction hereinbefore). The NCLAT was, therefore, right in observing that such amendment to sub-section (4) of Section 30 only amplified the considerations for the Committee of Creditors while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; <u>and the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.</u>

12.1.In regard to the question of fair and equitable treatment, though the Adjudicating Authority as also the Appellate Authority have returned concurrent findings in favour of the resolution plan yet, to satisfy ourselves, we have gone through the financial proposal in the resolution plan. What we find is that the proposal for payment to all the secured financial creditors (all of them ought to be carrying security interest with them) is equitable and the proposal for payment to the appellant is at par with the percentage of payment proposed for other secured financial creditors. No case of denial of fair and equitable treatment or disregard of priority is made out.

13.1.Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.

15.The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further exposited in the decisions aforesaid. <u>It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by</u>

receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors."

(emphasis supplied)

11. Furthermore, the Hon'ble Supreme Court has also clarified in clear terms that the commercial wisdom of the Committee of Creditors is paramount in a large number of decisions some of which are mentioned below along with the relevant extracts for the sake of clarity.

1. ***K.Sashidhar vs. India Overseas Bank & Ors., Civil Appeal No.10673 of 2018:-***

   "33. xx xx xx The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyze or evaluate the commercial decision of the CoCmuchless to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors."

2. ***Committee of Creditor of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors., Civil Appeal No.8766-67/2019:-***

   "31. Since it is the commercial wisdom of the Committee of Creditors that is to decide on whether or not to rehabilitate the corporate debtor by means of acceptance of a particular resolution plan, the provisions of the Code and the Regulations outline in detail the importance of setting up of such Committee, and leaving decisions to be made by the requisite majority of the members of the aforesaid Committee in its discretion……

   42. …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. Sahidhar (supra)."

12. We have also come across the decision of the Hon'ble NCLAT, Principal Bench, New Delhi vide judgment dated 05.01.2022 in the matter of ***Bank of Maharashtra Versus Videocon Industries Limited and Others cited as Company Appeal (AT) (Ins.) No.503 of 2021.*** In this case, one of the issues considered was whether a resolution plan which provides the dissenting Bank

less than the liquidation value which the bank would have received otherwise is violative of the provisions of the Code specifically Section 30 of the same.

13. After going through voluminous pleadings by both the sides the Hon'ble NCLAT held as under:-

> "*Concerns raised by the lenders regarding the distribution mechanism provided to the Dissenting Financial Creditors in the resolution plan and the contentious issue of distribution amount. All these are not complied with in accordance with Section 31(1) which is a requirement for satisfaction of the Adjudicating Authority. Section 30(2) of the Code has also not been complied with."*

14. The Hon'ble NCLAT, Principal Bench, New Delhi has also considered the same issue in the case of ***Canara Bank Vs. Ms. Mamta Binani, Resolution Professional & Ors. in Company Appeal(AT)(Insolvency) No. 1117 of 2019 dated 03.01.2022.*** The important paras of the …

In its decision, the Hon'ble NCLAT noted the fact that the Resolution plan was approved by an overwhelming majority of the members of the CoC, and the ' the resolution fund ' was equally distributed. The relevant extracts from the said order are as under:

> *"44. Although, the Appellant/Canara Bank gave a dissenting Vote for the approval of the Plan, based on the reason that 'Distribution of Resolution Fund' was discriminatory as against them and despite its plea that it was entitled to the equal and share in regard to the distribution of the Resolution Fund on the footing that the Bank held more than 80% of the assents of the 'Corporate Debtor' as security, <u>the fact of the matter is that the 'Committee of Creditors' had approved the Resolution Plan of Jagannth Financial Advisory Pvt. Ltd by 75.70% of votes.</u>*
>
> *It cannot be gainsaid that <u>the 'Resolution Fund' was equally distributed among all the 'Financial Creditors' showing them equal share i.e., 23.43% and that the 1st Respondent/Resolution Professional had</u> certified the plan and the compliance certificate was furnished. There is no illegality in the Resolution Plan as opined by this Tribunal, it comes to be known that the Successful Resolution Applicant/Respondent No. 4 had implemented the Resolution Plan in part and made payments quite in tune with the 'Approved Resolution Plan'."*
>
> *(emphasis supplied)*

15. The Hon'ble NCLAT placed reliance on the decision in the case of ***Amit Metaliks***:

"This 'Tribunal' aptly points out the decision of Hon'ble Supreme Court in ***India Resurgence ARC Pvt. Ltd. V. Amit Metaliks & Anr. 2021 SCC online SC 409*** wherein paragraph 21, it is mentioned as under:

"21. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further exposited in the decisions aforesaid. It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bringing about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors."

16. In the final paragraphs, the Hon'ble NCLAT summarised its findings as below:

"47. To be noted, in the present case, the distribution of the amount was made by the 'Committee of Creditors' resting on the total dues of individual Creditors and the same is not either whimsical or arbitrary in any manner. To put it differently, the 'distribution of the amount' between the Creditors provides equal treatment to all of them. Also that the Appellant was provided with a fair value as per the decision of the 'Committee of Creditors' and the value proportionate to the dues was allotted the same as that of other Financial Creditors."

(emphasis supplied)

17. Considering the fact that the decision in the case of *Ms. Mamta Binani, case (supra) dated 03.01.2022* of the Hon'ble NCLAT deals at length on the issue of distribution of assets among financial creditors (including those holding security interest) and is decided by a three Member Bench, as against the decision of a two Member Bench in *Videocon Industries Limited and Others*

(supra) dated 05.01.2022 of the Hon'ble NCLAT, this Bench follows the decision in the former case on the basis of the Doctrine of Precedents.

18. In the present case, the CoC is constituted by respondent/RP in which Punjab National Bank is having 97.97% voting share and applicant SIDBI has 2.03% voting share. We find that the proposal for payment to all the secured financial creditors (including the applicant carrying security interest) is equitable and the proposal for payment to the applicant is at par with the percentage of payment proposed for the other secured financial creditor. No case of denial of fair and equitable treatment or disregard of priority is made out.

19. We also hold that a dissenting secured creditor like the applicant cannot suggest a higher amount to be paid to it with reference to the value of the security interest as what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the CoC;

20. In the light of the discussion foregoing and reasons recorded, we do not find any merits in the application in hand. Accordingly, IA No.581/2021 stands dismissed.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

March 17, 2022
AV/ASH