THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

IA No. 571/2023
In
CP (IB) No.391/Chd/PB/2018
(Admitted)
Under Section 7 & 60(5) of the IBC, 2016
read with Rule 11 of the NCLT Rules, 2016

In the matter of:

Punjab National Bank ….Petitioner-Financial Creditor

Versus

Vallabh Textiles Company Private Limited ….Respondent-Corporate Debtor

And in the matter of IA No. 571/2023 :-

Sanjeev Bhatia
Resident of 39-R, Model Town,
Panipat, Haryana-132103
E-mail: bhatiasanjeev169@gmail.com

…Applicant

Versus

1. Rajiv Khurana
Resolution Professional,
#1299, Sector 15-B, Chandigarh-160015
Email: cirp.vtcl@gmail.com

2.Canara Bank
Bharat Nagar Chowk BNC-2107,
Ludhiana-141001
Email: cb2108@canarabank.com

3. Indian Overseas Bank
Ludhiana Main Branch,
Kachery Road,
Sainik Rest House- Ludhiana
Email: iob0047@iob.in

4.Punjab & Sind Bank,
Dholwal Branch, Ludhiana
Email: ifb.ludhiana@psb.co.in
5. The Karur Vasya Bank Limited

Corporate Business Unit
MRI Tower, 2nd Floor, Faiz Road, Karol Bagh,
New Delhi
Email:delhicbu@kvbmail.com, nitinkumarrana@kvbmail.com

6. Punjab National Bank
Large Corporate Branch, PNB House,
1st Floor, Industrial Area- A, Ludhiana
Email: bo4451@pnb.co.in

7. Sabrimala Industries India Limited,
(Successful Resolution Applicant)
Through its Authorized Representative Sh. Vivek Raheja
Regd Office: 906, D- Mall, Netaji Subhash Palace,
New Delhi- 110034, Delhi North West, DL-110034
E-mail: vivek@osrikgroup.com

….Respondents

Order delivered on: 08.01.2024

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

Present:

For Applicant: Mr. Atul V Sood, Advocate
For Respondents: Mr. Aman Kashyap, Advocate for Respondent No.1
: Mr. Viren Sharma, Advocate for Respondents Nos.2 to 6
: Mr. Aalok Jagga along with Mr APS Madaan and Mr Kanish Jindal, Advocates for Respondent No. 7

Per: Harnam Singh Thakur, Member (Judicial)

Subrata Kumar Dash, Member (Technical)

ORDER

IA 571/2023

The present application has been filed by Mr. Sanjeev Bhatia, who had participated as a Resolution Applicant (**"RA"**) in the Corporate Insolvency Resolution Process (**"CIRP")** of Vallabh Textiles Company Ltd (hereinafter referred to as the "**CD**" or the "Corporate Debtor") under Section 60(5)(c) of the Insolvency and Bankruptcy Code (hereinafter referred to as the **"Code"**) for declaring the process of

CIRP pursuant to publication of Form-G on 24.07.2022 wherein a Resolution Plan was approved, as contrary to law as well as the provisions of the Code/ Regulations that prevented value maximization.

2. The Brief facts of the application have been submitted as follows;

2.1. The Applicant Sanjeev Bhatia participated in the CIRP of the Corporate Debtor, Vallabh Textiles Company Limited, and submitted an Initial Resolution Plan valued at Rs 50 Crores on 15.09.2022. Later, the Applicant improved his bid to submit his revised Plan with a total infusion of Rs 125.52 Crores and a distributable amount of Rs 95.51 Crores as of 15.11.2022. The Applicant states that the Resolution Professional (**"RP"**) adopted the Challenge Method to improve the bid amount. The Applicant states that in February of 2023, the Applicant was intimated that his Resolution Plan was not approved despite being of the highest value and the Resolution Plan of another Resolution Applicant, namely Sabrimala Industries India Limited (hereinafter referred to as **"SIL"**, Successful Resolution Applicant, or, **"SRA"**), was approved with a total infusion of Rs 92.50 Crores and distributable amount of Rs 90.50 Crores allegedly without adhering to the mandatory provisions of Section 30(2) of the Code and the CIRP regulations.

2.2. The Applicant alleges that the RP/CoC has not exercised the evaluation of the Resolution Plans as per the provisions of the Code, which is a step precedent to the exercise of commercial wisdom. The process of maximization of value is not followed as per the Applicant, as a Plan which has offered Rs 95.51 Croes was not approved whereas the plan offering Rs 5 Crores less was approved with an overall difference between the two plans being Rs 33 Crores.

2.3. The Applicant for the above argument has placed reliance on Regulation 39(3) of the CIRP regulations.

2.4. The Applicant states that as informed to him by the RP, he is the highest bidder and thus the Applicant states that the evaluation exercise has not been undertaken and that the entire process has been fast-forwarded by jumping over the most critical step of evaluation so as to accommodate a particular Resolution Applicant. Applicant further states that the minutes of the meeting of the CoC aren't demonstrative of any such objective deliberations on the feasibility and viability of the Resolution Plan and that this exhibits the alleged malafide intention of accommodating the bid of SIL over the others. Applicant states that the CoC has to shoulder the responsibility and duty to follow the value maximization process in a regulated manner, i.e., as per the Code/ Regulations, which as per the Applicant, were thwarted in a prejudicial manner.

25. The Applicant alleges that the Successful Resolution Applicant in this case, i.e., SIL, is a trader company that has adopted a business model of acquiring sick companies under the DRT or the NCLT and then selling them to a prospective buyer to earn an abnormal profit. The Applicant alleges that the Modus Operandi of SIL is such, that it should not be permissible under the IBC, wherein SIL acquires such companies sans disclosing the future dictatorship or the shareholding structure of the CD post the approval of the Resolution Plan, and the Applicant states that the said non-disclosure can be verified from the Resolution Plan of SIL.

2.6. Applicant states that they have not withdrawn their earnest money of Rs 25 Lacs, which is still lying with the RP to demonstrate his bona fide.

2.7. The Applicant argues that the CoC cannot take the umbrage of 'Commercial Wisdom' where the process of maximization of value is not followed and that the very purpose of the 'Challenge Mechanism' stands defeated if any factor in the Plan/ IM/RFRP, which would decrease the NPV, despite the Plan offering higher value, is not highlighted during the negotiations.

3. In the **Reply** filed on behalf of Respondent no 1, i.e, the Resolution Professional ('RP') of the Vallabh Textile Company Limited ('CD'), the following was stated;

3.1. The RP firstly stated that the Anpplicant has made allegations against the Successful Resolution Applicant ('SRA'), and has sought such relief which would have direct implications on the rights of the SRA, thus an effective order/judgment cannot be passed in the absence of the SRA, who despite being a necessary party was not impleaded. Therefore, the RP has argued that this application deserves to be dismissed on the grounds of Non-Joinder of a necessary party.

3.2. The Respondent RP says that he received 8 resolution plans in a sealed envelope before the last date, i.e., 15.09.2022. On 09.11.2022, in the 32nd CoC meeting, the RP apprised the CoC that in terms of the previous meeting, the challenge process had to continue. The CoC then decided that the Prospective Resolution Applicants would submit their final revised Resolution Plans with the RP on or before 15.11.2022 which shall be treated as final.

3.3. On 24.01.2023, the Respondent RP convened the 36th meeting of the CoC wherein the CoC members were apprised that the check for eligibility of the prospective resolution Applicants was conducted through an independent agency

and the report was shared with the CoC members, where the agenda of voting upon the resolution plan was placed before the CoC.

3.4. The results of the voting were declared in the 38th CoC Meeting held on 02.02.2023 wherein the resolution plan submitted by SIL was approved with a 99.9% voting share.

3.5. The RP states that the Applicant, despite knowing that the plant of the CD had been running at 25-30% capacity as well as being aware of the recessionary trend in the industry, inserted the condition in his resolution plan wherein he allegedly pegged the financial offer to the value of the assets as of 31.03.2022, which implies that any loss accrued in the period from 01.04.2022 till the date of approval of Resolution Plan by this Tribunal, shall be reduced from the amount payable to financial creditors.

3.6. It is submitted that while the Applicant has averred that the Plan Value of the latter's Resolution Plan was Rs 125.51 Crore, the factual financial offer in the plan was of only Rs 95.41 Crore and the value of performing guarantee (being 5% of the plan value) was also stated accordingly. The Applicant had also inserted a condition in his Resolution Plan which has been reproduced below,

> *" Value of Assets indicated above should not be lower than the value of Assets as per the Balance Sheet of Corporate Debtor as on 31.02.2022 (supplied along with the Information Memorandum) and any shortfall in the value at the time of approval of Resolution Plan by AA to form part of the CIRP Cost".*

3.7. The Provisions of Regulation 39(1A)(b) if the CIRP Regulation was relied upon by the RP along with Para III of the Mandatory Terms and Conditions in the RFRP. Further, the RP states that there neither is any concept of "highest bidder" in a

CIRP nor was the Applicant ever declared as the “highest bidder”. Rather, the fact that his financial offer was the highest at that stage was conveyed to him.

3.8. The RP states that the claims of certain operational Creditors which were pending verification, were duly verified and admitted and the same was communicated to all Resolution Applicants, and that none of them, including the Applicant, ever raised any objection. Hence, the RP submits that the Applicant should be ‘estopped’ from raising any objection.

4. In the **Reply on behalf of Respondent no 2 to 6, i.e., members of the Committee of Creditors of M/s Vallabh Textiles Company Limited,** the following was stated;

4.1. It is submitted by the above respondents that the **Applicant has no locus standi to file the present application.** It is contended that the Applicant being an unsuccessful Resolution Applicant can’t seek the rejection of the Resolution Plan which has been approved by the CoC, from the Adjudicating Authority. Reliance has been placed on the following judicial decisions;

a. In ***IMR Metallurgical Resources AG V. Ferro Alloys Corporation Limited and Ors, Company Appeal (AT) (Insolvency) No. 272 of 2020*** was relied upon to state that the Resolution Applicant has no vested right that his Resolution Plan must be considered as has been laid down by the Hon’ble Supreme Court in the case of *Arcelor Mittal India Pvt Ltd vs Satish Kumar Gupta (Civil Appeal Nos.9402-9405 of 2018)*.

b. *In* ***M.K. Rajagopalan v S. Rajendran & Ors. Company Appeal (AT) (CH) (INS) No. 58 of 2023***, wherein it was laid down that the unsuccessful

Resolution Applicants have no locus standi as they are not stakeholders as per Section 31(1) of IBC. The excerpt relied upon by the Respondents is reproduced below;

> *"31. On a careful consideration of the respective contentions advanced on either side, this `Tribunal', keeping in mind of a vital fact that the `Petitioner / Appellant', being an `Unsuccessful Resolution Applicant', has no `Locus', to `assail' a `Resolution Plan' or its `implementation', coupled with a candid fact that he is not a `Stakeholder', as per Section 31(1) of the I & B Code, 2016, in relation to the `Corporate Debtor', this `Tribunal', without any `haziness', holds that the `Petitioner / Appellant', is not an `Aggrieved Person', coming within the ambit of Section 61 (1) of the I & B Code, 2016, especially, when he is not a `Privy', to the `Resolution Plan'. Viewed in that perspective, the `Leave', sought for in IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, sans merits."*
>
> *(Emphasis Supplied)*

4.2. The Respondents plead that there should be **minimum judicial intervention on the decision of the CoC** taken under the CoC's Commercial Wisdom. For this contention, they submit that the Hon'ble Supreme Court has emphasized time and again that minimal judicial interference is required in the framework envisaged under the IBC, as was laid down in the following judgments;

a. *Arun Kumar Jagatramka vs. Jindal Steel; and Power Limited and Another, (2021) 7 SCC 474.*
b. *Vallal RCK Vs M/s Siva Industries and Holdings Limited and Others, Civil Appeal No. 1811-1812 of 2022.*
c. *IMR Metallurgical Resources AG vs Ferro Alloys Corporation Limited and Ors., C.A. (AT) (INS) No. 272 of 2020*. An excerpt has been reproduced below;

" 12. In this Appeal, the Appellant had challenged the evaluation matrix applied by the CoC which falls within the commercial wisdom of the CoC. It is a settled position of law approval or rejection of the Resolution Plan that depends upon the commercial wisdom of the CoC, which involves evaluation of the Resolution Plan based on its feasibility. Such commercial wisdom of the CoC with the requisite voting majority is non-justiciable."

d. ***Rajesh Kumar & Ors. vs. Rabindra Kumar Mintri & Anr., C.A. (AT)(INS) No. 1489 of 2022*.** The relevant excerpt has been reproduced below;

" 7. Regarding the issue of viability and feasibility of the resolution plan, when the CoC approved the Resolution Plan in its commercial wisdom, it is presumed that the approval was given to a viable and feasible plan. The Resolution Plan being approved, this Tribunal also cannot interfere with the commercial wisdom. Approval of the CoC suggest that the plan is viable and feasible."

4.3. The Respondents argue that as the **Commercial Wisdom of the CoC is paramount,** it cannot be challenged by an unsuccessful Resolution Applicant. The Respondents submit that the legislative intent as well as the statutory scheme of the Code and the CIRP Regulations, coupled with the judicial pronouncements make clear the settled position of law, which as per the Respondents is that the approval of the Resolution Plan is solely within the commercial wisdom od the CoC. The following judicial decisions of the Hon'ble Supreme Court were relied upon for this contention;

a. *Committee of Creditors of Essar Steel India Limited through Authorized Signatory v. Satish Kumar Gupta and Others, 2019 SCC Online Sc 1478*.
b. *Kalpraj Dharamshi & Anr v. Kotak Investment Advisors Ltd. & Anr., Civil Appeal Nos. 2943-2944 of 2020*.

c. *K Shashidhar v Indian Overseas Bank & Ors, Civil Appeal No. 10673 of 2018*.

The relevant excerpt has been reproduced below;

> *"39. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the 70 dissenting financial creditors, and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail unless the approval is by a vote of not less than 75% (after the amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors…..*
>
> *….(In para 42) No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT), or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority."*
>
> *(Emphasis Supplied)*

4.4. Respondents 2 to 6 further state that the Committee of Creditors has already granted approval of a particular Resolution Plan by 99.91% of the voting share and that the same is now pending approval before the Adjudicating Authority under section 30(6) of the Code. The above Respondents place reliance on the Hon'ble Appellate Authority's decision in ***Shrawan Kumar Agrawal Consortium vs Rituraj Steel Private Limited, Company Appeal (AT) (Insolvency) No. 1490 of 2019*** where it was stated;

"the provisions investing jurisdiction and authority to the NCLT has not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same, justiciable."

The above decision stated that a direction given by the Adjudicating Authority calling for rebidding for maximization of the value of the Corporate Debtor *"also amounts to an interference in the business decision of the CoC which is not permitted in law*".

The Respondents thus contend that CoC can neither be directed to reconsider the Resolution Plan nor be directed to consider a second resolution plan submitted before the Adjudcating Authority. The Respondents also place reliance on the Judicial Decision of the Hon'ble Appellate Authority in *Chhatisgarh Distilleries Ltd v. Dushyant Dave & Ors, Company Appeal (AT) (Insolvency) No. 461 of 2019*.

4.5. The Respondents insist on **time being the essence of the Code**, as the basic objective of the Code is to consolidate and amend the laws relating to reorganization and insolvency resolution of the Corporate Persons in a time-bound manner. For this contention, Respondents 2 to 6 place reliance on the Hon'ble Supreme Court's decision in the case of *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. in Civil Appeal No. 3224/2020*.

5. In the Reply on behalf of Respondent no 7, i.e, Sabarimala Industries India Limited, (hereinafter referred to as "SIL"), also the Successful Resolution Applicant, the following was stated;

5.1. The Applicant has no locus standi to maintain the Application. The Resolution Plan of the unsuccessful Resolution Applicant has been rejected

unanimously by all present and voting members of the 38th COC dated 02.02.2023, whereas the resolution plan submitted by the respondent has been approved by 99.91% of the voting share of the COC. The applicant has no right to claim approval of the resolution plan versus the claim is maintainable before this adjudicating authority. The only right available to the applicant was to submit the resolution plan subject to the terms of Form G.

5.2. The applicant is challenging the commercial wisdom of COC while approving a resolution plan that is not subjected to judicial review by adjudicating authority. The prescribed authorities have been endowed with limited jurisdiction as specified in the IBC code and not to act as a court of equity or exercise plenary powers.

5.3. Neither the Adjudicating authority nor the appellate authority has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors, specifically on the opinion of the majority financial creditors.

5.4. The threshold of voting share of the dissenting financial creditors for rejecting the resolution plan is way below the simple majority mark, namely not less than 25% (and even after amendment w.e.f. 06.06.2018, 44%). The plan was to be required to pass through not less than 75% or 66% voting share. The legislation has consciously not provided any ground to challenge the commercial wisdom of the collective COC decision before the adjudicating authority.

5.5. Respondent states that even dissenting minority members of the CoC have been held not entitled to challenge the approval of the majority members of the CoC while making a collective decision on the approval of the Resolution Plan, and given that the dissenting stakeholders cannot challenge, then the applicant

who is not at all a stakeholder should therefore not be allowed to maintain the instant application.

5.6. The Respondent submits that the contention that the Resolution Plan of the Applicant is financially and technically more viable vis a vis the SRA's Resolution Plan is unsustainable. Which plan is better of the options made available before the CoC, has to be seen from the spectacle of the CoC.

5.7. The Respondent no 7, i.e, SIL, has placed reliance on the following judicial decisions;

a. ***Ghanashyam Mishra & Sons Private Limited vs Edelweiss Asset Reconstruction Company Limited, 2021 (9) SCC- 657.***

b. ***Jindal Stainless Steel vs Shailendra Ajmera, resolution Professional of Mittal Corporation Limited, CA (AT) (Insolvency) No. 1058 of 2022.***

c. ***K. Shashidhar vs Indian Overseas Bank & Ors (Civil Appeal No. 10673 of 2018 SC)***

d. ***Vijay Syal vs State of Punjab, 2003(9) SCC 401.***

e. ***Dhananjay Malik vs State of Uttaranchal, 2008(4) SCC 171.***

f. ***Madan Lal v State of J&K, 1995(2) SCT 880,***

g. ***Madras Institute of Development Studies vs Dr. K. Siva Subramaniyam, 2016(1) SCC 454.***

6. In the Rejoinder filed to reply of Respondent Resolution Professional, the Applicant states the following;

6.1.The Applicant states that the RP carried out the process of approval of the Resolution plan to accommodate the SRA in gross violation of the provisions of the code. The Applicant states that the minutes of the meetings of the various CoC meetings referred to by the RP in his reply have not been annexed to the Application neither have they been supplied to the Applicant. The RP has also not placed on record the Scoring Sheets as per the Evaluation Matrix.

6.2 . With regards to the clauses inserted by the Applicant that were highlighted by the Respondent RP, the Applicant submits that the RP has not placed on record any minutes of the CoC where the CoC found that the plan of the Applicant has *"surreptitiously, the applicant has inserted a condition in its resolution plan.*."

6.3. The Applicant states that the RP on one hand has claimed that there is "no concept of highest bidder" in a CIRP, while on the other in its own document "Bidding Process"(Page 114 c and d) of the Application has himself in paragraph 6 stated that the highest bid amount in the first round shall be shared with the RAs in the second round to enable them to improve their offer.

6.4. Applicant states that nothing was stopping the RP from placing on record the scoring sheets as per the Evaluation Matrix. The Applicant also states that the scoring on the qualitative criteria has not been done in violation of the code's provisions.

7. In the Rejoinder to the reply of Respondents 2 to 6, the Applicant stated the following;

7.1. The Applicant has stated that the relevant minutes of the meeting of the CoC meetings mentioned by the Respondents have not been placed on record to show if any “detailed discussion” has taken place.

7.2 The Applicant denies that it has no right to file the present Application, and submits that the CoC cannot take a recourse to say that their acts are beyond challenge in case the specific provisions of law get violated by the RP or the CoC.

7.4. The Applicant states that the stage of application of commercial wisdom has not come into existence as the evaluation of the Resolution Plans as not been done.

7.5. It is submitted that the omissions and commissions of the RP or the CoC are not above the scrutiny of the Tribunal and that the RP could not have applied for the approval of the Resolution plan which has been shown to have been approved by the CoC.

7.6. The Applicant says that it recognizes that time is the essence of the code; however compliance with the provisions of the Code, its Regulations, and law laid down in various judicial pronouncements are mandatory for the RP and the CoC.

8. We have carefully considered the submissions made in the application by the parties and have also perused the records.

8.1 In the present case,the main contention of the Applicant is that despite being the highest bidder, he has been disqualified without carrying out a proper evaluation exercise for the selection of the successful resolution applicant as mandated under the Code. Reliance has also been placed on the Regulation 39

(3) of the CIRP Regulations. In this regard, and the said provisions is reproduced below for the sake of clarity:

"*[(3) The committee shall-*

(a) Evaluate the resolution plans received under the sub-regulation (2) as per the evaluation matrix;

(b) Record its deliberations on the feasibility and viability of each resolution plan; and

(c) Vote on all such resolution plans simultaneously."

It is further submitted that the choice made by CoC/RP goes against the Value Maximisation Process of the IBC, 2016. Further it is alleged that the SRA i.e., SIL does not have the capability to run the Corporate Debtor.

8.2. In this regard, we have closely perused the RP's remarks on different parameters: compliance of Resolution Plan, NPV of the amount proposed and the evaluation matrix, which are enclosed as Annexure-20 to the Rejoinder filed by the Applicant. The evaluation matrix contains the RP's remarks under the following parameters:

> ***"1**. Reasonableness of Financial Projections i.e. Sales, EBITDA, EBIT etc/Certainty/Likelihood/ Feasibility/ Eventuality of honouring proposed commitments.*
>
> *2. Standing of Bidder/ Group in sector/External Rating/ adherence to financial discipline/ record of regulatory compliance/ whether NPA, including Group Companies,*

3. Ability to turnaround distressed companies- Managerial competence and technical abilities, key managerial personnel, track record in implementing turnaround of stressed assets etc."

We have also perused the comparative chart of the Resolution Applicants under the head NPV of the amount proposed in the Resolution Plan, wherein Applicant Mr. Sanjiv Bhatia (Option-2) has been ranked first. In the RP's comments on the compliance of the Resolution Plan, the same Mr.Sanjiv Bhatia (Option-2) has been categorised as compliant.

8.3 The main contention of the Ld. Counsels for the Applicant is that in the evaluation matrix the scoring/ranking of the Resolution Applicants has not been done and the same , therefore, is not in compliance with Regulation 39(3) of CIRP Regulation. A closer look at the Regulation 39(3) clearly shows that the Regulations provide for evaluation of the Resolution Plan received as per the evaluation matrix and recording of deliberation of the feasibility and viability of each Resolution Plan before voting of such Resolution Plan simultaneously. No where, it is mentioned that scoring and ranking of the resolution applicant has to be done . In the present context, the evaluation exercise has clearly been carried out and the allegation that the evaluation matrix the scoring/ ranking has not been done does not ,in any way, take away the validity of the evaluation process carried out .

9. We are, therefore, of the considered opinion that it is for the CoC to carry out the evaluation on the basis of information before it and nowhere the said Regulation mentioned that that has to be scoring/ranking of the Resolution Applicants before voting of the CoC members on the Resolution Plan. It is not the case of Application

that any information has been withheld from the CoC members during the deliberation before the voting exercise. In view of the same,we hold that the exercise carried out by the Resolution Professional for the selection of the Succesful Resolution Applicant , is in accordance with the 39(3) of the CIRP Regulations.

9.1 As regards the recording of feasibility and viability of each Resolution Plan, we refer to the Minutes of the 38th CoC meeting held on 02.02.2023, wherein the Resolution Plan submitted by Sabrimal Industries India Limited was approved with 99.91% voting share of the CoC. We also note that the Resolution Professional has mentioned that the Applicant has surreptitiously inserted a condition in its Resolution Plan, which stated that:

> *"Value of assets indicated above should not be lower than the value of assets as per the Balance Sheet of Corporate Debtor as on 31.03.2022 (supplied along with the information memorandum) and any shortfall in the value at the time of approval of Resolution Plan by the Adjudicating Authority to form part of the CIRP cost"*

It is further noted that regarding the CIRP cost, the Applicant has stated that the amount of unpaid CIRP cost, if any, was to be paid out of the upfront payment proposed to the Financial Creditors. According to the Resolution Professional these contentions made in the Resolution Plan of the Applicant, which pegged the financial offer to the value of asset as on 31.03.2022,in effect, considerably reduced the actual value of the offer as the asset base of the Corporate Debtor had reduced to a large extent during the resolution process.

9.2 We, however, do not wish to enter into the reasons based on which the CoC rejected the claim of the Applicant as it is not within the domain of this Adjudicating Authority to decide on the issue. The limited mandate that we have

is to ensure that all the information was placed before the CoC members by the Resolution Professional to enable them to take the sound commercial decision, and the and COC followed the procedure laid down in Regulation 39 (3) of the CIRP Regulations while selecting the Successful Resolution Applicant.

10. In view of the facts mentioned in the aforesaid paragraphs, we are of the considered view that there is no shortcoming in the evaluation process of the Resolution Plans submitted by the Resolution Applicants, including the present Applicant, by the CoC and, therefore, refuse to interfere with the decision on the selection of the Successful Resolution Applicant by the CoC.

11. Thus, I.A. No. 571 of 2023 stands dismissed and is disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 8, 2024
RHD/PDP