



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.556/2023 IN CP (IB) NO.262/ALD/2019

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Akul Securities Private Limited

..... Applicant

Versus

1. M/s. Gangotri Enterprise Limited, through its Resolution Professional
2. Committee of Creditors of M/s. Gangotri Enterprise Limited, Under CIRP:
 - a. Bank of India
 - b. Punjab National Bank
 - c. Union Bank of India
 - d. Axis Bank Limited
 - e. Canara Bank
 - f. IDBI Bank Limited
 - g. Central Bank of India.

..... Respondents

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AND IN THE MATTER OF:

BANK OF INDIA

.....Financial Creditor

Versus

M/S. GANGOTRI ENTERPRISE LIMITED

..... Corporate Debtor

Order pronounced on 3rd April, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Nilotpal Shyam with : *For the Respondent in IA*
Ms. Tejas Mishra & Sh. Mohd. No.556/2023
Nazim Khan, PCS.

Sh. Anand Chibbar assisted by : *For the Applicant in IA*
Ms. Supriaya Garg & Sh. Gaurav No.556/2023
Dwivedi, Adv.

Sh. Prakhar Shukla, Adv. : *For the Respondent in IA*
No.556/2023/CBI & PNB

Sh. Sandeep Arora, Adv. : *For the Respondent in IA*
No.556/2023/UBI

Sh. Devesh Saxena, Adv. : *For the Axis Bank (Respondent) in*
IA No.556/2023

Sh. Prabodh Kr. Bajpai, Adv. : *For the Respondent no. 2 in IA*
No.556/2023/Bank of India

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Sh. Deepakh Kapoor, Adv. : For the IDBI Bank in IA
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ORDER

1. This Application has been filed by the Applicant namely, M/s Akul Securities Pvt. Ltd. u/s 60(5) of the IBC, 2016 seeking the following relief:-

*i. Allow the present application and setting aside the declaration by the Respondent No.1/Resolution Professional dated 28.10.2023 (**Annexure A- 33**) whereby the Respondent No.1 has illegally rejected the resolution plan submitted by the applicant, when the majority of the COC members have already voted in its favour vide e-voting dated 27.10.2023;*

ii. To direct the Respondent No.1/Resolution Professional to submit the Resolution Plan, as approved by the COC, to the Hon'ble Adjudicating Authority in accordance with Section 30(6) of The Insolvency and Bankruptcy Code, 2016 read with other provisions of law;

iii. Further, the Respondents may be restrained from proceeding with the liquidation process of the Corporate Debtor during the pendency of the present application;

iv. Pass any such order/direction as this Hon'ble tribunal may deem fit and proper in the instant case, not prejudicing the rights of the present application.

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2. It is stated that this tribunal vide order dated 06.12.2021 admitted the application filed under section 7 of the IBC, 2016 by Financial Creditor i.e. Bank of India for initiating the CIR Process against the Corporate Debtor i.e. Gangotiri Enterprises Limited and appointed Mrs. Babita Jain as Interim Resolution Professional.
3. It is also stated in the Application that in the 6th Meeting of CoC certain clarification were sought from the PRA regarding resolution Plan. Then, in the 7th Meeting of CoC, held on 15.9.2022 it was decided that PRA shall submit the revise resolution plan by 22.09.2022. In the meantime, RP filed an application before this tribunal for extension of CIRP Period by 60 days beyond 270 days. This tribunal vide an order dated 22.8.2022 granted extension of another 60 days for CIRP Period as approved by the CoC in their 5th meeting held on 05.08.2022.
4. On 22.9.2022, the RP received the revised Resolution Plan and the same was sent by the RP to the CoC members vide an email dated 23.09.2022. As a result of the 8th COC meeting, the plan that was put up for e- voting which began

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on 29.9.2022 and ended on 10.11.2022. Five COC members, who together account for 62.76% of the voting power, voted against the Resolution Plan, leading the COC to reject the one and only resolution plan submitted by the prospective resolution applicant. The Resolution on the liquidation of the Corporate Debtor under Sections 39B, 39C, and 39D of the IBBI (CIRP) Regulations, 2016 was approved by the COC members at the 8th COC meeting. Additionally, the COC also approved a resolution proposing the applicant's name, Mrs. Babita Jain, with the necessary majority to act as liquidator.

5. Following the sole resolution applicant's resolution plan submission being rejected, the resolution applicant sent a letter dated 11.11.2022 requesting an additional opportunity to submit a revised, modified, or addendum to the resolution plan that would satisfy the COC. The letter was forwarded by the RP vide an email on 12.12.2022.
6. This tribunal vide order dated 23.11.2022 directed the COC to consider the modified Resolution Plan and also granted the extension of CIRP period by 21 days beyond the period 360

days in I.A. 424/ALD/2022. Further, RA requested for
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additional 10 days time from the COC in their 11th Meeting which held on 01.12.2022. The COC granted 03-04 days time to the resolution applicant for submission of the revised resolution plan.

7. In the 12th CoC meeting resolution applicant submitted revised resolution plan on 04.12.2022 and it was decided that all the clarification will be raised via email to the resolution applicant.
8. It is stated by the Applicant that in the 15th COC meeting held on 07.02.2023, the proposal/Revised Resolution Plan dated 02.02.2023 was submitted for voting to be considered by the COC. It was unanimously decided by the COC members to consider the revised Resolution Plan of the applicant in the next COC which was scheduled for 13.02.2023. A copy of the 15th COC meeting has been annexed as **Annexure A-18** with the Application.
9. Further, in its 16th meeting held on 13.02.2023, the COC again discussed and deliberated on the revised Resolution Plan of the applicant wherein the applicant agreed to enhance

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its fund-based consideration from Rs.121 crores to Rs.140 crores and also assured the COC that the same shall be submitted by way of addendum to the revised Resolution Plan, where other clauses would remain unchanged, by 14.03.2023. Subsequently, the COC resolved to approve the Resolution plan dated 02.02.2023 along with the addendum to the resolution plan dated 13.02.2023. A copy of the minutes of the 16th COC meeting has been annexed as **Annexure A-19** with the Application.

10. The Applicant, in order to resolve the CIRP, further sought extension of time from Respondent No.1, in order to submit a revised Resolution Plan, via email dated 26.04.2023. The applicant has genuinely been wanting to resolve the process and has adhered to the demands of the COC from time to time, yet no positive outcome has could be achieved. A copy of the email dated 26.04.2023 which was sent by the applicant to the RP has been annexed as **Annexure A-20** with the Application.

11. It is also stated that the sole Resolution Applicant was never called for the 18th COC, rather his request was denied, even
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though more than 52% of the COC members wanted to pursue the same. A copy of the 18th COC meeting wherein the Revised Resolution Plan of the applicant was rejected has been annexed as **Annexure A-21** with the Application.

- 12.** With an excessive increase in the amount, as amended in the Revised Resolution Plan from time to time, towards fund-based financial creditors, from the initial Rs.115 crores plus Rs.0.93 crores to Rs.140 crores plus Rs.0.93 crores on the asking of the COC, the Revised Resolution Plan along with Addendum was rejected/disapproved by the COC on 04.05.2023. A copy of the summary of decisions via e-voting has been annexed as **Annexure A-22** with the Application.
- 13.** Applicant contends that without affording a final opportunity to the applicant to convince the COC members of its intent, and without leaving any scope for further negotiation, Respondent No.1 filed an application (IA.254/2022 in CP(IB)No.262/ALD/2019) for liquidation of the Corporate Debtor before this Hon'ble Tribunal on the very next day i.e., on 05.05.2023.

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14. Applicant also contends that vide an email dated 05.05.2023, requested Respondent No.1 to consider an amended Resolution Plan. Since liquidation of the CD would not be in the interest of any party. Extracts of the email sent by the SRA are reproduced below:

"Respected RP Madam and Ld. COC Members,

*.....The RA has made every endeavour to give the maximize the recovery to all the esteemed COC members and other stakeholders of the Corporate Debtor. Over a period of time since submission of the first Resolution Plan, **the RA has increased the consideration amount offered for the fund based financial creditors from Rs 115 Cr to Rs 140 Cr along with return/ replacement of outstanding BG's (Non- Fund Based) of Rs 93.64 Cr within 2 years.***

The total proposed consideration amount was increased from Rs 210.22 Cr to Rs 235.22 Cr over a period after many rounds of discussion during 7-8 COC meetings held with esteemed lenders and addressing the issues of Ld. COC members.

On the other hand, the liquidation value of the corporate debtor is very meagre as the EPC Company and is majorly corresponding to one property based in NOIDA

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and another in Lucknow. Out of which, the allotment of one property at Noida has been litigated by Noida Authority during the CIRP period itself and other property at Lucknow has litigation since long. As per the information shared by the Resolution Professional, the allotment of land corresponding to the property in NOIDA has been cancelled by the NOIDA Authority due to non-payment of dues, the matter is under litigation. Further, Lucknow property is also under litigation.

Moreover, the collateral securities of the corporate debtor (CD) in the form of 3rd party collateral comprising of 27 properties have 17 properties which are agricultural in nature and are subject to restrictions at the time of monetization. Furthermore, the value of all PG's and CG's provided to the Lenders have a combined net-worth of Rs 6.21 Cr as detailed in the Information Memorandum prepared by the Resolution Professional. Based on discussions with the CoC members, the RA has already agreed that the personal guarantees of Mr. Ajeet Pandey, Mr. Vinay Shankar Tiwari and Mrs. Rita Tiwari, who all together hold around 53% of the CD, will not be released and will continue to be with the lenders of corporate debtors.

To summarize, against the total Resolution Amount offered by the Resolution Applicant of Rs 235.22 Cr against the small liquidation value of the corporate

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debtor. It is to be appreciated that the proposed discharge amount is much above (more than 10 to 11 times) the liquidation value of the corporate debtor. During the last negotiation round of the COC meeting, the fund- based consideration amount for Rs 140 Cr along with return/ replacement of outstanding BG's (Non- Fund Based) of Rs 93.64 Cr within 2 years was almost agreeable to all the lenders. **It was only on the positive note that the fund- based consideration was increased from Rs 121.21 Cr to Rs 140 Cr within 3 years along with return/replacement of outstanding BG's (Non- Fund Based) of Rs 93.64 Cr within 2 years. But with such a result, we are very shocked and not able to understand the areas at which we are not able to address.**

Corporate Debtor being an EPC company, it was an endeavor to revive such an institution which had an history of almost 30 years, which is very difficult to get in this particular sector. We wanted to utilize the comfort of the CD with all other government and semi government institutions with which CD has worked during this tenure of 30 years including the esteemed lender banks also. Thus, utilize this comfort and experience to revive with everyone's support.

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Accordingly, we request the Ld. CoC members and the Resolution Professional to kindly convene a COC meeting to allow us to address any pending issues of the CoC members.

A copy of the email dated 05.05.2023 has been annexed as **Annexure A- 23** with the Application.

15. The COC Members, in their 19th meeting held on 11.05.2023, deliberated on the above-mentioned email sent by the SRA and observed, that it is open to make efforts to ensure the successful resolution of the CD and is willing to consider the revised plan of the applicant, subject to the directions of the tribunal A copy of the minutes of the 19th COC meeting has been annexed as **Annexure A-24** with the Application.

16. After the rejection of the plan on 05.05.2023, the SRA/applicant filed IA No.225 of 2023 in CP No. (IB) 262/ALD/2019 before this tribunal praying for setting aside the resolution dated 04.05.2023 of the 16th COC meeting whereby the resolution plan of Rs.235.22 crores by the SRA

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had been rejected as against the liquidation cost of Rs.22.99 crores. This Tribunal vide order dated 19.05.2023 held that:

"4. We have perused the present application and the minutes of the COC meeting as reproduced above. We find that consideration of the proposal of the sole resolution applicant for a value of total of 235 crores would be in the best interest of value maximization. In view of the fact that the COC has already resolved that it is agreeable to consider revised resolution plan from the resolution applicant, provided that the resolution applicant submits a plan as proposed in its aforesaid email, which maximizes the value for all stakeholders.

5. We, therefore, direct the COC to convene the meeting and reconsider the proposal of the resolution applicant as it deems fit."

A copy of the order dated 19.05.2023 has been annexed herewith as **Annexure A-25** with the Application.

17. In pursuance to the aforesaid order, the COC reconsidered the proposal of the SRA in its 20th meeting dated 24.05.2023, wherein it was unanimously approved for the extension of 75 days to reconsider the plan of the applicant. The relevant extract of the 20th COC is reproduced as follows:

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"In continuance to the discussion held in Item no. A-4, the Chairperson apprised of the COC Members, that extension granted by the Hon'ble NCLT for period of 330 days plus 30days plus 21 plus 30 days plus 30 days plus 30 days plus 45 days plus 29 days i.e., 215 days of the CIRP are expiring on 02.06.2023. The COC members suggested the RP to take further extension of 75 days order to achieve the main aim of IBC i.e. resolution plan, maximization of assets of the corporate debtor in view of the time required to consider, discuss and negotiate the resolution plan, in view thereof, the chairperson further informed the COC that application is required to be filed with the adjudicating authority regarding extension of Corporate insolvency Resolution process period by 75 days beyond 02.06.2023 as the existing period of for period of 330 days plus 30days plus 21plus 30 days plus 30 days plus 30 days plus 45 days plus 29 days i.e., 215 days already taken is about to expire on 02.06.2023, which was accepted the COC members.

Accordingly, the following resolution was approved by the 100% of majority COC members by show of hands.

A copy of the 20th COC meeting dated 24.05.2023 has been annexed as **Annexure A-26** with the Application.

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- 18.** Respondent No.1 filed an application IA.238 of 2023 before this tribunal seeking extension of 75 days for completion of the CIRP. This tribunal vide order dated 31.05.2023 granted 60 days extension commencing from 03.06.2023. Copy of the order dated 31.05.2023 has been annexed as **Annexure-27** with the Application.
- 19.** After the grant of extension SRA increased the amount from the amount in the revised resolution plan to the extent of Rs.245.64 crores whereby fund based would be Rs.152 crores and non-fund based would be Rs.93.64 crores. A copy of the revised resolution plan dated 15.07.2023 has been annexed as **Annexure A-28** with the Application.
- 20.** The e-voting on the revised resolution plan commenced on 31.07.2023 wherein 04 banks out of the 07 banks, with a majority of more than 75% of the voting power, vide email dated 01.08.2023 (during e- voting) requested Respondent No.1 to extend the e-voting on the resolution plan and seek extension of 45days from this Tribunal so that they may give their formal assent on the resolution plan. Copies of emails

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dated 01.08.2023 are annexed as **Annexure A-29** with the Application.

21. In pursuance to the said emails, the RP issued a notice dated 01.08.2023 qua the agenda for the 22nd meeting of COC for 02.08.2023. The agenda specifically comprises of consideration and approval of extension of 45days beyond 330days plus 275days in view of the emails received from the majority of COC members. A copy of the said notice and agenda is annexed herewith as **Annexure A-30** with the Application.

22. Applicant also contends that after making multiple modifications in the Resolution Plan as per the recommendations given by the COC time and again, the COC vide e-voting in its 21st meeting again rejected the revised resolution plan dated 15.06.2023. The CoC members in their **21st meeting held on 28.06.2023** discussed the amendments made in the plan. The relevant extract of the said result dated 03.08.2023 is reproduced as under:

“.....

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TO DISCUSS, CONSIDER AND APPROVE THE AMENDMENT OF CLAUSE 1.8.3 OF THE REQUEST FOR RESOLUTION PLAN.

"RESOLVED THAT pursuant to applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the COC in its commercial wisdom hereby reduces of performance guarantee requirement from 20% of Resolution Plan amount to 5% of the Fund based value of the Resolution Plan amount pursuant to the request made by the RA M/s Akul Securities Private Limited"

RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required or considered necessary or incidental thereto in connection with."

S.NO	Name of the CoC member	Voting%	Votes in favour	Votes for Against	Abstain
1.	Bank of India	13.25	-	13.25	-
2.	Punjab National Bank	3.18	3.18	-	-
3.	Union Bank of India	9.58	-	9.58	-
4.	Axis Bank Limited	23.99	23.99	-	-
5.	Canara Bank	9.79	-	9.79	-
6.	IDBI Bank Limited	28.27	-	28.27	-
7.	Central Bank of India	11.94	11.94	-	-
Total		100.00	39.11	60.89	-

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Seven Members with Voting Rights 100% casted their votes.

Four CoC Members with Voting Rights of 60.89% casted against the Resolution and three Members with voting rights of 39.11% casted in favour of the Resolution.

*Hence, this Agenda item is declared as **NOT APPROVED** in terms of Section 21(8) of the Insolvency & Bankruptcy Code, 2016.*

.....”

23. In view of the aforesaid discussions, resolution plan submitted by the Sole Resolution Applicant was rejected by the CoC members in their **21st meeting held on 28.06.2023** vide 60.89% voting shares. A copy of the result dated 03.08.2023 of the 21st meeting of the COC has been annexed as **Annexure A-31** with the Application.

24. After the rejection of resolution plan in the 21st CoC Meeting, the Sole Resolution Applicant filed an application **I.A No. 387 of 2023** before this tribunal for consideration of the revised resolution plan and extension of CIRP for further period of four (04) weeks which expired on 02.08.2023. This tribunal vide order dated 17.8.2023 allowed the said application and held as under:-

“.....

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1. This application has been filed with a prayer seeking directions to be issued to the CoC to consider the amended Resolution Plan as submitted by the Sole Resolution Applicant, whereby it is offering Rs.245.64 Crores as against the liquidation value of Rs.22.99 Crores. The prayer as mentioned at page no.35, (a), is reproduced as under:-

a. Allow the present application and direct the CoC to consider the amended Resolution Plan dated 15.06.2023, as submitted by the Sole Resolution Applicant as the liquidation of assets of the Corporate Debtor would not be in the best interest of any parties involved (since the liquidation would only entail Rs.22.99 crores, while the SRA/applicant is offering Rs.245.64 crores, which is 11 times more), and also in light of the order dated 19.05.2023 (Annexure A-25) passed by the Hon'ble Tribunal in IA No.225 of 2023 in CP (IB) No.262/ALD/2019.

2. On the previous date of hearing i.e. on 10.08.2023, the notices in the present IA were issued to the respondents and replies were directed to be filed with respect to the decision taken by the CoC.

3. In pursuance thereof, an affidavit has been filed on behalf of the RP, whereby the minutes of 23rd CoC meeting held on 16.08.2023, has been attached. The relevant Agenda Item no.A5 is at page no.46 of the

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affidavit filed vide diary no.2207 dated 17.08.2023. The said additional affidavit is taken on record. The relevant part of Agenda Item no.A5 and the opinion of the respective Financial Creditors/ Banking Institutions is at page no.47.

4. In view of the opinion given by the respective Banks with regard to considering the revised Resolution Plan to be submitted by the Sole Resolution Applicant to the CoC, we are inclined to consider the prayer at this point of time, and direct the CoC to consider the revised Resolution Plan, which may be filed by the Sole Resolution Applicant within a period of one week. The CoC shall consider the said revised Resolution Plan, if filed within one week, in an objective manner and decide accordingly.

5. It is also pointed out by the RP as well as the Ld. Counsel representing the RP, that the present CIRP has already expired on 02.08.2023, and therefore prays for granting extension of the CIRP till the decision to be taken by the CoC in pursuance of today's order.

6. Let the CIRP be extended for a period of four weeks commencing from 03.08.2023. Ordered accordingly.

.....”

25. The Applicant made the following amendments in the resolution plan which are as stated as under:-

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DATE	AMOUNT
10 th July 2022	Proposed Discharge Amount for Rs. 208.89 Cr [Fund Base for Rs. 115.25 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr] <i>Post payment of discharge amount, all the existing security including personal guarantees, corporate guarantees, and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</i>
22 nd September 2022	Proposed Discharge Amount for Rs. 216.10 Cr [Fund Base for Rs. 122.46 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr] <i>Post payment of discharge amount, all the existing security including personal guarantees, corporate guarantees, and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</i>
3 rd December 2022	Proposed Discharge Amount for Rs. 229.89 Cr [Fund Base for Rs.

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	135.25 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr] <i>Post payment of discharge amount, all the existing security including personal guarantees, corporate guarantees, and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</i>
24 th December 2022	Proposed Discharge Amount for Rs. 230.22 Cr [Fund Base for Rs. 136.58 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr] <i>Post payment of discharge amount, all the existing security including personal guarantees, corporate guarantees, and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</i>
02 nd February 2023	Proposed Discharge Amount for Rs. 216.43 Cr [Fund Base for Rs. 122.79 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr] <i>Post payment of discharge amount, all the existing security including personal</i>

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	<i>guarantees (except the personal guarantees of Mr. Ajeet Pandey, Mr. Vinay Shankar Tiwari and Mrs. Rita Tiwari), corporate guarantees and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</i>
Addendum dated 13th February 2023 to the revised Resolution Plan dated 2 nd February 2023	Proposed Discharge Amount for Rs. 235.22 Cr [Fund Base for Rs. 141.58 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr] <i>Post payment of discharge amount, all the existing security including personal guarantees (except the personal guarantees of Mr. Ajeet Pandey, Mr. Vinay Shankar Tiwari and Mrs. Rita Tiwari), corporate guarantees and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</i>
15 th June 2023	Proposed Discharge Amount for Rs. 245.64 Cr [Fund Base for Rs. 152.00 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr]. <i>Post payment</i>

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	<p><i>of discharge amount, all the existing security including personal guarantees (except the personal guarantees of Mr. Ajeet Pandey, Mr. Vinay Shankar Tiwari and Mrs. Rita Tiwari), corporate guarantees and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</i></p>
24 th August 2023	<p>Proposed Discharge Amount for Rs. 250.65 Cr [Fund Base for Rs. 157.01 Cr and Non-Fund Based (O/s BG) for Rs. 93.64 Cr]. Post payment of discharge amount, all the existing security including personal guarantees (except the personal guarantees of Mr. Ajeet Pandey, Mr. Vinay Shankar Tiwari and Mrs. Rita Tiwari), corporate guarantees and all immovable properties as 3rd party collateral charged to the consortium shall be assigned/transferred/released.</p>

26. In compliance of the aforesaid order dated 17.8.2023 passed

by this tribunal, CoC in their 25th meeting considered the
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revised resolution plan and rejected the said plan. The relevant extract of the meeting is reproduced below: -

“SUMMARY OF THE DECISIONS TAKEN VIA E-VOTING CARRIED OUT AS PER THE DECISION TAKEN IN THE 25TH COC MEETING HELD ON 11th SEPTEMBER, 2023 COMMENCED ON 14th SEPTEMBER, 2023 AT 11.00 AM CONCLUDED ON 27TH SEPTEMBER, 2023 AT 7.00 PM THROUGH ELECTRONIC, AUDIO & VISUAL MEANS (ONLINE AV CONFERENCE) VIA EMAIL

E-voting Start: Thursday, 14th September 2023 at 11.00 A.M. E-voting End: Friday 27th October 2023 at 07.00 P.M.

Result Declaration Date: 28th October 2023

ITEM NO. B1: TO FURTHER DISCUSS AND APPROVE THE MODIFIED APPROVE THE RESOLUTION PLAN RECEIVED FROM AKUL SECURITIES PRIVATE LIMITED.

"RESOLVED THAT pursuant to Section 30(3) of the Insolvency and Bankruptcy Code, 2016 (IBC) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution plan dated 24.08.2023 of M/s Akul Securities Private Limited be and is hereby approved by

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the Committee of Creditors of M/s Gangotri Enterprises Limited.

RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committee of Creditors to the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto in connection with."

Voting Results:

S.NO	Name of the CoC member	Voting%	Votes in favour	Votes for Against	Abstain
1.	Bank of India	13.25	-	-	13.25
2.	Punjab National Bank	3.18	3.18	-	-
3.	Union Bank of India	9.58	-	9.58	-
4.	Axis Bank Limited	23.99	23.99	-	-
5.	Canara Bank	9.79	-	9.79	-
6.	IDBI Bank Limited	28.27	28.27	-	-
7.	Central Bank of India	11.94	-	-	11.94
Total		100.00	55.44	19.37	25.19

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Six COC members with Voting Rights 88.06% casted their Votes in and one COC Member with voting rights of 11.94 % NOT VOTED.

Three members with voting rights of 55.44% casted in favour of the Resolution and Two of the COC Members with Voting Rights 19.37% casted against the Resolution and one COC member ie Bank of India with Voting Right 13.25% voted for abstention and one COC member ie Central Bank of India with Voting Right 11.94% NOT VOTED.

Hence, this Agenda item is declared as NOT APPROVED in terms of Section 21(8) of the Insolvency and Bankruptcy Code, 2016.

ITEM NO. B2: TO DISCUSS, CONSIDER AND APPROVE THE WAIVER OF CLAUSE 1.8.3 OF THE REQUEST FOR RESOLUTION PLAN.

"RESOLVED THAT pursuant to applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the COC in its commercial wisdom hereby reduces of performance guarantee requirement from 20% of Resolution Plan amount to 5% of the Fund based value of the Resolution Plan amount pursuant to the request made by the RA M/s Akul Securities Private Limited"

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RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required or considered necessary or incidental thereto in connection with."

Voting Results:

S.NO	Name of the CoC member	Voting%	Votes in favour	Votes for Against	Abstain
1.	<i>Bank of India</i>	13.25	-	-	13.25
2.	<i>Punjab National Bank</i>	3.18	3.18	-	-
3.	<i>Union Bank of India</i>	9.58	-	9.58	-
4.	<i>Axis Bank Limited</i>	23.99	23.99	-	-
5.	<i>Canara Bank</i>	9.79	-	9.79	-
6.	<i>IDBI Bank Limited</i>	28.27	-	28.27	-
7.	<i>Central Bank of India</i>	11.94	-	-	11.94
Total		100.00	27.17	47.64	25.19

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Six COC members with Voting Rights 88.06% casted their Votes in and one COC Member with voting rights of 11.94 % NOT VOTED.

Three members with voting rights of 27.17% casted in favour of the Resolution and Three of the COC Members with Voting Rights 47.64% casted against the Resolution and one COC member ie Bank of India with Voting Right 13.25% voted for abstention and one COC member ie Central Bank of India with Voting Right 11.94% NOT VOTED.

*Hence, this Agenda item is declared as **NOT APPROVED** in terms of Section 21(8) of the Insolvency and Bankruptcy Code, 2016.*

....”

REPLY ON BEHALF OF THE COC MEMBERS

27. The CoC Members has filed their reply in response to the application separately. Bank of India, Central Bank of India and Union Bank of India has filed their reply vide dairy no. 44 dated 05.02.2024, 258 dated 30.01.2024 and 254 dated 29.01.2024 respectively wherein they have asserted that relief sought by the applicant is not maintainable.

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28. The Respondent namely Canara Bank has filed its reply vide dairy no. 377 dated 08.02.2024 wherein it is contended by the respondent bank No. 2 (Canara Bank) that the proposal dated 24.08.2023 was discussed in the 25th COC meeting, held on 11/09/2023 the resolution applicant has increased the plan value by Rs. 5.00crs only, whereas all the other grounds on which the previous plan dated 15.06.2023 was rejected by the COC remains unaddressed which are stated as under:-

“....

a. As per the revised plan dated 24.08.2023 RA has not offered any upfront payment to financial creditors.

b. Though in the plan the RA has undertaken to repay the lenders immediately in respective case of encashment/invocation of the bank guarantees within 2 years, such undertaking is not supported by any counter-guarantee or comfort letter.

c. The revised RP is a conditional plan since the RA has sought a change in PBG condition as per RFRP from 20% to 5%

d. Source of funds RA is also not covering the plan amount offered, so the financial viability of the resolution plan is doubtful.

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e. The account has already been declared as fraud by banks based on a forensic audit report dated 17.05.2017 and further proceedings in the matter are already under process.

f. The plan was discussed among four PSBs and all four (Bank of India, Union Bank, Central Bank of India and Canara Bank) who have voted against the plan earlier, have informed orally over the phone that they will be voting against the present plan also subject to final directions from their competent authority.

...”

29. Further, according to the revised resolution plan of Rs. 93.64 Cr has been set aside for outstanding bank guarantees, which must be replaced or returned within two years from the approval of the resolution plan by the tribunal. Despite the fact that the Plan requires the SRA to reimburse the relevant lenders right once in the event that the bank guarantees are cashed or invoked within two years, undertaking is not supported by any counter-guarantee or comfort from SRA in case of any invocation.

30. Furthermore, it is also contended by the Respondents that the consortium's access to PG/CG third-party securities does

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not extend to the corporate guarantee portion of Axis Bank's claim. Axis Bank is receiving additional benefit from this component of the plan amount in the increased voting share because the current Resolution plan involves the release of third-party securities mortgaged by PG/CG, for which RA has offered Rs. 104.71 Cr, and distribution is based on voting share basis rather than security interest. The SRA's amended resolution plan, which took into account Axis Bank's whole claim to be secured on par with other member banks, was distributed in a way that was deemed unacceptable during the JLM meeting.

- 31.** 09 (Nine) arbitration awards totaling Rs. 257.44 Cr (with interest of Rs. 359.51 Cr) that were decided in the Corporate Debtor's favor are currently pending in an appeal. 16 Arbitration cases wherein a total of Rs. 988.73 Cr is still pending. An arbitration award totaling Rs. 83.36 Cr has been made against the corporate debtor in 4 cases. However, the SRA has stated a combined offer of Rs. 52.29 Cr. towards the Corporate Debtor's assets and business operations, including arbitration awards, in its amended resolution plan.

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As a result, their offer for arbitration awards is just Rs. 23 Cr (45.99 - Corporate Debtor's liquidation value, or Rs. 22.99), which is extremely less given the size of the awards.

32. The source of funds given by SRA is not covering the Plan amount offered, so financial viability of the Resolution Plan is also doubtful. In the revised resolution plan dated 24.08.2023 in page no.68 under point D.9 has tried to give sources of fund for only 157.00 Cr (SRA's net worth of sheet of sanction of fund from any Bank/FI.)

33. The Respondent Banks namely, Punjab National Bank, IDBI Bank and Axis Bank has filed its reply vide dairy no 76 dated 09.01.2024, dairy no. 3190 dated 15.12.2023 and dairy no. 3068 dated 05.12.2023 respectively wherein it is stated that Resolution Plan dated 24.08.2023 submitted by the Respondent Bank was approved by the respondent after taking into account all the relevant factors along with objective of maximization of value of the assets of the Corporate Debtor. The Respondent has placed reliance on ***Tata Steel Limited v. Liberty House Group Pte. Ltd. &***

Ors., Company Appeal (AT) (Insolvency) No. 198 of 2018

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wherein the Hon'ble NCLAT vide order dated 4th February 2023 has dealt with similar kind of matter and observed that

“....

We find that the 'Resolution Plan' submitted by 'JSW Steel' has been approved by the 'Committee of Creditors' with 97.12% voting shares and voters having 2.88% voting shares remained absent. If some members of the 'Committee of Creditors' having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their shares should not have been counted for the purpose of counting the voting shares of the 'Committee of Creditors'. In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of JSW Steel', we hold that the 'Resolution Plan' submitted by JSW Steel' has been approved with 100% voting shares. The additional reply, if required, may be given at the time of hearing in accordance with queries of the Hon'ble Tribunal....”

- 34.** The Applicant has filed affidavit in compliance with the order dated 16.02.2024 passed by this tribunal wherein applicant has made the following submissions: -

The Resolution Applicant shall pay a total consideration of INR 250.65 Crore under the Binding Resolution Plan.

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Total Discharge Amount INR 250.65 crore

<p>INR 52.29 crores (Fund Based): For assets and business operations including arbitration claims of the Corporate Debtor.</p>	<p>INR 104.71 crores (Fund Based): This amount is offered for Personal-Guarantees of Promoters, Third Parties, Corporate Guarantees including immovable properties mortgaged with the consortium banks and others, except the personal Vinay Shankar Tiwari and Mrs. Rita guarantees of Mr. Ajeet Pandey, Mr. Tiwari, which will not be released and shall continue to be with the lenders of the Corporate Debtor.</p>	<p>INR 93.64 Crores (non-fund based): For Bank Guarantees which are outstanding as on 06.12.2021 with 4 members of the consortium of Banks /Financial Creditors and are to continued as Bank Guarantees until replaced or released within the time stipulated in the Resolution Plan.</p>
<p>Our Remarks: *Value for Arbitration-Claims-based-on RA'S internal assessment taking into account Awarded Arbitration for INR 257.44 Cr, Counter Claims for INR 488.48 Cr and Negative Awards for INR 83,36 Cr. RA has assigned INR 23.00 Cr for the arbitration claims. Although, it has to</p>		

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<p>pass through various legal stages till Supreme Court and presently all cases are at District Court.</p> <p>Remaining amount for INR 29.29 Cr. allocated for all the assets of the CD including Noida Property (Noida Authority has sent Cancellation of allotment).</p>	<p>Our Remarks: Based on our internal assessment and per the IM, out of 27 properties mortgaged as third-party collaterals, 17 are agricultural properties and other 10 are non-agricultural properties. Majority of 27 properties have pending litigation since long at various legal forums.</p>	
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The utilization of Discharge Amount of INR 250.65 Crore as envisaged above shall be as follows:

INR 1.25 Crore or as per actuals towards CIRP cost.

INR 0.32 Crore towards Operational Creditors (Employees, Statutory Dues and Others). INR 248.64 Crore towards Financial Creditor.

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INR 0.43 Crore towards Contingency Reserve (to meet any additional payments towards CIRP Cost and/or Operational Creditors over and the allocated amount).

Proposed discharge amount of INR 155,00,00,000 (Fund Based) will be paid by the Resolution Applicant to the Financial Creditor, over a period of 3 years in a phased manner as per the table below:

Quarters (At the end of each quarter)	Percentage	Amount (INR Cr)
Year 1-Q1	0%	-
Year 1-Q2	0%	-
Year 1-Q3	4.84%	7.50
Year 1-Q4	4.84%	7.50
Year 2-Q1	0%	-
Year 2-Q2	19.35%	30.00
Year 2-Q3	0%	-
Year 2-Q4	19.35%	30.00
Year 3-Q1	0%	-
Year 3-Q2	24.19%	37.50
Year 3-Q3	0%	-
Year 3-Q4	27.42%	42.50
Total	100.00%	155.00

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Note: Year 1 starts from Effective/ Transfer date i.e. from the approval of the Resolution Plan by the Hon'ble Adjudicating Authority). [Additionally, Rs. 2 Cr which includes towards CIRP cost, Operational Creditors (Employees, Statutory Dues and Others) and Contingency Reserve shall be paid within 90 days after approval of the Resolution Plan by the Hon'ble Adjudicating Authority]

The Bank Guarantees stated above are to be continued on existing terms and conditions. The Resolution Applicant undertakes that either the said Bank Guarantees will be replaced or returned within a period of 2 years from Effective Date. It is clarified that the Resolution Applicant undertakes to repay He respective lenders immediately in case of encashment of any of the said Bank Guarantees of INR 93.64 Cr within a period of 2 years from the Effective Bate (i.e., the date of approval of the Resolution Plan by the Hon'ble Adjudicating Authority).

- 35.** The Applicant has also filed written submissions vide dairy no. 406 dated 12.02.2024 which has been taken into considerations while arriving at the decision. The following submissions have been made by the applicant: -

“2.....There can also be members who do not express their views at all, either by not attending the meeting, or

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by attending but not voting or abstaining to vote at the meeting. This can also be discerned from the fact that under The Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provided for definition under Section 2(f) for

"
-

'dissenting financial creditor'- means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the committee.

There regulations were amended and by virtue of the amendment dated 05.10.2018, the said clause (f) stood omitted in toto.

The by virtue of such an amendment, intention of the legislature is absolutely clear to show that dissenting financial creditor would not include members who have not expressed their views, either by abstaining or not voting

*That in **Swift Formulations Pvt. Ltd. & Another v. IND Swift Ltd., 2004 SCC Online P&H 351**, reference has been made to English Company Law by Professor Robert R. Pennington (5th Edition, at Page 590), which would be relevant for the present matter as well. The same is reproduced as follows:*

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"... It appears that proxies may both speak and vote at meetings of creditors or members, and that the inability of proxies for members to speak at general meetings of a public company does not apply to meetings called to approve schemes of arrangement. The vote on the scheme at each meeting of members or creditors is taken by a poll, and for a resolution approving the scheme to be carried, the persons who are present in person or by proxy at the meeting and who vote in favour of the scheme must comprise a majority in number of all persons who vote in person or by proxy, and they must also hold three-quarters in value of the interests of all such persons. The number and the value of the interests of persons who do not attend and are not represented at the meeting, or who do attend the meeting but abstain from voting, are immaterial, and do not enter into the calculation at all. Likewise, the interests of persons who appoint proxies are disregarded if the proxies do not attend the meeting, or do attend but do not vote..."

Reliance was placed on all literature to interpret the provisions of Section 391(2) of the Companies Act, 1956 wherein it was expressly held that 3/4 majority of the members present and voting would only be counted and not otherwise.

3. It is further pointed out that the applicant has attached Annexure A-34 dated 18.01.2023, whereby the Govt. of

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India, Ministry of Corporate affairs has expressed a similar view and has observed as follows: "18. Clarity on the computation of voting share and treatment of abstention-

18.2 Further, a need to address abstention from voting was felt for the smooth conduct of the process. For instance, in cases where one or two members of the COC, having a significant voting share, abstain from voting on key decisions, it unnecessarily prevents the process from progressing. It is being considered that the voting threshold for major decisions should be revised of 2/3rd of the COC members present and voting in a meeting. However, when such decisions are undertaken, it should be ensured that voting shares of the members of the COC who approve the decision should constitute at least fifty-one percent or more of the total voting share of the COC."

4. That reference must also be made to the judgment passed by the **Hon'ble NCLT(Hyderabad Bench) in IA No. 446/2022 in CP(IB) No.219/10/HBD/2020 titled Pavan Kankanl v. Karnataka Bank Limited and Anr.** "16. Therefore, following the ruling in Tata Steels, supra, where it was held that if some members of the "Committee of Greditors-having-2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their

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shares should not have been counted for the purpose of counting the voting shares of the Company Appeal (AT) (Insolvency) No. 198 of 2018 'Committee of Creditors'. In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of JSW Steel', we hold that the 'Resolution Plan' submitted by 'JSW Steel' has been approved with 100% voting shares, we

hold that that the resolution passed in the 5th CoC meeting held on 25.02.2022 recommending to the Resolution Professional to file necessary application before this Authority for liquidation of the Corporate Applicant, having been passed by the member present in the meeting of the Committee of Creditors, has 100% voting share, and thus, satisfies the requirement under Section 33 (2) of IBC.

17. Before we part with, we wish to state that a member of the CoC though required to attend the meetings and vote when abstains or having been present fails to vote, such absence or abstaining from voting should not bring either the resolution or the liquidation process, as the case may be, to a grinding halt when the same results in falling short of 66% voting share as mandated under sub-section (2) of Section 33 of IBC. Hence, in our considered view, such dead- lock situation since would defcat the timelines set under the IBC or against the objectives of IB

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Code. We therefore take this opportunity to suggest to IBBI, to ponder upon bringing a suitable amendment to sub clause 2 of section 33 of IB Code, to meet situations of the present kind, so that the stalemate in taking the liquidation process forward when resolution fails, can be avoided."

Reliance by the Hon'ble Hyderabad Bench was placed on the order of the Hon'ble NCLAT in Tata Steel Limited v. Liberty House Group Pte. Ltd. & Others, 2019 SCC OnLine NCLAT 13, which held as follows: "46. We find that the 'Resolution Plan' submitted by JSW Steel' has been approved by the 'Committee of Creditors' with 97.12% voting shares and voters having 2.88% voting shares remained absent. If some members of the 'Committee of Creditors' having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their shares should not have been counted for the purpose of counting the voting shares of the 'Committee of Creditors'. In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of JSW Steel', we hold that the 'Resolution Plan' submitted by JSW Steel' has been approved with 100% voting shares.

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47. For the reasons aforesaid, while we are not inclined to interfere with the substantive part of the impugned order dated 23 April, 2018, set aside part of the order whereby adverse observation has been made against Mr. Mahender Kumar Khandelwal ('Resolution Professional')."

FINDING AND ANALYSIS

- 36.** We have heard the submission made by learned counsel of both the parties and perused the materials submitted on record.
- 37.** The applicant has challenged the decision of the COC taken in its 25th meeting dated 28.10.2023 for declaring the Resolution Plan of the Applicant as not being approved. The liquidation value is assessed at Rs.22.99 cr against which the applicant has submitted plan which was revised from time to time and ultimately submitted for the value of Rs.250.65 cr.
- 38.** According to the Applicant, the revised plan dated 24.8.2023 which has now been proposed and offered, is towards value maximization of the assets of the Corporate Debtor and being much higher in value than the liquidation value itself would

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be beneficial to the Members of COC who are the Financial Institutions/ Banking Institutions.

- 39.** We would therefore dwell upon twin aspects of the matter, one relating to decision of the COC per se as allegedly treating the plan as not being approved based upon erroneous calculation of the voting percentage of the CoC Members casted during the 25th meeting of the COC. And the second aspect would be dealing with the value maximization considering the liquidation value as well as the value of the Resolution Plan being offered by the present applicant.
- 40.** Coming to the first aspect of calculation of the voting percentage and the manner in which it has been determined, we have to look into the fact that there were 07 Financial Institutions constituting as Members of the COC. Out of which three Financial Institutions namely, the Punjab National Bank, Axis Bank & IDBI Bank Ltd. together constituting 55.44% casted vote in favour of the Plan mooted by the Applicant.

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- 41.** The second set of the Financial Institutions namely, the Union Bank of India and Canara Bank together constituting 19.37% of voting, casted a negative vote. The third set of the Financial Institutions namely, the Bank of India and Central Bank of India abstained from casting the vote and did not vote respectively which together constituted 25.19% voting shares.
- 42.** We therefore, find that out of the 100% share of the 7 Financial Institutions, 55.44% had casted in favour, 19.37% had casted in the negative and 25.19% did not exercise their voting right neither approving nor rejecting the Plan of the Applicant.
- 43.** It appears that the decision of the COC is based upon a flat calculation of the positive vote as against the negative vote and for this purpose the 100% voting has been taken as including the positive voting, the negative voting and abstained/ did not vote category.
- 44.** This methodology adopted by the COC/RP for the purpose of passing a Resolution which has been brought under

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challenge by the Applicant while relying upon a judgement of the Hon'ble NCLAT cited as **TATA Steel Ltd. Vs. Liberty House Group Pte. Ltd. and others 2019 SCC online NCLAT 13.**

45. Ld. Sr. Counsel representing the Applicant relies upon Para No.46 of the said judgement which is stated as under:-

“.....

46. We find that the Resolution plan submitted by JSW Steel has been approved by the Committee of Creditors with 97.12% voting shares and voters having 2.88 voting shares remained absent. If some members of the 'Committee of Creditors' having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their shares should not have been counted for the purpose of counting the voting shares of the 'Committee of Creditors'. In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of 'JSW Steel', we hold that the 'Resolution Plan submitted by 'JSW Steel' has been approved with 100% voting shares.....”

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46. It is further contended by the Ld. Sr. Counsel representing the Applicant that the basis for the erroneous calculation/ methodology adopted by the COC/ RP is also to be seen in the context of an amendment carried out in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 which has been amended on 5th October, 2018. It may be worthwhile to note that prior to the said amendment of 5th October, 2018, the definition under Clause 2 (f) read as under:-

“dissenting financial creditor –means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the committee.”

These Regulations were subsequently amended and the said Clause (f) stood omitted. This would necessarily imply that the definition of the dissenting Financial Creditor which though prior to the amendment included the Financial Creditor to be the one who has voted against the Resolution Plan or abstained from voting for the Resolution Plan, approved by the Committee, would no longer be applicable.

47. Another reliance has been placed on Annexure A-34 dated 18th January, 2023 to the following effect:-

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“18. Clarity on the computation of voting share and treatment of abstention

18.2 Further, a need to address abstention from voting was felt for the smooth conduct of the process. For instance, in cases where one or two members of the COC, having a significant voting share, abstain from voting on key decisions, it unnecessarily prevents the process from progressing. It is being considered that the voting threshold for major decisions should be revised of 2/3rd of the COC members present and voting in a meeting. However, when such decisions are undertaken, it should be ensured that voting shares of the members of the COC who approve the decision should constitute at least fifty-one percent or more of the total voting share of the COC."A conjoint reading of the aforesaid amendment as well as the clarification has given vide Clause 18.2 of the communication dated 18th January, 2023 would lead to a logical conclusion that where a Member of the COC having a significant voting share abstained from voting then the voting threshold for major decision should be revised of 2/3rd of the COC Members present in a meeting.”

- 48.** This however, is further qualified from a condition that in such a situation the voting shares of the Members of the COC who approved the decision should constitute at least 51% or more of the total voting share of the COC.

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49. In the present case, it is an admitted case that the total positive voting percentage is 55.44% which is more than 51% of the total voting share of the COC. However, once this is seen in the context of the share of voting of such Members of the COC who had casted vote in favour as against the ones who have casted in negative by excluding ones who abstained or did not vote would be a logically driven conclusion to determine as to the validity of the decision of the COC as a whole.

50. Now applying the ratio of the law as laid down by the Hon'ble NCLAT in Tata Steel Ltd. (supra) read with the communication dated 18th January, 2023 we find that the percentage of the COC Members who voted is 55.44% and the total percentage of the Members who participated in the meeting (whether casted in favour or against) by excluding the percentage of the voting share of the Members of the COC who abstained/ did not vote, the positive vote cast has to be seen in the context of 55.44% of 74.77% (total of the votes casted either in favour or against). This will make the total share of the percentage of the votes in favour of the proposal

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as 74.09%. This share of percentage of the voting of the Members of the COC is more than 2/3rd (66%) of the voting shares of COC Members present and voting in a meeting.

- 51.** We therefore find that a harmonious construction of interpretation in determining the share of percentage of voting casted by the Members of the COC in the meeting vis. a vis. the total number of the shares of the Members of the COC who actually participated in the voting process (whether voted in favour or against) would be 74.09% which is well above the threshold of 2/3rd of the voting share.
- 52.** Seen from this point of view and in accordance with the ratio as laid down by the Hon'ble NCLAT, we are inclined to hold that the Resolution passed by the COC is in favour of the proposal mooted by the Applicant as having been approved by 74.09%.
- 53.** Coming to the other aspect of value maximization, which is also a relevant and important factor to be gone into in the context of the present controversy, we cannot remain oblivious to the fact that the liquidation value of the

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Corporate Debtor is Rs. Rs.22.99 cr. Apparently a continuous endeavor was made by the Applicant from revising the plan value and upgrading the same from Rs.208 cr. to Rs.250.65 cr. and consideration of the same repeatedly by the COC and approval of the same in the concerned meeting of the COC approving the Plan by three Financial Institutions would also amply and make it clear that value maximization of the assets of the Corporate Debtor remained one of the significant and paramount factor all throughout. While the notices were issued to the Financial Institutions particularly to the ones who have abstained or did not vote, the replies received from them namely, Bank of India and Central Bank of India could not offer any reasonable basis of their such decision to abstain or refrain from casting the vote particularly in the light of the fact of much higher value of plan offered by the applicant as against the liquidation value.

- 54.** We are though conscious of the commercial wisdom of the COC to be regarded, however under the facts and circumstances of the present case where the value maximization and up-scaling of the plan value has

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continuously been undertaken and the same also being considered and approved by a majority of the Financial Institutions would make it a case to be looked into the decision making process of the COC.

- 55.** There are number of judgements passed by the Hon'ble Higher Courts wherein the value maximization of the assets of the Corporate Debtor has been accorded a paramount importance and priority. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta (2019 SCC OnLine SC 1478)*** “.....maximization of value of assets of the corporate debtors so as to run them efficiently as going concerns, is an important objective of the IBC. When the committee of creditors exercises its commercial wisdom to arrive at business decisions, it must take into account key features of the IBC. So long as the provisions of the IBC and its regulations have been met, it is the commercial wisdom of the requisite majority of the committee of creditors which holds sway.” The Hon'ble NCLAT in the matter of ***M/s Mohan Fabtex Ltd. Vs. Rajesh Jhunjunwala Liquidator,***

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NCLAT held that “*Maximisation of the value of the Corporate Debtor is one of the objectives of the IBC, however, the said objective has to be achieved within timelines.*”

- 56.** The Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India, (WRIT PETITION (CIVIL) NO. 99 OF 2018)*** while interpreting the Code’s preamble held that; as the fundamental aim of the Code is to revive and run the corporate debtor as a going concern, to balance the interests of all stakeholders, and to maximise the value of its assets, thus, CIRP can’t be at odds with the interests of the corporate debtor. And thus, paramount importance must be given during the CIRP to protect corporate debtor’s interests.
- 57.** In view of the aforesaid discussions we allow this application to the extent that the proposed plan of the Applicant is deemed to be passed by the CoC in terms of the percentage of the voting share by the Financial Institutions.
- 58.** We are however not making any reference to the merits of the Plan per se which would be considered/ gone into by the COC

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as per law. The Resolution Professional would be at liberty to move an application for seeking approval of Resolution Plan after its consideration by the CoC.

59. I.A No. 556 of 2023 is disposed of accordingly.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Date: 3rd April, 2024

*Avaneesh Kumar Singh
(Stenographer)*

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