NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 2330 & 2331 of 2024

(Arising against the impugned order dated 12.11.2024 passed by the National Company Law Tribunal, Allahabad Bench, in I.A. No. 358 of 2024 and I.A. No. 401 of 2024, arising out of Company Petition (IB) No. 31/ALD/2021)

IN THE MATTER OF:

Pragiti Construction,
Through Proprietor Renu Verma
having its address at House No. G-1/73, Transport Nagar, Phase-2, Lucknow – 226012, Uttar Pradesh. **...Appellant**

Versus

Committee of Creditor of the Corporate Debtor, represented by M/s Mahavir Medicare, having its office at 82/1-B, "Shreeshyla", Doddakallasandra Post, Kanakpura Main Road, Bengaluru – 560063. **...Respondent No. 1**

Mr. Rajeev Ranjan Singh, Resolution Professional, having his office at Flat No. 14049, 16 Avenue, Gaur City-2, Greater Noida West, Gautam Budh Nagar, Uttar Pradesh. **...Respondent No. 2**

Present:

For Appellant:	**Mr. Rajat Srivastava, Advocate.**
For Respondents:	**Mr. Milan Singh Negi, Mr. Nikhil Kr. Jha, Ms. Katyayani, Advocates for R-2.**

Cont'd..../

Mr. Saket Gogia, Mr. Gauri Pande, Man Singh, Sheetal Maggon, Ms. Damini, Mr. Deepesh M., Advocates for COC/R-1.

J U D G M E N T
(6th February, 2026)

INDEVAR PANDEY, MEMBER (T)

The present appeals has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') by M/s Pragiti Construction, through its Proprietor Ms. Renu Verma**,** assailing the **impugned orders dated 12.11.2024** passed by the Learned National Company Law Tribunal, Allahabad Bench, in **I.A. No. 358 of 2024 and I.A. No. 401 of 2024**, arising out of **Company Petition (IB) No. 31/ALD/2021** in the matter of M/s Mahavir Medicare (Operational Creditor) versus Rancom Healthcare Pvt. Ltd (Corporate Debtor/CD).

2. The first appeal CA AT Ins No. 2330 of 2024 has been filed against the order passed by the Adjudicating Authority (AA hereinafter) in IA No. 358 of 2024 on 12.11.2024. The AA, vide the said order, rejected the application filed by the Appellant seeking consideration of its Resolution Plan by the Committee of Creditors (CoC) and Resolution Professional (RP) which has been earlier rejected by the RP and CoC vide their order/communication dated 16.06.2024.

3. The second appeal CA AT Ins No. 2331 of 2024 has been filed by the same appellant against the order passed by the Adjudicating Authority in IA No. 401 of 2024 on 12.11.2024. The IA No. 401 had been filed by the

RP seeking the approval of Resolution Plan submitted by the Operational Creditor, M/s Mahavir Medicare. The AA vide the aforesaid order approved the Resolution submitted by OC, the same order is under challenge here. The same parties are arrayed in both the appeals.

4. M/s Mahavir Medicare/OC was also the sole member of the Committee of Creditors holding 100% voting rights. The Appellant contends that the Adjudicating Authority failed to consider material facts placed on record, including that the Appellant was an eligible Prospective Resolution Applicant under Section 29A of the Code, that its Resolution Plan had been submitted within the overall statutory Corporate Insolvency Resolution Process period of 180 days, and that the comparative merits of the competing Resolution Plans were not objectively examined. Aggrieved by the rejection of its Resolution Plan and the approval of the Resolution Plan submitted by the sole CoC member in the same CIRP proceedings, the Appellant has approached this Appellate Tribunal by way of the present appeal.

Brief facts of the case

5. The brief facts of the case are as given below:

i. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced after an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') by the Operational Creditor was admitted by the Adjudicating Authority, and pursuant thereto, by an order passed on 21.12.2023, Mr. Rajeev Ranjan Singh was appointed as the Interim Resolution Professional to conduct the insolvency process.

ii. In furtherance of the said admission, a public announcement under Form-A was issued on 23.12.2023, thereby inviting claims from creditors and notifying initiation of the CIRP, while also indicating that the estimated date for completion of the resolution process would be 18.06.2024.

iii. During the course of the CIRP, the Resolution Professional undertook the process of inviting Expressions of Interest and, after due scrutiny, prepared and circulated a final list of eligible Prospective Resolution Applicants through an email communication sent on 30.03.2024, wherein the Appellant as well as the Operational Creditor, M/s Mahavir Medicare, were both declared eligible to submit Resolution Plans, with the stipulated deadline for submission being fixed as 19.04.2024.

iv. It is the case of the Appellant, although it was found eligible and placed in the final list of Prospective Resolution Applicants after due verification under Section 29A of the Code, it could not submit its Resolution Plan within the originally stipulated period owing to non-availability of requisite information from the Resolution Professional, which was essential for preparing a viable and comprehensive plan.

v. In these circumstances, the Appellant addressed an email communication to the Resolution Professional on 08.06.2024, requesting permission to submit its Resolution Plan, even though the original submission deadline had elapsed, while specifically expressing its intent to revive the Corporate Debtor and maximize value for stakeholders.

vi. On the same day, the Resolution Professional responded by email dated 08.06.2024, expressing his inability to independently consider the Resolution Plan on account of the CIRP nearing its statutory timeline, while stating that the Appellant's request had been forwarded to the Committee of Creditors for consideration.

vii. Subsequently, by an email communication received on 10.06.2024, the Appellant was informed that the Committee of Creditors had refused to grant any further time for submission of the Resolution Plan, and that the request made by the Appellant stood rejected, despite the CIRP period not having yet expired.

viii. Notwithstanding such rejection, the Appellant proceeded to prepare a detailed and exhaustive Resolution Plan dated 13.06.2024, which was accompanied by investor credentials and a mandatory deposit of Rs. 2,00,000/- and the said plan was submitted to the Resolution Professional within the overall CIRP period of 180 days.

ix. The Appellant's Resolution Plan also included induction of an investor, namely Mr. Shobhit Agarwal, Proprietor of M/s Champion Shoppe, whose credentials, financial standing and business experience were clearly disclosed to demonstrate the feasibility and viability of the proposed revival of the Corporate Debtor.

x. However, by an email dated 16.06.2024, the Resolution Professional conveyed to the Appellant that the Committee of Creditors had declined to accept the Resolution Plan on the ground that the time for submission had expired, and enclosed the communication of the CoC rejecting the Appellant's proposal.

xi. Being aggrieved by such rejection, the Appellant filed an application being I.A. No. 358 of 2024 on 19.07.2024 before the Adjudicating Authority, seeking directions for consideration of its Resolution Plan, contending that the plan had been submitted within the statutory CIRP period and offered better value to the Corporate Debtor. The Resolution Professional filed his reply to the same on 06.09.2024.

xii. After hearing the parties, the Adjudicating Authority, by an order passed on 10.09.2024, directed the Resolution Professional to place and consider the Appellant's Resolution Plan before the Committee of Creditors, keeping in view all relevant parameters including the overall plan value.

xiii. Pursuant to the said direction, the sixth meeting of the Committee of Creditors was convened on 18.09.2024, wherein the Resolution Plan submitted by the Appellant was discussed. The Resolution Professional noted that the Appellant's plan offered a comparatively better value, however, the Committee of Creditors rejected the same without assigning cogent reasons.

xiv. It further transpired that the sole member of the Committee of Creditors, holding 100% voting rights, proceeded to approve its own Resolution Plan, thereby acting both as a creditor and a competing Resolution Applicant.

xv. Ultimately, by the impugned orders dated 12.11.2024, the Adjudicating Authority rejected the contentions of the Appellant in I.A. No. 358 of 2024 and approved the Resolution Plan submitted by the Operational Creditor in I.A. No. 401 of 2024, without undertaking a comparative evaluation of the two plans or addressing the issue of conflict of interest.

xvi. The Appellant being aggrieved by the rejection of its Resolution Plan and the approval of the plan submitted by the sole CoC member, has preferred the present appeals challenging the legality, fairness and correctness of the impugned orders.

Submissions of the Appellant

6. Ld. Counsel for the Appellant submits that the Appellant's Resolution Plan was not considered by the Committee of Creditors despite a categorical direction issued by the Adjudicating Authority. It is submitted that I.A. No. 358 of 2024 filed by the Appellant was disposed of by the Learned NCLT vide order dated 10.09.2024, wherein the Resolution Professional undertook to consider both Resolution Plans, namely the plan already approved by the CoC and the plan submitted by the Appellant, in terms of the relevant parameters including the total plan value. In furtherance thereof, the Adjudicating Authority expressly directed the CoC of Rancom Healthcare Private Limited to consider the Resolution Plan submitted by the Appellant afresh and take a decision accordingly.

7. Ld. Counsel states that pursuant to the said order, a CoC meeting was convened on 18.09.2024 to consider the Appellant's Resolution Plan; however, the said meeting resulted in the rejection of the Appellant's plan. It is submitted that during the said meeting, submissions were made that M/s Pragiti Construction is a proprietorship concern of Ms. Renu Verma and is primarily engaged in the real estate business, whereas the Corporate Debtor is engaged in trading of pharmaceutical and medical products.

8. Ld. Counsel further submits that it was stated before the CoC that although the total value of the Resolution Plan submitted by the Appellant is Rs. 20 lakhs, which is higher than the Resolution Plan submitted by Mahavir Medicare, the distribution amount proposed to the operational creditor is Rs. 10 lakhs against a claim of Rs. 14,99,25,340, resulting in a haircut of 99.33% and recovery of 0.67%. It was also stated that Mahavir Medicare's Resolution Plan proposes capital infusion of Rs. 10 lakhs as compared to Rs. 5 lakhs proposed by the Appellant and that Mahavir Medicare has more than 35 years of experience in the pharmaceutical trading business, which was treated as the foremost criterion by the CoC.

9. It is the submission of the appellant that the Resolution Professional himself placed before the CoC that the value of the Resolution Plan submitted by Mahavir Medicare is Rs. 1 lakh, whereas the value of the Appellant's Resolution Plan is Rs. 20 lakhs, out of which Rs. 10 lakhs would be distributed to the operational creditor. The Resolution Professional further stated that the Appellant's offer was an initial offer

and could increase if the plan was considered in competition, and that consideration of the Appellant's plan could lead to healthy competition.

10. Ld. Counsel submits that despite the aforesaid advantages, the CoC rejected the Appellant's Resolution Plan on the ground that reconsideration would lead to extension of the CIRP period and delay the proceedings, as the Resolution Plan of Mahavir Medicare had already been accepted and filed before the Adjudicating Authority. It is submitted that the Resolution Professional thereafter agreed to place submissions before the Hon'ble NCLT on the next date of hearing.

11. Ld. Counsel further submitted that the conduct of the Resolution Professional and the CoC is vitiated by violations of Regulation 39 of the CIRP Regulations. It is submitted that no evaluation of the Appellant's Resolution Plan was carried out and no evaluation matrix was presented to the CoC. The Appellant was not invited to the CoC meeting where its Resolution Plan was considered. Details of avoidance and fraudulent transactions were not shared with the Appellant, and simultaneous voting on both Resolution Plans was not undertaken.

12. It is the submission of the Ld. Counsel that the background facts reveal glaring misconduct. The Operational Creditor nominated the IRP, who was appointed by the Adjudicating Authority. The Operational Creditor was the sole claimant and the sole voting member of the CoC. There were no other creditors or claimants. The IRP was confirmed as RP by the CoC, and the Operational Creditor submitted its own Resolution

Plan. Despite the Adjudicating Authority directing consideration of the Appellant's Resolution Plan, the same was not afforded due consideration.

13. Ld. Counsel submits that the actions of the IRP, RP, and CoC demonstrate bias against the Appellant. The Resolution Plan of the Appellant, which was ten times the value of the Resolution Plan of the Successful Resolution Applicant, was ignored. The minutes of the 6th CoC meeting held on 18.09.2024 demonstrate apparent bias. The Resolution Professional failed to verify the highly inflated claim of the Successful Resolution Applicant and acted in violation of the order dated 10.09.2024. It is submitted that the conduct also amounts to breach of the Code of Conduct for Insolvency Professionals and the Guidelines for Committee of Creditors dated 06.08.2024.

14. Ld. Counsel further submits that the rejection of the Appellant's Resolution Plan is arbitrary and based on extraneous considerations. The CoC failed to exercise its commercial wisdom in conformity with the objectives of the IBC, including maximisation of value. The reasons cited, namely sector incompatibility and apprehension of time loss, are unknown to law and unsupported by the Code.

15. It is the submission of appellant that his Resolution Plan offered ten times the amount to the operational creditor as compared to the competing plan, and the total plan value was also ten times higher. It is further submitted that the Appellant is based in Lucknow and sought to revive the Corporate Debtor at Lucknow, whereas the Successful Resolution Applicant is based in Bengaluru, a fact which was overlooked.

16. Ld. Counsel submits that the conduct of the CoC lacks transparency; is not reasoned; does not show arm's length independence from the RP; and is malafide exercise of commercial wisdom. Decisions of the CoC are not supported by reasoned data or objective evaluation. The Appellant submits that the entire process has resulted in gross prejudice and denial of a fair opportunity.

17. It is the submission of Ld. Counsel that the present case involves a position of conflict where the Operational Creditor acted as complainant, investigator, decision-maker, and beneficiary. Such conduct violates the principles of natural justice, particularly the rule that no person can be a judge in his own cause, and is contrary to the fairness framework embedded within the IBC.

18. Ld. Counsel for the Appellant submits that the arbitrary rejection of a higher value Resolution Plan and the failure of the Committee of Creditors to consider the same in a fair and transparent manner is contrary to the settled legal position laid down by the Hon'ble Supreme Court and this Hon'ble Appellate Tribunal. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors., (2019) 16 SCC 479*, wherein it has been held that while the commercial wisdom of the CoC is ordinarily non-justiciable, the decision-making process must conform to the objectives of the Insolvency and Bankruptcy Code, including value maximisation, fairness, and equitable treatment of stakeholders. It is

submitted that arbitrariness, lack of transparency, or reliance on extraneous considerations vitiates the process itself.

19. Ld. Counsel further places reliance on *Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17*, wherein the Hon'ble Supreme Court categorically held that the Insolvency and Bankruptcy Code is not a mere recovery legislation, but a beneficial statute intended for resolution, revival, and preservation of the Corporate Debtor as a going concern. It was emphasised that the insolvency framework must operate with fairness, reasonableness, and non-discrimination. Counsel submits that exclusion of a bona fide Resolution Applicant offering a substantially higher plan value, without due process, directly violates the principles laid down in Swiss Ribbons.

20. Ld. Counsel for the Appellant relies upon the decision of this Hon'ble Appellate Tribunal in *Binani Industries Limited v. Bank of Baroda & Anr., Company Appeal (AT) (Insolvency) No. 82 of 2018*, wherein it was held that Resolution Plans must be evaluated on the basis of overall feasibility, viability, and value contribution, and that a higher value Resolution Plan cannot be rejected on technicalities or marginal considerations. It was further held that exclusion of a Resolution Applicant without objective evaluation defeats the purpose of the Code and undermines the integrity of the resolution process.

21. Ld. Counsel submits that the failure of the Resolution Professional to ensure a fair and transparent process is contrary to the principles reiterated in *Essar Steel India Limited (supra),* wherein the Hon'ble

Supreme Court underscored the pivotal role of the Resolution Professional in conducting the CIRP strictly in accordance with the provisions of the Code and ensuring that no stakeholder is unfairly prejudiced. It is submitted that non-compliance with statutory duties and disregard of binding judicial directions renders the process illegal.

22. Ld. Counsel further relies upon the judgment of the Hon'ble Delhi High Court in *Kunwer Sachdev v. IDBI Bank Ltd. & Ors., judgment dated 12.02.2024*, wherein it was held that although the commercial wisdom of the CoC is generally not open to judicial interference, the process of decision-making must nevertheless reflect fairness, reasonableness, objectivity, and absence of arbitrariness. Counsel submits that the present case squarely falls within the exception carved out by the said judgment.

23. Ld. Counsel submits that the Code of Conduct for the Committee of Creditors issued by the Insolvency and Bankruptcy Board of India vide Guidelines for Committee of Creditors dated 06.08.2024 mandates integrity, objectivity, professional competence, due care, transparency, and fair reasoning in decision-making. It is submitted that the conduct of the CoC in the present case is in clear violation of these binding norms, as decisions were unsupported by reasoned data or objective evaluation.

24. Ld. Counsel further submits that in the absence of express statutory safeguards governing a situation where the Petitioning Creditor is the sole claimant, sole CoC member, sole Resolution Applicant, and beneficiary, the Mischief Rule of statutory interpretation must be applied. Reliance is placed on *Heydon's Case (1584) 76 ER 637*, which propounds that

statutes must be interpreted in a manner that suppresses the mischief and advances the remedy. Counsel submits that the mischief sought to be remedied by the IBC is precisely the abuse of insolvency proceedings for self-serving ends.

25. Ld. Counsel further relies upon *Smith v. Hughes, [1960] 2 All ER 859*, wherein the Court adopted a purposive interpretation to cure statutory defects and prevent abuse, holding that the focus must be on the mischief sought to be addressed rather than a narrow literal interpretation. It is submitted that similar purposive interpretation is warranted in the present case. Ld. Counsel also places reliance on *Eastbourne Borough Council v. Stirling & Morley, [2000] EWHC Admin (Paragraph 19)***,** wherein it was reiterated that courts must look at the substance and effect of conduct rather than its form, particularly where rigid literal interpretation would result in injustice.

26. Counsel for appellant submits that the principles governing purposive interpretation were further reiterated by the Hon'ble Supreme Court in *The Bengal Immunity Company Limited v. The State of Bihar & Ors., AIR 1955 SC 661***,** wherein it was held that in order to properly interpret a statute, it is necessary to consider the mischief for which the old law did not provide and the remedy which the new law seeks to cure. Counsel submits that these principles apply with full force to the present insolvency process.

27. Ld. Counsel finally submits that the cumulative effect of the above precedents establishes that where the insolvency process is conducted in

a manner that is arbitrary, biased, and driven by conflict of interest, judicial intervention is not only permissible, but necessary to preserve the sanctity of the IBC framework and the principles of natural justice embedded therein. He strongly argues that in the light of above the appeals be allowed and the Resolution Plan be set aside.

Submissions of Respondent No. 1/Committee of Creditor

28. Ld. Counsel for the Respondent No. 1/CoC, represented by M/S Mahavir Medicare, respectfully submits that the present appeal is liable to be dismissed at the threshold as the undisputed chronology of events clearly demonstrates strict compliance with the Insolvency and Bankruptcy Code, 2016 by Respondent No. 1, while the Appellant has consistently defaulted in adhering to statutory and process-driven timelines.

29. Ld. Counsel states that the Corporate Insolvency Resolution Process was initiated pursuant to an application filed under Section 9 of the Code on 19.03.2021 by Respondent No. 1 before the Hon'ble NCLT, Allahabad, which came to be admitted on 21.12.2023, whereupon an Interim Resolution Professional was appointed. Consequent thereto, the IRP issued a public announcement on 23.12.2023 in "Financial Express" and "Jansatta" inviting claims from creditors.

30. Ld. Counsel for the Respondent No. 1 further submits that Respondent No. 1 duly filed its claim on 04.01.2024 for an amount of Rs.

14,99,25,340/, and no other creditor filed any claim despite due notice and publication. As a result, Respondent No. 1 became the sole member of the Committee of Creditors, a position which has never been disputed by the Appellant at any stage.

31. Ld. Counsel for the Respondent No. 1 further states that Form-G inviting Expressions of Interest was issued on 18.02.2024 and the final list of eligible Prospective Resolution Applicants, including the Appellant, was circulated on 30.03.2024. The last date for submission of Resolution Plans was initially fixed as 19.04.2024 and, at the specific request of the Appellant, the same was extended till 04.05.2024, thereby affording sufficient opportunity to the Appellant.

32. Ld. Counsel further submits that despite the extension being granted solely for the benefit of the Appellant, the Appellant failed to submit any Resolution Plan within the extended timeline. In contrast, Respondent No. 1 submitted its Resolution Plan on 04.05.2024, well within the permissible period. The Resolution Professional accordingly informed the CoC on 06.05.2024 that only one Resolution Plan had been received within time.

33. Respondent No. 1 further states that the 5th CoC meeting was convened on 07.06.2024 for consideration of the Resolution Plan submitted by Respondent No. 1, which was thereafter approved through e-voting on 11.06.2024. It was only on 08.06.2024, that the Appellant sought permission to submit its Resolution Plan belatedly, which request

was rejected by the RP in accordance with the decision of the CoC taken in exercise of its commercial wisdom.

34. Ld. Counsel submits that notwithstanding the rejection, the Appellant unilaterally deposited an EMD of Rs. 2,00,000/- and submitted its Resolution Plan on 13.06.2024, nearly forty days after the extended deadline. Subsequent applications were filed, including IA No. 358/2024 by the Appellant seeking consideration of its belated plan and IA No. 401/2024 by the RP seeking approval of the Resolution Plan of Respondent No. 1.

35. Ld. Counsel further states that although the Hon'ble NCLT, by order dated 10.09.2024, directed the CoC to consider the Appellant's plan, the same was duly placed before the 6th CoC meeting held on 18.09.2024 and was rejected for detailed and recorded reasons. Ultimately, by orders dated 12.11.2024, the Hon'ble NCLT dismissed IA No. 358/2024 and approved the Resolution Plan of Respondent No. 1, which orders are the subject matter of the present appeal.

36. Ld. Counsel further submits that the present appeal has become wholly infructuous, inasmuch as the Resolution Plan approved by the Hon'ble NCLT has already been fully implemented. On 11.12.2024, the Resolution Professional received the entire upfront consideration of Rs. 1,00,000/- along with CIRP costs amounting to Rs. 11,61,136/- from Respondent No. 1 in its capacity as the Successful Resolution Applicant.

37. Ld. Counsel for the Respondent No. 1 states that upon receipt of the aforesaid amounts, the Resolution Professional proceeded with implementation and distribution strictly in accordance with the approved Resolution Plan. Once the plan has been implemented, the CIRP attains finality and no effective relief survives for adjudication in the present appeal.

38. Ld. Counsel further submits that the Appellant has only itself to blame for its exclusion, having failed to submit a Resolution Plan within the original deadline of 19.04.2024 or even within the extended deadline of 04.05.2024, which extension was granted solely at the Appellant's request.

39. Ld. Counsel for the Respondent No. 1 further states that by the time the Appellant approached the RP on 08.06.2024, the Resolution Plan of Respondent No. 1 had already been placed for voting. The RP, acting with the approval of the CoC, rightly rejected the belated request. Even thereafter, the Appellant's plan, submitted on 13.06.2024, was far beyond the permissible timeline.

40. Ld. Counsel submits that despite this, and pursuant to the NCLT's order dated 10.09.2024, the Appellant's Resolution Plan was duly considered by the CoC in the 6th meeting and rejected on merits for lack of feasibility and viability, with reasons recorded in the minutes. Thus, no procedural or substantive prejudice has been caused to the Appellant.

41. Ld. Counsel further submits that the decision of the CoC to reject the Appellant's Resolution Plan is a pure commercial decision taken in exercise of its statutory commercial wisdom. The IBC does not contemplate adjudication of inter se rights between prospective resolution applicants, nor does it confer any vested right upon a belated applicant to demand reconsideration.

42. Ld. Counsel states that principles of natural justice cannot be invoked to override statutory timelines or to dilute the primacy accorded to commercial wisdom under the Code.

43. Respondent No. 1 further submits that the Resolution Plan submitted by the Appellant suffered from fundamental procedural and substantive infirmities. The Appellant disclosed an undisclosed co-applicant in the Resolution Plan, despite submitting its EOI in its sole name, which itself rendered the plan defective.

44. Ld. Counsel for the Respondent No. 1 further states that the Appellant lacks domain expertise, being engaged in real estate, whereas the Corporate Debtor operates in pharmaceutical trading. The proposed haircut of 99.32%, absence of a credible revival strategy, and lack of implementation clarity clearly justified the CoC's decision to reject the plan.

45. Respondent No. 1 further submits that the Appellant lacks any legitimate commercial interest in the resolution of the Corporate Debtor and has indulged in a colourable exercise. The Appellant itself asserted

that the liquidation value of the Corporate Debtor is approximately Rs. 3.5 lakhs, yet offered Rs. 10 lakhs without any commercial justification.

46. Ld. Counsel states that the Corporate Debtor has no substantial assets and functions merely as a distributor, making such a disproportionate offer commercially irrational. This assumes significance in view of the proceedings initiated by the Resolution Professional under Sections 45 and 66 of the Code, based on transaction audits revealing undervalued and fraudulent transactions exceeding Rs. 5.6 crores. The Appellant's conduct, therefore, appears aimed at creating artificial locus rather than genuine resolution.

47. Ld. Counsel further submits that the balance of equities overwhelmingly favours Respondent No. 1. The Appellant's exposure is limited to Rs. 10 lakhs and incidental CIRP costs, which are minimal and compensable. The Respondent No. 1 has an admitted claim exceeding Rs. 14 crores, and any interference with the approved Resolution Plan would cause irreparable prejudice. The revival of the Corporate Debtor was intended to serve as a strategic extension of Respondent No. 1's pharmaceutical operations, justifying the CoC's preference in its commercial wisdom.

48. Ld. Counsel for the Respondent No. 1 further submits that the sole prayer in IA No. 358/2024 was for consideration of the Appellant's Resolution Plan. Pursuant to the order dated 10.09.2024, the said plan was duly considered by the CoC and rejected with recorded reasons. Counsel further states that once the Appellant's plan has already been

considered and rejected, nothing survives in the said IA, and consequently, the present appeal is devoid of any subsisting cause of action.

49. Ld. Counsel further submits that the allegation of conflict of interest is wholly misconceived. The Insolvency and Bankruptcy Code does not prohibit a sole CoC member from submitting a Resolution Plan. Counsel further states that the CIRP was conducted strictly in accordance with law, and Respondent No. 1, having over 36 years of experience in the same line of business, possesses the requisite expertise to revive the Corporate Debtor and has also proposed capital infusion, unlike the Appellant.

50. Ld. Counsel for the Respondent No. 1 further submits that the Resolution Plan of Respondent No. 1 aligns squarely with the legislative intent of the IBC, namely revival of the Corporate Debtor as a going concern and maximisation of value. The plan envisages capital infusion, operational synergy, and deployment of domain expertise, thereby ensuring sustainable revival rather than mere paper recovery.

51. Respondent No. 1 further submits that decisions relating to timelines, feasibility, viability, and acceptance or rejection of Resolution Plans fall exclusively within the commercial domain of the Committee of Creditors. Ld. Counsel further states that neither the Adjudicating Authority nor the Appellate Tribunal can substitute its own view for a business decision taken by the CoC in exercise of its commercial wisdom.

52. Ld. Counsel submits that the CoC rightly declined to match the Appellant's offer, as increasing the amount from Rs. 1 lakh to Rs. 10 lakhs would have had negligible impact on recovery against an admitted claim of Rs. 14.62 crores.

53. Respondent No. 1 further states that revising the approved Resolution Plan would have caused further delay in CIRP, contrary to the time-bound mandate of the Code. Ld. Counsel submits that it is well settled that commercial decisions of the CoC, including rejection of Resolution Plans and refusal to extend timelines, are non-justiciable.

54. Making his final submissions, Ld. Counsel states that the CoC acted strictly within the framework of the Code, and its decision does not warrant any interference by this Hon'ble Tribunal.

Submissions of Respondent No.2: RP

55. Counsel for Respondent No. 2 respectfully submits that the Resolution Professional, being an officer of the Court, has at all times acted bonafidely, independently and without prejudice to the rights of any stakeholder. It is submitted that Respondent No. 2 has no personal or pecuniary interest in the outcome of the resolution process and has discharged his statutory duties strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations.

56. He further submits that the entire Corporate Insolvency Resolution Process of Rancom Healthcare Private Limited was conducted by the

Resolution Professional in a fair, transparent and time-bound manner. All statutory compliances including issuance of public announcement, collation and verification of claims, constitution of the Committee of Creditors, issuance of Form-G, preparation of Information Memorandum, issuance of evaluation matrix and invitation for resolution plans were duly carried out in accordance with law.

57. Ld. Counsel submits that there has been no violation whatsoever of Section 30(2) of the Insolvency and Bankruptcy Code in the present case. The resolution plan approved by the Committee of Creditors satisfies all mandatory requirements of the Code and the Regulations, including payment of CIRP costs in priority, compliance with liquidation value safeguards, feasibility and viability of the plan, and adherence to Section 29A eligibility conditions.

58. Ld. Counsel further submitted that no material irregularity has been committed by the Resolution Professional during the conduct of CIRP so as to attract Section 61(3) of the Code. The Appellant has failed to demonstrate any illegality, procedural impropriety or jurisdictional error on part of the Resolution Professional. Mere dissatisfaction with the commercial outcome of the process cannot be equated with material irregularity under law.

59. Ld. Counsel submits that it is a settled position of law that the commercial wisdom of the Committee of Creditors, while approving or rejecting a resolution plan, is non-justiciable. The Hon'ble Supreme Court has categorically held in *Kalpraj Dharmashi and Anr. vs. Kotak Investment*

Advisors Limited and Anr., reported in (2021) 10 SCC 401 (para 158), that neither the Adjudicating Authority nor the Appellate Authority can interfere with the commercial decision taken by the CoC after due deliberation.

60. He further submitted that there is no provision under the Insolvency and Bankruptcy Code which mandates that the value of a resolution plan must necessarily be higher than the liquidation value. The Hon'ble Supreme Court in *Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Ors.*, reported in (2020) 11 SCC 467 (paras 27–30), has expressly held that comparison of resolution plan value with liquidation value is impermissible once the plan satisfies statutory requirements and is approved by the CoC. This legal position has also been reiterated by the Hon'ble NCLAT in *Ramesh Kesavan vs. CA Josin Jose and Anr.*, reported in 2024 SCC OnLine NCLAT 56 (para 9).

61. Ld. Counsel submits that there is no provision under the Code which prohibits or bars a member of the Committee of Creditors from participating in the CIRP as a Prospective Resolution Applicant. The Code does not create any such disqualification, and therefore, the Appellant's objection on this count is wholly misconceived and contrary to the statutory framework.

62. It is submitted that in the 6th CoC meeting, the Committee of Creditors recorded detailed and reasoned grounds for rejecting the resolution plan submitted by the Appellant. Firstly, the CoC noted the lack of sector-specific expertise of the Appellant, who is engaged in real estate

business, whereas the Corporate Debtor operates in the business of trading and supply of generic medicines. The Successful Resolution Applicant, Mahavir Medicare, operates in the same line of business and thus ensures continuity and revival of the Corporate Debtor.

63. Secondly, the CoC noted that the Appellant offered Rs. 10,00,000/- against an admitted claim of Rs. 14,99,25,340/-, resulting in a haircut of 99.33%, which is commercially insignificant. Thirdly, the CoC was of the view that entertaining another plan at such an advanced stage would further delay the CIRP, which would be detrimental to the interests of the sole creditor and contrary to the time-bound mandate of the Code.

64. Ld. Counsel submits that the resolution plan approved by the Committee of Creditors and the Ld. Adjudicating Authority provides for a total plan value of Rs. 12,61,136/-, which was to be implemented within 30 days from approval. The plan provides for payment of Rs. 1,00,000/- to the sole operational creditor along with payment of CIRP costs on actuals amounting to Rs. 11,61,136/- till submission of the resolution plan.

65. It is further submitted that the approved plan clearly provides that all applications relating to preferential, undervalued, fraudulent and extortionate transactions (PUFE) shall be pursued by the Successful Resolution Applicant, and the benefits arising therefrom shall accrue to the CoC member itself. In this regard, IA No. 339 of 2024 under Section 45 of the Code involving Rs. 6.25 lakhs and IA No. 349 of 2024 under

Section 66 of the Code involving Rs. 559.01 lakhs are pending and shall be pursued as per the approved plan.

66. Ld. Counsel submits that both the resolution plans, namely that of the Appellant and that of the Successful Resolution Applicant, provide for payment of CIRP costs in full. Therefore, CIRP costs ought not to be considered for the purpose of comparative evaluation between the two plans. It is further submitted that both plans also provide for infusion of funds by way of share capital for carrying on the business of the Corporate Debtor. Hence, this component equally does not warrant comparative analysis.

67. The principal distinguishing factor between the two plans lies in the amount offered to the sole creditor. Under the approved plan, the SRA offers Rs. 1,00,000/- plus CIRP costs on actuals, whereas under the Appellant's plan, Rs. 10,00,000/- is offered. However, the sole beneficiary of both amounts is the SRA itself, being the only creditor. In effect, under its own plan, the SRA pays itself Rs. 1,00,000/-, which is akin to an internal adjustment, whereas under the Appellant's plan, the SRA would receive Rs. 10,00,000/- from an external party.

68. It is submitted that despite the higher apparent offer, the SRA, in exercise of its commercial wisdom, consciously rejected the Appellant's plan. Additionally, the Appellant's plan provides for an additional Rs. 10,00,000/- towards contingent liabilities, whereas no such provision exists in the approved plan. The present appeal itself is a live illustration of a contingent liability arising post approval of the plan.

69. Ld. Counsel submits that these commercial considerations fall squarely within the exclusive domain of the Committee of Creditors and are not amenable to judicial review.

70. Ld. Counsel humbly submits that pursuant to the approval of the resolution plan by the Ld. Adjudicating Authority on 12.11.2024, the Successful Resolution Applicant has already implemented the plan in its entirety. Payments aggregating to Rs. 23,00,734/-, including CIRP costs, which are higher than the liquidation value, were made on 11.12.2024 and duly distributed amongst stakeholders.

71. It is submitted that all other aspects of the approved resolution plan stand fully implemented. The Monitoring Committee has been constituted, meetings have been held, and the Corporate Debtor has exited CIRP. Therefore, the resolution plan has attained finality and implementation, rendering the present appeal devoid of merit and infructuous.

72. Ld. Counsel respectfully submits that the Resolution Professional has acted strictly in accordance with law, without any bias or irregularity, and the present appeal deserves to be dismissed on facts as well as in law.

Analysis and Findings

73. We have carefully considered the pleadings on record, the rival submissions advanced by the parties, and the material placed before us.

74. At the outset, we note that the present case arises from an unusual and peculiar factual situation. In the present Corporate Insolvency Resolution Process, there is no Financial Creditor. The CIRP was initiated

by an Operational Creditor, namely Respondent No.1. No other creditor filed any claim. As a result, Respondent No.1 became the sole claimant and the only member of the Committee of Creditors, holding 100% voting rights. The same Operational Creditor also submitted its own Resolution Plan and later on became the Successful Resolution Applicant. The Interim Resolution Professional initially appointed in the process was later confirmed as the Resolution Professional by the same sole-member CoC. Thus, the entire CIRP was effectively controlled by one stakeholder, who acted as the petitioning creditor; the only member of the CoC; the sole voting authority with 100% voting rights; the Resolution Applicant, and the sole beneficiary of the approved Resolution Plan.

75. In the above factual background, two important issues arise for our consideration.

i. The first issue is whether a Resolution Applicant who is also a Operational Creditor of the CD and sole member of Committee of Creditors, holding 100% voting rights can approve its own Resolution Plan?

ii. The second and linked issue is whether such a Committee of Creditors, consisting of only one member, who is also a Resolution Applicant and who is directly interested in the outcome of the resolution process in its own favour can fairly, objectively, and independently assess the feasibility and viability of competing Resolution Plans submitted by other Resolution Applicants, particularly when such assessment involves comparative evaluation and exercise of discretion.

76. The Appellant has argued that the entire resolution process is unfair and legally flawed due to a clear conflict of interest. It is submitted that the Committee of Creditors consisted of only one Operational Creditor who had 100% voting rights and who also submitted and approved its own Resolution Plan. The Appellant submits that this defeats the basic principles of fairness, transparency, and value maximisation under the Insolvency and Bankruptcy Code. It is further argued that despite a clear direction of the Adjudicating Authority dated 10.09.2024 to freshly consider the Appellant's Resolution Plan, the same was rejected in a routine and mechanical manner without proper evaluation under Regulation 39 of the CIRP Regulations. The Appellant also submits that its Resolution Plan offered much higher value and better chances of revival, but was rejected on weak grounds such as sector mismatch and possible delay. According to the Appellant, the actions of the Resolution Professional and the CoC have caused serious prejudice and the impugned order cannot be sustained.

77. Per contra, the Respondent No.1 has defended the impugned order by stating that the decision taken by the Committee of Creditors is based on its commercial wisdom and should not be interfered with. It is submitted that the Appellant's Resolution Plan was submitted late and, even after reconsideration, was found to be unviable and offering very low recovery in percentage terms. Respondent No.1 contends that factors such

as experience in the relevant business sector and timely completion of the CIRP were valid reasons for rejecting the Appellant's plan. It is further submitted that the Resolution Plan of Respondent No.1 has already been approved and implemented, and therefore the appeal deserves to be dismissed.

78. Respondent No.2, the Resolution Professional, has submitted that all the steps taken during the CIRP were in accordance with the Insolvency and Bankruptcy Code and the CIRP Regulations. It is stated that the Appellant failed to submit its Resolution Plan within the prescribed time and that the Resolution Professional could not accept a belated plan without approval of the CoC. It is further submitted that in compliance with the order dated 10.09.2024, the Appellant's Resolution Plan was placed before the CoC and considered in the 6th CoC meeting. According to Respondent No.2, the rejection of the Appellant's plan was based on commercial considerations recorded in the minutes, and therefore no illegality or unfairness can be attributed to the Resolution Professional.

79. We first examine Issue No. 1, and note that Section 30(5) of the Code provides an important statutory safeguard to ensure fairness in the decision-making process of the Committee of Creditors. The relevant Section 30 (5) of the Code has been reproduced below:

> *"**Section 30: Submission of resolution plan.***
>
> *(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:*

> *Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor."*

80. There are two parts to this section of IBC. The first part gives the Resolution Applicant discretion to attend the meeting of CoC in which its resolution plan is considered. The second part of proviso to the Section 30(5), however states that voting right in CoC is vested in a resolution applicant, only if he is a financial creditor. The object of this provision is to prevent a resolution applicant from influencing the decision-making process in its own favour and to ensure that voting on Resolution Plans remains independent and free from conflict of interest. In the present case, Respondent No.1, who is an Operational Creditor and not a Financial Creditor, acted not only as a Resolution Applicant, but also as the sole member of the Committee of Creditors with 100% voting rights and proceeded to vote in favour of its own Resolution Plan. Such a situation directly defeats the spirit and purpose of Section 30(5), which seeks to separate the role of a Resolution Applicant from the role of a voting decision-maker.

81. In the present case the Resolution Applicant is an Operational Creditor and not a Financial Creditor. In such a situation it is clearly barred, from voting on its own Resolution Plan, submitted for resolution of Corporate Debtor. Such voting and approval of its own Resolution Plan by the Operational Creditor is in the face of express bar provided in Section 30 (5) of the Code. The question of commercial wisdom of Committee of

Creditors is meaningless in this situation, as the resolution plan approval by the CoC comprising of Resolution Applicant, who is also an OC is in express violation of Section 30 (5) of the Code, and such approval of CoC is void-ab-initio.

82. For the reasons discussed above, we hold that the conduct of the Committee of Creditors in the present case is in clear violation of Section 30(5) of the Insolvency and Bankruptcy Code. The said provision expressly prohibits the Resolution Applicant, who is not a Financial Creditor from voting on its resolution plan in the meeting of Committee of Creditors. In the present case, the sole Operational Creditor acted as a Resolution Applicant and, at the same time, exercised 100% voting rights to approve its own Resolution Plan. Such conduct is in face of the statutory bar provided by Section 30(5) of Code. Permitting a Resolution Applicant, who is not a Financial Creditor, to effectively vote on and approve its own Resolution Plan amounts to a material irregularity in the decision-making process. Accordingly, Issue No. 1 is answered in negative.

83. We now proceed to examine Issue No. 2 by closely analysing the manner in which the 6th meeting of the Committee of Creditors was conducted. The proceedings of the said meeting are central to determining whether the Committee of Creditors fairly and objectively assessed the feasibility and viability of the Resolution Plans submitted by the Appellant and the Respondent.

84. The relevant portion of minutes of 6th CoC meeting held on 18.09.2024 are extracted below:

IA No. 401/2024 & 358/2024

The RP apprised the CoC that the IA/401/2024 has been filed by the RP seeking approval of the Resolution Plan filed by M/s Mahaveer Medicare, SRA and the Operational Creditor in the matter of Rancom Healthcare Private Limited, and who itself initiated the present CIRP U/s 9 of the Code by filing the application along with the Resolution Plan. There are two objections application filed to this approval of the Resolution Plan; one by way of an IA No 358/2024 i.e. M/s Pragati Construction on the ground that the Resolution Plan submitted by the Applicant has been rejected by the RP/ CoC on the ground of having been submitted beyond the cut-off date.

The Hon'ble NCLT instructed that though the Resolution Plan of M/s Pragati Construction was belatedly submitted on 13.06.2024 but the same was submitted before the completion of 180 days of the CIRP period, and this Plan is somewhat above the Resolution Plan of Mahaveer Medicare, which has already been submitted. In this regard, the Hon'ble NCLT directed the CoC of Rancom Healthcare Private Limited to freshly consider the Resolution Plan submitted by the M/s Pragati Construction in IA No.358/2024 also, and take a decision accordingly.

The RP in this regard has called the present meeting of committee of creditors to place the Resolution Plan received from M/s Pragati Constructions. During the meeting, Mr. Harshvardhan Sharma, representative of M/s Mahaveer Medicare (Sole CoC member) submitted the following observations to the Resolution Plan submitted by M/s Pragati Constructions:

1. Mr. Harshvardhan Sharma stated that M/s Pragati Constructions, is a proprietorship concern of Ms. Renu Verma and is primary engaged into the real estate business, whereas the corporate debtor i.e. Rancom Health Care Private Limited is engaged into the business of trading pharmaceutical and medical products. It was further submitted by Mr. Harshvardhan Sharma that the proposed Resolution Applicant No. 2 with whom M/s Pragati Constructions has filed the Resolution plan is one Mr. Shobhit Agrawal, proprietor of M/s Champion Shoppe, engaged into the business of the trading of electronic goods, totally unrelated to the business of the Corporate Debtor, Rancom Health Care Private Limited.

2. Secondly, Mr. Harshvardhan Sharma submitted that though the total value of Resolution Plan of Pragati Constructions is Rs 20 Lakhs, which is more than that of the Resolution Plan submitted by Mahaveer Medicare. However, the distribution amount being assigned to the operational creditors (Mahaveer Medicare) is only Rs 10,00,000 (Rupees Ten Lakhs) against their claim of Rs 14,99,25,340/- (Rupees Fourteen Crores Ninety-Nine Lakhs Twenty-Five Thousand Three Hundred and Forty Only), offering a haircut of 99.33%. Therefore, the recovery for the creditors in this plan is negligible amounting to just 0.67%. Further, M/s Mahaveer Medicare's Resolution Plan offers an amount

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Proprietor

RANCOM HEALTHCARE PRIVATE LIMITED UNDR CIRP MINUTES OF SIXTH COC MEETING

of ₹10,00,000 towards capital infusion for the revival of the Corporate Debtor, as compared to ₹ 5,00,000 proposed in the M/s Pragati Constructions' Resolution Plan. Moreover, M/s Mahaveer Medicare has more than 35 years of experience in the business of trading pharmaceutical and medical products, which is the foremost criteria adopted by the Committee of Creditors to accept M/s Mahaveer Medicare's Resolution Plan.

The RP made a submission to the CoC that the value of the Resolution plan submitted by Mahaveer Medicare (SRA) is Rs 1 Lakh and the value of Resolution Plan submitted by M/s Pragati Constructions is Rs 20 Lakhs out of which Rs 10 lakhs will be distributed to the operational creditors. The RP further stated that as there is a noticeable difference between both the plans value therefore, can we match the values of the resolution plans with one another. The amount of Rs 20 lakhs as offered by M/s Pragati Constructions is their initial offer and if this goes further in competition with the Resolution Plan of Mahaveer Medicare then the same may be increased. The RP further submitted that if the Resolution Plan of M/s Pragati Constructions is considered for review then this will create a healthy competition. To this, Mr. Harshvardhan Sharma replied that the purpose is not like matching/increasing or keeping a healthy competition but it is like how much the RA is trying to recover for the purpose of paying back to the creditors. In the present Resolution plan of M/s Pragati Constructions, the hair cut is of 99.33%. Mr. Harshvardhan Sharma stated that they had a detailed discussion over this internally and they have reached out to a conclusion that if again the Resolution plan of M/s Pragati Constructions will be considered, it will amount to extension of CIR period and accordingly, delay of proceedings. CoC had already accepted the Resolution Plan of Mahaveer Medicare and the same has been duly submitted before this Hon'ble NCLT vide IA/401/2024. Now, the CoC is not desirous of repeating the same procedure again and in this way, rejecting the Resolution Plan of M/s Pragati Constructions. The RP further requested the CoC to present on the next date of hearing and make their submission on the Resolution plan of M/s Pragati Constructions before the Hon'ble NCLT. Mr. Harshvardhan Sharma agreed for the same.

After the conclusion of the meeting, the RP received the detailed statement of observation/Rejection of CoC member on the Resolution Plan of M/s Pragati Constructions and the same has been incorporated in the minutes.

PRAGATI CONSTRUCTIONS

Renu Verma

IA No. 403/2024

The RP apprised the CoC that there is another application bearing IA No. 403/2024 filed by VSE Infosystems bearing no IA/403/2024 challenging the Resolution Plan on the ground that his offer has not been considered. The counsel for the RP submitted that the RP has not received any Resolution Plan from VSE Infosystems until the last date of submission of the Plan or even till the closure of 180 days of the CIRP period and only the application has been moved before this Hon'ble NCLT. The RP stated that the Reply has already been filed to this application and the same has also been shared with the CoC

85. We note from the minutes of the 6th meeting of the Committee of Creditors that the Resolution Professional placed on record the stark difference between the competing Resolution Plans. The Resolution Professional specifically informed the CoC that the Resolution Plan

submitted by Respondent No.1 (Mahaveer Medicare) was of a value of Rs. 1 Lakh, whereas the Resolution Plan submitted by the Appellant, M/s Pragiti Constructions, was of a value of Rs. 20 Lakhs, out of which Rs. 10 Lakhs was proposed to be distributed to the operational creditor. The Resolution Professional further pointed out that the offer of Rs. 20 Lakhs was only an initial offer and that, if the Appellant's Resolution Plan was taken up for review and competition, the value could be increased. It was also suggested by the Resolution Professional that consideration of the Appellant's Resolution Plan would create a healthy competitive process.

86. Despite these observations, the sole CoC member, through its representative Mr. Harshvardhan Sharma, rejected the very idea of considering or reviewing the Appellant's plan, stating that the purpose was not to match or increase values or to encourage competition, but only to assess recovery for creditors, and further stating that the Appellant's plan involved a haircut of 99.33%. <u>*It was further stated that the **CoC had already internally discussed the matter and concluded** that reconsideration of the Appellant's Resolution Plan would lead to extension of the CIRP period and delay in the process, since the Resolution Plan of Respondent No.1 had already been approved and filed before the Adjudicating Authority in IA No. 401 of 2024*</u>. On this basis, the CoC expressed its unwillingness to repeat the process and rejected the Appellant's Resolution Plan.

87. What is significant is that this rejection was based on a pre-determined conclusion based on internal discussion by the Operational

Creditor/ 100% CoC and not on any fresh or structured evaluation, notwithstanding the direction of AA to reconsider the Appellant's plan. The matter was not even discussed within the CoC with RP, as there were only two members in CoC. The Resolution Professional on its part did not carry out proper evaluation of the Appellant's plan and did not prepare or place any evaluation matrix before the Committee of Creditors, as required under Regulation 39 of the CIRP Regulations. The minutes of the meeting do not show any analysis of relative merits of the Appellant's plan and the plan submitted by Respondent No.1/ Operational Creditor.

88. The Appellant was also not invited to the said meeting, where its Resolution Plan was discussed and rejected, which deprived the Appellant of any opportunity to explain or clarify its proposal. Section 30 (5) of the Code gives the discretion to Resolution Applicant to attend the CoC meeting, where its Resolution Plan is to be considered. In this case it was a duty cast upon the RP to inform the Appellant about 6th CoC meeting and invite him to attend the same. This becomes especially important in the present case because the only member of the Committee of Creditors was also the competing Resolution Applicant. We further note that important information relating to avoidance and fraudulent transaction proceedings was not shared with the Appellant, even though such information was relevant for a fair assessment of the Resolution Plan. The voting process was also not conducted fairly, as both Resolution Plans were not placed for consideration and voting at the same time.

89. We also find it necessary to address the factual aspect concerning the stark difference in the plan values offered by the competing Resolution Applicants, as this assumes relevance not for substituting our commercial opinion, but for examining whether the decision-making process was fair and bona fide. It is an admitted position on record that the Resolution Plan submitted by the Appellant proposed a total plan value of Rs. 20 Lakhs, apart from CIRP costs, whereas the Resolution Plan submitted by Respondent No.1 contemplated an upfront amount of only Rs. 1 Lakh, apart from CIRP costs. Such a substantial variance in plan value, by itself, may not compel acceptance of the higher offer; however, it unquestionably triggered a heightened obligation upon the Committee of Creditors, particularly in the context of a judicial direction dated 10.09.2024, to undertake a reasoned, structured, and transparent comparative evaluation. The absence of any evaluation matrix, financial comparison, or reasoned explanation as to why a plan offering twenty times the upfront value was rejected in favour of a significantly lower-valued plan reinforces the conclusion that the reconsideration was neither meaningful nor objective. In the peculiar facts of the present case, where the sole member of the CoC was also the beneficiary of the lower-valued plan, the failure to address this glaring financial disparity further strengthens the inference of procedural infirmity and conflict of interest, thereby vitiating the decision-making process.

90. In this context, we are unable to accept the submission that the decision of the CoC is immune from scrutiny merely because it is styled as an exercise of commercial wisdom. The supremacy of commercial

wisdom cannot be extended to shield a process that is fundamentally flawed due to conflict of interest, violation of Section 30(5) of the Code and absence of procedural safeguards. The present case, therefore, stands on a distinct footing from the usual cases where deference is shown to CoC decisions taken by a body comprising multiple financial operational creditors.

91. As a result, the Appellant's Resolution Plan, which offered an amount twenty times higher than the plan of the Successful Resolution Applicant, was effectively ignored rather than genuinely evaluated. The subsequent incorporation of a written statement of rejection after the conclusion of the meeting only reinforces the view that the decision was already taken and the meeting was conducted merely as a formality. These lapses show that the 6th CoC meeting was conducted only as a formality, and not as a meaningful exercise of consideration, thereby constituting a serious procedural irregularity.

92. We note that the Adjudicating Authority, by its order dated 10.09.2024, had issued a clear and unambiguous direction to the Committee of Creditors to freshly consider the Resolution Plan submitted by the Appellant along with the already approved plan, keeping in view the relevant parameters including the total plan value. Such a direction was not merely procedural in nature but was intended to ensure a meaningful, objective, and unbiased consideration of the Appellant's plan. Once such a direction was issued, it was incumbent upon the Resolution Professional

and the Committee of Creditors to comply with the same in both letter and spirit.

93. In the present case, we note that the manner in which the 6th meeting of the Committee of Creditors was conducted suffers from serious procedural irregularities and violation of principles of natural justice. Not inviting the appellant for the meeting was a violation of Section 30 (5) of the Code, which provides discretion to the Resolution Applicant and not to RP. The Appellant's Resolution Plan was not fairly or objectively evaluated, no proper evaluation matrix was applied, relevant material information was not shared, and the Appellant was not invited to or permitted to participate in the 6th CoC meeting, where its Resolution Plan was discussed and rejected. The assessment of the Resolution Plan was carried out by a single-member Committee of Creditors who was the only other Resolution Applicant directly interested in the outcome of the process. Such a process cannot be said to be fair, transparent, or impartial. The failure to invite the Appellant to the meeting, coupled with the predetermined rejection of its Resolution Plan, amounts to denial of a meaningful opportunity and constitutes a clear violation of principles of natural justice.

94. We derive support from the decision of the Hon'ble Supreme Court in *Essar Steel India Ltd. v. Satish Kumar Gupta* [(2019) 16 SCC 479], wherein it has been authoritatively held that while the commercial wisdom of the Committee of Creditors is supreme, such wisdom must be exercised in furtherance of the objectives of the Insolvency and Bankruptcy Code,

one of the foremost being maximisation of the value of the assets of the Corporate Debtor. Applying the said principle to the facts of the present case, we find that the Committee of Creditors failed to act in conformity with this core objective. The Appellant's Resolution Plan admittedly offered a value much higher than the only other Resolution Plan on record, yet the same was not taken up for genuine consideration. The reasons advanced for rejection, namely that the Appellant belonged to an "incompatible sector" and that consideration of the Appellant's Resolution Plan would result in loss of time, do not address the central requirement of value maximisation. Sectoral incompatibility, by itself, cannot override the statutory objective of maximising value without a proper assessment of feasibility and viability, and delay cannot be cited as a ground when consideration of the plan itself was directed by the Adjudicating Authority. The arbitrary refusal to meaningfully consider a substantially higher-value Resolution Plan, therefore, runs contrary to the ratio laid down in *Essar Steel*, and demonstrates that the commercial wisdom in the present case was not exercised in accordance with the objectives of the Code.

> *"45. However, as has been correctly argued on behalf of the operational creditors, the preamble of the Code does speak of maximisation of the value of assets of corporate debtors and the balancing of the interests of all stakeholders. There is no doubt that a key objective of the Code is to ensure that the corporate debtor keeps operating as a going concern during the insolvency resolution process and must therefore make past and present payments to various operational creditors without which such operation as a going concern would become impossible. Sections 5(26), 14(2), 20(1), 20(2)(d) and (e) of the Code read with Regulations 37 and*

38 of the 2016 Regulations all speak of the corporate debtor running as a going concern during the insolvency resolution process. Workmen need to be paid, electricity dues need to be paid, purchase of raw materials need to be made, etc. This is in fact reflected in this court's judgment in Swiss Ribbons (supra) as follows:

"26. The Preamble of the Code states as follows: "An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."

46. This is the reason why Regulation 38(1A) speaks of a resolution plan including a statement as to how it has dealt with the interests of all stakeholders, including operational creditors of the corporate debtor. Regulation 38(1) also states that the amount due to operational creditors under a resolution plan shall be given priority in payment over financial creditors. If nothing is to be paid to operational creditors, the minimum, being liquidation value - which in most cases would amount to nil after secured creditors have been paid - would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. <u>There is no doubt whatsoever that the ultimate discretion of what to</u>

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 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 supplied)

95. We also draw support from the judgment of the Hon'ble Supreme Court in '*Swiss Ribbons Pvt. Ltd. v. Union of India*' [(2019) 4 SCC 17],

wherein the Court has emphasised that the Insolvency and Bankruptcy Code is founded on the principles of fairness, transparency, and maximisation of value, and that the insolvency process must be conducted in a manner that is just, equitable, and procedurally sound. The Hon'ble Supreme Court has clearly observed that exclusion of bona fide resolution applicants, without due process violates the very spirit of the Code. Applying this settled position to the present case, we find that the approach adopted by the Committee of Creditors falls short of these principles. The CoC has noted in the 6th CoC meeting that the Resolution Plan of the Appellant offers 0.67% of the total dues of the Operational Creditor, who is also the sole CoC member and the Successful Resolution Applicant. However, such an observation ignores the admitted factual position that the Appellant's Resolution Plan offers an amount ten times higher to the Operational Creditor and that the overall plan value proposed by the Appellant is also twenty times the value of the competing Resolution Plan submitted by the Successful Resolution Applicant. The CoC failed to examine whether the revival of the Corporate Debtor would be better achieved under the Resolution Plan submitted by the Appellant as compared to the plan submitted by the Operational Creditor itself. We also find that a relevant and material factor was completely overlooked, namely that the Successful Resolution Applicant is based in Bengaluru and proposes to revive the business of the Corporate Debtor situated in Lucknow, whereas the Appellant is already carrying on business in Lucknow and proposed revival of the Corporate Debtor at the same location. This aspect, which had a direct bearing on feasibility, viability, and effective revival, was ignored altogether. The failure to consider these material factors, coupled with rigid reliance on selective percentages without holistic evaluation, demonstrates lack of fairness and transparency in the process and results in exclusion of a bona fide Resolution Applicant without due process, which is impermissible in view of the law laid down in *Swiss Ribbons (supra).* The relevant paras 11 and 12 of the aforesaid Judgment are extracted below:

> *"11. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either*

> *no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. [See ArcelorMittal (supra) at paragraph 83, footnote 3].*
>
> *12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."*

96. We also take note of judgment of this Appellate Tribunal in '*Binani Industries Ltd. v. Bank of Baroda'*, [Company Appeal (AT) (Insolvency) No. 82 of 2018], wherein it has been held that Resolution Plans must be evaluated on the basis of their overall feasibility, viability, and value contribution, and that such plans cannot be rejected on technicalities or marginal considerations. The Tribunal has emphasised that the resolution process must be fair and aimed at maximising value, and that arbitrary or

biased exclusion of a competing Resolution Plan defeats the purpose of the Code. Applying this principle to the present case, we find that the conduct of the Committee of Creditors clearly reflects bias, as the substantially better Resolution Plan submitted by the Appellant was not taken up for genuine consideration and was rejected on frivolous and extraneous grounds. The failure to meaningfully evaluate a competing plan offering significantly higher value, while approving the plan submitted by the sole CoC member itself, is directly contrary to the law laid down in *Binani Industries (supra)* and vitiates the decision-making process. Relevant paras 30 to 33 and 47 of the aforesaid Judgment are extracted below:

> *"30. Keeping in mind the aforesaid proposition, it is to be seen:*
>
> *(i) Whether the 'Committee of Creditors' discriminated between the eligible 'Resolution Applicants', while considering the 'Resolution Plan' of 'Rajputana Properties Private Limited? and;*
>
> *(ii) Whether the Resolution Plan submitted by Rajputana Properties Private Limited is discriminatory?*
>
> *31. The Adjudicating Authority has noticed that the 'Committee of Creditors' had extensive negotiations and consultations with the Rajputana Properties Private Limited' on the ground that it was the highest 'Resolution Applicant and also obtained certain clarification: after due deliberation voted in favour of the Resolution Plan' of the "Rajputana Properties Private Limited in its meeting held on 14th March, 2018. At the same time the Committee of Creditors' discriminated with the other Resolution Applicants which will be evident from the fact that the proposal for negotiation and better proposal given by the Ultratech Cement Limited' was not at all considered though it was submitted on 8th March, 2018 i.e. much prior to the approval of the plan (14th March, 2018). The 'Committee of Creditors' have*

taken plea that the revised offer given by Ultratech Cement Limited' was merely an e-mail with an offer. The other plea taken was that the offer was not made in accordance with the process document and if it is considered then it would be a deviation of the process laid down in the process document' by the 'Committee of Creditors'. Third objection was that the offer was beyond the time as stipulated under the 1&B Code'.

32. The Adjudicating Authority has rejected such objections by detailed impugned order. It appears that the process document' was issued on 20th December, 2017 which inter alia stipulated general and qualitative parameters. It clearly indicated that Committee of Creditors' will negotiate only with the 'Resolution Applicant' which reveals highest score based on the evaluation criteria and whose Resolution Plan' is in compliance with the requirements of the 1&B Code' as confirmed by the 'Resolution Professional' We have dealt with the object of the 'T&B Code' as recorded above. The Resolution Professional as well as the Committee of Creditors' are duty bound to ensure maximization of value within the time frame prescribed by the 1&B Code'. Such an object in finding out a Resolution Applicant' who can offer maximum amount so as to safeguard the interest of all stakeholders of the 'Corporate Debtor' is lacking in the case in hand from the side of the 'Committee of Creditors'

33. In the present case, the 'Committee of Creditors' not only failed to safeguard the interest of the stakeholders of the Corporate Debtor while approving the 'Resolution Plan' submitted by 'Rajputana Properties Private Limited', also ignored the revised 'Resolution Plan' offered by "Ultratech Cement Limited' which has taken care of maximization of the assets of the Corporate Debtor' and also balanced the claim of all the stakeholders of the Corporate Debtor'.

47. We have noticed the relevant provision of the process document and Section 25(2)(h) and held that the 'Committee of Creditors' have not acted in terms with the provisions of the

> *I&B Code' and the 'process document. The maximization of the value assets of the Corporate Debtor' cannot be ignored nor it can be ignored that the same should balance all the stakeholders*."

97. The maxim nemo judex in causa sua, that no person can be a judge in his own case, is not a mere technical rule but a foundational principle intended to preserve the integrity of adjudicatory and decision-making processes. When the same entity proposes a Resolution Plan, evaluates competing plans, rejects them, and finally approves its own plan, the process ceases to be fair, impartial, or credible. Even if actual mala fides are not expressly proved, the existence of a real likelihood of bias is sufficient to vitiate the process. Justice must not only be done but must also appear to have been done.

98. In view of the aforesaid discussion, we are satisfied that the rejection of the Appellant's Resolution Plan is vitiated by material irregularity, violation of principles of natural justice, and non-compliance with binding judicial directions. Accordingly, we hold that the decision of CoC which comprised of a Resolution Applicant who was also an Operational Creditor and had 100% voting rights in CoC on the resolution plan of the appellant was vitiated by material irregularity. A single member of CoC who is also a Resolution Applicant would always have conflict of interest vis-a-vis another Resolution Applicant and his decision in such cases would be in violation of principles of natural justice. The second issue is decided accordingly.

99. The Resolution Professional plays a pivotal role in proceedings under the Code. It is expected that RP would conduct the CIRP proceedings in accordance with the provisions of the Code including the Rules and Regulations thereunder. It was the duty of RP to highlight the provisions of Section 30 (5) to the notice of Operational Creditor and the Adjudicating Authority. Had it been done on time, this proceeding would not have wasted so much of time and resources of NCLT and this Appellate Tribunal. A RP is supposed to be well versed in the relevant legal provisions of the Code. His failure to take note of Section 30 (5) of the Code is viewed seriously. The matter is brought to the notice of IBBI for appropriate action against the RP. IBBI is further directed to take note of peculiar legal situation of the present case and initiate necessary amendments to the Insolvency and Bankruptcy Code.

100. The Adjudicating Authority has also failed to note the provisions of Section 30 (5) of the Code. Had it taken the note of the same in time this proceeding would have ended much earlier. In the present case, the Adjudicating Authority correctly referred the resolution plan of appellant to the CoC vide its direction dated 10.09.2024, but it did not address the concerns arising from non-compliance with its directions i.e. whether the RP and CoC while evaluating the resolution plan of the appellant abided by the principles of natural justice and provisions of the Code.

101. In our considered view, where the statutory framework is silent and a clear conflict of interest emerges, both the Resolution Professional and the Adjudicating Authority are required to act as institutional safeguards

to prevent abuse of the process. Their failure to do so in the present case has materially affected the resolution process.

102. We note that peculiar situation in the present case reflects a legislative vacuum, wherein the IBC which is a complete Code and provides legal mechanism for CIRP in all types of cases cannot throw light about the manner in which this type of case is to be resolved. As we have already held that the resolution plan suffers from material irregularity and is in express violation of Section 30(5) of the Code. The resolution of the Corporate Debtor is not possible within the current legislative framework and liquidation is the only solution in this case.

103. Accordingly, we set aside the impugned order and order the liquidation of the Corporate Debtor. C.P. (IB) No. 31/ALD/2021 is restored to its original position. Parties to appear before the Ld. Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) on 18.02.2026.

[Justice N Seshasayee]
Member (Judicial)

[Mr. Arun Baroka]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)