

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No. 04/2023

in

CP(IB) No. 184/7/HDB/2019
(u/s. 60(5) of IB Code, 2016)

In the matter of:

Devi Trading & Holding Pvt. Ltd.,
Registered Office at
8, Camac Street Shantiniketan Building,
8th Floor, Suit No. 807, Kolkata,
West Bengal – 700 017

...Applicant

Vs.

1. Mr. Ravi Sankar Devarakonda
(Reg. No. IBBI/IPA-001/IP-P00095/2017-18/10195
Resolution Professional of Meenakshi Energy Ltd.,
The Skyview 10, 18th Floor, Zone – a,
Survey no. 83/1, Raidurgam,
Hyderabad – 500 008

And others

... Respondents (15 in No.)

Date of order: 10/08/2023

CORAM:

Justice Mrs. Telaprolu Rajani, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical).

Counsels present:

For the Applicants : Mr. Tarun G. Reddy

For the Respondent : Mr. T. G. Rajesh for R-1

[PER: BENCH]

ORDER

1. The present application is being filed by the Applicant under section 60(5) of the IB Code, 2016 challenging the Resolution Plan approved by the Committee of Creditors of the Corporate Debtor, M/s Meenakshi Energy Ltd. and pending for approval of the Hon'ble Adjudicating Authority vide I.A. No. 156 of 2023.

2. The facts in brief, as mentioned in this Application, are as under:

i) Originally vide orders dated 07.11.2019, M/s. Meenakshi Energy Ltd. (Corporate Debtor) was admitted into CIRP on the strength of an application filed by State Bank of India under Section 7 of the IBC, 2016 and Mr. Ravi Sankar Devarakonda was appointed as the Interim Resolution Professional (IRP). A copy of the order is enclosed at page 147 to the application.

ii) Thereafter on 29.11.2019, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor, and the Applicant herein was inducted as a member of the CoC, and the claim put forth by the Applicant for Rs. 159.56 Crores was admitted in full. The Applicant herein is an unsecured financial creditor and is a minority member of the CoC of the Corporate Debtor having a voting share of 4.29% in the CoC.

iii) Pursuant to the constitution of the CoC of the Corporate Debtor, Mr. Ravi Sankar Devarakonda (IRP) was confirmed and appointed as the Resolution Professional (RP) of the Corporate Debtor on 05.12.2019.

iv) Pursuant to the appointment of the RP, a resolution plan was submitted by the consortium of Prudent ARC Ltd and M/s. Vizag Minerals and Logistics Pvt. Ltd. (PAL-VMLL) and the same was rejected by the CoC in its 34th meeting held on 11.07.2022.

v) Thereafter an application was filed by the RP, seeking extension of time for completion of the CIRP process and the NCLT by orders dated 25.07.2022 extended the time for completion of the CIRP by 60 days and permitted a fresh round of bidding to be conducted. A copy of the order is enclosed to the application at page No. **178**. Pursuant to the same, three resolution plans were received ie. from Vedanta Ltd., Jindal Power Ltd., and the consortium of PAL-VMLL.

vi) The said resolution plans were voted upon by the CoC between 06.01.2023 to 17.01.2023, during which the resolution plan submitted by Vedanta Ltd., was approved by the CoC with a majority vote of 92.61%. The Applicant herein voted against the said resolution plan as the same was considered by him as not feasible and viable and did not adequately balance the interests of all the stakeholders.

vii) Thereafter, on 22.01.2023, the RP filed I.A. No. 156/2023 seeking approval of the NCLT in respect to the Resolution Plan of Vedanta Ltd., which was approved by the CoC. The resolution plan circulated for voting (**@Pg. 181**) and the resolution plan filed for approval (**@Pg. 34**) are different and the resolution plan filed for approval was never voted upon by the CoC.

viii) Challenging the above resolution plan, the present application is filed under Section 60(5) of the IBC, 2016

3. CONTENTIONS OF THE APPLICANT

A. The Resolution Plan placed before the Hon'ble Tribunal for its approval is different from the Resolution Plan that was voted upon by the CoC.

- Originally, a resolution plan dated 28.10.2022 (**@Pg.181**) was submitted by Vedanta Ltd., to the CoC for its consideration. Thereafter, the said resolution plan dated 28.10.2022 was amended from time to time vide

various letters, emails and clarifications issued by Vedanta Ltd., till 05.01.2023.

- Thereafter the resolution plans submitted by Vedanta Ltd., Jindal Power Ltd., and the consortium of PAL-VMML were circulated to the CoC by the RP vide his email dated 06.01.2023 (**@Pg.179**) for the purpose of voting, which commenced on 06.01.2023 and concluded on 17.01.2023.
- Pertinently, vide his email dated 06.01.2023, the RP had only circulated the resolution plan dated 28.10.2022 submitted by Vedanta Ltd., and none of the letters, emails or clarifications issued by Vedanta Ltd., pursuant to its resolution plan dated 28.10.2022 were circulated by the RP to the CoC for the purpose of voting.
- However, despite the fact that the said amendments were never voted upon by the CoC during the voting that took place between 06.01.2023 to 17.01.2023, the RP filed a resolution plan dated 05.01.2023 (**@Pg. 34**) before the NLCT, seeking approval of the NLCT under Section 30(6) of IBC, 2016.
- At Para 13 of the Reply filed by the RP it is stated that “ *Vedanta on August 29, 2022 had submitted its resolution plan which was amended on October 28, 2022. Thereafter, Vedanta in its letter dated December 26, 2022 had stated that in case it is declared as successful resolution applicant, it would be submitting a consolidated plan which shall be filed with this Hon’ble Tribunal for approval.*” The RP has neither placed on record the letter dated 26.12.2022, nor such letter has been disclosed by the RP in I.A. No. 156/2023 under Section 30 (6) and Section 31 of the IBC read with Regulation 39 (4) of the CIRP Regulations for placing the Resolution Plan approved by COC before this Tribunal. Even otherwise, there is no provision under the IBC or the Regulations thereunder which allows a Prospective Resolution Applicant to submit a ‘consolidated Resolution Plan’ after it is declared as successful Resolution Applicant. IBC nowhere provides for submission of separate Resolution Plans to the CoC and to the Adjudicating Authority. The contents of para 13 of the Reply filed by RP show that the Resolution Plan which was considered and approved by the CoC has not been submitted by the Respondent RP to this Adjudicating Authority along with I.A. No. 156/2023 and rather a different version of the Resolution Plan, which was not before the CoC, has been submitted before this Adjudicating Authority. This is in complete contravention of the duty of the RP under Section 30 (6) of the IBC which provides that “ *The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.*”. Further, Section 31 of the IBC provides that the Adjudicating Authority has to

consider the Resolution Plan “as approved by the committee of creditors”. Regulation 39 (4) of the CIRP Regulations mandates that “ *the resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before*”. Thus, it is clear that the Resolution Plan submitted before this Adjudicating Authority is not the Resolution Plan “ as approved by the committee of creditors”. It is further shocking to note that the Vedanta’s Resolution Plan circulated by the Resolution Professional vide email dated 06.01.2023 (**@Pg. 181**) for the purpose of voting by the CoC is materially different from the Resolution Plan submitted before this Adjudicating Authority (**@Pg. 34**). Pertinently, the Respondent RP has not placed on record the email dated 06.01.2023 along with the Resolution Plan circulated to the CoC along with I.A. No. 156/2023. It is clear from a comparative reading of the both the Resolution Plans i.e. the Resolution Plan submitted before this Hon’ble Adjudicating Authority and the Resolution Plan circulated to the CoC for voting, that some of the contents of the Resolution Plan (**@Pg. 181**) have been modified after approval by the CoC and before submitting the Resolution Plan before this Adjudicating Authority (**@Pg. 34**). Even the placing of the stamp of Vedanta Limited on each of the pages of the Resolution Plans is different. Further, the EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) figures reflected in the Resolution Plan (internal page 107 of the Resolution Plan) (**@Pg. 181**) circulated to the CoC are materially different from the EBITDA figures reflected in the Resolution Plan (internal page 110 of the Resolution Plan) (**@Pg. 34**) submitted before this Adjudicating Authority. The figures given in the Resolution Plan (internal page 110 of the Resolution Plan) (**@Pg. 34**) submitted before this Adjudicating Authority are materially higher than the figures indicated in the Resolution Plan (internal page 107 of the Resolution Plan) (**@Pg. 181**) circulated to the CoC for voting. The Respondent Resolution professional has thus acted malafidely and in contravention of the IBC by receiving from the successful Resolution Applicant a ‘consolidated Resolution Plan’ which was not placed before the CoC during voting on the Resolution Plan. Further, the Respondent Resolution Professional has failed to explain as to why such ‘consolidated Resolution Plan’ could not be placed before the CoC before the voting.

- The Resolution Plan placed before this Adjudicating Authority vide I.A. No. 156/2023 does not even disclose that the changes have been made in the EBITDA figures after the approval of the Resolution Plan by CoC and the same has been disclosed by the Resolution Professional only after being pointed out by the Applicant herein. Change in the EBITDA figures by Vedanta Ltd. in the Resolution Plan to be submitted before this Hon’ble Adjudicating Authority shows that Vedanta Ltd. had misrepresented the EBITDA figures or its corporate profitability and

performance before the CoC for the purpose of seeking approval by the CoC. No reason has been disclosed as to why such 'consolidated Resolution Plan' with the changed EBITDA figures could not be submitted by Vedanta Ltd. to the CoC before the voting on the Resolution Plan. Further, it needs to be noted that the Respondent Resolution Professional has not disclosed in I.A. No. 156/2023, the facts with respect to 'consolidated Resolution Plan' and the modifications made therein by Vedanta Ltd. after the voting and approval by CoC.

- Further, the Resolution plan dated 05.01.2023 reads that the same is a compendium that is prepared pursuant to the Resolution plan dated 28.10.2022 along with the amendments and that the same is for the purpose of ease of reference. @Pg. 34
- It is pertinent to note that such a compendium was never circulated to the CoC for voting which took place between 06.01.2023 to 17.01.2023 and what was circulated to the CoC was only the Resolution Plan dated 28.10.2022 submitted by Vedanta Ltd., and as such the same cannot be approved by the NCLT inasmuch as the same is wholly impermissible under Section 30(6) of the IBC, 2016.
- It is further pertinent to note that as per Section 30(6) of the IBC, 2016, a duty is cast upon the RP to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority for its approval. That being the case, the Resolution Plan dated 05.01.2023 which was never voted upon by the CoC is liable to be rejected by this Hon'ble Tribunal.
- Notwithstanding all of the above, there is significant change in the financial layout in the Resolution plan dated 05.01.2023 (@Pg.143) when compared to the financial layout in the original Resolution plan dated 28.10.2022 (@Pg. 286) and such a change in the resolution plan was never voted upon by the CoC.
- In this regard, the Hon'ble Supreme Court of India in **M.K. Rajagopalan v. Dr. Periasamy Palani Gounder and Anr. 2023 SCC OnLine SC 574 @ Para 188-195** has categorically held and observed that the requirements of CIRP Regulations, particularly that of placing the resolution plan in its final form before the CoC before submitting it to the adjudicating authority for its approval, has to be scrupulously complied with and further observed that even a minor modification/revision which was not finally approved by the CoC cannot be disregarded as a mere formality and not placing such a resolution plan before the adjudicating authority for its approval amounts to material irregularity which cannot be cured.

- In the instant case, the Resolution plan dated 05.01.2023 which is styled as compendium of the resolution plan dated 28.10.2022, along with its amendments, was never voted upon by the CoC and as such the same cannot be approved by this Tribunal and the same is liable to be rejected.
- It is the contention of the Respondent RP that “*the increase in EBITDA figures was only due to increase in the value of the resolution plan and for improving its feasibility and viability*”. Such contention is frivolous because the Respondent RP, merely being a facilitator in the CIRP process, has no jurisdiction to consider the feasibility and viability of the Resolution Plan. It is settled law that ‘feasibility and viability’ of a Resolution Plan is a business decision which is under the exclusive domain of the CoC. It is thus submitted that if the RP is allowed to accept amendments to a Resolution Plan approved by the CoC on the ground of increasing feasibility and viability, then the same would mean that CoC’s approval of a Resolution Plan is meaningless.

B. The Resolution Plan of Vedanta Ltd. does not balance the interests of all the stake holders.

- It is trite law that the object of IBC mandates the Resolution of the Corporate Debtor in a time bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the “interests of all the stakeholders”. That the Preamble of the IBC states as follows:

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

(emphasis supplied)

- Hon’ble Supreme Court of India in . **Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222** has categorically held that the legislative intent of the IBC is “ *to bring about resolution*

and revival of the corporate debtors so as to benefit not only the corporate debtor but also other stakeholders in equal measure.

- As per the clause 3.5.5 of the Resolution plan (@Pg. 61) the CoC has been empowered to decide the distribution mechanism for the financial package offered by Vedanta Ltd.
- As per the distribution mechanism proposed by the CoC in relation to the Resolution Plan submitted by Vedanta Limited, nothing has to be paid to the Unsecured Financial Creditors and the same fails to balance the interest of all stakeholders inasmuch the Applicant herein being an Unsecured Financial creditor whose claim of Rs. 159.56 Crores despite being admitted in full is being paid 'nil' out of the financial package offered by Vedanta Ltd.
- Further, the CoC has failed to record any reasons as to how such 'nil' apportionment of funds to Unsecured Financial Creditors balances the interest of the stakeholders and such an action undertaken by the CoC is contrary to the very spirit of the Insolvency and Bankruptcy Code, 2016 which has been enacted with the objective of balancing the interests of all the stake holders.
- That when there is nothing to be paid to Unsecured Financial Creditors, the CoC ought to have acknowledged such 'nil' apportionment and ought to have recorded its reasons as to how such 'nil' apportionment of funds to Unsecured Financial Creditors is feasible and viable.
- That if the 'nil' payment to the unsecured Financial Creditors as approved by the majority of the COC is upheld then the same may discourage the unsecured Financial Creditors from lending money to any Corporation.
- The action of the CoC in not recording any such reasons reeks of arbitrariness and is an action that is in gross violation of the law laid down by the Hon'ble Supreme Court of India in ***Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta ((2020) 8 SCC 531)*** @Para 72-74 and the law laid down by the Hon'ble NCLAT in ***Hammond Power v Mr. Sanjit Kumar Nayak 2020 SCC OnLine NCLTAT 199*** @Para 15-16 and ***Padmanabhan Venkatesh v. Shri V. Venkatachalam & Ors., Company Appeal (AT) (Insolvency) No. 128/2019 @ Para 40, 41.*** In view of the same, the resolution plan approved by the CoC is liable to be rejected.

C. The CoC has failed to exercise its commercial wisdom and has approved the waterfall mechanism envisaged under Section 53(1) of the IBC, 2016 for distribution of funds.

- As per the resolution plan submitted by Vedanta Ltd., the CoC has been empowered to decide on the distribution mechanism for the financial package offered by Vedanta Ltd., and the CoC without any deliberation has chosen to follow the waterfall mechanism envisaged under Section 53(1) of the IBC, 2016 for distribution of funds resulting in ‘nil’ apportionment of funds to the Applicant under the resolution plan submitted by Vedanta Ltd.
- During the 41st Meeting of the CoC held on 22.11.2022 (**@Pg. 29 of RP’s Counter**), the RP had informed the CoC that it was open to the CoC to decide on the distribution methodology either on the basis of the ratio of admitted claims or as per Section 53 of the IBC, 2016.
- That despite there being an option for distribution of funds on the basis of the ratio of admitted claims, the CoC, without any deliberation and without taking into consideration the interest of all the stakeholders, has decided to distribute the funds as per the waterfall mechanism envisaged under Section 53 of the IBC, 2016 resulting in ‘nil’ apportionment of funds to the Unsecured Financial Creditors. Such an action undertaken by the CoC cannot be said to be in the commercial wisdom of the CoC.
- It is further pertinent to note that Section 53 of IBC, 2016 is not a mandatory requirement and the same is only a guiding principle. The CoC, instead of strictly following the waterfall mechanism, ought to have exercised its commercial wisdom to decide on a different methodology for distribution of funds, in order to balance the interests of all the stakeholders, including the Applicant herein.
- A reading of Section 30 (4) of the IBC makes it clear that the word “may” provides flexibility to the COC to adopt or not adopt the order of priority envisaged under Section 53 (1) of the IBC. In this regard the decision of the Hon’ble Supreme Court of India in ***Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta ((2020) 8 SCC 531) @ Para 128 to 145*** may be referred to.
- Further the contention of the RP that the Minutes of the 41st Meeting of the CoC held on 22.11.2022 show that the CoC has chosen to follow Section 53 of IBC, 2016 for distribution of funds after discussion and deliberation is wholly misplaced in as much as the use of words “deliberated and decided” cannot be considered to be due deliberation

and such discussion and deliberation must reflect in the minutes of the CoC, which is wholly absent in the instant case. In view of the same, the resolution plan approved by the CoC is liable to be rejected. Even though, minutes of the 41st CoC meeting dated 22.11.2022 show that the CoC had decided to put to vote the basis for distribution, however, none of the minutes of the CoC meetings show that the CoC had deliberated and discussed upon the various distribution mechanisms. In a nutshell, there is nothing on record to suggest that the CoC ever deliberated and discussed upon the feasibility and viability of the Resolution Plan submitted by Vedanta Ltd. vis a vis the proposed distribution mechanism and how it is in the interest of 'all stakeholders'.

- Thus, instead of strictly adopting the manner of distribution of funds envisaged under Section 53 (1) of the IBC, the COC had the discretion to decide upon a different manner of distribution of funds which would have balanced the interests of all stakeholders, including the Unsecured Financial Creditors and would have ensured better feasibility and viability.

D. The contention of the RP that the Applicant and the consortium of PAL-VMML are in collusion is wholly misconceived.

- It was contended by the RP that the Applicant herein and the consortium of PAL-VMML are in collusion with each other because the Resolution Plan proposed by Vedanta envisages 'nil' payment to Applicant whereas the Resolution Plan proposed by PAL-VMML envisages payment of 95% of the admitted claim of the Applicant.
- The said contention is wholly misplaced in as much as the instant application has been filed challenging the resolution plan approved by the CoC which does not balance the interest of all the stake holders. It is pertinent to note that the Applicant herein is not advocating the benefits of another resolution plan over the plan submitted by Vedanta Ltd., but is rather pointing out the illegalities and flaws in the plan submitted by Vedanta Ltd., which was approved by the CoC in a manner contrary to the very spirit of the IBC 2016 and to the detriment of the Applicant herein who is a minority member of the CoC for the benefit of the Secured Financial Creditors who constitute majority members of the CoC.
- Therefore, the contention of the RP that the Applicant and the consortium of PAL-VMML are in collusion is wholly false and misconceived.

4. In view of the above submissions, the applicant prays this Tribunal to allow the present application and dismiss I.A. No. 156 of 2023 and pass any such other order or orders that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

5. The Respondent No. 1 has filed reply affidavit, wherein it is contended as under:

A) The Application has been filed with an ulterior motive and malafide intent to delay the CIRP of the Corporate Debtor:

i) The Applicant has filed the present Application with an intent to delay the CIRP process of the Corporate Debtor by trying to create prejudice against Respondent No. 1, the members of the CoC who have been made respondents and the successful resolution applicant.

ii) During the approval of resolution plan between January 6, 2023 to January 17, 2023, Vedanta's resolution plan was approved by a whopping majority of the CoC in its commercial wisdom. However, the Applicant being the dissenting financial creditor rejected Vedanta's resolution plan by 4,22%.The Applicant by way of the present Application is causing prejudice and harm to the other creditors of the Corporate Debtor and is going against the ethos of the Code which is the successful resolution of the Corporate Debtor. The fact that the Applicant is attempting to hamper the approval of the resolution plan submitted by Vedanta and the successful CIRP of the Corporate Debtor is evident from the fact that the Applicant did not raise any objection either to distribution mechanism or to the distribution sheet circulated vide email dated January 10, 2023. Hence, the present Application ought to be dismissed at the very threshold.

B) The Resolution Professional has acted as per the Code:

i) As regards the Applicant's contention that Respondent No. 1 has not acted as per the Code by failing to circulate the consolidated version of Vedanta's resolution plan it is submitted as under:

ii) Vedanta, on August 29, 2022 had submitted its resolution plan which was amended on October 28, 2022. Thereafter, Vedanta had also submitted a letter dated December 26, 2022. Vedanta, in its letter dated December 26, 2022 had stated that in case it is declared as successful resolution applicant, it would be submitting a consolidated plan which shall be filed with this Tribunal for its approval. Further, the commercial value of the amended resolution plan dated October 28, 2022 increased, based on the inter-se challenge process run on January 4, 2023.

iii) Vedanta submitted the consolidated version of its resolution plan, which included its resolution plan submitted on October 28, 2022 along with all amendments/letters/email clarifications till January 5, 2023 including the outcome of inter-se Challenge Process held on January 4, 2023. The first page of the consolidated version of Vedanta's resolution plan dated January 5, 2023 (at Page No. 34, Annexure-I of the Application) states that it is a compendium prepared pursuant to Resolution Plan submitted on October 28, 2022 along with all amendments/letters/email clarifications till January 5, 2023 including the outcome of inter-se Challenge Process held on January 4, 2023. This is for the case of reference".

iv) Hence, it is evident that the consolidated version of Vedanta's resolution plan dated January 5, 2023 is prepared for the purpose of ease of reference of this Tribunal (given that there are multiple communications from Vedanta i.e. the Successful Resolution Applicant to the Resolution Professional in the form of offer letter, emails, and outcome of inter se challenge process). Vedanta has therefore submitted the consolidated version of its resolution plan only for the sake of convenience and ease of implementation should it get approved. Since it was a mere consolidation of the resolution plan dated October 28, 2022 along with its addendums it did not result in any significant changes in the overall structure of the resolution plan. Further, Respondent No.1, has on January 27, 2023 circulated the same with the CoC, including the Applicant. Additionally, it is

submitted that as per the letter dated December 26, 2022, Vedanta had stated that in case it is declared as successful resolution applicant, it would be submitting a consolidated plan which shall be filed with this Tribunal for its approval. Accordingly, there was no change in the major contours of the plan which was voted upon by the CoC and the structure of the resolution plan as amended from time to time has not been altered in the consolidation. The only change was in the EBITDA figures in the consolidated version of the resolution plan.

v) A pre-fixed bid submission template was shared with all the RAs for participating in the inter-se challenge process. Hence, there was no option to bring out the necessary modifications to support the increased plan value. Therefore, Vedanta's increased EBITDA figures, in order to demonstrate better implementation of the increased plan value, could not be brought out while voting on Vedanta's resolution plan in the inter- se challenge process. It is also to be noted that the unit rate increased to Rs. 3.33 from Rs. 3.15 per unit, which is still below the average prevailing market price, thereby improving the feasibility & viability of the plan. Therefore, it is evident that the increase in EBITDA figures was only due to increase in the value of the resolution plan and for improving its feasibility and viability. It is also submitted that it is evident that the increase in the EBITDA figures benefits the lenders/creditors of the Corporate Debtor and the Applicant in order to delay the CIRP process is attempting to create prejudice with respect to the consolidated version of Vedanta's resolution plan. It is further to be noted that the increase in the EBITDA figures does not impact the distribution and implementation of the resolution plan dated October 28, 2022 submitted by Vedanta.

vi) Vedanta's resolution plan, which has been voted upon by the CoC, has been consolidated into one document for the ease of reference of this Tribunal. Hence, it is incorrect and false to contend that incorrect plan has been filed along with the Plan Approval Application.

vii) Hence, the contention of the Applicant that Respondent No. 1 has not acted in accordance with the Code and has changed the resolution plan as submitted with the Plan Approval Application is incorrect. Respondent No. 1 has acted in accordance with the Code and only the value of the resolution plan has improved post challenge process. This is reflected in the consolidated version of Vedanta's resolution plan which was submitted before this Tribunal with the Plan Approval Application for ease of reference. Further, Respondent No. 1 has also caused the value maximization of the Corporate Debtor, which is the objective of the Code.

C) Resolution Plan is viable and feasible:

i) The Applicant has alleged that Respondent No. 1 has not provided any minutes showing deliberation on viability and feasibility of the resolution plans by the CoC. Further, there is nothing on record with the Plan Approval Application to show that the CoC approved the consolidated version of Vedanta's resolution plan after due deliberations on the viability and the feasibility of the resolution plans submitted by the RAS.

ii) The Applicant has further alleged that the consolidated version of Vedanta's resolution plan envisages NIL payment to the unsecured Financial Creditors and the CoC has not recorded reasons as to how such NIL apportionment to the unsecured Financial Creditors is 'feasible and viable'. (Page Nos. 22-23, Para No. 22 of the Application)

iii) The Applicant has also stated that as per Regulation 39(3)(b) of the CIRP Regulations the CoC ought to record its deliberations on the feasibility and viability of each of the resolution plan. It is submitted that the CoC in its 41st meeting convened on November 22, 2022 discussed the feasibility and viability of the resolution plans submitted by the RAs. Further, the process advisors in the 40th meeting held on November 4, 2022 had provided a draft report on feasibility and viability of the resolution plans submitted by the RAs. It is also to be noted that in the 41st CoC meeting, the process advisors had presented about the

feasibility and viability of the resolution plans submitted by the RAs. It is to be noted that Mr. Yashraj Agrawalla was present on behalf of the Applicant in both the meetings and did not raise any objections or contentions with respect to the resolution plan dated October 28, 2022 submitted by Vedanta.

CoC in its 41st meeting held on November 22, 2022 noted the following in each of the resolution plans:

- i) Assumptions for plant technical and operational parameters, capex requirements.
 - ii) Timelines to complete FGD for phase – 2, expected commencement timeline for both the phases, economics of power off take and
 - iii) Fuel sourcing along with sources of funding and financial resourcefulness.
- iv) CoC noted that Vedanta has prior experience in operating power plants in similar scale. It is further to be noted that the Applicant during the deliberations on the viability and feasibility of the resolution plans submitted by the RAs did not raise any objections, Hence, the feasibility and viability of the resolution plans submitted by the RAs were discussed and considered by the CoC.
- v) The Applicant is only raising objections as an afterthought and has never raised any objections on resolution plans submitted by the RAs. Further, it is to be noted that the CoC in its commercial wisdom, after taking into consideration of the feasibility and viability of Vedanta's plan, has approved the Resolution Plan by a majority of 94.96%, which only the Applicant has rejected.
- vi) The consolidated version of Vedanta's resolution plan is nothing but a compendium prepared pursuant to Resolution Plan submitted on October 28, 2022 along with all amendments/letters/email clarifications till January 5, 2023 including the outcome of inter-se Challenge Process held on January 4, 2023. Therefore, there is no change in the structure of the consolidated version of Vedanta's resolution plan. It is also to be noted that only the commercial values of Vedanta's resolution plan dated October 28, 2022 had increased after running the inter-se challenge process, hence there was no necessity to once again discuss

and deliberate on viability and feasibility of the consolidated version of Vedanta's resolution plan.

vii) It is to be noted that viability and feasibility of Vedanta's resolution plan was discussed by the CoC in the 41st CoC meeting. Therefore, it is evident that the contention of the Applicant that the Consolidated version of Vedanta's resolution plan is not viable and feasible is misleading and incorrect. Further, it is to be noted that Vedanta's resolution plan was approved by a whopping majority of the CoC in its commercial wisdom and hence the same is not within the judicial review of this Tribunal further. The Consolidated version of Vedanta's resolution plan complies with Section 30(2) of the Code as it provides for:

- i. payment of insolvency resolution process costs in priority;
- ii. payment of debts of operational creditors as per Section 53 of the Code;
- iii. payment of debts dissenting financial creditors as per section 53 of the Code;
- iv. management of affairs of corporate debtor after approval of the resolution plan;
- v. implementation and supervision of the consolidated version of Vedanta's resolution plan.

viii) Further, in view of judicial pronouncements it is evident that the scope of judicial intervention is only allowed on the following grounds:

- i. If the resolution plan is in contravention of the provisions of any law for the time being in force; or
- ii. There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or
- iii. The debts owed to the operational creditors have not been provided for; or

- iv. The insolvency resolution process costs have not been provided for repayment in priority, or
 - v. The CoC has not taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process and that it needs to maximise the value of its assets.
- ix) It is pertinent to note that the CoC discussed on the feasibility and viability of the resolution plans submitted by the RAs. After discussing the feasibility and viability of the resolution plans submitted by the Ras, the CoC noted that as Jindal and Vedanta had prior experience in the industry, their resolution plans were viable and feasible. Hence, post running the inter-se challenge process there was no necessity to discuss the feasibility and viability of Vedanta's resolution plan, given that the consolidated version of Vedanta's resolution plan only included its resolution plan submitted on October 28, 2022 along with all amendments/letters/email clarifications till January 5, 2023 including the outcome of inter-se Challenge Process held on January 4, 2023.
- x) It is also settled law that, 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 the Code, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of challenge.
- xi) It is to be noted that the Applicant has not proved how the Consolidated version of Vedanta's resolution plan is in contravention of Section 30(2) of the Code and is not feasible and viable. This Tribunal, as per the Code and judicial pronouncement, has limited powers to adjudicate on the Consolidated version of Vedanta's resolution plan. It is in the light of the same that the Application should be dismissed at the very threshold.

D) Distribution is the commercial wisdom of the CoC:

- i) The Applicant has contended that the CoC has not acted in accordance with the Code and has alleged the following with respect to the same:
- a. As per the Consolidated version of Vedanta's resolution plan, nothing has been paid to the unsecured Financial Creditors and hence the approved resolution plan does not balance the interest of all the stakeholders. The arbitrary distribution in the Consolidated version of Vedanta's resolution plan and the malafide actions of the majority of the CoC show that the CoC comprising of secured Financial Creditors has collectively misused its discretionary powers to suppress the minority of the CoC comprising of unsecured Financial Creditors. Further, the distribution is as per Section 53 of the Code, despite it not being mandatory. (Page Nos. 20 and 24-26, Para Nos.16, 24 and 26 of the Application)
- ii) The Consolidated version of Vedanta's resolution plan is nothing, but a compendium prepared pursuant to Resolution Plan submitted on October 28, 2022 along with all amendments/letters/email clarifications till January 5, 2023 including the outcome of inter-se Challenge Process held on January 4, 2023. Therefore, there is no change in the structure of the Consolidated version of Vedanta's resolution plan. The Applicant has stated that the distribution is as per Section 53 of the Code, despite it not being mandatory. The Applicant has further stated that as per the Consolidated version of Vedanta's resolution plan, nothing has been paid to the unsecured Financial Creditors and hence the approved resolution plan does not balance the interest of all the stakeholders. The Applicant has also submitted that the Consolidated version of Vedanta's resolution plan envisages NIL payment to the unsecured Financial Creditors and the CoC has not recorded reasons as to how such NIL apportionment to the unsecured Financial Creditors is 'feasible and viable'.
- iii) The Applicant is admittedly an unsecured financial creditor, who, as per the Consolidated version of Vedanta's resolution plan, would not be receiving any proceeds, as the corpus available is not sufficient to pay the secured financial creditors. The Applicant is aware of the same and has only filed the present Application to delay the Plan Approval Application of the Corporate Debtor.

Further, upon a perusal of the Application, it is evident that the Applicant has raised frivolous and baseless allegations against Respondent No. 1 and the CoC.

iv) Vedanta's resolution plan does not mention the distribution mechanism within the class of CoC financial creditors and rather it was the CoC, which in its 41st meeting held on November 22, 2022 discussed and deliberated upon the methodology for distribution. The Applicant, during the deliberation did not raise any contentions or objections to adopting distribution as per Section 53 of the Code. Rather, the CoC put the distribution mechanism to a vote and distribution as per Section 53 of the Code was approved by a majority of 93.43% % of the CoC.

v) Neither the liquidation value nor the aggregate payment proposed to be made under the Consolidated version of Vedanta's resolution plan is sufficient to cover the debt of the Financial Creditors of the Corporate Debtor in full. Accordingly, the liquidation value or amount payable under the Code, to the operational creditors and the statutory creditors is NIL. Payment is as per the waterfall mechanism under Section 53 of the Code. Hence, the same is not in violation of the Code. (Clause 3.6.2 of the Consolidated version of Vedanta's resolution plan, Annexure-1, Page No. 62, Application)

vi) Clause 3.5.2 of the Consolidated version of Vedanta's resolution plan proposed cash payments to the dissenting Financial Creditors. The amount paid to the dissenting Financial Creditors shall be equivalent to the amount payable in accordance with Section 53(1) of the Code during the liquidation of the Corporate Debtor. As per Clause 3.5.5 of the Consolidated version of Vedanta's resolution plan it is stated that the CoC would decide the manner in which the total financial package is to be distributed. (Clause 3.5 of the Consolidated version of Vedanta's resolution plan, Annexure-1, Page Nos, 60-61, Application)

vii) It is also to be noted that the CoC in its commercial wisdom has decided to distribute the amounts received under the Consolidated version of Vedanta's resolution plan as per Section 53 of the Code and this is the prerogative of the

CoC. Hence, the CoC has neither acted with any malafide intent nor violated the provisions of the Code. (Clause 1.4 of the Consolidated version of Vedanta's resolution plan, Annexure-1, Page No. 50, Application)

viii) The Applicant has also stated that Section 53(1) of the Code is not a mandatory requirement during CIRP and is only a guiding principle. The Applicant has further stated that the CoC in its commercial wisdom is free to determine what amounts are to be paid to different classes and sub-classes of creditors in accordance with the provisions and objectives of the Code and relevant regulations.

ix) Further, it is trite law that distribution mechanism adopted by the CoC is entirely within its domain as per Section 30(4) of the Code. The CoC has therefore distributed proceeds as per the waterfall mechanism provided under section 53 of the Code and has done so in its commercial wisdom.

5. In view of the above submissions, Respondent No. 1 sought to dismiss the application.

6. Respondent No. 2 filed its reply, wherein it is contended as under:

I. The Consolidated Resolution Plan approved by the CoC is in compliance with the Code and the Regulations framed thereunder:

- i. The contention of the Applicant that the distribution under the Consolidated Resolution Plan is arbitrary, is misleading and is vehemently denied. The Consolidated Resolution Plan submitted by Vedanta has been approved by the CoC with a majority vote of 94.96% after assessing its feasibility and viability and in its commercial wisdom.
- ii. The Resolution Professional of the CD, Respondent No. 1 herein, has also issued a compliance certificate dated January 5, 2023 stating that the Consolidated Resolution Plan submitted by Vedanta is in compliance with the Code and the CIRP Regulations

II. The CoC has approved the payments and distribution mechanism under the Consolidated Resolution Plan in its commercial vision and such decision is non-justiciable.

- i. The CoC of the CD has already approved the Consolidated Resolution Plan of Vedanta by a majority of 94.96%. It is a well-established principle that the commercial wisdom of the CoC is paramount and non-justiciable. Furthermore, it is also well settled, once it is found that all the mandatory requirements have been complied with and taken care of, the approved resolution plan cannot be subject to judicial review to carry out a quantitative analysis.
- ii. The CoC in its commercial wisdom can decide the payments under the Consolidated Resolution Plan. In this regard Respondent No. 2 relied on the judgement of the Hon'ble Supreme Court in Committee Creditors of Essar Steel India v. Satish Kumar Gupta, (2020) 8 SCC 53 ("Essar Steel") which has recognised the primacy of the CoC's discretion to determine the distribution to various creditors. Further, in Essar Steel, the Hon'ble Supreme Court also held that the Adjudicating Authority is not empowered to go into the merits of the commercial decision of the CoC since the scope of judicial review of the Adjudicating Authority for assessing the resolution plan approved by the CoC is limited. The said judgement was upheld by the Hon'ble Supreme Court in the case of India Resurgence ARC Private Limited Vs. M/s Amit Metaliks Ltd., CA No. 1700 of 2021.
- iii. Respondent No. 2 also relied on the decision of the Hon'ble Supreme Court in the case of K. Sashidhar Vs. Indian Overseas Bank, AIR 2019 SC 1329 to submit that the primacy of the commercial wisdom of the COC has been upheld by the Hon'ble Supreme Court in a catena of cases including the said case.
- iv. In the present case, it is submitted that Clause 3.5.2 of Consolidated resolution Plan proposed cash payments to the dissenting Financial Creditors. The amount paid to the dissenting Financial Creditors shall be equivalent to the amount payable in accordance with Section 53(1) of the Code during the liquidation of the Corporate Debtor. Furthermore, Clause 3.5.5 of the Consolidated Resolution Plan states that the CoC would decide the manner in which the total financial package is to be distributed. In fact, the distribution sheet in case of liquidation and dissenting to plan scenario showing that the liquidation value of the Applicant was NIL was already shared by Respondent No. 1 with the Applicant on January 10, 2023. Copy of the resolution approving the distribution methodology is annexed herewith and marked as Annexure R-2. However, the Applicant did not raise any objection to the same, and cannot now challenge the same as an afterthought.

- v. The payments under the Consolidated Resolution Plan are solely in the domain of the commercial wisdom of the CoC and are not subject to judicial review if the mandatory requirement of the Code are complied with. The Consolidated Resolution Plan is in due compliance with the law, as evidenced from the compliance certificate issued by the Consolidated Resolution Professional. Furthermore, the Applicant has failed to establish how the Consolidated Resolution Plan is non-compliant with the mandatory requirements of the Code, to warrant judicial intervention.
- vi. Therefore, the contention of the Applicant that the distribution under the Consolidated Resolution is arbitrary, is not maintainable and liable to be dismissed.

III. The CoC in its commercial wisdom can decide upon the distribution mechanism under the Consolidation Resolution Plan.

- i) The Applicant has erred in averring that the distribution method decided by the CoC is not in the interest of all the stakeholders. This contention of the Applicant is not only illogical but is also contrary to the established principle of law that priority in scheme of distribution is within the domain of the CoC and cannot be subject to judicial review. In this regard, reliance is again placed on the decision of the Hon'ble Supreme Court in Amit Metaliks.
- ii) In the present case, it is submitted that the CoC in its 41 meeting held on November 22, 2022 discussed and deliberated upon the methodology for distribution. It was discussed that the distribution mechanism can be either basis ratio of admitted claims or as per Section 53 of Code, which will take into account the value and priority of security interest of each of the creditors and invited views of CoC. During the voting on the distribution mechanism, the Applicant did not raise any contentions or objections to adopting distribution as per Section 53 of the Code. Detailed discussions were undertaken on the distribution mechanism and no objection was ever raised by Devi Trading, the Applicant herein either during the COC meeting or otherwise. The CoC, after due deliberation, voted in favour of distribution as per Section 53 of the Code by a majority of 93.43% of the CoC. The voting on the distribution mechanism concluded on 13 December 2022 and the Applicant raised no objection to the same until the present Application. Therefore, the CoC in its commercial wisdom has approved the distribution mechanism and therefore, the same cannot be interfered with.
- iii) In fact, the distribution sheet in case of liquidation and dissenting to plan scenario showing that the liquidation value of the Applicant was NIL and was already shared by Respondent No. 1 with the Applicant on

January 10, 2023. However, the Applicant did not raise any objection either to distribution mechanism or the distribution sheet circulated pursuant thereto. Therefore, the Applicant cannot be allowed to approbate and reprobate at the same time. It is, therefore, submitted that the Application under Reply is a mere after-thought, and thus, liable to be dismissed. Further, the Applicant herein is an unsecured financial creditor and as such unsecured creditors are lower in priority to secured creditors.

- iv) From the aforesaid conduct of the Applicant, it is abundantly clear that the Applicant is now estopped from making frivolous claims regarding distribution mechanism. The present Application under Reply is just a delaying tactic employed by the Applicant to derail the timely resolution of the Corporate Debtor. The Applicant is not interested in ensuring the resolution and sustenance of the Corporate Debtor but is only interested in wrongfully claiming payments for which it is ineligible and disrupting the CIRP of the Corporate Debtor.

IV) The CoC has recorded its deliberations on feasibility and viability of each resolution plan as mandated under Regulation 39 (3) (b) of the CIRP Regulations.

- i. It is submitted that the contention of the Applicant that the CoC has failed to deliberate and record its reasons on 'feasibility and viability of the resolution plans as envisaged under Regulation 39 (3) (b) of the CIRP Regulations, is misleading and erroneous. The CoC, on August 29, 2022, had received resolution plans from Vedanta, Jindal Power Limited and Prudent ARC Limited & Vizag Minerals and Logistics Private Limited (collectively, "RAS"). The CoC of the Corporate Debtor in its 41 meeting held on November 22, 2022 has extensively deliberated and recorded the "viability and feasibility" of the resolution plans of the RAS.
- ii. Furthermore, while reviewing the resolution plans, the CoC noted the following in each of the resolution plans
 - i. Assumptions for plant technical and operational parameters, capex equipment,
 - ii. Timelines to complete FGD for phase-2, expected commencement timeline for both the phases, economics of power offtake and
 - iii. Fuel sourcing along with sources of funding and financial resourcefulness.
- iii. Additionally, it is submitted that the CoC had also noted that Vedanta has prior experience in operating power plants in similar scale and size. It is further

to be noted that during the deliberations on the viability and feasibility of the resolution plans submitted by the resolution applicants, the Applicant did not raise any objections.

iv) Pertinently, the resolution plans submitted by the RAS were regularly discussed, deliberated and negotiated upon. The updated feasibility and viability report dated January 5, 2023, along with the updated evaluation matrix scores was also shared by Respondent No. 1 with the Applicant on January 6, 2023. The updated feasibility and viability report dated January 5, 2023 expressly notes that the Consolidated Resolution Plan is feasible and viable. Therefore, it is patently clear that the Applicant is only attempting to mislead this Tribunal by stating that the CoC has failed to consider the feasibility and viability of the Consolidated Resolution Plan.

v) The contention raised by the Applicant that the EBIDTA figures are not matching is frivolous and deserves to be dismissed. It is submitted that there is only a minor change to INR 3.33 from INR 3.15 per unit in the Consolidated Resolution Plan. It is pertinent to note that the EBIDTA figures, at best are only indicative of the financial strength of the resolution, applicant. However, the EBIDTA figures do not in any way affect the implementation or the distribution under a resolution plan. Therefore, this contention raised by the Applicant deserves no consideration and is liable to be dismissed.

vi) Furthermore, vide letter dated December 26, 2022, Vedanta had clarified that the same may be read in conjunction to and as an integral part of the Consolidated Resolution Plan dated October 28 2022. It is submitted that as there were multiple amendments to the resolution plans, it was imperative to have the Consolidated Resolution Plan.

vii) It is pertinent to note that the CoC, majority of which are public sector banks, dealing with public money, is acting, as the custodian of public trust and discharging statutory role. While the COC in its commercial wisdom is trying to revive the Corporate Debtor, the Applicant is making frivolous and untenable pleas in order to make personal gain at the cost of compromise with value maximization and loss of huge amount of public money borrowed by the Corporate Debtor. It is pertinent to note that Devi Trading, the Applicant herein, was assigned the debt by SREI Infrastructure Finance Limited (vide Assignment Agreement dated November 1, 2019, effective from October 31, 2019), Vistar Financiers Pvt. Ltd. and Saranya Power Trading vide other Assignment Agreements. CIRP of the Corporate Debtor was admitted on November 7, 2019. It is also worth noting that the Applicant herein is the only financial creditor which voted in favour of the resolution plan of Consortium of Prudent ARC Limited and Vizag Minerals & Logistics Private Limited ("PAL-VML") and PAL-VML has from the beginning tried to scuttle and disrupt the CIR Process of the Corporate Debtor.

6. In view of the aforesaid, Respondent No. 2 submitted that there remain no ground whatsoever for the Applicant to challenge the Consolidated Resolution Plan. Therefore, in view of the facts and circumstances stated hereinabove and the submission/ objections raised to the Application under Reply, it is prayed that this Tribunal may dismiss the Application.

7. The Applicant has filed rejoinder to the reply filed by Respondent No. 1, wherein it is submitted as under:

i) With regard to the contention of Respondent No. 1 that the present application is filed by the Applicant with an ulterior motive and malafide intent to delay the CIRP of the CD, the applicant submits that the application is filed bonafidely, being a minority member of the CoC of the CD, having a voting share of 4.29%. The CoC failed to exercise its commercial wisdom in accordance with the objective of the IBC since it failed to balance the interest of all stakeholders.

ii) The Respondent has failed to explain as to how the Respondent is being prejudiced by filing the present application under section 60(5) of the IBC challenging the Resolution plan as approved by the CoC.

iii) As per the distribution proposed under the Resolution Plan submitted by Vedanta Limited, nothing has to be paid to the unsecured financial creditors and the Resolution Plan as approved by the CoC, thus, fails to balance the interest of all stakeholders defeating the object of IBC.

iv) It is settled law that the waterfall mechanism envisaged under section 53(1) of the IBC is not mandatory requirement during the CIRP process and is only a guiding principle and the CoC in its commercial wisdom is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions and objectives of the IBC and the Regulations made thereunder. A reading of the section 30(4) of the IBC makes it clear that the word

'may' provides flexibility to the CoC to adopt or not to adopt the order of priority envisaged under section 53(1) of the IBC.

8. The Applicant has filed rejoinder to the reply filed by Respondent No. 2 on behalf of the Assenting Financial Creditors, wherein, inter-alia, quoted the submissions mentioned in Application against the objections raised by the Respondent No. 2.

9. The applicant and Respondent No. 1 have filed written submissions, which are almost a reiteration of the submissions made in their pleadings.

10. We have heard both the counsel and perused the record as well as the written submissions filed.

10.1 The main contention of the Applicant appears to be based on hyper technical aspect, which is that the resolution plan submitted for approval of this Tribunal is not the same which is approved by the CoC. The resolution plan which is placed for approval before this Tribunal is dated 05/01/2023, whereas, the approved resolution plan is dated 28/10/2022. The contention is that the resolution plan dated 05/01/2023 is not placed before the CoC for approval and was directly placed before this Tribunal for approval, which is illegal. The answer to the said contention provided by the Respondent is that the resolution plan dated 05/01/2023 is nothing but a consolidated volume of the resolution plan dated 28/10/2022, which was approved by the CoC and which was amended from time to time and all the amendments made to resolution plan being placed before the CoC. The resolution plan dated 05/01/2023 is only prepared for the convenience of reference by this Tribunal and that, in fact, the approval of the resolution plan dated 05/01/2023 would in effect be only an approval of the resolution plan dated 28/10/2022, which is a final plan placed before the CoC after undergoing several amendments. State Bank of India, representing CoC,

has clearly submitted in its written statement and oral submissions that resolution plan dated 05/01/2023(consolidated version) of M/s Vedanta Limited which is submitted for approval to adjudicating authority has its approval. Therefore, in our view, this contention of applicant is not tenable, as CoC itself is admitting having approved it.

10.2 The letter dated 26/12/2022 by the RP is contended as not being placed on record. Paragraph 13 of the reply filed by the RP is relied upon by the Applicant to contend that the letter dated 26/12/2022 is not placed on record. It can be seen that the letter is only to the effect that in case Vedanta is declared as successful resolution applicant, it would be submitting a consolidated plan which would be filed before this Tribunal for its approval. It is also stated that commercial value of the amended resolution plan dated 28/10/2022 increased based on the inter-se challenge process run on January 4, 2023. It can be seen that the consolidated resolution plan dated 05/01/2023 did not result in significant changes in the overall structure of the resolution plan. It is also not denied that the RP has circulated the same with the CoC including the applicant on January 27,2023. There was no change in the major contours of the plan which was voted upon by the CoC. The only change was in the EBITDA figures in the consolidated version of the resolution plan. The EBITDA figures are only indicative of the future financial strength of the resolution applicant calculated on the basis of financial protection for coming years and do not in any way effect the implementation or distribution under the resolution plan, hence, the same cannot be considered as improvements made in the plan. The figures which are reflected in the EBITDA can also be seen to understand that it only pertains to future years.

It is not the case of the applicant that he was not present in the meetings where discussions pertaining to the resolution plan took place till 28/10/2022 which is the date on which the final resolution plan was approved. The only contention is that the plan placed before this Tribunal is not placed before the CoC. It is clarified that the plan dated 05/01/2023 is nothing but a consolidated

plan containing all the changes which took place up to 28/10/2022 and placed before the CoC in the meetings in which the applicant was very much present.

10.3 The contention that the present resolution plan did not provide for unsecured creditors, in which, the applicant herein is not considered, it is submitted that the CoC in its commercial wisdom has decided to vote on the present plan, which is totally in accordance with the provisions of IBC. In the 41st CoC meeting on 22/11/2022, the applicant was very much present, but, he abstained from voting. In the said meeting the RP informed that the plans submitted by Vedanta and Jindal did not mention member wise distribution inter se the class of financial creditors and have left it open for the CoC to decide, whereas, the plan submitted by PAL-VMLL has demarcated the distribution of secured and unsecured financial creditors. Accordingly, RP informed that the CoC discussed and deliberated that the distribution methodology can be either basis ratio of admitted claims or as per section 53 of the Code which will take into account the value and priority of security interest of each of the creditors and the distribution mechanism is within the domain of CoC as per section 30(4) of the Code, which is extracted below for the sake of ready reference:

“The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may 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] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under [section 29A](#) and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of [section 29A](#), the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of [section 29A](#):

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of [section 12](#), and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.]

Provided also that the eligibility criteria in [section 29A](#) as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.”

10.4 The RP relies on the judgement of the Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta and Others, [2020] 8 SCC 531 in support of the above said contention. The Minutes of the Meeting reflected that the Members have deliberated and decided to put the plan before the Tribunal. The previous experience of Vedanta and Jindal was taken into consideration and the plan submitted by the PAL-VMML was considered as not viable or feasible than the two other resolution plans. The agenda for discussion on matters was that the basis for distribution of inter se the class of financial creditors, Viz., as per the ratio of admitted claims or as per section 53 of the IBC Code, is also included. All the addendums and revisions to the resolution plan submitted by the Resolution Applicants were placed before the CoC and the same were very well discussed.

10.5 In the 44th meeting of CoC held on January 4, 2023, the resolution plan by Vedanta was discussed which was revised to Rs. 1440 crores from Rs. 650 crores and Jindal's offer of revised plan for Rs. 1344 crores. PAL-VMLL did not submit a revised financial offer. The revised financial offer of Vedanta and Jindal dated 04/01/2023 were considered and discussed in the 44th CoC meeting. It was also decided that the voting lines would be open on January 6, 2023 and end by January 16, 2023. Further, one day extension was provided based on the request from the CoC Members. Vedanta submitted a convenience and consolidated resolution plan incorporating its addendums on January 4, 2023 to its resolution plan submitted on 28/10/2022.

10.6 In view of the above factual scenario, the judgement of the Hon'ble Supreme Court in the case of M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder and Another, 2023 SCC Online SC 574, on which reliance is placed by the Applicant, does not help the Applicant as each and every aspect relating to the resolution plan placed before us was also placed before the CoC and was discussed in the meetings where the Applicant was also very much present. Hence, it is clear from the above facts that the consolidated plan which was dated 05/01/2023 is nothing but the resolution plan dated 28/10/2022 with all its addendums, as approved by the CoC. The stress placed by the applicant on the words "may" would itself make clear that the CoC has exercised its discretion only as provided by Law. One cannot be permitted to contend that the discretion should be exercised in a particular manner. The approved manner of distribution enjoys the majority of the CoC, thereby leaving no scope for further objections. Hence, we do not find any merit in the submissions made by the Applicant and, thus, this application is dismissed.

11. Accordingly, I.A. No. 04 of 2023 in CP(IB) No. 184/7/HDB/2019 is dismissed and stands disposed of.

Sd/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)**