NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 517 OF 2024

I.A. NO. 247, 6082, 7158 of 2025

[Arising out of judgement dated 04.03.2024 passed by the National Company Law Tribunal, Ahmedabad Bench in IA No. 851 of 2020 in C.P. (IB) No. 127 of 2017]

In the matter of:

Express Resorts and Hotels Limited
Express Hotel Building,
R.C. Dutt Road, Baroda.
Vadodara – 390 007, Gujarat.

.....Appellant

Versus

1. **Amit Jain**
   Resolution Professional
   Neesa Leisure Limited
   Having its office at:
   Building No. 10, Tower-B,
   8th Floor, DLF Cyber City Phase-II,
   Gurgaon-122 022. **...Respondent No.1**

2. **State Bank of India**
   Stressed Asset Management Branch
   2nd Floor. "Paramsidhi Complex",
   Opp. V.S. Hospital, Ellisbridge,
   Ahmedabad 380006 **...Respondent No.2**

3. **Corporation Bank**
   Navrangpura Branch,
   Near Navrangpura Post Office,
   Ahmedabad-380 009 **...Respondent No.3**

4. **Asset Reconstruction Company (India) Limited**
   The Ruby, 10th Floor,
   29, Senapati Bapat Marg,
   Dadar (West), Mumbai - 400 028 **...Respondent No.4**

5. Oriental Bank of Commerce
Corporate Office, Plot No. 5,
Institutional Area, Sector 32,
Gurugram, Haryana -122 001 **...Respondent No.5**

6. Paisalo Digital Limited
101, CSC, Pocket 52. CR Park,
Near Police Station,
New Delhi 11 019 **...Respondent No.6**

7. IFCI Limited
61, Nehru Place,
New Delhi 110 019 **...Respondent No.7**

8. Syndicate Bank
Plot No. 22, 23 and 24,
GIDC Sector 25,
Gandhinagar, Gujarat **...Respondent No.8**

10. Bank of India

Ahmedabad Large Corporate Branch,
2nd Floor, Bank of India Building,
Bhadra, Ahmedabad 380 001. **...Respondent No.10**

13. Saraswat Co Operative Bank Limited

Zonal Office (Gujarat Zone),
Unit No. 10 & 11, Shivalik Yash,
Opp. Shastrinagar BRTS Bus Stand,
Naranpura, Ahmedabad 380 013. **...Respondent No.13**

14. Bhupendra Singh Rajput

A 309, ATMA House, Opp. Old RBI,
Ashram Road, Ahmedabad 380 009. **...Respondent No.14**

15. HT Media Limited

18-20, Kasturba Gandhi Marg,

New Delhi – 110001 **...Respondent No.15**

16. Ex-Directors of the Suspended Board of Management

Of Neesa Leisure Limited
Through,
Mr. Ome Prakash Verma
S/o Ram Adalat Verma
Aged About 46 Years, R/O 86,
Village And Post Tiwari,
Tehsil Mankapur, District
Gonda, Uttar Pradesh – 271313 **....Respondent No.16**

17. RARE Asset Reconstruction Limited
104- 106, Gala Argos, bs. Harikrupa Tower,
Nr. Ellisbridge Gymkhana, Gujarat College Road,
Ellisbridge, Ahmedabad- 380006

....Respondent No.17

(**Respondents No. 9, 11 & 12** were deleted and **Respondent No. 17** was added in amended memo)

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Raheel Patel, Mr. Himanshu Satija, Mr. Anshul Rao and Ms. Heena Kochar, Advocates.

For Respondents : Mr. Varun Kalra, Mr. Samir Malik and Mr. Shahan Ulla, Advocates for R1/ RP.
Mr. Maulin Raval, Adv. Vatsa Vyer, Mr. Deepanshu Chandra and Mr. Krishna, Advocates.
Mr. Aspi Kapadia, Mr. Jaitegan Singh Khurana and Mr. Uday Bedi, Advocates for R16.
Mr. Navin Pahwa, Sr. Advocate with Mr. Mohit D. Ram, Ms. Nayan Gupta, Advocates for R17.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed by Express Resorts and Hotels Limited, who were the Successful Resolution Applicant (hereinafter referred

to as the **'SRA'**) in the Corporate Insolvency Resolution Process (hereinafter referred to as the **'CIRP'**) of Neesa Leisure Limited (hereinafter referred to as the '**Corporate Debtor' or 'CD'**) against the impugned order dated 04.03.2024 in IA No. 851 of 2020 in C.P. (IB) No. 127 of 2017 whereby the resolution plan given by the Appellant, which was approved by the Committee of Creditors (hereinafter referred to as the **'COC'**) was rejected mainly on the ground that resolution plan does not comply with the requirements under Section 31(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **'IBC, 2016'**).

2. During the pendency of this appeal, debts of Asset Care & Reconstruction Enterprise Limited (**Original Respondent No.12**) and Small Industries Development Bank of India (**Original Respondent No.9**) have been assigned to RARE Asset Reconstruction Limited, who is now added as **Respondent No.17**. Further, debt of Edelweiss Asset Reconstruction Company Limited (**Original Respondent No.11**) was assigned to Asset Reconstruction Company (India) Limited (**Respondent No.4**). The memo of parties was accordingly amended and taken on record.

3. This is the third round of litigation relating to the CIRP of the Corporate Debtor before this Tribunal. The brief facts of this case are as under:

i. The Corporate Debtor-Neesa Leisure Limited was admitted to CIRP under Section 7 of the IBC, 2016 on an application filed by Asset Reconstruction Company (India) Limited on 26.04.2019 and Mr. R.D. Chaudhry was appointed as the Interim Resolution Professional (hereinafter referred to as the **'IRP'**).

ii. There was stay on CIRP by the Hon'ble High Court of Gujarat from June 19, 2019 to October 9, 2019. On 20th June 2020, the IRP handed over the charge to Mr. Amit Jain who was appointed as the Resolution Professional by the Ld. NCLT.

iii. The COC consisted of representatives of Banks and other creditors including SBI, Corporation Bank, ARCI Limited (applicant for initiating CIRP), OBC, IFCI Limited, SIDBI, Bank of India, Edelweiss Asset Reconstruction Company Ltd, Saraswat Coop Bank, Authorised Representative for FD holders, Superintendent, CGST, Gandhinagar, Authorised Representative of Golf Unit Holders.

iv. The Expression of Interest (hereinafter referred to as the **'EOI'**) was issued on 09.02.2020 and 8 EOIs were received and placed before the 7th COC meeting held on March 4, 2020.

v. On 12.03.2020, Information Memorandum was issued to the prospective resolution applicants (hereinafter referred to as the **'PRA'**) with a request for submission of resolution plan.

vi. The Request for Resolution Plan (hereinafter referred to as the **'RFRP'**) identified following properties/sites for visit by the PRAs.

a) Cambay Grand, Thaltej, Ahmedabad

b) Cambay Saphire, Vejalpur, Ahmedabad

c) Cambay Sapphire, Gandhinagar

d) Cambay Grand, Kukas, Jaipur

e) Cambay Resort, Jamdoli, Jaipur

f) Cambay Resort Udaipur; and

g) Cambay Sapphire, Neemrana.

vii. The last date of submission of resolution plan along with EMD was on 17.04.2020.

viii. In the 12th COC meeting held on 02.09.2020, the Resolution Professional briefed the COC about four resolution plans which were received. In the said meeting the suspended management raised objection regarding ARC on the ground that ARC cannot take over under IBC. During the presentations by the PRAs, the litigation about Jamdoli Property, wherein lease has been cancelled and possession taken over by the Jaipur Development Authority, litigation with RIICO etc. were discussed. The PRAs were given opportunity to revise the plan.

ix. Various allegations were made by the suspended management on wide differences in valuations obtained. The RP then obtained a third valuation in compliance of Regulation 35(1)(b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations.

x. The suspended management, on the other hand, offered a settlement proposal to the COC to consider a debt resolution plan or convert debt to equity taking over 75% of the equity of the CD. The CoC directed the suspended management to give a proposal for repayment.

xi. On 20.09.2020, the COC heard the promoter director on his settlement proposal. Certain objections were also raised by some of the COC members. The members of COC desired that promoter director submit a better plan and this be done before 25.09.2020.

xii. The promoter director, Mr. Sanjay Gupta gave settlement proposal which was revised on 17.10.2020. This revised proposal was deliberated by

the COC. The COC in its 14th meeting held on 19.10.2020, after deliberation decided not to take up the proposal of the promoter director.

xiii. Finally, the Resolution Professional found three resolution plans submitted by Kundan Care Products, Pacific India Projects and Consortium of Express Resorts Groups eligible for consideration by the COC.

xiv. The COC after rejecting the settlement proposal of the suspended management evaluated and discussed the three resolution plans in the 14th COC meeting dated 19.10.2020.

xv. The resolution plan was submitted by the Appellant herein on 17.08.2020 and was thereafter revised on 07.09.2020, 15.09.2020 and 15.10.2020 after discussions with Resolution Professional/COC.

xvi. Finally, the revised plans of all these PRAs were placed before the COC in the 14th meeting held on 19.10.2020. The plan submitted by Express Consortium was approved on 24.10.2020 by 67.85% voting share. The resolution plan of Pacifica got 19.91% of votes and resolution plan of Kundan got 0.73% of votes.

xvii. The Successful Resolution Applicant, M/s Express Resorts & Hotels Ltd (Appellant herein) is well established in hotel industry, with 45 years of experience with group of 3 companies, and had wide experience in this industry. This is also noted in para 17 of the impugned order.

xviii. The resolution plan of the appellant had plan value of Rs. 143.83 crores. As noted in para 19 of the impugned order, another Rs. 250 crores fresh funds for capex (equity/quasi equity/debt) were promised in the plan taking total plan value to approximately Rs. 400 crores.

xix. Letter of Intent (LOI) was issued to SRA/Appellant on 07.11.2020 by the Resolution Professional.

xx. On 13.11.2020, the SRA/Appellant submitted a performance bank guarantee of Rs. 50 crores and on 19.11.2020 the RP filed IA 851 of 2020 for approval of resolution plan given by the SRA/Appellant.

xxi. Subsequently, on and after 15.02.2021 several parties such as GSEC Limited, Sankalp IN and others filed various applications seeking intervention and participation in the CIRP of the Corporate Debtor, including another attempt of settlement by promoters. Having known the financial outlay of the resolution plan of the Appellant, the new entrants suggested that they are willing to pay higher amount than proposed by the Appellant.

xxii. Some of the Applicants requested the Ld. NCLT to reject the resolution plan and requested COC be allowed to reconsider the plans of other interested Applicants also.

xxiii. The IA for plan approval was heard and reserved for orders on 17.05.2022. Thereafter, through order dated 06.09.2022, the Ld. NCLT disposed of application for approval of the resolution plan allowing the Resolution Professional to accept new resolution plans afresh including from earlier unsuccessful resolution applicants, as well as other entities.

xxiv. This order was challenged in appeal before this Tribunal and this Tribunal vide judgment dated 09.02.2023 had set aside the order dated 06.09.2022 passed by the Ld. NCLT. In the said order dated 09.02.2023, after discussing the judgments of Hon'ble Supreme Court in the case of *(i) Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Anr – (2021) SCC OnLine 707, (ii) Bank of Maharashtra vs.*

Videocon Industries Ltd. & Ors. – Company Appeal (AT) (Ins.) Nos. 503, 505, 529, 545 and 650 of 2021, (iii) Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors. – (2020) 8 SCC 531, (iv) Company Appeal (AT) (CH) (Ins.) No.172 of 2021 – Alok Kailash Saksena vs. Associate Décor Ltd. & Ors. and (v) Kalinga Allied Industries Pvt. Ltd. vs. Committee of Creditors & Anr. – Company Appeal (AT) (Ins.) No.689 of 2021 this Tribunal held as under:

> ***"23.*** *The IBC and the CIRP Regulations provide a tight scheme and timeline for completion of entire process. In the present case, we have noticed that CIRP period had come to an end and by order dated 09.07.2020 an extension was granted by the Adjudicating Authority of 146 days. The extended period was also come to an end in October 2020. The CIRP period had come to an end and by an order passed on 09.11.2020, the Adjudicating Authority granted three weeks' time for filing of Resolution Plan before it. The period of CIRP was over long ago and Adjudicating Authority after about two years, subsequent of completion of CIRP period cannot direct the CIRP process to begin again by providing for inviting applications for fresh Resolution Plan.*
>
> ***24.*** *The maximisation of value of the Corporate Debtor is admittedly an object of the CIRP, but the said maximisation has to be achieved within the timeline provided in the scheme.*
>
> ***25.*** *The present is not a case where in the process, which was completed by approval of the Resolution Plan by the CoC any breach has been committed. When after following the provisions of the Code and Regulations, the Resolution Plan has been approved by the Adjudicating Authority, the said approval by the CoC has to be respected and cannot be interfered with in exercise of judicial review by the Adjudicating Authority. More so, when there is no such ground that the Plan approved, violates any of the provisions of Section 30, sub-section (2). The object of IBC is to revive the Corporate Debtor and put it again on the track. When a Resolution Plan, has been approved after due deliberations, in exercise of commercial wisdom of the CoC, it has to be accepted that Corporate Debtor was decided to be revived by the Resolution Plan. The mere fact that certain other offers have been received after the approval of the Resolution Plan, CoC cannot have a change of heart and start clamoring before the Adjudicating Authority that they have no objection to sending*

back the Resolution Plan for reconsideration. This will be permitting an unending process, since by passing of time situation keeps on changing. After coming to know about the financial offer in a Plan, which has been approved by the CoC, any subsequent offer by any entity, who did not participate in the process earlier, cannot be entertained.

26. *The CoC being satisfied that financial offer given by the Applicant is satisfactory, exercise their commercial wisdom, even CoC cannot be allowed to change its view, since it is bound by its own decision taken in approving the Resolution Plan. Present is not a case where the CoC is pointing out any breach of procedure or manifest error in their approval of the Resolution Plan, which may be a ground to be pressed before the Adjudicating Authority. The CoC after full consideration has approved the Plan and the financial offer made by the Applicant in the Plan. In the name of receiving higher offer, subsequently, CoC cannot turn around and pray to the Adjudicating Authority to send the Plan back for consideration. The present case itself is an example that adopting such course by the CoC and Adjudicating Authority, enormous delay shall take place, which is not in the interest of CIRP, nor in the interest of Corporate Debtor. The Corporate Debtor has to be revived with speed and in timelines, which has been prescribed in the CIRP. Once, the said object is achieved, the same shall not be allowed to frustrate on the grounds, which have been raised before the Adjudicating Authority in the present case. We may notice that in this Appeal, an interim order was passed on 21.09.2022, staying the further process in pursuance of the impugned order dated 06.09.2022, which order is still continued.*

27. *In the result of the foregoing discussion, we are satisfied that Adjudicating Authority has committed error in passing the impugned order. The impugned order is set aside. The matter is remitted to the Adjudicating Authority to pass fresh order on IA No./851/AHM/NCLT/2020 filed by the RP for the approval of the Resolution Plan. The Plan being pending since 2020, we direct the Adjudicating Authority to pass a final order on IA No./851/AHM/NCLT/2020 within a period of three months from the date the copy of this order is produced. Appeal is allowed. No order as to costs."*

(Emphasis supplied)

xxv. The said order of this Tribunal dated 09.02.2023 was upheld by the Hon'ble Supreme Court vide order dated 17.03.2023.

After the directions of this Tribunal to Ld. NCLT to dispose of the IA for approval of resolution plan, the suspended board of directors submitted a fresh proposal under Section 12A of the Code on 07.03.2023.

As noted earlier, their earlier proposal dated 17.10.2020 under Section 12A of the IBC, 2016 was rejected by the COC. Some queries were also raised by the Ld. NCLT regarding applicability of the judgment of Hon'ble Supreme Court in the case of *Rainbow Papers Limited* regarding payment of statutory dues and the ongoing litigation relating to Rajasthan property before the Hon'ble Rajasthan High Court.

Another proposal of settlement was submitted under Section 12A of the Code on 05.04.2023 which was considered and rejected by the COC as it did not get the requisite voting in COC in its support.

One of the financial creditors, namely, Asset Care Reconstruction Enterprise filed an IA 584/2023 before Ld. NCLT suggesting that the approval of resolution plan be deferred till the decision of the Hon'ble Rajasthan High Court regarding Rajasthan property.

xxvi. On 10.05.2023, the Resolution Professional filed an affidavit regarding impact of the judgment of *Rainbow Papers Limited.* The Appellant filed an affidavit dated 19.05.2023 to deal with Resolution Professional's affidavit on the impact of judgment of *Rainbow Papers Limited,* with relevant judicial precedence. However, on 28.11.2023, the Ld. NCLT directed the Resolution Professional to convene a COC meeting to apprise the COC members of the judgment in the case of *Rainbow Papers Limited* and orders passed by the Hon'ble Rajasthan High Court.

xxvii. In the second round of litigation before this Tribunal, the Appellant filed Company Appeal (AT) (Insolvency) No. 1624 of 2023 against the said order of Ld. NCLT dated 28.11.2023 referring the matter back to COC on above referred issues.

This Tribunal vide order dated 18.12.2023 set aside the directions of the Ld. NCLT to refer the issue to the COC and directed the Ld. NCLT to conclude the hearing on the IA seeking approval of resolution plan within a period of one month from 12.01.2024. This Tribunal noted that impact of *Rainbow Papers Limited* in the CIRP process was already explained by the Resolution Professional and the SRA. The relevant portion of the order dated 18.12.2023 of this Tribunal is reproduced below:

> ***"9.*** *We have already noticed order of this Tribunal dated 09.02.2023, where this Court has disapproved the request to send matter again to CoC to reconsider the Resolution Plans. This Tribunal has directed the Adjudicating Authority to consider the plan approval application and decide the same within a period of three months. The impugned order has directed the matter to be taken before the CoC, which was not approved by this Tribunal in order dated 09.02.2023. Insofar as merits of the plan, it was to be examined by the Adjudicating Authority and take a decision in accordance with law. It is further observed that no purpose shall be served in prolonging the matter by the Adjudicating Authority by sending the matter to CoC and obtain opinion of CoC. It was for the Adjudicating Authority, who has to take decision on I.A. No. 851 of 2020 after hearing the parties. We are of the view that order impugned passed in I.A. No.851 of 2020 is unsustainable and is set aside. In result of setting aside the impugned order all consequential actions are also unsustainable. Subsequent actions including meeting of CoC conducted in consequence to the impugned are set aside.*
>
> ***10.*** *Learned counsel for the parties submit that the matter has been adjourned to 12.01.2024 on joint request of the parties. We are of the view that in view of the fact that date 12.01.2024 is already fixed, the Adjudicating Authority after hearing the parties shall endeavour to decide the application I.A. No. 851 of 2020 as expeditiously as possible, preferably within a period of*

one month from the date fixed. Appeal is allowed to the above extent.

11. *We make it clear that we have not expressed any opinion on the merits of I.A. No. 851 of 2020 and it is for the Adjudicating Authority to decide the matter in accordance with law."*

xxviii. The Ld. NCLT in the impugned order dated 04.03.2024 considered the IA No. 851/2020 filed by Resolution Professional seeking approval of the resolution plan and rejected the plan. The relevant portion of the impugned order dated 04.03.2024 rejecting the resolution plan is reproduced below:

"***Thus, it appears that:***

a) The Resolution Plan approved by COC has not been done with process that can be approved by this Adjudicating Authority as it lacked due and transparent process of examining each application. on its merits. Individual COC members were observed to be involved in various discussions, delaying approval of the plan in order to improve the plan value.

b) The terms of RFRP were not complied with by way of an analysis of the NPV of the payment schedule as the Financial Creditors or the other eligible creditors had got 24% of the debt payable by equity which was also objected by the suspended management stating that the ARCs (3) were not eligible to get such equity contribution.

c) The Information Memorandum had included the disputed RIICO properties at Nemrana and Jamdoli where the leasor had taken Raj. Raj. back the possession and many litigations on property in Rajasthan and Hon'ble NCLAT & Supreme court clearly stated that these were not assets of CD. There is also a stay on further proceedings in the matter before the Hon'ble High Court.

d) The valuations obtained stated to have been 3 have been examined. They have been observed to have done for valuing separately land and building, machinery and current and other assets. They cannot be called as separate valuations for the entire assets of the CD. There is a wide variation between the 2

valuations of Shri S Dingra within a year and why and how the methodology were changed is not convincing. If the RP had obtained another valuation due to variation, it can be convincing to this tribunal to accept only if it is comparable with a similar valuation of the entire property. RP and COC have also arbitrarily allowed and accepted the valuation and the Information Memorandum prepared and issued has included the properties which are not to have been. The RP in the Information Memorandum and RFRP has not clearly specified the nature of defects/saleability of these assets which can only be passed on as assets of the CD to the Resolution applicant. The SRA who got the Plan approved taking in to account the NIL value in second valuation of Mr Dingra has sought to retain the property and sought concessions, if granted the SRA would on that ground try to retain the property for his use and development, inspite of litigations.

e) Even though the Operational Creditors representing the Sales Tax Authorities have submitted a claim were part of COC, in the plan there is NIL distribution to government. There is also an acceptance affidavit that the various authorities of government will benefit from the Rainbow judgment, while the SRA has been repeatedly raising objections to any of the points raised by the COC members (one or more) on this impact, but only stated that since nothing is left residual after paying secured creditors he has considered as NIL payment to operational creditors. Similarly the payments made on claims stated to have been admitted to the workers and employees are not fully covered even though there is declaration. The dissenting creditors have also raised objections to the contention in the plan on the payment methodology through equity distribution which has a cap and a rider that only the dissenting creditors would get the benefit,

f) The COC members after submitting the plan, with 90% approval had sought the orders of the Tribunal to send the plan back to COC for reconsideration, which was also consented by the RP. The objection of the SRA was that it should not be done after the approval. This Tribunal did not agree with the same as it stated that they had not examined the merits of the case. The Tribunal could have remitted back the plan to the COC as there were valid 120 reasons which sought on account of covid situation, litigations and the valuation issues,

g) It is further observed that the Resolution Plan was approved by a wafer thin majority of 67.5. Constitution of COC members with

their voting rights have been done after rejecting the claims of the Rajasthan Golf Unit holders even though they had a right to claim and had also appeared and raised objections before this tribunal is not valid. Many FD holders have not submitted the claim and we are not sure whether a transparent process to invite their claims was done. Some of their claims are also rejected including a large claim of one of the claimants stating that he had submitted a plan along with suspended management.

h) The promoter of the plan had been repeatedly offering a process of settlement and rejection of plan but was not considered even though heard before the plan was approved. It was stated that the Joint Lenders Forum would examine the matter but not done. The main litigants who have delayed and objected the plan with various appeals are the Successful Resolution Applicant and the suspended management who objected to any thing and every thing to consider only the plan or reject the plan. The stand of the SRA that plan is to be approved not on merits (with defects in the title of the property) but as COC has approved whereby he could acquire the property on as in where basis inspite of litigations is unwarranted and not accepted.

i) Concessions sought by the applicant on properties not held on the books of the Corporate Debtor or under valid litigation or disputes /is not correct and impact on such an order will have far more repercussions if considered.

J) The plan has treated the secured creditors to be paid and not considered the claims of unsecured creditors when the majority of the assets are under dispute which are mainly leased properties against which these secured creditors have created exposure. From the submissions unless a fresh legal opinion is obtained (which was not done by the Resolution Professional), most of these secured creditors would be deemed unsecured as the liabilities (in 3 cases) were acquired later after sanction of loan or when the assets turned NPA or under restructuring by Asset reconstruction companies who have submitted claim stating secured status.

k) The CIRP cost has not been fully covered and the plan schedule of payment is not considerable due to the points mentioned including the NPV arrived at and that the Hotel Business when on its down fall during COVID period has been valued of all the hotel assets only at 30% value. There is also certain borrowing sought by the Resolution Professional as interim finance. There are

disputes even in Ahmedabad property as GIDC have raised objections which have leased the lands and the property leaned by AUDA has certain objections including on valuations as there is wide variations in the property valued of hotels in Ahmedabad.

L) It is not clear from RFRP whether the Information Memorandum in the form submitted before the Tribunal only when called for before reserving the orders in January was the same which was issued with RFRP, which on examination does not have this as attachment. The auction process then is not transparent and many discussions and negotiations have taken place independently than in the meeting with the applicants. No explanation given as to why the Information Memorandum was not filed along with the application.

m) Even though the suspended management has been repeatedly putting up proposals which are higher than the plan, which are better in content, there are many litigations and also IAs filed under Sec 19 and Sec 43 including enforcement department cases which needs review. It is to be assessed by COC on to whether such applications can be considered and if so only it is with approval of joint lenders forum and consideration of all other stake holders including operational creditors as per the provisions of IBC.

N) The Resolution Professional did not make the operational creditors whose claims were considered to be NIL to be paid in the plan as party to this application.

O) The Resolution Plan does not comply with the requirements under Sec 31(1) and is rejected under Sec 31(2).

P) The bench has considered the submissions of applicant and respondents in other IAs filed (IA 188/2020, IA 1089 of 2023, IA 589 of 2023) which have opposed the Resolution Plan. In view of the orders passed in this application for approval of Resolution Plan they are considered as infructuous and to be disposed off.

***28.** We heard the submissions of applicant and all respondents in this matter and pass the following order:-*

ORDER

Application is rejected."

4. The Ld. Sr. Counsel for the Appellant in his oral and written submission submitted as under:

i. The CIRP was initiated on 26.04.2019 and the resolution plan was submitted by the Appellant on 17.08.2020. The EMD of Rs. 50 crores was paid by the Appellant as far back as 13.11.2020.

ii. The resolution plan is fully compliant with Section 30(2) of the IBC, 2016 and was approved by the COC with requisite majority in its 'commercial wisdom' which is not justiciable in view of the judgments in the case of *(i) Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors. – (2020) 8 SCC 531; (ii) Pratap Technocracts Pvt. Ltd. & Ors. v. Monitoring Committee of Reliance Infratel Ltd., (2021) 10 SCC 623; (iii) K. Sashidhar v. Indian Overseas Bank and Others (2019) 12 SCC 150; and (iv) Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd. & Anr., (2022) 2 SCC 401.*

iii. The Respondent No. 17, RARE Asset Reconstruction Limited, is successor and assignee of ACRE who was a member of the 14th COC and had voted in favour in the resolution plan in the 14th COC meeting held on 19.10.2020. The Respondent No. 17 steps into the shoes of ACRE and cannot now oppose the approval of the very plan it has assented too.

iv. The Ld. Sr. Counsel referred to decision of the Hon'ble Supreme Court in the case of *Ebix Singapore Pvt. Ltd.* and of this Tribunal in the case of *Mehar Bhumi Bhawan Pvt. Ltd.* in *Company Appeal (AT) (Ins.) No. 1876 of 2025* on this issue.

v. The resolution plan was approved by the COC on 19.10.2020 whereas the decision of *Rainbow Papers Limited* was pronounced on 06.09.2022 and the resolution plan was fully compliant with the law then prevalent. In any case, the Resolution Professional had submitted affidavit in compliance to the judgment of the Hon'ble Supreme Court in *Rainbow Papers Limited* and has arrived at the quantum of secured statutory claims as approximately Rs. 16.09 crores and that pro-rata payable comes to approximately Rs. 2.33 crores, treating the statutory authorities as operational secured creditors as per *Rainbow Papers Limited* judgment.

vi. The Appellant has given an undertaking it shall pay the amount of Rs. 2.33 crores over and above the plan value in good faith to bring the matter to quietus.

vii. This additional payment would ensure that the share of the creditors who are part of the COC remains same, and is not decrease due to the impact of the judgment of the *Rainbow Papers Limited.*

viii. On the issue of valuation, it is submitted that the valuations were done by the registered valuer appointed by the Resolution Professional under supervision of the COC. No stakeholder, including members of the COC, other creditors, or former promoters have raised any objection to the valuation at the relevant time. The appointment of the registered valuer was ratified by the COC, and his report was placed before the COC and was duly considered by it. Valuation of the assets of the COC squarely falls within the 'commercial wisdom' of the COC and is non-justiciable.

ix. The impugned order does not assign any cogent reason for non-compliance of Section 30(2) of the IBC, 2016 and Ld. NCLT has even referred to their earlier order dated 06.09.2022 which was set aside by this Tribunal.

x. The following chart was submitted rebutting each observation made in the impugned order:

Relevant Paragraphs from the Impugned Order	**Submissions of the Appellant**
a) *The Resolution Plan approved by COC has not been done with a process that can be approved by this Adjudicating Authority as it lacked due and transparent process of examining each application on its merits. Individual COC members were observed to be involved in various discussions, delaying approval of the plan in order to improve the plan value.*	1. No reasons assigned as to why the Plan Approval was not a transparent process. Assumption of the NCLT without any basis. 2. Plan Approval was delayed as SBD/Promoters gave a proposal for settlement at the last minute, which is ignored by NCLT. 3. Negotiating with various resolution applicants is a standard practice adopted by the CoC while approving a resolution plan. (Regulation 39(1A) of CIRP Regulations) 4. Further, in ***Jindal Stainless Ltd. vs. Mr. Shailendra Ajmera, RP of Mittal Corp Ltd. & Ors.: CA (AT) (Ins.) No. 1058 of 2022***, this Hon'ble Tribunal held the CoC has the power to negotiate with resolution applicants after receiving the plans and before voting on them. 5. The Plan submitted by the Appellant is compliant with all requisites under IBC under Sections 29A and 30 and 31(1) of IBC read with Regulations

	35A, 38(1), 38(1A), 38(1B), 38(2), 38(3), 39(2) and 39(4) and accordingly Compliance Certificate (FORM-H) was filed 6. It is settled law that the jurisdiction of the Adjudicating Authority is limited to examining if the plan as approved by the CoC, complies with the requirements of Section 30(2). Refer Pratap Technocracts Pvt. Ltd. & Ors. vs. Monitoring Committee of Reliance Infratel Ltd., **(2021) 10 SCC 623** Paras 25, 28, 29, 30. Refer Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. & Anr., **(2022) 2 SCC 401** Para 100-101
b) The terms of RFRP were not complied with by way of an analysis of the NPV of the payment schedule as the Financial Creditors or the other eligible creditors had got 24% of the debt payable by equity which was also objected by the suspended management stating that the ARCs (3) were not eligible to get such equity contribution.	1. ARCs are allowed to hold equity. No Law baring the ARCs to hold equity. 2. Equity is given with a compulsory exit clause and is part of the RFRP carrying weightage in evaluation matrix. 3. Assumption of NCLT that NPV is not calculated as per RFRP. 4. The suspended management have no role in acceptance or rejection of a resolution plan by the CoC. It is a settled law that CoC's commercial wisdom will prevail over objections raised by the suspended management. 5. Further, in any case, the issue of NPV of the payment schedule falls within the exclusive domain of the commercial wisdom of the CoC.

c) *The Information Memorandum had included the disputed properties at Nemrana and Jamdoli where the leasor had taken back the possession and many litigations on property in Rajasthan and Hon'ble NCLAT & Supreme court clearly stated that these were not assets of CD. There is also a stay on further proceedings in the matter before the Hon'ble High Court.*	1. IM is a document that is required to provide all information on the CD. 2. Properties at Neemrana and Jamdoli are bound to be included as rights & liabilities arise out of the said properties against the CD from the said properties. 3. The Hon'ble SC, in Ebix Singapore Pvt. Ltd. vs. CoC of Educomp, (2022) 2 SCC 401 in Para 207, has held that the RP is duty bound to disclose all factors and information in the information memorandum, including factors effecting change in the information mentioned therein. 4. In light of the same, the IM clearly points out the issues of leases of both properties 5. Further, in any case, the Plan is on "as is where is" basis. 6. Thus, the judgements of SC, NCLAT and Rajasthan High Court do not affect the approval of Plan as the Resolution Plan is on 'as is where is' basis and is submitted after complete knowledge of the said orders.
d) *The valuations obtained stated to have been 3 have been examined. They have been observed to have done for valuing separately land and building, machinery and current and other assets. They cannot be called as separate valuations for the entire assets of the CD. There is a wide variation between the 2 valuations of Shri S Dingra*	1. Correctness of the Valuation cannot be gone into by the NCLT at the stage of Approval of the Plan. 2. CoC has accepted the Valuations in its commercial wisdom. The valuations cannot be doubted by the NCLT. ***(refer Singh Raj Singh Vs SRS Meditech Limited and Ors,***

within an year and why and how the methodology were changed is not convincing. If the RP had obtained another valuation due to variation, it can be convincing to this tribunal to accept only if it is comparable with a similar valuation of the entire property. RP and COC have also arbitrarily allowed and accepted the valuation and the Information Memorandum prepared and issued has included the properties which are not to have been. The RP in the Information Memorandum and RFRP has not clearly specified the nature of defects/saleability of these assets which can only be passed on as assets of the CD to the Resolution applicant. The SRA who got the Plan approved taking in to account the NIL value in second valuation of Mr. Dingra has sought to retain the property and sought concessions, if granted the SRA would on that ground try to retain the property for his use and development, inspite of litigations.	***2020 SCC Online NCLAT 684, para 7)*** 3. Defects in relation to these Properties have been mentioned in the IM. 4. SRA/Express has not mentioned anything about the valuation of any of the properties. Assumption of NCLT without any basis. 5. Valuation Reports under IBC are confidential documents and are not shared with the SRA/Express. **[Reg 35(2) & (3) prior to amendment in 2024]** 6. In any case, Valuation is done by 2 Registered valuers as per Section 247 of the companies Act, 2013 and in complete compliance of Rule 27 and Rule 35 of the Insolvency and Bankruptcy board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016.

e) Even though the Operational Creditors representing the Sales Tax Authorities have submitted a claim were part of COC, in the plan there is NIL distribution to government. There is also an acceptance affidavit that the various authorities of government will benefit from the Rainbow judgment, while the SRA has been repeatedly raising	1. Despite being part of the CoC, Sales Tax Authorities have never raised an objection against the Plan. 2. Plan [24.10.2020] was submitted prior to Rainbow Papers' Judgement [06.09.2022]. 3. Even after Rainbow Papers Judgement, Sales Tax Authorities have raised no

objections to any of the points raised by the COC members (one or more) on this impact but only stated that since nothing is left residual after paying secured creditors he has considered as NIL payment to operational creditors. Similarly, the payments made on claims stated to have been admitted to the workers and employees are not fully covered even though there is declaration. The dissenting creditors have also raised objections. to the contention in the plan on the payment methodology through equity distribution which has a cap and a rider that only the dissenting creditors would get the benefit.	objection to the NIL Payment or their treatment as "Operational Creditors" rather than "Secured Operational Creditors". 4. SRA/Express is entitled to advance its legal arguments, which cannot be curtailed. 5. SRA/Express has shown its willingness to pay the amount of INR 2.33 Crores, which was offered before this Hon'ble Tribunal. (vide additional affidavit dated 26.03.26) 6. SRA/Express has proposed full payment of admitted dues of employee/workmen 7. The said fact is even recorded in the Impugned Order by NCLT 8. It is the discretion of the SRA on whom to give benefits. Dissenting Creditors having seen the pro & cons of the Plan, have dissented. They cannot alleged discrimination thereafter. Furthermore, equity distribution was decided in the 14th CoC Meeting. 9. It is now well settled that distribution to the creditors in accordance with provisions of Section 30(2) is in the discretion of the CoC and with regard to distribution the scope of judicial review by the Adjudicating Authority and this Tribunal is very little. Refer Simbhaoli Sugars Ltd. vs. Pramod Kumar Sharma, RP of Uniworld Sugars Pvt. Ltd. & Ors., Company Appeal (AT)(Ins.) No. 776 of 2023 decided on 28.07.2023 Paras 8,9 & 10.

	Refer Pratap Technocracts Pvt. Ltd. & Ors. vs. Monitoring Committee of Reliance Infratel Ltd. (2021) 10 SCC 623 Paras 41
f) The COC members after submitting the plan, with 90% approval had sought the orders of the Tribunal to send the plan back to COC for reconsideration, which was also consented by the RP. The objection of the SRA was that it should not be done after the approval. This Tribunal did not agree with the same as it stated that they had not examined the merits of the case. The Tribunal could have remitted back the plan to the COC as there were valid reasons which sought on account of covid situation, litigations. and the valuation issues.	1. Observations similar to Order dated 06.09.2022 of NCLT, which was set aside by this Hon'ble Tribunal vide Order dated 09.02.2023 2. The said finding is directly contrary and passed in complete ignorance of the findings of this Hon'ble Tribunal in its judgment dated 09.02.23, which were confirmed by the Hon'ble SC on 17.03.23.
g) It is further observed that the Resolution Plan was approved by a wafer-thin majority of 67.5. Constitution of COC members with. their voting rights have been done after rejecting the claims of the Rajasthan Golf Unit holders even though they had a right to claim and had also appeared and raised objections before this tribunal is not valid. Many FD holders have not submitted the claim and we are not sure whether a transparent process to invite their claims was done. Some of their claims are also rejected including a large claim of one of the claimants stating that he had	1. Assumption that a transparent process is not followed. 2. Golf Unit Holders are represented by an Authorised Representative. 3. "Wafer thin" majority remains a majority under the provisions of IBC. The threshold of 66% was still crossed. 4. Observations without any basis that CoC Constitution is bad. No objections raised since 2020 on constitution of the CoC. 5. Regular progress reports were filed by the RP, no objection, observation by the NCLT on the CoC constitution.

submitted a plan along with suspended management.	
h) The promoter of the plan had been repeatedly offering a process of settlement and rejection of plan but was not considered even though heard before the plan was approved. It was stated that the Joint Lenders Forum would examine the matter but not done. The main litigants who have delayed and objected the plan with various appeals are the Successful Resolution Applicant and the suspended management who objected to anything and everything to consider only the plan or reject the plan. The stand of the SRA that plan is to be approved not on merits (with defects in the title of the property) but as COC has approved whereby, he could acquire the property on as in where basis inspite of litigations is unwarranted and not accepted.	1. Observations are contrary to records. Settlement Proposals of the Suspended Management have been considered multiple times and not accepted by the CoC. **[1st Proposal rejected in 14th CoC] [2nd Proposal Rejected in May, 2023].** 2. It is a settled law that once a proposal by the Suspended Management under S.12A is rejected by the CoC, the suspended management cannot submit revised/fresh proposals. Refer Sanjeev Mahajan vs. Indian Bank & Ors., **Company Appeal (AT)(Ins.) No. 1440 of 2024 decided on 20.08.2024**, Paras 18,19,20,21. Refer Pratham Expofab Pvt. Ltd. vs. Mr. Anil Matta, RP & Ors., **Company Appeal (AT)(Ins.) No. 1803 of 2024 decided on 05.11.2024**, Paras 25,26,27, 28,29. 3. Further, plan is on "as is where is" basis. 4. No provision in the Code which provides for a rejection of a plan which is on 'as is where is' basis. 5. The Appellant/SRA has only exercised its statuary right to challenge orders of the NCLT which were not in consonance with the settled law and provisions of the Code.The said exercise of its statutory right cannot be termed as a delay tactic, more so when the

	Appellant has succeeded in both its previous appeals.
i) Concessions sought by the applicant on properties not held on the books of the Corporate Debtor or under valid litigation or disputes is not correct and impact on such an order will have far more repercussions if considered.	1. To grant concessions are discretionary powers of NCLT, which if rejected or allowed does not invalidate the Resolution Plan.
j) The plan has treated the secured creditors to be paid and not considered the claims of unsecured creditors when the majority of the assets are under dispute which are mainly leased properties against which these secured creditors have created exposure. From the submissions unless a fresh legal opinion is obtained (which was not done by the Resolution Professional), most of these secured creditors would be deemed unsecured as the liabilities (in 3 cases) were acquired later after sanction of loan or when the assets turned NPA or under restructuring by Asset reconstruction companies who have submitted claim stating secured status.	1. Observations are without any basis and contrary to records. 2. The NCLT assumes that ARCs (3 in No.) could not have been secured creditors as liabilities are acquired after the loan was sanctioned and CD's account turned NPA. Normally, debt is acquired by ARCs only after (i) sanction of loan by Financial Institutions; and (ii) Accounts turn NPA.
k) The CIRP cost has not been fully covered and the plan schedule of payment is not considerable due to the points mentioned including the NPV arrived at and that the Hotel Business when on its down fall during COVID period has been valued of all the hotel assets only at 30% value. There is also certain borrowing sought by the Resolution Professional as	1. The Resolution plan provides for payment of the full CIRP Cost. 2. No party has objected to the authencity of the documents produced before NCLT. 3. None of the observations made would render the Plan illegal, whereby it is liable to be rejected. 4. The fact about the pending litigations is fully disclosed in the IM.

interim finance. There are disputes even in Ahmedabad property as GIDC have raised objections which have leased the lands and the property leased by AUDA has certain objections including on valuations as there is wide variations in the property valued of hotels in Ahmedabad.	5. Further, the Resolution Applicant considering the same has submitted the plan on 'as is where is' basis.
l) It is not clear from RFRP whether the Information Memorandum in the form submitted before the Tribunal only when called for before reserving the orders in January was the same which was issued with RFRP, which on examination does not have this as attachment. The auction process then is not transparent and many discussions and negotiations have taken place independently than in the meeting with the applicants. No explanation given as to why the Information Memorandum was not filed along with the application.	1. No party, including the Appellant and other prospective RAs or members of the CoC, have objected to the authencity of the IM or other documents produced before NCLT. 2. In any case, non-submission of the IM before the NCLT by the RP, will certainly not render the Plan illegal and liable to be rejected. 3. It is not anybody's case that the IM was not given to the PRAs.
m) Even though the suspended management has been repeatedly putting up proposals which are higher than the plan, which are better in content, there are many litigations and also IAs filed under Sec 19 and Sec 43 including enforcement department cases which needs review. It is to be assessed by COC on to whether such applications can be considered and if so, only it is with approval of joint lenders forum and consideration of all other stakeholders including	1. Reference to CoC to take a decision was made by NCLT vide its Order dated 28.11.2023 [reproduced @Pg.886; Vol IV] and was categorically set aside by this Hon'ble Tribunal vide its Order dated 18.12.2023 2. Further, Settlement Proposals have been considered and not accepted by the CoC. [1st Proposal rejected in 14th CoC] [2nd Proposal Rejected in May, 2023]. 3. It is a settled law that once a proposal by the Suspended

operational creditors as per the provisions of IBC.	Management under S.12A is rejected by the CoC, the suspended management cannot submit revised/fresh proposals. Refer Sanjeev Mahajan vs. Indian Bank & Ors., **Company Appeal (AT)(Ins.) No. 1440 of 2024 decided on 20.08.2024**, Paras 18,19,20,21. Refer Pratham Expofab Pvt. Ltd. vs. Mr. Anil Matta, RP & Ors., **Company Appeal (AT)(Ins.) No. 1803 of 2024 decided on 05.11.2024**, Paras 25,26,27,28,29
n) *The Resolution Professional did not make the operational creditors whose claims were considered to be NIL to be paid in the plan as party to this application.*	1. This is neither a requirement under the Code or Rules/Regulations not a practice followed. 2. Joining all OCs will lead to an absurdity. 3. Such objections were not taken by any party since the Application was filed on 26.11.2020. 4. The NCLT has not raised issues in the hearings that have taken place before it since 2023.
o) *The Resolution Plan does not comply with the requirements under Sec 31(1) and is rejected under Sec 31 (2).*	1. No reasons assigned nor do observations made in Paras (a) to (n) relate to a reason as to why the Resolution Plan would violate any law as provided under Section 30(2). 2. The Plan submitted by the Appellant is compliant with all requisites under IBC under Sections 29A and 30 and 31(1) of IBC read with Regulations 35A, 38(1), 38(1A), 38(1B), 38(2), 38(3), 39(2) and 39(4) and accordingly Compliance Certificate (FORM-H) filed

p) The bench has considered the submissions of applicant and respondents in other IAs filed (IA 188/2020, IA 1089 of 2023, IA 589 of 2023) which have opposed the Resolution Plan. In view of the orders passed in this application for approval of Resolution Plan they are considered as infructuous and to be disposed off.	-----

5. The Ld. Counsel Mr. Aspi Kapadia, appearing for the suspended management opposed the resolution plan on the following grounds:

i. It is submitted that the valuation was not proper. Initially the valuation was done by Mr. Sunil Dhingra where the valuation of all the properties was arrived at Rs. 1245.81 crores. Subsequently, another report was submitted by Mr. Sunil Dhingra wherein the valuation was substantially reduced to Rs. 187.27 crores (fair market value).

ii. It is submitted that the earlier report was based on the method involving valuation of the assets whereas the second report was based on the income approach, i.e. yield from the properties. Subsequently, another valuation was done by M/s Crest Capital Advisors wherein fair market value was arrived at Rs. 246.80 crores. Considering the difference in the two valuations, as per Regulation 35, the Resolution Professional had got third valuation done from Adroit Valuers, where fair market value was determined at Rs. 180.87 crores.

iii. It is submitted that there was no justification for changing the method of valuation by Mr. Sunil Dhingra. One reason for wide variation in valuation is that Jamdoli property in Rajasthan was initially valued Rs. 443.24 crores by Mr. Dhingra and later in his second report it was reduced to 'Zero'. It is

submitted that this amounted to fraud and fraud vitiates the entire proceedings.

iv. It is submitted that the judgment of Hon'ble Supreme Court in the case of *State Tax Oficer v. Rainbow Papers Limited* reported in *(2023) 9 SCC 545* has come subsequently on 06th September, 2022, after the plan was approved by the COC. It is declaration of law and non-provision of statutory dues as secured dues makes the plan non-compliant to Section 30(2) of the IBC.

v. It is submitted that the resolution plan provides that Assenting Secured Financial Creditors shall have right to nominate directors, and shall get equity stake in the Corporate Debtor. It is submitted that such demarcation between Assenting and Dissenting Financial Creditors is illegal. On specific query by the Bench, the Ld. Counsel was not able to identify the provision of IBC or any regulation which prohibits such treatment.

vi. It is submitted that the valuation of resolution plan is low and they have filed an IA No. 115/2024 before the Ld. NCLT requesting for calling for fresh resolution plans instead of going for liquidation. It is submitted that the suspended management has filed IA 247/2025 before this Tribunal seeking directions to the COC to consider the settlement proposal of the applicant under Section 12A of the IBC, 2016.

6. The Ld. Sr. Counsel Mr. Navin Pahwa appearing for Respondent No. 17 (RARE Asset Reconstruction Limited) submitted that they are supporting the impugned order. It is submitted that resolution plan was in violation of the law as declared by the Hon'ble Supreme Court in the case of *Rainbow Papers Limited.* In the said case of *Rainbow Papers Limited,* the Hon'ble Supreme

Court had set aside the resolution plan as the statutory dues were considered as unsecured operational credits and not as secured credits.

6.1 It is submitted that though the resolution plan in the present case is prior to the said judgment, it is in violation of Section 30(2) as it does not treat statutory dues as secured credits.

6.2 It is submitted that the Ld. NCLT through daily order dated 11.10.2023 had asked the Resolution Professional to check whether the resolution plan is in compliance of the judgment of *Rainbow Papers Limited.* The Resolution Professional had filed an affidavit identifying the statutory dues which have to be treated as secured credits in terms of the *Rainbow Papers Limited* judgment.

6.3 It is submitted that this issue was considered by the COC in its 19th meeting held on 13.12.2023 and it was noted that as per the Resolution Professional, and the legal advisor assisting the Resolution Professional, the total amount of secured statutory claims as per *Rainbow Papers Limited* judgment are of Rs. 16.9 crores.

6.4 It is submitted that law laid down in the judgment of *Rainbow Papers Limited* still stands. Subsequently, though through the judgment in the case of *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd. & Ors.,* it was held by the Hon'ble Supreme Court that electricity dues were not covered by the *Rainbow Papers Ltd.* judgment. The review filed in the case of Rainbow rejected by the Hon'ble Supreme Court. Presently, a Curative Petition is pending before the Hon'ble Supreme Court and two other matters are also pending relating to similar issues.

6.5 It is submitted that the Neemrana property was wrongly included in the information memorandum as it belonged to a third party and not to Corporate Debtor.

6.6 It is submitted that plan violates Section 30(2) in not complying on the judgment of *Rainbow Papers Ltd.* and Ld. NCLT has rightly rejected the plan.

6.7 It is submitted that the Adjudicating Authority has option either to accept or reject the plan and cannot modify the plan as held by this Tribunal in the case of *Pioneer Engineering Industries v. Anjali Capfin Pvt. Ltd.* in *Company Appeal (AT) (Ins.) No. 1382 of 2024* and by the Hon'ble Supreme Court in *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr.* reported in *(2022) 2 SCC 401.*

6.8 In its written submissions, the Respondent No. 17 submitted that there were significant changes in valuation post-COVID and the Ld. Adjudicating Authority ought to have accepted the COC's request for sending back the plan to COC for reconsideration.

7. The Ld. Counsel appearing online on behalf of Ahmedabad Municipal Corporation (hereinafter referred to as the **'AMC'**) submitted that they had filed two IAs *viz. I.A. No. 6082 and 7158 of 2025* for impleadment on behalf of Ahmedabad Municipal Corporation South West Zone and Ahmedabad Municipal Corporation North West Zone. The Ld. Counsel was allowed to make oral and written submissions.

7.1 It is the submission of Ld. Counsel that AMC is a statutory municipal body constituted under the Gujarat Provincial Municipal Corporation Act, 1949 (**'GPMC Act'**) and is responsible for providing essential civic services and collecting statutory dues and other such levies within its jurisdiction.

7.2 It is submitted that the Corporate Debtor owns and occupies immovable property at Ahmedabad for which it is liable to collect such statutory dues as are mandated under the provisions of the GPMC Act. It is submitted that even though the AMC had submitted claim in a timely manner there is NIL distribution to the AMC in the resolution plan which is contrary to the judgment in the case of *STO v. Rainbow Papers Ltd.,* reported in *(2023) 9 SCC 545.* It is submitted that as per Section 141 of GPMC Act, AMC has first charge over assets of Corporate Debtor assets. The relevant portion of GPMC Act is extracted below for ready reference:

> *"141. (1) Property-taxes due under this Act in respect of any building or land shall. subject to the prior payment of the land revenue, if any, due to the {State} Government thereupon, be a first charge, in the case of any building or land held immediately from the [Government], upon the interest in such building or land of the person liable for such taxes and upon the movable property. If any found within or upon such building or land and belonging to such person: and in the case (any other building or land, upon the said building or land and upon the movable property. If any found within or upon such building or land and belonging to the person liable for such taxes.*
>
> *Explanation.- The term "property taxes" in this section shall he deemed to include charges payable under section 134 for water supplied to any premises and the costs of recovery of property-taxes as specified in the rules."*

7.3 The Ld. Counsel drew attention to the impugned order dated 04.03.2024 which at page 36 in clause (e) notes that there is NIL payment to Operational Creditor's. It is submitted that the plan has provided payment to secured creditors though some of the security assets were under dispute, whereas un-secured creditors were not given any amount.

7.4 It is the submission of Ld. Counsel that the judgment of this Tribunal in Company Appeal (AT) (Ins.) No. 1833 of 2024 dated 26.09.2025 squarely applies to the facts of this case as far as their claims are to be considered as secured operational credits. The relevant portion of the said judgment is as under:

> *"20. In any view of the matter, we have noticed above that Hon'ble Supreme Court in 'Pashchimanchal Vidyut Vitran Nigam' (supra), as noted above has noticed the difference between the Government dues and dues payable to the statutory corporations. The Hon'ble Supreme Court has clearly noticed the distinction between the Government dues and dues payable to the operational creditor. We may in this reference also notice the definition of operational creditor as contained in Section 5(21). The definition itself contemplates debts of local authority.*
>
> *21. We feel ourselves bound by the judgment of the Hon'ble Supreme Court in 'Pashchimanchal Vidyut Vitran Nigam' (supra), and 'State Tax Officer' (supra) as well as the judgment of the Hon'ble Supreme Court in 'Greater Noida Industrial Development Authority' (supra). In view of the law laid down by the Hon'ble Supreme Court in above cases, appellant has a statutory charge by virtue of Section 2(32) of the Kolkata Municipal Corporation Act and the appellant is a secured creditor. Adjudicating authority committed error in rejecting the claim of the appellant as secured creditors."*

8. In the rejoinder to submissions made by Ld. Counsel for AMC, Mr. Abhijeet Sinha, Ld. Sr. Counsel appearing for the Appellant submitted that the impact of judgment passed in *Rainbow Papers Ltd.* case was considered in the 19th CoC meeting dated 13.12.2023 as given in page 873 and 874 of the Appeal Paper Book (APB), according to which a further amount of Rs. 2.33 crore was liable to be paid to the statutory creditors as per the judgment of

Rainbow Papers Ltd. in proportion to their secured dues. These dues were basically of the State Tax Authority of Gujarat and Rajasthan and Ahmedabad Municipal Corporation. He further submitted that this Tribunal in a recent judgment in the case of *The Cosmos Co. Op. Bank Ltd. v. Mr. Kailash T. Shah* in *Company Appeal (AT) (Ins.) No. 774 of 2024* has held as under:

> *"66. We note that the NCLT's order did not change the structure or commercial terms of the Resolution Plan. The order records that the Resolution Professional had, on 13.12.2022, stated that the amount relating to the State Tax Department's claim had been kept aside pending adjudication. The NCLT merely directed that this reserved amount be released to the Department in view of the Supreme Court's judgment in Rainbow Papers.*
>
> *67. This shows that the Adjudicating Authority was not altering the plan's commercial content or the CoC's commercial wisdom. It was only ensuring that a pending issue i.e. whether the State's claim was secured or not, was settled in accordance with the binding law of the Supreme Court. Therefore, this act does not fall within the scope of "modification" but rather "implementation" of plan in accordance with laid down law. It should also be noted here that the approved Resolution plan had been implemented in totality, wherein the Successful Resolution Applicant M/s Naresh Tradelink Pvt. Ltd./ Respondent No. 2, has deposited the total proceeds pertaining to the approved Resolution Plan and the Resolution Professional has given the possession of the assets of the corporate Debtor to the Successful Resolution Applicant. The insolvency of the CD has thus been successfully resolved."*

8.1 In the aforesaid judgment, this Tribunal has upheld the decision of the Ld. NCLT in modifying the resolution plan in view of *Rainbow Papers Ltd.* judgment while noting that the *NCLT's order did not change the structure or commercial terms of the Resolution Plan.*

8.2 The Ld. Sr. Counsel Mr. Sinha referred to the case of *India Resurgence ARC Private Limited v. M/s Amit Metaliks Limited & Anr.* in *Civil Appeal No. 1700 of 2021* wherein the Hon'ble Supreme Court held as under:

> *"13.1. Thus, 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 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."*

9. The Ld. Counsel for the Resolution Professional informed that through daily order dated 10.11.2023, the Ld. NCLT had asked the Resolution Professional to check whether the resolution plan is in compliance of the judgment in the case of *Rainbow Papers Limited.* The Resolution Professional had filed an affidavit which is placed at page 826 of the APB, according to the said affidavit the total amount due to the statutory authorities was Rs. 238 crores. However, the statutory dues covered by the judgment of *Rainbow Papers Limited* were much less, as there was no corresponding security charge against most of the statutory dues. The statutory dues covered by the said judgment were only Rs. 16.09 crores.

9.1 It was submitted that this issue was considered by the COC in the 19th meeting held on 13.12.2023, wherein the following was noted:

> ***"Applicability of Rainbow Judgement in our case***
>
> *1. Resolution Plan of Neesa Leisure Limited was approved by the CoC on 05 November 2020 and was filed with the Hon'ble NCLT Ahmedabad bench on 26 November 2020. The order in Rainbow papers was pronounced by Supreme Court on September 6, 2022.*
>
> *2. Therefore, the Supreme Court judgement was not taken into account by the CoC while considering and approving the resolution plan. Please note that under the approved resolution plan, "Nil" payment is proposed to all Operational Creditors including statutory dues*
>
> *3. RP legal advisor has stated that the resolution plan of Express Hotels consortium which has been approved by the CoC is not*

compliant with the Supreme Court's judgment in Rainbow Papers matter.

4. The 18th CoC meeting was held on 08 December 2023 wherein RP discussed on the Agendas as directed by the NCLT Bench.

5. In the 18th CoC meeting, RP was asked to take the updated view of the RP legal advisor based on latest developments / judicial precedents etc for assessment of the impact of Rainbow judgment on the Secured Statutory claims admitted, by scrutinizing the same in the context of the Rainbow Paper Judgment and discuss the same in the next CoC meeting.

6. Consequently, RP instructed the RP legal advisor to provide its view on the impact of the Rainbow judgement ie in the matter of State Tax Officer (1) Vs. Rainbow Papers Ltd and its implication on the resolution plan, if any

7. RP Legal advisor shared their opinion dated 12 December 2023, which was shared with COC on same day, ***post which the RP determined that the admitted amount of Secured Statutory claims as per Rainbow Paper judgement was Rs. 16.09 Crores****."*

9.2 The Ld. Counsel for the Resolution Professional submitted that resolution plan pre-dates the judgment in the case of *Rainbow Papers Ltd.,* and that in the previous round of litigation the SRA had submitted that they will comply with the additional liability as a consequence of the judgment of Rainbow Papers Ltd.

9.3 It is further submitted that the Ld. NCLT has not given any specific instance or any reason as to how the process for approval of the plan lacks transparency. The process was fair and transparent and the resolution plan was approved after following due process with active consideration and application of the COC's commercial wisdom and it secured the requisite majority vote of the COC.

9.4 It is submitted that the Net Present Value (NPV) of payment was duly examined, and was submitted to the COC in the 13th COC meeting and only after considering this, in the 14th COC meeting, the plan was approved. Regarding inclusion of Jamdoli and Neemrana property in the Information Memorandum, the Resolution Professional submitted that the Information Memorandum (IM) was prepared by the erstwhile Resolution Professional who had duly disclosed ongoing dispute in Jamdoli and Neemrana property, including pending litigation before the Hon'ble Rajasthan High Court and the Ld. ADJ, Behror, Rajasthan. Further, the resolution plan was on an "as-is-where-is" and "no-recourse basis" and SRA would only have acquired the rights which the Corporate Debtor possesses.

9.5 It is submitted that as per the Companies (Registered Valuers and Valuation) Rules, 2017, three distinct asset classes, namely, "Land and Building", "Plant and Machinery" and "Securities and Financial Assets" are recognized. It is mandatory to appoint separate valuers for each asset class. Since there was huge difference between first and second valuation report regarding land and building, a third valuer was appointed in terms of Regulation 35(1)(b) after due consent of CoC in 8th CoC meeting. The process for valuation was fully supervised by the CoC and all actions taken and valuation reports received were in the knowledge of the CoC.

9.6 It is submitted that the claims of the Rajasthan Golf Unit Holders were verified as "Other Creditors" in view of the buyback clause, after due verification and this classification was duly communicated to the CoC in its 8th meeting. Notably, no appeal has been filed against Resolution Professional's decision by any Rajasthan Golf Unit Holder.

9.7 It is submitted that 12A settlement proposal by the promoters was considered by the CoC in 13th meeting dated 24.09.2020 and was rejected. Another fresh proposal of promoters under Section 12A was submitted to the CoC as recorded in the 17th and 20th CoC meeting dated 10.05.2023 and 24.01.2024 respectively. The CoC, in its commercial wisdom has rejected the settlement proposals.

9.8 It is submitted that it is settled law in *Hem Singh Bharana v. Pawan Doot Estate Pvt. Ltd. & Ors. in Company Appeal (AT) (Ins.) No. 1481 of 2022* that the withdrawal application under Section 12A cannot be entertained after approval of the resolution plan by the CoC.

9.9 On the issue of seeking concessions in the resolution plan, it is submitted that it is standard practice and it is upto the discretion of Ld. NCLT whether to grant such reliefs or concessions, and no fault can be attributed for seeking concessions in the resolution plan.

9.10 It is submitted that claim of all secured creditors is duly considered by the Resolution Professional and the observations in para 27(j) of the impugned order are not borne out by records. Moreover, no appeal has been filed against the decision of the Resolution Professional by any such creditor.

9.11 Regarding CIRP cost not being fully recovered, a sum of Rs. 3.36 crores was provided in the plan and it further provides that any increase in such costs may be set off by the SRA against the upfront cash payments to be made to the financial creditors under the plan.

9.12 On Ld. NCLT's observation that Information Memorandum was not filed with IA for approval of the plan, it is submitted that the information

memorandum was later filed before the Ld. NCLT on 01.02.2024 and was available before the Ld. NCLT prior to passing of the impugned order.

9.13 Regarding objection that the suspended management's plan was higher in value (para 27(m) of the impugned order), it is stated that 12A proposals were repeatedly rejected by the CoC in its commercial wisdom and it is settled law, as stated in *Hem Singh case* cited *supra* that withdrawal application under Section 12A cannot be entertained after approval of the resolution plan by the CoC.

9.14 Regarding operational creditors not being made a party to the IA No. 851 of 2020, there is no provision under the Code mandating that operational creditors who receive no value under the plan be impleaded as a party in the IA filed for approval of resolution plan.

10. Heard. Perused the records.

11. We note that insolvency in this case was initiated on 26.04.2019. The CoC was quite diverse being constituted of representatives of banks and other creditors, including representatives of FD holders, Superintendent CGST and Golf Unit Holders etc. Eight EOIs were received and thereafter, only three plans were submitted. The CoC negotiated with prospective Resolution Applicants (PRAs) and obtained revised higher plans. The plans were then put to vote in the 14th CoC meeting held on 19.10.2020. The resolution plan submitted by the Appellant received 67.85% voting share. The resolution plan submitted by Pacifica got 19.91% of votes and resolution plan of Kundan got 0.73% of votes. The resolution plan submitted by the appellant had plan value of Rs. 143.83 crores and further infusion of capex of Rs. 250 crores. This was higher than the liquidation value of Rs. 141.84 crores. The Letter of Intent

(LOI) was issued to the appellant by the Resolution Professional on 07.11.2020. On 13.11.2020, the appellant deposited performance bank guarantee of Rs. 50 crores, which is still with the Resolution Professional/Corporate Debtor. On 19.11.2020, the Resolution Professional filed IA 851/2020 for approval of resolution plan given by the appellant.

11.1 We note that one of the critical factor in this case is that the resolution plan was given during the COVID period when the hotel/hospitality industry was under severe strain due to ongoing pandemic. The plan remained pending before the Ld. NCLT for substantial time, during which the pandemic subsided. The IA for plan approval was reserved for orders on 17.05.2022. However, in the order pronounced on 06.09.2022, the Ld. NCLT disposed of the application by allowing acceptance of new resolution plans afresh, including from earlier unsuccessful resolution applicants as well as other entities. This order was set aside by this Tribunal in Company Appeal (AT) (Ins.) No. 1158 of 2022 on 09.02.2023 with directions to pass final order in IA No. 851/2020 within a period of three months while making following observations/directions:

i. The period of CIRP was over long ago and the Adjudicating Authority after about two years, subsequent to completion of CIRP period cannot direct the CIRP process to begin again by providing for inviting applications for fresh Resolution Plan.

ii *"The present is not a case where in the process, which was completed by approval of the Resolution Plan by the CoC any breach has been committed."*

iii. After following the provisions of the Code and Regulations, the Resolution Plan has been approved by the Adjudicating Authority, the said

approval by the CoC has to be respected and cannot be interfered with in exercise of judicial review by the Adjudicating Authority. More so, when there is no such ground that the Plan approved violates any of the provisions of Section 30, sub-section (2).

iv. The mere fact that certain other offers have been received after the approval of the Resolution Plan, CoC cannot have a change of heart seeking withdrawal of the resolution plan for reconsideration.

v. This will be permitting an unending process, since by passage of time situation keeps on changing.

vi. After coming to know about the financial offer in a Plan, offer of other entities to participate in the process cannot be entertained.

vii. The CoC being satisfied that financial offer given by the Applicant is satisfactory, exercised their commercial wisdom and cannot be allowed to change its view, since it is bound by its own decision taken in approving the Resolution Plan.

viii. The CoC after full consideration has approved the present plan and in the name of receiving higher offer, subsequently, CoC cannot turn around and ask back the plan.

ix. The Adjudicating Authority was directed to pass a final order within a period of three months. The relevant portion of the said judgment of this Tribunal dated 09.02.2023 in Company Appeal (AT) (Ins.) No. 1158 of 2022 is as under:

> *"23. The IBC and the CIRP Regulations provide a tight scheme and timeline for completion of entire process. In the present case, we have noticed that CIRP period had come to an end and by order dated 09.07.2020 an extension was granted by the Adjudicating Authority of 146 days. The extended period was*

also come to an end in October 2020. The CIRP period had come to an end and by an order passed on 09.11.2020, the Adjudicating Authority granted three weeks' time for filing of Resolution Plan before it. The period of CIRP was over long ago and Adjudicating Authority after about two years, subsequent of completion of CIRP period cannot direct the CIRP process to begin again by providing for inviting applications for fresh Resolution Plan.

24. *The maximisation of value of the Corporate Debtor is admittedly an object of the CIRP, but the said maximisation has to be achieved within the timeline provided in the scheme.*

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

26. *The CoC being satisfied that financial offer given by the Applicant is satisfactory, exercise their commercial wisdom, even CoC cannot be allowed to change its view, since it is bound by its own decision taken in approving the Resolution Plan. Present is not a case where the CoC is pointing out any breach of procedure or manifest error in their approval of the Resolution Plan, which may be a ground to be pressed before the Adjudicating Authority. The CoC after full consideration has approved the Plan and the financial offer made by the Applicant in the Plan. In the name of receiving higher offer, subsequently,*

CoC cannot turn around and pray to the Adjudicating Authority to send the Plan back for consideration. The present case itself is an example that adopting such course by the CoC and Adjudicating Authority, enormous delay shall take place, which is not in the interest of CIRP, nor in the interest of Corporate Debtor. The Corporate Debtor has to be revived with speed and in timelines, which has been prescribed in the CIRP. Once, the said object is achieved, the same shall not be allowed to frustrate on the grounds, which have been raised before the Adjudicating Authority in the present case. We may notice that in this Appeal, an interim order was passed on 21.09.2022, staying the further process in pursuance of the impugned order dated 06.09.2022, which order is still continued.

***27.** In the result of the foregoing discussion, we are satisfied that Adjudicating Authority has committed error in passing the impugned order. The impugned order is set aside. The matter is remitted to the Adjudicating Authority to pass fresh order on IA No./851/AHM/NCLT/2020 filed by the RP for the approval of the Resolution Plan. The Plan being pending since 2020, we direct the Adjudicating Authority to pass a final order on IA No./851/AHM/NCLT/2020 within a period of three months from the date the copy of this order is produced. Appeal is allowed. No order as to costs."*

(Emphasis supplied)

The said order of this Tribunal dated 09.02.2023 was upheld by the Hon'ble Supreme Court vide order dated 17.03.2023.

11.2 We note that the Ld. NCLT again referred the plan to CoC in the "second round" of litigation regarding applicability of the judgment in the case of *Rainbow Papers Ltd.* This reference back to the CoC was objected to by the appellant in CA (AT) (Ins.) No. 1624 of 2023 and this Tribunal vide order dated 18.12.2023 set aside the directions of the Ld. NCLT to refer the issue to the CoC and directed the Ld. NCLT to conclude the hearing on the IA No. 851/2020 seeking approval of the resolution plan within a period of one month from 12.01.2024. It was noted in the said judgment that impact of *Rainbow*

Papers Ltd. in the present CIRP process has already been explained by the Resolution Professional and the SRA.

11.3 In the Appeal Paper Book (APB) at page 1039 and 1040 is an email written by the Resolution Professional to various stakeholders, including all the members of the CoC, wherein it is mentioned that during the course of hearing before this Tribunal, the Ld. Counsel for the appellant had offered, on instructions, that appellant is ready to bear the additional expenses of Rs. 2.3 crores relating to proportionate dues payable to statutory authorities treating them as secured creditors as per the judgment of *Rainbow Papers Ltd.* Similar email of one of the financial creditor is available at page 1036 of APB.

11.4 The impugned order is examined by us in the foregoing background as under:

(i) We find that no categorical findings have been given and the operational part of the impugned order begins with the term "it appears that" and thereafter it gives observations of Ld. NCLT on various issues. The observation of the Ld. NCLT are examined hereinafter.

(ii) The Ld. NCLT observes that approval of the resolution plan lacked due and transparent process of examining each application on its merits and involved various discussions in order to improve the plan value. No specific reason has been assigned by the Ld. NCLT nor any evidence, or correspondence has been quoted. This Tribunal in its order dated 09.02.2023 has clearly stated that no breach of any process in approval of the resolution plan by CoC has been noted. Regarding discussions in CoC with prospective resolution applicants to improve the value of the plan, we note that this is standard practice where CoC negotiates with the Prospective Resolution

Applicants (PRA) to improve plan value or seek better implementation. This process of negotiation with the PRA prior to the submission of final resolution plan and its approval by the CoC has been approved by this Tribunal in para 20 of the judgment in the case of *Jindal Stainless Ltd. vs. Mr. Shailendra Ajmera, RP of Mittal Corp Ltd. & Ors.* in *Company Appeal (AT) (Ins.) No. 1058 of 2022*. This observation of Ld. NCLT is not backed by any facts, and rather is contrary to the record and earlier findings given by this Tribunal in judgment dated 09.02.2023 in *Company Appeal (AT) (Ins.) No. 1158 of 2022* in this very case as under:

> *"25. .....*
> *The present is not a case where in the process, which was completed by approval of the Resolution Plan by the CoC any breach has been committed."*

(iii) The next observation of the Ld. NCLT is that terms of RFRP were not complied by way of analysis of the NPV of the payment schedule and that eligible creditors had got 24% of the debt payable by equity, which is objected to by the suspended management stating that the ARCs were not eligible to get such equity contribution. We find that there is no law or regulation under IBC to bar the ARCs to hold equity and this aspect has been examined by the CoC while approving the resolution plan. We also note that suspended management has no role in acceptance or rejection of a resolution plan by the CoC. We also note the Resolution Professional has confirmed that the issue of NPV was discussed and considered by the CoC in its 13th CoC meeting, prior to approval of the resolution plan in the 14th CoC meeting. These aspects, in any case, are in the domain of commercial wisdom of CoC and are not amenable to judicial review by the Ld. NCLT.

(iv) The next observation of Ld. NCLT is regarding inclusion of Jamdoli and Neemrana properties in the Information Memorandum which were included despite many pending litigations on these properties including stay on one property by the Hon'ble High Court. We note that the information memorandum is prepared in terms of Section 29 of the IBC, 2016. The said Section is reproduced below:

"SECTION 29. PREPARATION OF INFORMATION MEMORANDUM.

(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes—

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation: For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified."

(Emphasis supplied)

The plain reading of the aforesaid Section shows that information memorandum is required to contain all relevant information and as per the Explanation below the said Section, the relevant information includes all information relating to disputes by or against the Corporate Debtor. There is

no doubt that Neemrana and Jamdoli properties were under dispute at various stages of litigation, but disputes were duly disclosed in the information memorandum. Disclosing the disputed property in the information memorandum is not against the provisions, rather it is required to be done under Explanation to Section 29 of the IBC. We note that in the plan, while seeking reliefs and concessions, it is noted as under: (page 460 of APB)

> *"…. Nothing in the aforementioned clause shall apply to the disputes concerning the re-possession of leasehold lands concerning Cambay Neemrana and Cambay Jamdoli, which shall be independently negotiated by the Resolution Applicant with the respective authorities."*

We also note that the resolution plan is on "as is where is" basis and "no-recourse basis". The SRA does not get any right which is not held by the Corporate Debtor or any right better then the Corporate Debtor. He simply steps into the shoes of the Corporate Debtor in any pending litigation.

In *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd. & Anr., (2022) 2 SCC 401,* in para 207 it has been held that Resolution Professional is duty bound to disclose all facts and information in the information memorandum. The relevant portion of the said judgment is as under:

> *"207. Under IBC, there is a duty upon the RP to collect as much information about the corporate debtor as is accurately possible to do. When such information is communicated through an IM to the resolution applicant, the RP must be careful to clarify when its information is not comprehensive and what factors may cause a change."*

The Ld. NCLT has clearly erred in relying on this observation which is contrary to law.

(v) On the next observation of Ld. NCLT regarding multiple valuations, we note that the Companies (Registered Valuers and Valuation) Rules, 2017 states that there are three distinct asset classes, namely, "Land and Building", "Plant and Machinery" and "Securities and Financial Assets", and separate valuers are appointed for each asset class. Since there was large difference between the first and second valuation reports regarding land and building, the third valuer was appointed by the Resolution Professional with consent/knowledge of the CoC, in terms of Regulation 35(1)(b) of IBBI (CIRP) Regulations. The relevant provisions of Regulation is as under:

"35: Fair value and Liquidation value.

(1) Fair value and liquidation value shall be determined in the following manner: -

(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

[Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.]

(b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a)."

(Emphasis supplied)

The Resolution Professional had undertaken the valuation exercise as per requirements of the said Regulation 35.

It is also noted that as per the relevant Regulations at the time the resolution plan was considered by the CoC, the valuation reports were treated as confidential documents and were not shared with the resolution applicants. We note that the valuation reports obtained were submitted to the CoC and the CoC has accepted the valuation in its commercial wisdom. Even, the third valuer was appointed after due consent of CoC in its 8th CoC meeting. The valuation is not a perfect science and different results due to use of different methods, is quite common. In the process of resolution plan submission and approval, the valuation gives only indicative value to assist the CoC in arriving at a decision, whereas the resolution applicant bids for the company based on its own valuation and estimation of attendant risks. In any case, the entire valuation exercise has been done under the supervision of CoC prior to approval of the resolution plan and forms part of the commercial wisdom of the CoC which has been held to be non-justiciable in several judgments of the Hon'ble Supreme Court. In the context of valuation being part of commercial wisdom of CoC, we note that this Tribunal in the case of *Singh Raj Singh v. SRS Meditech Limited and Ors.* in *Company Appeal (AT) (Ins.) No. 522 of 2020* has held as under:

> *"7. Objection in regard to valuation conducted by the Resolution Professional and approved by the Committee of Creditors is equally without substance. It is not disputed that two registered Valuers were appointed to determine fair value and liquidation value of the Corporate Debtor. Such valuation reports were placed before Committee of Creditors which in its 6th meeting held on 18th July, 2019 considered the same before approving the Resolution Plan. In "Maharashtra Seamless Ltd. vs. Padmanabhan Venkatesh & Ors. - Civil Appeal 4242 of 2019" decided on 22nd January, 2020, Hon'ble Apex Court observed that the object behind carrying out valuation of the assets of the Corporate Debtor is to assist the Committee of Creditors to take*

decisions on a Resolution Plan. It was further held that there is no requirement that the Resolution Plan should match the maximized asset value of the Corporate Debtor. Relevant extract from the judgment is reproduced herein below: -

> *"25. Now the question arises as to whether, while approving a resolution plan, the Adjudicating Authority could reassess a resolution plan approved by the Committee of Creditors, even if the same otherwise complies with the requirement of Section 31 of the Code. Learned counsel appearing for the Indian Bank and the said erstwhile promoter of the corporate debtor have emphasised that there could be no reason to release property valued at Rs.597.54 crores to MSL for Rs.477 crores. Learned counsel appearing for these two respondents have sought to strengthen their submission on this point referring to the other Resolution Applicant whose bid was for Rs.490 crores which is more than that of the appellant MSL.*
>
> *26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.*
>
> *27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."*

8. The dictum of Hon'ble Apex Court in "Hon'ble Apex Court in K. Shashidhar vs. Indian Overseas Bank and Ors. reported in (2019) SccOnline SC 257" is loud and clear. The commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the resolution process within the timelines prescribed by IBC. Judicial review of a

> *Resolution Plan approved by the CoC is limited as laid down in "Committee of Creditors of Educomp Solutions Ltd. vs. Ebix Singapore Pte. Ltd. & Anr."*
>
> (Emphasis supplied by us)

(vi) The next observation of the Ld. NCLT is that the resolution plan is not compliant with the decision of the Hon'ble Supreme Court in *Rainbow Papers Ltd.* as there is NIL distribution to Govt./statutory authorities. On this observation, we note that the plan was submitted on 24.10.2020 and that representative of the Sales Tax Department was part of the CoC and had not objected to the plan. The plan submitted was compliant to the interpretation of law till then. The judgment of the Hon'ble Supreme Court in *Rainbow Papers Ltd.* was pronounced on 06.09.2022, almost two years after the submission of the resolution plan. Gujarat Sales Tax Authority, which is major beneficiary of the *Rainbow Papers Ltd.* judgment has not raised any objection regarding the impugned resolution plan, though it was part of the CoC. This Tribunal already had considered this issue in the 2nd round of litigation relating to this very case in its judgment dated 18.12.2023 in *Company Appeal (AT) (Ins.) No. 1624 of 2023* wherein this Tribunal had noted the affidavit filed by the Resolution Professional on this issue, and had set aside the order of Ld. NCLT regarding 2nd reference to CoC on the issue of compliance of *Rainbow Papers Ltd.*

We also note that the Resolution Professional in his email dated 18.12.2023 (appearing at page 1039 and 1040 of the APB) written to each and every member of the CoC has stated therein that during the hearing on 18.12.2023, the Ld. Counsel for the appellant, on instructions, has stated that the appellant is ready to bear additional expenses of Rs. 2.33 crores as

suggested by the Resolution Professional, being the proportionate dues payable to the statutory authorities as per the judgment of the Hon'ble Supreme Court in *Rainbow Papers Ltd.*

It is apparent that all the CoC members and Resolution Professional were aware that such offer existed prior to the pronouncement of the impugned order on 04.03.2024. It is noteworthy that the appellant had filed an affidavit dated 26.03.2026 before this Tribunal in which he has expressed his willingness to pay amount of Rs. 2.33 crores to statutory authorities in compliance of *Rainbow Papers Limited* Judgment.

The two impleadment IAs filed by the two divisions of Ahmedabad Municipal Corporation (AMC), and the written and oral pleadings by the Ld. Counsel have been considered. We find that dues of AMC have been admitted as statutory dues covered by the judgment of the *Rainbow Papers Ltd.* by the Resolution Professional in his affidavit and proportionate payment has been promised to them by the SRA in his affidavit dated 26.03.2026. In view of this submission by the SRA, the grievance raised by the AMC does not survive.

We note that the resolution plan was submitted much prior to the judgment of the Hon'ble Supreme Court in the case of *Rainbow Papers Ltd.* We also note, subsequently, the Hon'ble Supreme Court in *Pashchimanchal Vidyut Vitran Nigam' (supra),* has stated that the "waterfall mechanism" under Section 53 was not brought to the attention of the Hon'ble Supreme Court in the said judgment and that the said *Rainbow* judgment should be read into the facts of the said case.

This Tribunal in the case of *The Cosmos Co. Op. Bank Ltd. v. Mr. Kailash T. Shah* in *Company Appeal (AT) (Ins.) No. 774 of 2024* has noted that the

resolution plan in the said case was approved by the CoC prior to the judgment of the *Rainbow Papers Ltd.* and has noted that the Resolution Professional has stated that within the plan value, he is willing to reallocate the disbursement of funds so as to comply with the requirements of judgment of *Rainbow Papers Ltd.* On the issue whether this will amount to modification of the resolution plan, this Tribunal has noted as under:

> *"67. This shows that the Adjudicating Authority was not altering the plan's commercial content or the CoC's commercial wisdom. It was only ensuring that a pending issue i.e. whether the State's claim was secured or not, was settled in accordance with the binding law of the Supreme Court. Therefore, this act does not fall within the scope of "modification" but rather "implémentation" of plan in accordance with laid down law. It should also be noted here that the approved Resolution plan had been implemented in totality, wherein the Successful Resolution Applicant M/s Naresh Tradelink Pvt. Ltd./ Respondent No. 2, has deposited the total proceeds pertaining to the approved Resolution Plan and the Resolution Professional has given the possession of the assets of the corporate Debtor to the Successful Resolution Applicant. The insolvency of the CD has thus been successfully resolved."*
>
> (Emphasis supplied)

Regarding power of the Tribunal to give effect to the judgment of the *Rainbow Papers Ltd.,* this Tribunal in the aforesaid judgment has held as under:

> *"70. If we were to hold that the NCLT was powerless to give effect to a Supreme Court judgment in a matter already before it, it would amount to compelling the Tribunal to enforce an order contrary to the highest law of the land, something no court can do. Therefore, the NCLT rightly exercised its jurisdiction to align its order with binding precedent."*

The present case is slightly better than the case of *Cosmos* cited *supra* in as much as the SRA is not reducing any amount payable to any creditor under the plan but has promised to pay Rs. 2.33 crores over and above the

disbursement specified in the plan. This additional payment does not alter the plan's commercial content or the CoC's commercial wisdom. The amount payable to the creditors is not being reduced and sanctity of distribution/disbursal of funds to creditors is maintained. If the plan is otherwise compliant to be Code, the Tribunal, in view of the judgment in the case of *Cosmos* cited *supra,* has the authority to cause implementation of the judgment of the Hon'ble Supreme Court in *Rainbow Papers Limited* and to ensure that the insolvency of the Corporate Debtor is resolved successfully and is not held back merely on issue of non-compliance of subsequent event/interpretation of law.

(vii) Regarding the observation of the Ld. NCLT that the payments to workers and employees are not fully covered, we note the plan provides for payment of full dues of employees and workmen. In fact, as noted at page 424 of the APB, the resolution plan envisages full payment of the employee/workmen dues amounting to Rs. 17,53,319/-. This observation of Ld. NCLT is factually incorrect.

(viii) On the observation of Ld. NCLT regarding payment methodology through equity distribution, it is not stated as to which provision it violates. If the distribution is not contrary to any provision or regulation, and has been approved by the CoC in its commercial wisdom, it is beyond the scope of judicial review of the Ld. NCLT as has been held in the judgment of this Tribunal in the case of *Simbhaoli Sugars Ltd. v. Pramod Kumar Sharma, RP of Uniworld Sugars Pvt. Ltd. & Ors.* in *Company Appeal (AT) (Insolvency) No. 776 of 2023*:

> *"8. It is now well settled that distribution to the creditors in accordance with provisions of Section 30(2) is in the discretion of*

the Committee of Creditors and with regard to distribution the scope of judicial review by the Adjudicating Authority and this Tribunal is very little."

(ix) The observation of the Ld. NCLT that CoC members had sought the recall of the plan to CoC for reconsideration and that the Tribunal could have remitted back the plan to the CoC as there were valid reasons is contrary to the judgment of this Tribunal dated 09.02.2023 in *Company Appeal (AT) (Ins.) No. 1158 of 2022* in this very case, wherein this Tribunal had given a finding that plan once approved by the CoC cannot be recalled merely on the grounds that a higher offer subsequently can be achieved. It is noteworthy, that this judgment dated 09.02.2023 was upheld by the Hon'ble Supreme Court vide order dated 17.03.2023. This observation of the Ld. NCLT is contradictory to the judgment of this Tribunal, which was upheld by the Hon'ble Supreme Court on 17.03.2023, and this observation violates the principle of judicial discipline.

(x) The next observation of the Ld. NCLT is that the resolution plan was approved by a wafer-thin majority of 67.5%. The requirement of minimum vote in favour of resolution plan is stated in sub-section 4 of Section 30 of the IBC, 2016 and the requirement is "by vote of not less then 66%" of voting share of the Financial Creditors forming part of CoC. A plan cannot be rejected on the ground that it has been approved by a wafer-thin majority if it meets the statutory requirement of vote in favour of 66% of voting share of CoC members.

(xi) The next observation of the Ld. NCLT regarding non-acceptance of claims also has no basis as the Code and the CIRP Regulations provide procedure for filing of claims, and their acceptance by Resolution Professional, which is duly followed by the Resolution Professional. Any aggrieved person

can challenge non-admittance of his/its claim. The CoC had representatives from Rajasthan Golf Unit and FD holders who have not raised any issue regarding non-admittance of their claims. The Ld. NCLT has not identified the claims which were not admitted. In the oral and written pleadings in the present appeal, no submission has been made regarding this.

(xii) The next observation of the Ld. NCLT is that promoters have repeatedly offered a process of settlement and had asked for rejection of the plan. We note that the proposal of the suspended management for settlement was considered and rejected by the CoC on several occasions. The rejection of proposal of settlement is part of the commercial wisdom of the CoC which is not justiciable. It may also be noted that only the 'applicant' in the application under Section 7 or 9 or 10 has the authority to request for withdrawal of CIRP under Section 12A of the IBC. The provisions of 12A of the IBC, 2016 are as under:

> *"12A. Withdrawal of application admitted under section 7, 9 or 10.—The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."*

The promoters have no locus to file application for withdrawal under Section 12A of the IBC. The IA 247/2025 filed by ex-promoters for withdrawal of CIRP under Section 12A is thus not valid.

Further, in the case of *Hem Singh Bharana v. Pawan Doot Estate Pvt. Ltd. & Ors. in Company Appeal (AT) (Ins.) No. 1481 of 2022,* it has been held that withdrawal under Section 12A cannot be entertained after approval of the resolution plan by the CoC, and also in the judgment of this Tribunal in the

case of *Sanjeev Mahajan v. Indian Bank & Ors.* in *Company Appeal (AT) (Ins.) No. 1440 of 2024,* it has been held:

> *"When the settlement proposal, which was submitted by the Appellant, which came to be considered by the CoC and was rejected, it is not open for the Appellant, after the approval of Resolution Plan of the SRA and after rejection of settlement proposal of the Appellant by CoC, to sent emails increasing his offer from earlier submitted settlement proposal."*

Considering above facts and judgments, we find no merit in this observation.

(xiii) The next observation of Ld. NCLT is regarding concessions sought by the appellant on properties not held on the books of Corporate Debtor or under litigation. The grant of any concession is the sole discretion of the Ld. NCLT and the SRA cannot be faulted for asking concessions, which very well could have been denied by the Ld. NCLT as per law.

(xiv) The next observation of Ld. NCLT is that the claims of the unsecured creditors have been not been considered and that some of the secured creditors may have been unsecured creditors considering that security was obtained later after sanction of loan or when the assets turned NPA. This observation is also without any basis as the claims are verified and duly admitted as per provisions of the Code and its Regulations. The creditors can always file application before the Ld. NCLT challenging non-admittance of claims or for wrong classification. No such instance has been cited in the order. No such pleading was made in the written or oral submissions made before us. Sometimes the loan of the financial creditor may be assigned to others like Asset Reconstruction Company, and this assignment may be after the accounts turned into Non-Performing Asset (NPA) and the assignee steps

into the shoes of the assignor having equal rights and liabilities. The assignee gets the same status as the assignor.

(xv) The next observation of the Ld. NCLT is that CIRP cost has not been fully covered and that during the COVID hotel assets have been valued at lesser value. We note that resolution plan provides for payment of full CIRP costs. As per plan available at page 468 of the APB, the plan provides for CIRP costs of Rs. 3,35,75,163/-. In para 3.1 of the resolution plan, it is stated as under:

> *"3.1. IRP Costs:*
>
> *3.1.1. The IRP Cost including the payment to IRP/ RP, all expenses incurred by IRP/RP to the extent duly ratified or approved by the Committee of Creditors (CoC), interim finance raised by during CIRP as per the details provided by RP on VDR will be paid in full and in priority to other stakeholders and the same has been presently estimated at Rs. 3,35,75,163/- (Rupees Three crore thirty five lakhs seventy five thousand one hundred and sixty three only). it is clarified that in the event, the IRP Costs increases above the amount as mentioned herein, the Resolution Applicant will be entitled to offset such increase against the amounts payable as upfront cash payment (as envisaged in the Resolution Plan) to Financial Creditors under this plan.*
>
> *Payment Terms: The IRP Costs shall be paid in priority to any other creditors of the Corporate Debtor."*

The observation of Ld. NCLT that plan does not fully cover the CIRP cost is factually incorrect.

(xvi) On the observation of the Ld. NCLT that the hospitality business was suffering downfall during the COVID period and the hotels were valued at only 30% of their value, we find this aspect has been covered in the judgment of

this Tribunal dated 09.02.2023 in *Company Appeal (AT) (Ins.) No. 1158 of 2022* cited *supra,* that once the resolution plan is approved by the CoC, the CoC cannot turn around in the expectation of receiving a higher offer. The resolution plan was given in the conditions existing at that time and as this Tribunal has already noted in the judgment dated 09.02.2023, there was no error/breach in the process through which the resolution plan was approved. There was competitive bidding and the plan which obtained the requisite votes of more than 66% of CoC, was approved by the CoC.

(xvii) On the observation of Ld. NCLT that there are disputes even in Ahmedabad property, it is reiterated that the plan is on "as-is-where-is basis" and "no-recourse basis". The SRA steps into the shoes of the Corporate Debtor, including in the disputes relating to the property.

On the issue of authenticity of the information memorandum, and the observation that it was not filed along with application for approval of the resolution plan, we find that no person, including the SRA and other PRAs or members of the CoC have raised any objection regarding the authenticity of the information memorandum. Non-submission of the information memorandum along with IA for approval of plan cannot be ground for rejection of the plan, especially when the information memorandum was furnished during the course of proceedings before the Ld. NCLT.

(xviii) On the next observation of Ld. NCLT that the suspended management was repeatedly giving settlement proposals, we note that these proposals have been repeatedly rejected by the CoC. The 1st proposal was rejected in 14th CoC meeting and 2nd proposal was rejected in May, 2023. Once the proposal of suspended management is rejected, it cannot revise or submit fresh proposals.

We note that this Tribunal in *Hem Singh Bharana v. Pawan Doot Estate Pvt. Ltd. & Ors. in Company Appeal (AT) (Ins.) No. 1481 of 2022* has stated that withdrawal application under Section 12A of the IBC, after approval of resolution plan by the COC, cannot be accepted. Similarly, this Tribunal in *Sanjeev Mahajan vs. Indian Bank* in *Company Appeal (AT) (Ins.) No. 1440 of 2024* has held that no fresh proposal from suspended management can be considered after rejection of their earlier proposal by CoC.

(xix) On the observation, Resolution Professional had not made operational creditors party to the IA for approval of resolution plan, we find that there is no such requirement under the Code or Regulations regarding joining of operational creditors in the IA for approval of resolution plan.

(xx) Lastly, it is stated by the Ld. NCLT the resolution plan is not compliant with the requirements under Section 31(1) and is rejected as per Section 31(2). We find that no reason has been given, nor the provisions violated have been identified. We find that the Resolution Professional, while submitting the resolution plan has certified that the plan is compliant with all the requisites under the IBC, more specifically, under section 29A, 30 and 31 read with relevant Regulations. The CoC before approving the plan is also required to satisfy itself that the plan is compliant with the provisions of IBC. We find that the observations of Ld. NCLT are subjective, based on assumptions, and some of them are ex-facie factually incorrect or against the law.

11.5 After considering and dealing with the observations of the Ld. NCLT, we now examine law relating to approval of resolution plan. The resolution plan is approved under section 31(1). The sub-section (1) of section 31 is as under:

"Section 31: Approval of resolution plan.

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]"

11.6 The pre-requisite for approval of the resolution plan is that it should meet the requirements as listed in sub-section (2) of Section 30. Of course, the plan has to be approved by the COC with 66% or more votes. We now examine the grounds stated in sub-section (2) of Section 30. The said section is as under:

"Section 30: Submission of resolution plan.

30. (1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

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

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

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

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

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

Explanation 1.-For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. -For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"

11.7 In the impugned order, Ld. NCLT has not identified the provisions of Section 30 which the plan violates. The observations of Ld. NCLT at best impinge upon non-compliance of clause (a) regarding CIRP cost and clause (e) regarding contravention of law as interpreted in the judgment of *Rainbow Papers Ltd.* We have noted that CIRP cost has been fully provided in the resolution plan. We note that plan provides for Rs. 3,35,75,163/-. At page 468 of the APB, in para 3.1.1 the resolution plan notes that the CIRP cost will be fully paid in priority to other stakeholders and clarifies that if CIRP cost is higher then estimated, it shall be offset against the cash payments to the financial creditors. The relevant paragraph of the resolution plan is as under:

"3.1. IRP Costs:

3.1.1. The IRP Cost including the payment to IRP/ RP, all expenses incurred by IRP/ RP to the extent duly ratified or approved by the Committee of Creditors (CoC), interim finance raised by during CIRP as per the details provided by RP on VDR will be paid in full and in priority to other stakeholders and the same has been presently estimated at Rs. 3,35,75,163/- (Rupees Three crore thirty five lakhs seventy five thousand one hundred and sixty three only). it is clarified that in the event, the IRP Costs increases above the amount as mentioned herein, the Resolution Applicant will be entitled to offset such increase against the amounts payable as upfront cash payment (as envisaged in the Resolution Plan) to Financial Creditors under this plan.

Payment Terms: The IRP Costs shall be paid in priority to any other creditors of the Corporate Debtor."

11.8 On the issue of compliance to the judgment of the Hon'ble Supreme Court in the case of *Rainbow Papers Ltd.* regarding statutory dues covered by the said judgment to be treated as secured operational credits, the Resolution Professional has tabulated the amounts due to the statutory creditors, including those covered by the judgment of the *Rainbow Papers Ltd.* The Resolution Professional has identified that the admitted amount of secured statutory creditors as per *Rainbow* judgment is Rs. 16.09 crores, which was placed before the 19th CoC meeting held on 13.12.2023. The Resolution Professional had worked out that prorata distribution to secured creditors covered by the *Rainbow* judgment comes to Rs. 2,33,31,839/-. The SRA is willing to bear this additional cost of payment of Rs. 2,33,31,839/- payable to statutory authorities, on proportionate basis, in full compliance of the judgment of the Hon'ble Supreme Court in *Rainbow Papers Ltd.*

11.9 We note that the plan was given in 2020, as per prevalent interpretation of law relating to statutory dues. The judgment in the case of *Rainbow Papers Ltd.* came in September, 2022, which was further clarified by the Hon'ble Supreme Court in the case of *Pashchimanchal Vidyut Vitran Nigam' (supra),* wherein it was held that electricity dues are not covered by the judgment of *Rainbow Papers Ltd.* and that the "waterfall mechanism" under Section 53 of the IBC was not brought to the notice of the Hon'ble Supreme Court in the case of *Rainbow Papers Ltd.* and the said judgment (Rainbow Papers Ltd.) is to be read in the facts of that case. In any case, the SRA is willing to bear additional burden, as is clear from the email dated 18.12.2023 sent by the Resolution Professional to the various members of the CoC and the affidavit of SRA dated 26.03.2026 filed during the present proceedings.

11.10 This Tribunal in the case of *The Cosmos Co. Op. Bank Ltd. v. Mr. Kailash T. Shah in Company Appeal (AT) (Ins.) No. 774 of 2024* has considered the impact of *Rainbow Papers Limited* in the resolution plan submitted prior to the pronouncement of the said judgment. In the said case (*Cosmos)* the resolution plan was approved on 13.10.2021. The Adjudicating Authority approved the resolution plan on 29.06.2022. However, the Resolution Professional withheld an amount of Rs. 1.31 crore and later during hearing in IA No. 522 of 2021 before the Ld. NCLT stated that he is considering the Sales Tax Department as a secured creditor. The financial creditor filed an application *viz. IA No. 195 of 2024* seeking release of the said amount of Rs. 1.31 crore to it. The financial creditor, aggrieved by the impugned order rejecting its application, filed an appeal seeking release of Rs. 1.31 crore in favour of the appellant. In the said appeal, this Tribunal accepted the condition that Sale Tax Department be treated as a secured creditor and that the Resolution Professional and the Ld. NCLT had rightly directed that the said amount be released in favour of Gujarat Sales Tax Department in compliance of the judgment of the Hon'ble Supreme Court in *Rainbow Papers Limited.* In para 43 of the said judgment, this Tribunal notes the key issue in this case as under:

> *"43. The key issue to be decided in this matter is whether retention and subsequent distribution of Rs. 1.31 crores from the amount earmarked for the financial creditor in the Resolution Plan to the State Tax Department after the approval of resolution plan is in accordance with the provisions of the Code and judicial precedents."*

11.11 After analysing the facts of the said case, this Tribunal held as under:

> *"64. Section 31(1) of the IBC provides that once the Adjudicating Authority is satisfied that a Resolution Plan meets the requirements*

of Section 30(2), it shall approve the plan, which then becomes binding on the Corporate Debtor and all stakeholders. This provision does not, however, prevent the Adjudicating Authority from giving necessary directions to ensure proper implementation or to resolve issues that were pending or reserved at the time of plan approval.

65. The distinction lies between altering a plan and clarifying or ensuring its proper implementation. While the former is impermissible, the latter is well within the jurisdiction of the Adjudicating Authority to ensure compliance with the Code and binding judicial precedents.

66. We note that the NCLT's order did not change the structure or commercial terms of the Resolution Plan. The order records that the Resolution Professional had, on 13.12.2022, stated that the amount relating to the State Tax Department's claim had been kept aside pending adjudication. The NCLT merely directed that this reserved amount be released to the Department in view of the Supreme Court's judgment in Rainbow Papers.

67. This shows that the Adjudicating Authority was not altering the plan's commercial content or the CoC's commercial wisdom. It was only ensuring that a pending issue i.e. whether the State's claim was secured or not, was settled in accordance with the binding law of the Supreme Court. Therefore, this act does not fall within the scope of "modification" but rather "implementation" of plan in accordance with laid down law. It should also be noted here that the approved Resolution plan had been implemented in totality, wherein the Successful Resolution Applicant M/s Naresh Tradelink Pvt. Ltd./ Respondent No. 2, has deposited the total proceeds pertaining to the approved Resolution Plan and the Resolution Professional has given the possession of the assets of the corporate Debtor to the Successful Resolution Applicant. The insolvency of the CD has thus been successfully resolved.

68. We must also note that once the Supreme Court declares the law, it applies retrospectively to all pending matters unless expressly stated otherwise. In Rainbow Papers, the Apex Court held that Section 48 of the GVAT Act creates a security interest by operation of law and that the State is a secured creditor.

69. When this law was declared, the NCLT was obliged to apply it to the pending IA 522 of 2021. Its decision to direct payment to the State Department was therefore not an exercise of review but an application of the prevailing legal position.

70. If we were to hold that the NCLT was powerless to give effect to a Supreme Court judgment in a matter already before it, it would amount to compelling the Tribunal to enforce an order contrary to

the highest law of the land, something no court can do. Therefore, the NCLT rightly exercised its jurisdiction to align its order with binding precedent."

(Emphasis supplied)

11.12 In summary, in the aforesaid case of *Cosmos,* this Tribunal has held that *Rainbow Papers Limited* has been rightfully applied and that the distribution has been rightfully changed in the light of the said judgment treating State Tax Department as a secured creditor in departure to the approved resolution plan. It was held that this is not modification but rather implementation of plan and held that the Ld. NCLT was not powerless to give effect to a Supreme Court judgment in a matter already before it. In this case plan value was not altered, but only distribution was altered affecting the amount distributed to the financial creditors.

11.13 The present case before us is on a better footing than *Cosmos'* case, as the SRA has volunteered to bear the additional burden of Rs. 2.33 crores for making payment to secured creditors covered by the judgment of *Rainbow Papers Ltd.,* in total compliance of the said judgment. Since this amount has been offered over and above the amount promised earlier, the rights and benefits of the financial creditors who approved the resolution plan are not affected in any way. The promise to pay the additional Rs. 2.33 crores was made by the appellant in earlier round of litigation as evidenced by the emails at page 1036, 1039 and 1040 of the APB. The Ld. Counsel for the Resolution Professional has confirmed in the proceedings before us that such an assurance was given by the SRA in the earlier proceedings before this Tribunal also. In an affidavit filed on 26.03.2026, the SRA has confirmed its willingness

to pay the additional amount of Rs. 2.33 crores, in addition to the amounts promised earlier in the resolution plan.

11.14 This Tribunal in the case of *Vashishth Builders and Engineers Limited v. Trisul Dream Homes Limited & Anr. in Company Appeal (AT) (Ins.) No. 732 of 2025* has held as under:

> *".....The scope of interference with the commercial wisdom of the CoC is now well settled. Unless there is violation of Section 30(2) in a resolution plan, the Adjudicating Authority cannot reject the approval of Resolution Plan by the CoC in its commercial wisdom....."*

11.15 In this judgment this Tribunal further notes as under:

> *"29. None of the observations made by the Adjudicating Authority in Para 18, as noted above, amounts to any findings which can be read to be violation of Section 30(2) of I&B Code so as to reject the Resolution Plan submitted by the SRA. Even with regard to issues which have been pointed out by the Adjudicating Authority, there were ample explanation on the record which has not been adverted to by the Adjudicating Authority in the application for approval of Resolution Plan. The Resolution Professional is not supposed to include every explanation with regard to matters covered in the plan and the Resolution Plan is a primary document which refers to various clauses contained in the plan. The Adjudicating Authority has failed to point out any violation of Section 30(2) in Para 18 of the judgment on the basis of which rejection of the resolution Plan can be sustained. We, thus, are satisfied that the Adjudicating Authority committed error in rejecting I.A. No.(Plan)05/CHD/2024."*

Consequently, the resolution plan submitted by the SRA was approved in the said judgment and following directions were issued:

"The Adjudicating Authority may pass a consequential order consequent to approval of resolution plan within 60 days from the date this order is produced before the Adjudicating Authority."

11.16 We now look at judicial guidance on the scope of intervention of Ld. NCLT in a plan approved by the CoC in its commercial wisdom:

(a) The Hon'ble Supreme Court in *K. Sashidhar v. Indian Overseas Bank and Others,* reported in *(2019) 12 SCC 150* has held as under:

"52. .....There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

(Emphasis supplied)

(b) The Hon'ble Supreme Court in *Vallal RCK v. Siva Industries and Holdings Limited & Others* reported in *(2022) 9 SCC 803* has held as under:

"21. *This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in K. Sashidhar v. Indian Overseas Bank, Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., and Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.*

> ***22.*** *No doubt that the aforesaid observations have been made by this Court while considering the powers of the CoC while granting its approval to the resolution plan."*
>
> (Emphasis supplied)

(c) The Hon'ble Supreme Court in *Ramkrishna Forgings Limited v. Ravindra Loonkar & Anr.* reported in *(2024) 2 SCC 122* has held as under:

> ***"35.*** *At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. Stricto sensu, it is now well settled that it is well within the CoC's domain as to how to deal with the entire debt of the corporate debtor. In this background, if after repeated negotiations, a resolution plan is submitted, as was done by the appellant (resolution applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with."*
>
> (Emphasis supplied)

(d) In the case of *Arun Kumar Jagatramka vs. Jindal Steel & Power Ltd. & Anr., Civil Appeal No.9664 of 2019,* the Hon'ble Supreme Court held as under:

> *"….. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:*
>
> > *"**An adjudicating authority ensures adherence to the process***

> *At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."*
>
> (Emphasis supplied)

(e) In the case of *Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee)*, reported in *(2021) 10 SCC 623*, the Hon'ble Supreme Court held as under:

> ***"25.*** *The resolution plan was approved by the CoC, in compliance with the provisions of IBC. The jurisdiction of the adjudicating authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). NCLT is within its jurisdiction in approving a resolution plan which accords with IBC. There is no equity-based jurisdiction with NCLT, under the provisions of IBC.*
>
> *.....*
>
> ***28.*** *The function of the adjudicating authority under Section 31 is to determine whether the resolution plan "as approved by the CoC" under Section 30(4) "meets the requirements" under Section 30(2). If the adjudicating authority is satisfied that the resolution plan, as approved, meets the requirements under sub-section (2) of Section 30, "it shall by order approve the resolution plan" which shall then be binding on the corporate debtor and all the stakeholders, including those specifically spelt out:"*

11.17 The scope of judicial review while approving a resolution plan is very limited as has been held in a catena of cases including *K. Sashidhar (supra),*

Arun Kumar Jagatramka (supra), Vallal RCK (supra), Ramkrishna Forgings Limited (supra) and *Pratap Technocrats (P) Ltd. (supra)* by the Hon'ble Supreme Court and in *Vashishth Builders and Engineers Limited (supra)* by this Tribunal. The "commercial wisdom" of CoC has been given paramount status, and the scope of intervention by Ld. NCLT is extremely limited, and unless there is violation of any provision of Section 30(2), the Ld. NCLT cannot reject a resolution plan approved by the CoC.

11.18 We find that the Ld. NCLT has not given any specific finding on contravention of any provision of Section 30(2) of the IBC, 2016. The Ld. NCLT has rejected the plan based on subjective legally unsustainable observations, some of which are also factually incorrect. None of the observation can be said to be violation of any provision of Section 30(2) so as to call for rejection of the plan. Even on the observations of Ld. NCLT, there were ample explanation and documents on record, which have not been adverted to by the Ld. NCLT The Ld. NCLT has failed to point out any specific violation of any provision contained in Section 30(2), on the basis of which rejection of the plan can be sustained.

11.19 Considering the judicial guidelines and the provisions of Section 30 and 31 of the IBC, 2016, for the reason cited above, we are satisfied that Ld. NCLT erred in rejecting the resolution plan which is otherwise compliant with the requirements of the Code. The impugned order is set aside and in the result, the appeal is allowed. The resolution plan submitted by the SRA is approved. The Ld. NCLT may pass consequential order, consequent to approval of resolution plan, within 15 days from the date this order is

produced before the Ld. NCLT. All pending applications, if any, are disposed of. No order as to costs.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 25.05.2026
Ram N.