THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH GARH BENCH
(through web-based vide conferencing platform)

IA No.333 of 2021
In
CP(IB) No.277/Chd/Pb/2018
(Admitted)

Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:-

Punjab National Bank …Financial Creditor

Versus

Kudos Chemie Limited …Corporate Debtor

And in the matter of:-
Union Bank of India
(Earlier known as Corporation Bank)
Stressed Assets Management Branch,
SCO # 137-138, Sector 8-C,
Chandigarh- 160 009
Through Dayanand, Assistant General Manager
E-mail:- dayanand2@unionbankofindia.com

…Applicant

Versus

1. Mr. Rajender Kumar Jain,
   Resolution Professional of M/s Kudos Chemie Limited,
   Reg.#IBBI/IPA-001/IP-P00543/2017-2018/10968,
   #3698/1, First Floor, Sector 46-C, Chandi garh- 160047
   E-mail:- amicusthe@gmail.com

2. Punjab National Bank
   Zonal Sastra, PNB House, Bank's Square,
   Sector 17-B, Chandigarh
   Through it's Authorized Representative
   E-mail:- zs8340@pnb.co.in

3. UCO Bank
   SCO #55-57 Bank's Square,
   Sector 17-B, Chandigarh
   Through it's Authorized Representative
   E-mail:- cha17b@ucobank.co.in

4. IDBI Bank Ltd.
   1st Floor, SCO # 72-73, Bank's Square,
   Sector 17-B, Chandigarh
   Through it's Authorized Representative
   E-mail:- p.singh@idbi.co.in

5. State Bank of India
   Stressed Assets Management Branch
   SCO #99-107, 1st Floor, Pragati Bhawan
   SCO 8-C, Chandigarh
   Through its Authorized Representative
   E-mail:- sbi.04262@sbi.co.in

6. Central Bank of India
   SAM Branch, Chandigarh
   SCO #58-59 Bank's Square,
   Sector 17-B, Chandigarh
   Through it's Authorized Representative
   E-mail:- samvbchanzo@centralbank.co.in

7. Siemens Financial Services Private Limited
   Head Office address:
   Plot #2, Sector-2, Kharghar Node,
   Navi Mumbai- 410 210

   Correspondence Address:
   Birla Aurora Towers, Level 21,
   Plot #1080, Dr. Annie Besand Road,
   Worli, Mumbai- 400 030
   Through it's Authorized Representative
   E-mail:- sidharth.vidhyarthi@siemens.com
   vaibhav.priyadarshi@siemens.com

…Respondents

Order delivered on 07.03.2022

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

<u>Present through Video Conferencing</u> :-

For the Applicant	:-	Mr. Manish Jain, Advocate
For Respondent No.1	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate
For Respondent No.2, 3, 5 & 6	:-	Mr. Arpit Chawla, Advocate
For Respondent No.7	:-	None

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

IA No.333/2021

This application has been filed by the applicant-Union Bank of India, a financial creditor of the Kudos Chemie Ltd. (for short the '**corporate debtor**') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**Code'**) seeking the following directions:-

> *i. To direct respondent No.1 to distribute an amount of Rs.17.26 Crores under the Resolution Plan Amount to the applicant as per option No.3, i.e. if CDR was never implemented and in accordance with Section 53 of the Code;*
>
> *ii. To pass any other order(s) as this Tribunal may deem fit in the given facts of the present case.*

2. It is stated that the initially facilities had been granted to the corporate debtor by Corporation Bank which has now merged with Union Bank of India pursuant to an amalgamation which came into effect on 01.04.2020 and thus, pursuant to the said amalgamation, Union Bank of India is competent to initiate/pursue any and all legal proceedings on behalf of Corporation Bank for recovery of its dues from borrowers including the corporate debtor. It is further stated that Clause 4 (8) of the Scheme of Amalgamation specifically provides that any GPA executed by Corporation Bank shall be of full force and effect against or in favour of Union Bank of India, and may be enforced or acted upon as fully and effectively as if in the place of Corporation Bank and thus the GPA dated 13.12.2012 continue to be valid. The relevant extract of Clause 4(8) of Scheme of Amalgamation is reproduced below:

> *"4(8): Unless otherwise expressly provided in this Scheme, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect, immediately before the commencement of this Scheme and to which*

> *Transferor Bank 1 or Transferor Bank 2 is a party or which are in favour of the Transferor Bank 1 or the Transferor Bank 2, shall be of full force and effect against or in favour of the Transferee Bank, and may be enforced or acted upon as fully and effectively as if in the place of the Transferor Bank 1 or the Transferor Bank 2, the Transferee Bank had been a party thereto or as if they had been issued in favour of the Transferee Bank thereto and it shall not be necessary to obtain the consent of any third party or other person who is a party to any of the aforesaid instruments or arrangements to give effect to the provisions of this sub-paragraph."*

3. It is submitted that the Applicant Bank (Corporation Bank) had initially sanctioned Working Capital Limit of Rs.20.00 Crores and Term Loan facility of Rs.45.00 Crores to the corporate debtor to part finance its project costing around Rs.66.60 Crores. In terms of the Sanction Letter, the Bank has pari-passu first charge on the entire fixed assets of the corporate debtor with other term lenders. It is mentioned that at the time sanction of the term loan, share of the Applicant was 27.58% i.e. Rs.45.00 Crore Term Loan Limits out of total Term Loan exposure of Rs.163.16 Crores and the security available for Term Loan Limit was Rs.70.75 crore. The said Term Loan Limit and Cash Credit limits were renewed from time to time. It is further mentioned that the charge of the Lender-Bank was registered with the Registrar of Companies for the Term Loan facility of Rs. 45.00 crore on 20.06.2009.

4. It is further submitted that the credit limit sanctioned to corporate debtor was restructured by a consortium led by respondent No.2 i.e. Punjab National Bank under CDR Package on 29.12.2014 and the cut-off date for the said Restructuring with the credit limit was taken as on 28.02.2014. At the time of cut-off date, the total outstanding Term Loan Limit of the corporate debtor was Rs. 392.91 Crores and the Term Loan outstanding of the Applicant-Bank was Rs.29.15 Crores, which constituted 7.419% of the total Term Loan limits. Out of the total outstanding Term

Loan of Rs. 392.91 crores as on the cut-off date, an amount of Rs. 351.03 crores was restructured and thus, the Applicant Bank had a Term Loan limit exposure of Rs. 28.12 crores. Further, under the Corporate Debt Restructuring (in short '**CDR'**) package, a major part of Working Capital Limit (in short '**WCL**') of all the lenders were converted into Working Capital Term Loan (in short '**WCTL**') and Funded Interest Term Loan (in short '**FITL**') Limit and upon conversion of Working Capital Limit into WCTL and sanction of FITL limit under the CDR package, the exposure of the Applicant-Bank in Term Loan lenders was reduced from 7.42% to 2.22% as per the facility agreement executed on 29.12.2014. Hence, Applicant Bank's security coverage was also reduced on fixed assets due to CDR restructuring. In this regard, it was submitted that under the CDR package, the Applicant had first pari-passu charge on the fixed assets of the Corporate Debtor with the other lenders, excluding the assets exclusively charged to the Lenders and second pari-passu charge on the entire current assets, present & future including entire stocks, book debts, loans & advances.

5. In view of the above restructuring of the loan, the lenders of the Corporate Debtor executed a Master Restructuring Agreement (in short '**MRA**') on 29.12.2014 (Annexure A-3) in order to implement the restructuring proposal. One of the main conditions of the above MRA was that the promoters of the Corporate Debtor shall bring in a mandatory contribution of Rs. 63.00 Crores upfront. It was further agreed that they shall also provide personal guarantees of Mr. Jitendra Singh, Mrs. Gurmeet Sodhi, Mr. Kabir Sodhi & Mr. Kirat Sodhi to all the CDR lenders. However, despite various opportunities, the promoters failed to bring in the requisite contribution of funds under the CDR mechanism. As a result of the same, all the lender banks in their Joint Lenders Meeting (in short '**JLM**') dated 29.08.2016

(Annexure A-4), decided to exit from CDR mechanism of the Corporate Debtor on account of non-compliance of CDR conditions and thus, failure of CDR package was approved.

6. Thereafter, the CDR Cell vide its letter dated 30.09.2016 (Annexure A-5) also approved the exit of corporate debtor from CDR mechanism on account of non-compliance of CDR conditions and thus, approved failure of CDR package. Thus, CDR package of corporate Debtor was never implemented due to the non-compliance of the conditions enumerated under it and neither the corporate debtor nor the Banks could avail any of the benefits accruing thereunder and in other words, the rights & liabilities of all parties were restored as if to say that the CDR package was never in existence.

7. It is further mentioned that para 3.2.3 of MRA provides a clause for Continuation of Security Interest. The said clause clearly states that subsisting charge over the movable & immoveable assets of the borrower shall continue to be in full force & effect for respective facilities. Further, Clause 8.3 of the MRA provides for Consequences of Revocation. The said clause states that upon revocation of the restructuring of the existing loans, the rights & remedies of the Lenders would continue as if they had not been waived, amended, modified, superseded or replaced by the Restructuring Documents and the Lenders shall be entitled to enforce such rights and remedies. Clause 3.2.3 & 8.3 are reproduced below:

> *"3.2.3. Continuation of Existing Gecuritp-*
> *The subsisting mortgages/charges/securities over the immoveable and movable assets of the Borrower shall continue to be in full force and effect for respective Facilities. However, Borrower shall create all the stipulated security for respective Facilities in accordance with Article III except the subsisting mortgages / charges in respect of the respective Facilities.*

> *8.3 Consequence of Revocation:*
> *Upon revocation of the restructuring of the Existing Loans pursuant to Section 8.2 the rights and remedies of the Lenders under the Existing Documents would continue as if they had not been waived, amended, amended and restated modified, superseded or replaced by the Restructuring Documents and the Lenders shall be entitled to enforce such rights and remedies, including the right to appoint additional nominee directors and all rights arising on account of occurrence of an Existing Event of Default, as if the same had not been waived and/or modified pursuant to this Agreement and the other Restructuring Documents, provided, however, that the obligations of the Borrower under the Restructuring Documents shall continue to be binding on the Borrower and the Lenders shall be entitled to exercise all rights and remedies conferred on them pursuant to the Restructuring Documents, including the right to any Security Interests created pursuant to the Restructuring Documents. The Lenders may, in addition to all other rights and remedies under the Restructuring Documents and Law, cancel the Priority Loans, cease to fund interest on the Facilities and/or charge default interest or liquidated damages in respect of any interest that has been funded by them."*

8. In view of the above stated clauses, it is stated that the Applicant Bank is entitled to receive the Resolution Plan amount as per the Security Interest prior to CDR package. It is further stated that the charge created by the other consortium lenders on the basis of CDR, cannot be considered and are invalid for the reason that the said charges were created on the basis of the CDR which had failed.

9. This Tribunal vide order dated 05.07.2019, admitted the petition against the corporate debtor and CIRP was initiated and accordingly, Respondent No.1 was appointed as the RP. The Applicant is a member of the Committee of Creditors and has been participating in the meetings of the Committee of Creditors being held from time to time.

10. In the 20th meeting of the Committee of Creditors, held on 16.01.2021, Agenda Item No.20.04 pertained to approval of the Resolution Plan submitted by the Resolution Applicant. During the course of discussions, the Applicant-Bank

raised an objection regarding the manner of Distribution of Asset under Section 53 of the Code and suggested that distribution should be done as per the security interest "prior" to CDR implementation and not as per voting share of the claimed amount. However, the request of the Applicant Bank was not considered by the other members of the Committee of Creditors.

11. Thereafter in 21st CoC Meeting dated 21.01.2021, the members of the Committee of Creditors deliberated upon the distribution of Resolution Plan amount in Agenda Item No.21.04. On the request of the members of the Committee of Creditors, Respondent No.1 shared the consolidated sheet of distribution chart (Annexure A-8), wherein the Resolution Professional, made the calculations as per four different scenarios which are mentioned below:

1) Plan amount as per claims accepted by RP;
2) Plan amount as per security interest by assuming WCTL and FITL as part of Term Loan;
3) Plan amount if CDR package was assumed to have not been implemented; and
4) Plan amount if CDR package was assumed to have been implemented.

12. The Applicant Bank again raised its objection in relation to manner of distribution of the Resolution Plan amount to the Financial Creditors and thus, voted for Option No.3, i.e. plan amount, if CDR package was assumed to have not been implemented. However, the objection of the Applicant, being a minority CoC member — holding only 2.31% voting share — was cast aside by the other Financial Creditors, who voted for Option No.1 i.e. Plan amount as per claims accepted by Resolution Professional. Therefore, left no other option the Applicant voted against the Resolution Plan submitted by the Resolution Applicant-UPL. It is further

submitted that the Resolution Plan has been approved by the other members of the Committee of Creditors holding 97% voting share.

13. According to the applicant, no party/financial creditor can be allowed to derive the benefit from a CDR which was actually never implemented. It is submitted that the provisions of Section 30(2)(1)(b) of the Code provide for the minimum payment to the dissenting Financial Creditors 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. Further Regulation 38(1)(b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short the 'Regulations') provides that the financial creditors, who have a right to vote under Sections 21(2) and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.

14. It is contended by the applicant that the amount to be paid to it as a dissenting financial creditor under the approved Resolution Plan should be calculated and paid as per Option No.3 i.e. amount, if CDR package was not been implemented and also in terms of the above stated provisions. It is reiterated that admittedly, the CDR Package had never been implemented and thus no benefit can be derived thereunder by anyone.

15. According to the applicant, the credit limit sanctioned to the corporate debtor was restructured by the Applicant under the CDR Package on 29.12.2014, whereas the cut-off date for the restructuring the credit limit was taken as on 28.02.2014. Thus, the total Term Loan outstanding of the corporate debtor as on cut-off date was Rs.392.91 Crores and term loan outstanding of the Applicant Bank was Rs. 29.15 Crores (i.e. 7.41%). In the present case, the total Liquidation amount

available is Rs.232.60 Crores and out of this the Applicant Bank is entitled to receive Rs. 17.26 Crores. The calculation in this regard is tabulated below:

Sr.No.	Particulars	Amount (In Rs.)
1.	Total Liquidation Value of Assets	236.53 Crores
2.	CIRP Cost	(3.73 Crores)
3.	Workmen Dues	(0.20 Crores)
4.	Liquidation Value in hand	232.60 Crores
5.	7.419% of Rs. 232.60 crores	17.26 Crores

Thus, the Applicant in entitled to receive Rs. 17.26 Crores in terms of Option No.3 and Section 53 of the Code.

16. The Applicant submits that by way of the present application, neither it is stalling the Resolution Process of the corporate debtor nor questioning the commercial wisdom of the members of the Committee of Creditors. The present application is for the limited purpose for distributing the Resolution Plan Amount to the Applicant as per Option No.3 and Section 53 of Code, since the CDR package was never implemented.

17. Notice of this application was issued to the respondents on 05.07.2021 and the applicant was directed to serve notice of this application to the respondents along with copy of entire paperbook through e-mail and speed post.

18. Respondent No.1/Resolution Professional filed its reply vide Diary No.00701/5 dated 27.07.2021, wherein it is stated that the contents of the application filed by the applicant are false and baseless. By way of the present application, the applicant has sought a relief i.e. direction to respondent No.1/Resolution Professional to distribute an amount of Rs.17.26 Crores under the

resolution plan, which is not only misconceived but is also beyond the provisions of the Code.

19. It is stated by respondent No.1 that the Resolution Professional convened the 20th Meeting of Committee of Creditors on 16.01.2021, at which one of the agenda items was the approval of revised resolution plan submitted by M/s UPL Limited. The members of the Committee of Creditors deliberated on the distribution of the amount as proposed under the Resolution Plan in terms of provisions of Section 53 of the Code read with Section 30(4) of the Code, terms of Resolution Plan and eligibility of the Resolution Applicant in terms of provisions of Section 29A of the Code. Thereafter, in the 21st meeting of the Committee of Creditors, was held on 21.01.2021, wherein the respondent No.1-Resolution Professional presented the manner of distribution of amount offered under the resolution plan submitted by the resolution applicant under various scenarios, viz. (i) plan amount in proportion to claims accepted by the Resolution Professional; (ii) plan amount as per liquidation value of security interest by assuming WCTL and FITL as part of the term loan; (iii) plan amount, if CDR package was assumed to have not been implemented; and (iv) plan amount, if CDR package was assumed to have been implemented. Subsequent to discussions and deliberations, the Committee of Creditors decided that option (i) i.e. that the plan amount as per claims admitted, shall form the basis of the resolution plan and the members of the Committee of Creditors directed the Resolution Professional to put the resolution plan to vote by e-voting after 7-10 days and in the meantime, one more attempt to improve the resolution plan amount should be made. Thereafter, subsequent to e-voting by the Committee of Creditors, the resolution plan submitted by M/s UPL Limited was approved with 97.61% voting share of the Committee of Creditors.

20. According to the respondent No.1/Resolution Professional, the instant application has been filed by the applicant, a financial creditor of the corporate debtor, holding 2.31% of voting share in the Committee of Creditors and the Committee of Creditors in its commercial wisdom has already decided the distribution under the approved resolution plan as per Section 30(4) of the Code, which is in the purview and domain of the Committee of Creditors.

21. It is contended by respondent No.1/Resolution Professional that upon considering the legislative intent and the statutory scheme of the Code and the CIRP Regulations, as well as judicial pronouncements by the Hon'ble Supreme Court the approval of the resolution plan is solely within the commercial wisdom of the Committee of Creditors and upon receiving such approval, it is not for the adjudicating authority to replace its own wisdom with the commercial wisdom of the Committee of Creditors and thus, has prayed that the instant application ought not be entertained as it is not within the ambit of a majority financial creditor to frustrate the entire CIRP process seeking a resolution plan to be implemented in an alternative manner, when such resolution plan has been approved by 97.61% of the Committee of Creditors.

22. It is reiterated by the Resolution Professional that Committee of Creditors, which constitutes the consortium of lenders had taken part in the CDR process and have voted in favour of the resolution plan with an outstanding majority of 97.61% and the same does not merit interference by this Tribunal. Thus, Section 30(4) requires the Committee of Creditors whilst approving a resolution plan to take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured

creditor. Accordingly, the plan distribution is based on new security interest registered with ROC post CDR, which the members of the Committee of Creditors have themselves agreed to. It is now open to the applicant-bank to dispute the security interest since it exists in the ROC.

Thus, it is submitted that in pursuance of the resolution plan having been approved by 97.61% of the Committee of Creditors, the instant application is misconceived and deserves to be dismissed.

23. A joint reply on behalf of Punjab National Bank, respondent No.2; UCO Bank, respondent No.3; and State Bank of India, respondent No.5, has been filed vide Diary No.00701/3 dated 23.07.2021, which while adopting the reply of respondent No.1/Resolution Professional has submitted that respondent nos.2, 3 and 5 being one of the most prominent public sector banks and being the members of the Committee of Creditors in the on-going process of the corporate debtor, had always acted within the ambit of the Code. Respondent nos.2, 3 and 5 had always showed constructive participation in the Committee of Creditors' Meeting convened by the IRP/RP in the instant matter and had always strived to take all decisions based on best of their commercial wisdom after due deliberation and detailed discussion, being custodian of the public money.

24. It is further submitted that the decision taken by respondent Nos.2, 3 and 5 along with other Committee of Creditors members-banks to approve the resolution plan by 97.16% voting was a well-informed decision being taken after thorough analysis of financial contours, feasibility and viability of the resolution plan. Further, according to the provisions of the Code, there is no mention that an implementation or revocation of any CDR should be taken into consideration by the Committee of

Creditors while exercising their commercial wisdom in taking business decision regarding the distribution of resolution plan. The very intent of legislature was only that there should be fairness of distribution amongst similarly situated creditors which has been achieved in the present matter as the applicant is being treated equally.

25. According to respondent Nos.2,3 and 5, the claim of the applicant-bank of Rs.85.29 Crores was admitted by the Resolution Professional, which gave the applicant bank 2.31 voting share in the Committee of Creditors and was never challenged by the applicant, the option no.1 being chosen for the distribution of the resolution amount gives equal treatment to the applicant-bank in relation to its 2.31% voting share with other creditors. Thus, it is a fair and equitable distribution and the applicant-bank cannot be allowed to go beyond its own voluntarily filed claim as on CIRP commencement date and to trace back to post CDR voting share to claim 7.419% share. It is thus, prayed that the present application may be dismissed with heavy costs on the applicant as if the application is allowed, it would open flood gate resulting more liquidations rather than insolvency resolutions and maximization of value of assets of the corporate debtor.

26. Central Bank of India, Respondent No.6 also filed its reply, wherein it has toed the line of reply filed by respondent No.1, 3 and 5 and stated that the application is wholly frivolous, misconceived, groundless, and not maintainable. The averments made in the application are having no legal veracity or foundation as per the Code and the same has been filed without any justified reason and cause against respondent No.6, hence, the same is liable to be dismissed.

27. It is further stated that respondent No.6 being one of the most prominent public sector banks and being member of the Committee of Creditors in the ongoing CIRP of the corporate debtor had always acted showed constructive participation in the meetings of the Committee of Creditors and within the ambit of the Code. Thus, it is prayed that the instant application filed by the applicant-bank may kindly be dismissed with heavy costs.

28. During the course of the arguments, it is contended by learned counsel for the applicant that it is a financial creditor and member of the Committee of Creditors of the corporate debtor. The applicant has initially sanctioned working capital limit of Rs.20 Crores and Term Loan facility of Rs.45.00 Crores to the corporate debtor to part finance its project. In terms of the sanction letter, the bank has pari-passu first charge on the entire fixed assets of the corporate debtor with other term lenders. Accordingly, the share of the applicant was 27.58% i.e. Rs.45.00 Crores Term Loan Limits out of total term loan exposure of Rs.163.16 Crores. It is alleged that as per the credit limit sanctioned to the corporate debtor, the exposure of the applicant bank was Rs.29.15 Crores, which constituted 7.419% of the total term loan limits. Out of the total outstanding Term Loan of Rs.392.91 Crores, an amount of Rs.351.03 Crores was restructured and thus, the applicant-bank had a term loan limit exposure was reduced from 7.42% to 2.15% as per the facility agreement executed on 29.12.2014. Under the restructuring of the loan, the lenders had executed a MRA on 29.12.2014 in order to implement the restructuring proposal.

29. It is further alleged that the promoters of the corporate debtor failed to fulfill the conditions of the MRA, as a result of the same, all the lender banks in their JLM dated 29.08.2016, decided to exit from CDR mechanism of the corporate debtor.

Further, the CDR cell vide its letter dated 30.09.2016 also approved the exit of the corporate debtor from CDR mechanism on account of non-compliance of CDR conditions. It is averred by learned counsel for the applicant that in the 20th meeting of the Committee of Creditors held on 16.01.2021, in agenda item 20.04, the applicant-bank raised an objection regarding the manner of distribution of assets under Section 53 of the Code and suggested that distribution should be done as per the security interest "prior" to CDR implementation and not as per voting share of the claimed amount. However, the request of the applicant-bank was not considered by the other Committee of Creditors members.

30. It is argued by learned counsel for the applicant that the applicant-bank further raised its objection through e-mail dated 10.01.2021 in relation to the manner of distribution of the resolution plan amount and thus, voted for option 3. However, the objection of the applicant, being a minority member of the Committee of Creditors, holding only 2.31% voting share was cast aside by the other financial creditors, who voted for option 1. Therefore, applicant voted against the resolution plan. In the present case, the total liquidation amount available is Rs.232.60 Crores out of this the applicant-bank is entitled to receive Rs.17.26 Crores in terms of Option 3 and Section 53 of the Code.

31. In support of his arguments, the learned counsel for the applicant has placed reliance on a decision dated 05.01.2022 passed by the Hon'ble National Company Law Appellate Tribunal, in Company Appeal (AT) (Ins). No.503 of 2021; Bank ***of Maharashtra versus Videocon Industries Ltd. and Ors***, wherein it is held as under:-

"***Para 30****: … The CoC, majority of which are public sector banks and financial institutions dealing with money is acting as the custodian of public trust and discharging statutory role.*

…. We agree that the CoC, if it has power to approve the plan, has also power to reconsider and review its own decisions on Resolution Plan. Power to approve, no doubt, carries with it power to reconsider.

Para 45:

…… The CoC is not functus-officio on the approval of the Resolution plan and accordingly, the judicial precedents clearly established that the Adjudicating Authority and this Tribunal is competent to send back the Resolution plan to the CoC for reconsideration."

Hence, it is prayed by learned counsel for the applicant that respondent No.1 be directed to distribute an amount of Rs.17.26 Crores under the resolution plan to the applicant as per option 3, i.e. if CDR was never implemented and in accordance with the provisions of Section 53 of the Code.

32. It is argued by learned counsel for respondent No.1 that Resolution Professional is only required to examine the resolution plan with respect to compliance under Section 30(2) of the Code and upon such compliance, the Resolution Professional is only required to place the resolution plan for voting under Section 30(4) of the Code. In support of his contentions, learned counsel for the respondent No.1/Resolution Professional has placed reliance on judgment passed by the Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India versus Satish Kumar Gupta and Others; (2020) 8 SCC 531***, wherein it is held that:-

"6.Section 30(4) of the I&B Code provides that the Committee of Creditors may approve a Resolution Plan by a vote which shall not be less than 66% of voting share of Financial Creditors. Such approval is to be done after considering the feasibility and viability of the Resolution Plan, the manner of distribution proposed therein heaving regard to the order of priority amongst the creditors in terms of the waterfall mechanism laid down in Section 53 of the I&B Code including the priority and value of security interest of Secured Creditor besides

other requirements specified by IBBI. On a plain reading of this provision it is manifestly clear that the considerations regarding feasibility and viability of the Resolution Plan, distribution proposed with reference to the order of priority amongst creditors as per statutory distribution mechanism including priority and value of security interest of Secured Creditor are matters which fall within the exclusive domain of Committee of Creditors for consideration. These considerations must be present to the mind of the Committee of Creditors while taking a decision in regard to approval of a Resolution Plan with vote share of requisite majority. As regards amendment introduced in Section 30(4), be it seen that the amendment that if, introduced vide Section 6 (b) of Amending Act of 2019 vests discretion in the Committee of Creditors to take into account the value of security interest of a Secured Creditor in approving of a Resolution Plan. It's a guideline rind not imperative in terms, which may be taken into account by the Committee of creditors in arriving at a decision as regards approval or rejection of a Resolution Plan, such decision being essentially a business decision based on commercial wisdom of the Committee of Creditors.

It abundantly clear that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors. Such considerations, being relevant only for purposes for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61(3) of I&B Code. While it is true that prior to amendment of Section 30(4) the Committee of Creditors was not required to consider the value of security interest obtaining in favour of a Secured Creditor while arriving at a decision in regard to feasibility and viability of a Resolution Plan, legislature brought in the amendment to amplify the scope of considerations which may be taken into consideration by the Committee of Creditors while exercising their commercial wisdom in taking the business decision to approve or reject the Resolution Plan. Such consideration is only aimed at arming the Committee of Creditors with more teeth so as to take an informed decision in regard to viability and feasibility of a Resolution Plan, fairness of distribution amongst similarly situated creditors being the bottomline. However, such business decision taken in exercise of commercial wisdom of Committee of creditors would not warrant judicial intervention unless creditors belonging to a class being similarly situated are not given a fair and equitable treatment.

33. Further, reliance has been placed upon a judgment dated 13.05.2021 passed by the Hon'ble Supreme Court in the matter of ***India Resurgence Arc. Pvt. Ltd. versus M/s Amit Metaliks Ltd. & Another; Civil Appeal No.1700 of 2021***, wherein it is held as under:-

11. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.

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

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

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

Thus, Section 30(4) requires the Committee of Creditors whilst approving a resolution plan to take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor.

34. Learned counsel for the respondent No.1/Resolution Professional further contends that it is settled law 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 based on a 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 or before this Hon'ble Appellate Authority.

It is thus, prayed that in view of the aforementioned facts and circumstances, the present application filed by the Applicant be dismissed.

35. Mr. Arpit Chawla, learned counsel appearing for respondent Nos.2, 3, 5 and 6 submits that respondent No.2, 3, 5 & 6 based on their commercial wisdom and after examining all the salient features of the resolution plan decided to go with option no. 1 i.e. Distribution of resolution plan as per the claim submitted. It is mentioned that voting agenda item 21.04 placed in 21st meeting of the Committee of Creditors regarding the approval of resolution plan submitted by M/s UPL Limited (having option 1 as basis i.e. distribution of plan amount as per claims admitted) was passed by a voting percentage of 97.61%. As the essential minimum voting threshold as per Section 30(4) of IBC, 2016 being –"*the Committee of creditors may approve a resolution plan by vote of note less that sixty-six (66) percent, of voting*

share of financial creditors" was attained, thus, there was no illegality of any kind committed as being contended by the applicant.

36. In support of his submissions, learned counsel for respondent Nos.2, 3, 5 and 6, has also placed reliance on a judgment dated 13.05.2021 passed by the Hon'ble Supreme Court in the matter of ***India Resurgence Arc. Pvt. Ltd. versus M/s Amit Metaliks Ltd. & Another; Civil Appeal No.1700 of 2021***, wherein it is held as under:-

> *6.1 xxxx*
>
> *7. It abundantly clear that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors. Such considerations, being relevant only for purposes for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61 (3) of I&B Code.*
>
> *xxxx*
>
> *However, such business decision taken in exercise of commercial wisdom of Committee of creditors would not warrant judicial intervention unless creditors belonging to a class being similarly situated are not given a fair and equitable treatment.*
>
> *xxxx*
>
> *10. As regards the process of consideration and approval of resolution plan, it is now beyond a shadow of doubt that the matter is essentially that of the commercial wisdom of Committee of Creditors and the scope of judicial review remains limited within the four-corners of Section 30(2) of the Code for the Adjudicating Authority.*
>
> *xxxx*
>
> *16. It needs hardly any emphasis that if the propositions suggested on behalf of the appellant were to be accepted, the result would be that rather than insolvency resolution and maximization of the value of assets of the corporate debtor, the processes would lead to more liquidations, with every secured financial creditor opting to stand on dissent. Such a result would be defeating the very purpose envisaged by the Code; and cannot be countenanced. xxxx"*

Thus, it is prayed that the application filed by the applicant be dismissed.

37. On behalf of respondent No.6, it is argued by Mr. Arpit Chawla, learned counsel that the present application is wholly frivolous, misconceived, groundless and not maintainable and the averments made in the same are having no legal veracity or foundation as per the Code and the same has been filed without anu justified reason/cause against the respondent No.6, hence the same is liable to be dismissed. It is a settled proposition of law that a person, whose case is based entirely on misconstrued facts, has no right to approach the court or tribunal. It is contended on behalf of respondent No.6 that it being one of the most prominent public sector banks and being a member of the Committee of Creditors in the on-going CIRP of the corporate debtor has always acted within the ambit of the Code. Further, respondent No.6 had always showed constructive participation in the meetings of the Committee of Creditors convened by the IRP/RP and had always strived to take all decisions based on best of their commercial wisdom after due deliberation and detailed discussions, being custodian of the public money. Thus, prayer for dismissal of the application with heavy costs has been prayed for, as if the application is allowed it would open flood gate resulting into more liquidations rather than insolvency resolutions and maximizations of value of assets of the corporate debtor.

38. We have heard learned counsel for the parties and perused the paper book.

39. After hearing both the parties and after careful perusal of the law cited before us, we are of the considered view that the contentions raised by learned counsel for the applicant are not much convincing, thus, not tenable. At the outset, learned counsel for the applicant has raised twofold arguments. Firstly; that Resolution Professional/respondent No.1 be directed to distribute an amount of Rs.17.26

Crores under the resolution plan to the applicant as per option No.3 i.e. if CDR was never implemented instead of amount given in the resolution plan and secondly, the distribution should be done as per Section 30(2)(b) based upon security interest under Section 53 of the Code prior to CDR implementation and not as per voting share of the claimed amount.

40. Both these contentions of learned counsel for the applicant are not tenable because the distribution of the amount was made by the Committee of Creditors resting on total dues of voting share of individual creditors which is neither whimsical nor arbitrary in any manner. Although the applicant gave a dissenting vote for approval of the Plan, based on the reason that distribution of resolution fund was discriminatory against it and despite the plea that it was entitled to the equal share in regard to the distribution of the resolution fund on the value of the assets of the corporate debtor as security. However, the committee of creditors, deciding to go with option no.1 i.e. distribution of plan amount as per claims admitted, has approved the resolution plan by 97.61% votes.

41. In the circumstances, the issue which require adjudication before this Bench is as to *whether the plan is in violation of Section 30(2)(b) of the Code for not providing the liquidation value to the dissenting financial creditors?*

42. In support of his arguments, learned counsel for the applicant while placing reliance upon judgment in the matter of *Bank of Maharashtra versus Videocon Industries Ltd. and Ors (supra)* submitted that the resolution plan be sent back to the Committee of Creditors for reconsideration. However, the said authority relied upon by the learned counsel for the applicant is not applicable to the facts and circumstances of the case as well as in view of the judgment passed by the Hon'ble

Supreme Court in the matter of *Committee of Creditors of Essar Steel India versus Satish Kumar Gupta and Others (supra).*

43. Moreover, we have also come across a decision dated 03.01.2022 passed by the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, on the same issue in the matter of ***Company Appeal (AT) (Insolvency) No.1117 of 2019; Canara Bank versus Mamta Binani, Resolution Professional of Aristo Texcon & Others***, wherein it is held as under:-

> *"44. Although, the Appellant/Canara Bank gave a dissenting Vote for the approval of the Plan, based on the reason that 'Distribution of Resolution Fund' was discriminatory as against them and despite its plea that it was entitled to the equal and share in regard to the distribution of the Resolution Fund on the footing that the Bank held more than 80% of the assets of the 'Corporate Debtor' as security, the fact of the matter is that the 'Committee of Creditors' had approved the Resolution Plan of Jagannath Financial Advisory Pvt. Ltd. by 75.70% of votes.*
>
> *45. It cannot be gainsaid that the 'Resolution Fund' was equally distributed among all the 'Financial Creditors' showing them equal share i.e., 23.43% and that the 1st Respondent/Resolution Professional had certified the plan and the compliance certificate was furnished. There is no illegality in the Resolution Plan as opined by this Tribunal, it comes to be known that the Successful Resolution Applicant/Respondent No. 4 had implemented the Resolution Plan in part and made part payments quite in tune with the 'Approved Resolution Plan'.*
>
> *46. Besides the above, at this juncture, this 'Tribunal' aptly points out the decision of Hon'ble Supreme Court in India Resurgence ARC Pvt. Ltd. V. Amit Metaliks & Anr. wherein a paragraph 21 it is mentioned as under:*
>
>> *"21. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further exposited in the decisions aforesaid. It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bringing about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors."*

Therefore, on the basis of *doctrine of precedents*, we follow the law laid down in *Mamta Binani's case (supra)* instead of *Videocon Industries case (supra)* relied upon by the learned counsel for the applicant, as *Mamta Binani's case (supra)* is a three Member Bench judgment passed by the Hon'ble NCLAT, as against *Videocon*

Industries case (supra), which is two Member Bench judgment, passed by the Hon'ble NCLAT. Apart, it is held in *Committee of Creditors of Essar Steel India versus Satish Kumar Gupta and Others (supra)* that *since it is the commercial wisdom of the Committee of Creditors that is to decide on whether or not to rehabilitate the corporate debtor by means of acceptance of a particular resolution plan, the provisions of the Code and the Regulations outline in detail the importance of setting up of such Committee, and leaving decisions to be made by the requisite majority of the members of the aforesaid Committee in its discretion.*

44. If at all the commercial wisdom of the Committee of Creditors is challenged and if a secured creditor is allowed his share basing upon the value of security interest then it would lead to ***'unjust enrichment'*** of such secured creditors, disadvantageous to the interest of other secured creditors i.e. the same class of creditors who require just and equal treatment.

45. In the circumstances if the present application is allowed then it would open flood gate resulting into more liquidations rather than insolvency resolutions and maximization of value of assets of the corporate debtor, which is not otherwise the objective of the Code. Thus, we do not find any illegality or violation of any law including the provisions of Section 30(2)(b) of the Code while approving the resolution plan by the Committee of Creditors with voting share of 97.61%. Consequently, for the reasons recorded hereinbefore, we do not find any merit in the application and the same stands dismissed.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

March 17th, 2022
MK

IA No.333 of 2021
In
CP(IB) No.277/Chd/Pb/2018
(Admitted)