IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I

IA (IBC) (PLAN) No. 59 of 2026
IN
CP (IB) 421 of 2025

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016, r/w. Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan under the provisions of Section 31(1) of the Code; And

In the matter of
S. RAJENDRAN
RESOLUTION PROFESSIONAL OF SU TOLL ROAD PRIVATE LIMITED
…Resolution Professional/Applicant

In CP (IB) 421/2025
STATE BANK OF INDIA
…Financial Creditor/Applicant

Versus

SU TOLL ROAD PRIVATE LIMITED
…Corporate Debtor/Respondent

Order pronounced on 03.11.2026

***Coram**:*

Shri. Prabhat Kumar — Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey — Hon'ble Member (Judicial)

Appearances:

For the NHAI/Objector	:	Senior Counsel Cyrus Ardeshir, Adv. Prachi Johri a/w Adv. Sachin Jain and Adv. Himanshu Sharma
For the Resolution Professional/ Applicant	:	Senior Counsel Gaurav Joshi a/w Adv. Saurabh Panda, Adv. Abhilash Chaudhary, Adv. Arushi Chandra, Adv. Arushi Handa, Adv. Arpana
For CoC	:	Senior Counsel Krishnendu Dutta and Adv. Harsh Gurbani i/b Adv. Madhav Kanoria, Adv. Srideep Bhattacharyya, Adv. Neha Shivhare and Adv. Aditya Tanay Pandey
For SRA	:	Sr. Adv. Sharan Jagtiani a/w Adv. Saurabh Bachhawat, Adv. Pooja Mayhajan, Adv. Kaushik puranik, Adv. Karan Vir Khosla

ORDER

1. The present Application is filed by the Resolution Professional, Mr. S. Rajendran ("Applicant/Resolution Professional/RP"), under Section 30(6) r/w Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("Code"), r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan dated originally dated 17.02.2026, submitted by email dated 23.02.2026 and as finally revised on 04.05.2026 pursuant to the Challenge Process, read with the clarification dated 08.05.2026 ("*Resolution Plan*") for **SU Toll Road Private Limited** ("*Corporate Debtor*") submitted by **the Consortium of VK Gupta & Associates and Mr. Harish Kumar Agarwal** ("*SRA*") which was placed before the members of the Committee of Creditors ("*CoC*") in the 12th Meeting of the CoC held on 12.05.2026 and approved with 100% voting share on 09.06.2026, following e-voting conducted from 12.05.2026 to 09.06.2026.

2. The Corporate Debtor is a company incorporated on 24.03.2007 under the provisions of the Companies Act, 1956, bearing CIN U74999MH2007PTC169145, and having its registered office at Reliance Centre, 19, Walchand Hirachand Marg, Ballard Estate, Mumbai – 400001.

BRIEF BACKGROUND:

3. The present Application is being filed by **Mr. S. Rajendran**, the resolution professional of the Corporate Debtor above-named, who is registered as an 'Insolvency Professional' with the Insolvency and Bankruptcy of India ("IBBI") and his Registration No. is IBBI/IPA-002/IP-N00098/2017-18/10241.
4. This Tribunal vide its Order dated 18.08.2025 ("Admission Order") admitted the application filed by the State Bank of India ("Financial Creditor / SBI") in terms of Section 7 of the Code, and initiated corporate insolvency resolution process ("CIRP") against the Corporate Debtor and appointed Mr. Sanjay Kumar Mishra as the Interim Resolution Professional ("IRP") of the Corporate Debtor.
5. Upon commencement of the Corporate Insolvency Resolution Process ("CIRP"), the IRP made the Public Announcement in Form-A on 20.08.2025 in terms of Regulation 6 of the CIRP Regulations. Thereafter, the IRP intimated the creditors in accordance with Regulation 6A of the CIRP Regulations on 21.08.2025 and filed e-Form INC-28 with the Registrar of Companies on 01.09.2025, intimating the commencement of the CIRP.
6. Pursuant to the Public Announcement, the IRP received claims from the creditors and, in compliance with Regulation 13 of the CIRP Regulations, prepared the List of Creditors. The List of Creditors, updated as of 02.09.2025, was filed before this Tribunal on 10.09.2025 and was also uploaded on the website of the IBBI and the Corporate Debtor.
7. In the 1st CoC meeting held on 16.09.2025, the CoC ratified the remuneration and expenses incurred by the IRP, deliberated upon the

strategy for marketing the assets of the Corporate Debtor and the process for inviting Expressions of Interest ("EoI"), including issuance of Form-G, and approved the appointment, fees and expenses of the Registered Valuers. Thereafter, in the 2nd CoC meeting held on 20.09.2025, the CoC approved the appointment of Ernst & Young Restructuring LLP as process advisor to the Resolution Professional, Shardul Amarchand Mangaldas & Co. as legal counsel to the Resolution Professional, and CLA-Indus Value Consulting for conducting the transaction audit under Sections 43, 45, 50 and 66 of the Code, along with their respective fees and expenses.

8. The IRP, thereafter, issued the Invitation for Expression of Interest ("EoI") by way of Form-G dated 03.10.2025 under Regulation 36A of the CIRP Regulations, inviting Prospective Resolution Applicants ("PRAs"), to submit their EoIs on or before 24.10.2025. Subsequently, in the 3rd meeting of the CoC held on 17.10.2025, the CoC approved the revision of Form-G. Pursuant thereto, the IRP issued the revised Form-G on 22.10.2025, extending the last date for submission of EoIs from 24.10.2025 to 31.10.2025.
9. Meanwhile, the IRP received several EoIs from interested PRAs, including the VK Gupta & Associates consortium and Mr Harish Kumar Agarwal. The IRP assessed the EoIs against the eligibility criteria approved by the CoC and, on 05.11.2025, circulated the provisional list of PRAs to the CoC members and the concerned PRAs. At the 4th Coc meeting, held on 06.11.2025, SBI proposed replacing the IRP and appointing the present Applicant as the Resolution Professional ("RP"). The Coc approved the Applicant's appointment as RP through e-voting, and this Tribunal subsequently confirmed the appointment by order dated 01.12.2025.
10. At the 5th meeting of the CoC on 13.11.2025, the members of the CoC approved the terms of the Request for Resolution Plan ("RFRP"), the evaluation matrix, the earnest money deposit and the performance

security. The IRP also informed the CoC that no objections had been received from the PRAs against the provisional list. Of the 26 EoIs received, 25 met the prescribed eligibility criteria and were included in the final list of PRAs, which was circulated to the CoC on 20.11.2025.

11. Thereafter, on 21.11.2025, the IRP issued the RFRP to the eligible PRAs for submission of resolution plans in respect of the Corporate Debtor. The eligible PRAs were also provided with the Information Memorandum ("IM") and access to the Virtual Data Room ("VDR"), based on the information available with the IRP.
12. At the 6th CoC meeting on 19.12.2025, the Coc approved extending the last date for submission of resolution plans from 21.12.2025 to 19.01.2026. Subsequently, with the CoC's approval, the deadline was further extended to 10.02.2026 and ratified at the 7th CoC meeting on 06.02.2026, at which the CoC also approved a 90-day extension of the CIRP period under Section 12 of the Code. Pursuant to the extension of the CIRP period, the Applicant received resolution plans from 6 PRAs on 23.02.2026, namely (i) SA Infrastructure Consultants Private Limited; (ii) SMS Limited; (iii) Kalyan Toll Infrastructure Limited; (iv) Consortium of VK Gupta & Associates and Mr. Harish Kumar Agarwal; (v) Indus Infra Trust; and (vi) Prakash Asphaltings and Toll Highways (India) Limited.
13. At the 8th CoC meeting on 24.02.2026, the resolution plans were opened in the presence of the respective Resolution Applicants, who presented summaries of their plans. The Applicant also informed the CoC of receipt of the valuation reports. The CoC then deliberated on the proposed challenge process and approved the appointment of Pipara & Co LLP as the consultant to verify compliance with Section 29A of the Code.
14. Thereafter, at the 9th CoC meeting on 05.03.2026, the CoC approved the Challenge Process Note to maximize the value of the Corporate Debtor and selected Scenario 2, which provided for a two-phase challenge process with a reserve price of Rs. 264 crore. The CoC also authorized

the Applicant to issue the Challenge Process Note and to undertake the necessary steps. Accordingly, the Applicant issued the Challenge Process Note on 12.03.2026.

15. On 12.04.2026, the appointed Consultant issued its preliminary opinion confirming the eligibility of four PRAs participating in the Challenge Process under Section 29A of the Code. Thereafter, at the 10th CoC meeting on 13.04.2026, Phase 2 of the Challenge Process was conducted with the participation of the four eligible Resolution Applicants. The Challenge Process concluded after no further bids were received in Round 14 and the extended Round 14, with the highest total NPV of Rs. 427 crores. Accordingly, the Resolution Applicants were informed to submit their revised final resolution plans, incorporating their final bids and the requisite modifications and clarifications, by 16.04.2026.

16. The RP, pursuant to the Coc's instruction, extended the last date for submission of signed resolution plans to 04.05.2026, and all six RAs submitted their signed plans on that date. Further, the final report of Pipara & Co. LLP, the 29A Consultant, received on 05.05.2026, was circulated to the CoC members on 06.05.2026. The report confirmed compliance with Section 29A of the Code by Kalyan Toll Infrastructure Limited, the consortium of VK Gupta & Associates and Mr. Harish Kumar Agarwal, SA Infrastructure Consultants Private Limited, and Indus Infra Trust. With respect to SMS Limited and Prakash Asphaltings and Toll Highways (India) Limited, the assessment remained subject to certain queries and clarifications, and conclusive confirmation of their eligibility could not be provided in the absence of the requisite responses. Thereafter, at the 12th CoC meeting held on 12.05.2026, the resolution plans, along with the clarifications received, were placed for simultaneous voting under Regulation 39(3) of the CIRP Regulations. The CoC also approved pro-rata distribution to stakeholders, wherever applicable, in accordance with their admitted claims, the Code, and the terms of the respective resolution plans.

17. E-voting on the resolution plans, along with clarifications, was conducted from 12.05.2026 to 09.06.2026. On 09.06.2026, the CoC approved the resolution plan submitted by the consortium of VK Gupta & Associates and Mr. Harish Kumar Agarwal, the Successful Resolution Applicants, with 100% voting share. Accordingly, the RP issued a Letter of Intent ("LOI") dated 09.06.2026, which was unconditionally accepted by the Successful Resolution Applicants ("SRA"). Thereafter, the SRA furnished two performance bank guarantees of Rs. 20.95 crore each, aggregating to Rs. 41.90 crore, in favour of State Bank of India, acting on behalf of the CoC, in accordance with the RFRP and the Letter of Intent. The details of the Performance Bank Guarantees are as follows:
    a) HDFC Bank guarantee no. 035GT02261620004 dated 11.06.2026 for Rs. 20.95 crore, expiring on 07.12.2026 with claim date 07.12.2027; and
    b) ICICI Bank guarantee no. 0013NDDG00014427 dated 12.06.2026 for Rs. 20.95 crore, valid up to 08.12.2026 with claim period up to 07.12.2027.
18. Further, the Applicant submits that the Corporate Debtor entered into a Concession Agreement dated 19.07.2007 with the National Highways Authority of India ("NHAI") for the Salem–Ulundurpet section of NH-68/NH-79. NHAI submitted a claim of approximately Rs. 444.68 crore, of which Rs. 65.07 crore, representing settlement under "Vivad Se Vishwas II", was admitted, while Rs. 372.48 crore was treated as a contingent liability in relation to pending arbitration involving claims and counter-claims between the parties. The arbitration was initiated by the Corporate Debtor prior to the commencement of the CIRP, claiming approximately Rs. 841.23 crore against NHAI, which, in turn, filed a counter-claim of Rs. 328.12 crore. The arbitration proceedings are presently pending adjudication. During the CIRP, the Applicant informed the operational creditors that, in the absence of any nomination by them, NHAI, being the operational creditor with the highest admitted debt,

would be invited to attend the CoC meetings as their representative, without voting rights, in accordance with Section 24(3)(c) of the Code. Accordingly, NHAI was invited to attend the CoC meetings but has not attended any meeting to date.

19. The Applicant submits that the present Application was filed on 23.06.2026, within the prescribed 330-day period for completion of the CIRP. Pursuant to the extension granted by this Tribunal vide order dated 15.05.2026, the CIRP period was extended to 13.07.2026.

SALIENT FEATURES OF THE RESOLUTION PLAN:

20. **Going Concern:** The SRA propose to revive and operate the Corporate Debtor as a going concern, undertake necessary repairs and maintenance of the toll road project, explore disposal of non-core assets for working capital, and retain rights to recover amounts due from third parties.
21. **Resolution Plan Value and Funding:** The total Resolution Plan provides the plan value of Rs. 419.50 crore, comprising Rs. 417 crores for financial creditors, to be infused through debt and equity, and Rs. 2.50 crore through debt from associates of the Resolution Applicants.
22. **Payment to Stakeholders:** The plan provides for Rs. 50 lakhs towards CIRP Costs, Rs. 417 crores towards financial creditors, Rs. 4 lakhs towards operational creditors, including government dues, employees and workmen, and Rs. 1.96 crore towards other operational creditors.
23. The Resolution plan provides the payment waterfall and treatment of each stakeholder class is summarised below:
    (a) **CIRP Costs:** CIRP Costs shall be paid in priority in accordance with Section 30(2)(a) of the Code, initially from the Corporate Debtor's revenue, with an initial infusion of Rs. 50 lakh and further funding by the SRA, if required.
    (b) **Operational Creditors:** The proposed payments of Rs. 4 lakh and Rs. 1.96 crore shall constitute full and final settlement of the respective categories of operational creditors. Statutory dues of

employees and workmen, including provident fund and gratuity, are proposed to be paid in full and in priority in accordance with applicable law.

(c) **Financial Creditors**: Secured financial creditors are proposed to receive Rs. 417 crores within T+60 days from approval of the Resolution Plan by the Adjudicating Authority. Dissenting financial creditors shall be paid in accordance with the minimum entitlement prescribed under Section 53(1) of the Code, as applicable.

(d) **Cash Balances and Receivables**: The cash, cash equivalents, bank balances, deposits and gross trade receivables accrued up to 30.06.2026 or the Approval Date, whichever is earlier, after deduction of applicable CIRP Costs, shall be transferred to the financial creditors within T+30 days, in the manner determined by the CoC.

24. **Acquisition of Control and Capital Structure:** Upon completion of the stipulated payments and capital restructuring, the SRA propose to acquire control of the Corporate Debtor, with VK Gupta & Associates, through Mr Vinay Gupta, and Mr Harish Kumar Agarwal holding 50% each of the equity and/or preference share capital.

25. **Implementation Timeline:** The plan envisages constitution of the Monitoring Committee by T+2 days, appointment of proposed directors by T+15 days, funding for CIRP Costs and operational creditors by T+30 days, and payment to financial creditors and allotment of shares by T+60 days from approval of the Resolution Plan.

26. Reliefs and Waivers: The Resolution Plan seeks various reliefs, concessions and waivers from the competent authorities. However, the Resolution Plan clarifies that implementation shall not be conditional upon the grant of such reliefs, and that all approvals and compliances required under applicable laws shall be obtained or fulfilled by the SRA.

27. Avoidance Transactions and Recoveries: Rights and recoveries of the Corporate Debtor arising from litigation, arbitration and other proceedings shall continue to vest in the Corporate Debtor, without set-off against payments or liabilities under the Resolution Plan. The Resolution Plan further confirms that the treatment of avoidance and fraudulent or wrongful trading proceedings shall remain subject to Regulation 38(2A) of the CIRP Regulations and the terms of the clarification.
28. The Applicant submits that the Monitoring Committee shall be constituted consisting of;
    a) *the Resolution Professional (as Chairman) subject to his consent; otherwise, some other insolvency professional shall be appointed;*
    b) *one (1) representative of the Resolution Applicant, and*
    c) *one (1) representative of the Secured Financial Creditors.*

29. **Source of Funds:** The SRA have identified the sources of funds as the net worth of VK Gupta & Associates amounting to Rs. 82.65 crore and Mr Harish Kumar Agarwal amounting to Rs. 390.98 crore, both as on 31.03.2026. Additionally, non-binding commitment letters from HDFC Bank and ICICI Bank for Rs. 250 crore each have been submitted in support of the proposed funding.
30. Performance Guarantee: The SRA has submitted Form-H under Regulation 39(4) of the CIRP Regulations to certify that 2 Performance Guarantees aggregating to Rs. 41.90 Crores have been submitted in favour of State Bank of India, acting on behalf of the CoC, in accordance with the RFRP and the Letter of Intent. The details of the Performance Bank Guarantees are as follows:
    c) HDFC Bank guarantee no. 035GT02261620004 dated 11.06.2026 for Rs. 20.95 crore, expiring on 07.12.2026 with claim date 07.12.2027; and

d) ICICI Bank guarantee no. 0013NDDG00014427 dated 12.06.2026 for Rs. 20.95 crore, valid up to 08.12.2026 with claim period up to 07.12.2027.

STATUTORY COMPLIANCE:

31. In compliance with Section 30(2) of the IBC, 2016, the Resolution Professional has examined the Resolution Plan of the Successful Resolution Applicant and confirms that this Resolution Plan:
    a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
    b) Provides for payment of debts of Operational Creditor;
    c) Provides for payment to the Financial Creditors who did not vote in favour of the Resolution Plan
    d) Provides for the management of the affairs of the Corporate Debtor;
    e) Provides for the implementation and supervision of the resolution plan;
    f) Does not contravene any of the provisions of the law for the time being in force.
32. It is further confirmed by Applicant that, in compliance with Section 30(4) of the IBC, 2016, the Resolution Plan is feasible and viable, according to the CoC (b) has been approved by the CoC with 99.93% voting share.
33. It is further confirmed by Applicant that, in compliance with Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution Plan provides that;
    i. The amount due to the Operational Creditors under the Resolution Plan shall be given priority in payment over Financial Creditors.
    ii. The Resolution Plan includes a statement as to how it has dealt with the interest of all stakeholders.
    iii. The Resolution Plan provides:
        a) The terms of the plan and its implementation schedule.

b) For the management and control of the business of the Corporate Debtor during its term.

c) Adequate means of supervising its implementation.

NHAI's Objections to the Resolution Plan:

34. National Highways Authority of India ("NHAI/Applicant"), an Operational Creditor of the Corporate Debtor, filed **IA (IBC) 3433 of 2026** seeking rejection of the Resolution Plan submitted by the Consortium of VK Gupta & Associates and Mr Harish Kumar Agarwal, which was approved by the CoC on 09.06.2026 and is pending approval before this Tribunal.

35. The Resolution Professional/RP of the Corporate Debtor, the Committee of Creditors ("CoC"), and SRA, namely, VK Gupta & Associates and Mr Harish Kumar Agarwal consortium, are arrayed as Respondent Nos. 1, 2, and 3, respectively.

36. NHAI submits that owing to alleged non-performance of its contractual obligations under the concessionaire agreement dated 19.07.2007 for the Build, Operate and Transfer (BOT) basis for the Salem–Ulundurpet section of NH-68 from 0.313 KM to 136.670 KM, disputes arose between the parties, culminating in an arbitral award dated 08.10.2021, as corrected on 05.01.2022.

37. NHAI submits that, pursuant to the commencement of the CIRP and the public announcement issued by the RP, it filed its claim as an operational creditor for Rs. 444.68 crore. The claim included Rs. 65,06,52,340/- arising from Arbitration-I, comprising a settlement amount of Rs. 56.10 crore under the Settlement Agreement dated 12.08.2024 and accrued interest of approximately Rs. 8.96 crore, which remained unpaid. NHAI further submits that, in Arbitration-II (ICA Case No. AC-2417), it had raised counter-claims of Rs. 328.12 crore, calculated up to 30.11.2024, along with interest, and pre-estimated and agreed damages of Rs.44.31 crore calculated up to 18.08.2025.

38. NHAI submits that, vide communication dated 13.09.2025, the IRP admitted its claim of Rs. 65.07 crore in terms of the settlement agreement and kept the remaining claim of Rs. 379.62 crore in abeyance, subject to pending arbitration proceedings. The RP subsequently communicated the status of the claim on 07.01.2026, reflecting Rs. 65.07 crore as admitted, Rs. 372.42 crore as contingent and Rs. 7.18 crore as rejected. NHAI objected to the treatment of its claim vide email dated 09.01.2026, seeking admission of the entire claim of Rs. 444.68 crore. The RP, vide email dated 19.01.2026, invited NHAI to attend CoC meetings without voting rights under Section 24 of the Code, noting that the admitted operational debt exceeded 10% of the Corporate Debtor's total debt.
39. NHAI submitted that, vide email dated 02.04.2026, it requested the RP to admit the rejected claim of Rs. 7.182 crore, comprising Rs. 7.11 crore towards the negative change of scope and Rs. 0.072 crore towards 50% of the Independent Engineer's expenses, allegedly payable under the Concession Agreement. However, the RP did not respond to the said email or revise the claim records. NHAI further submitted that it lodged supplementary claims of Rs. 12.04 crore on 14.05.2026, which the RP declined to consider vide email dated 19.05.2026 on the ground of delay under Regulation 13(1B) of the CIRP Regulations.
40. NHAI submitted that, during the 9th CoC meeting on 05.03.2026, the RP incorrectly informed the CoC that NHAI had not challenged its claim, despite NHAI having pursued the admission of its claims through subsequent correspondence. NHAI further contended that, although the CoC acknowledged its position as the principal stakeholder and the Corporate Debtor's dependence on the concession granted by it, the RP deferred NHAI's involvement until the selection of the SRA, and no approval was obtained thereafter. NHAI alleged that the Challenge Process primarily focused on maximising recoveries for financial creditors, without corresponding improvements in the amounts proposed for operational creditors or adequate consideration of the viability of the

Corporate Debtor's sole project. Following subsequent CoC meetings and the e-voting results declared on 09.06.2026, the consortium of VK Gupta & Associates and Mr Harish Kumar Agarwal was declared the SRA, and a Letter of Intent was issued in its favour. Further, NHAI has filed the present application, contending that the resolution plan is non-compliant with applicable law and liable to be rejected.

41. The NHAI objects to the Resolution Plan submitted by the consortium of VK Gupta & Associates and Mr. Harish Kumar Agarwal on the following grounds:

    a) *The Resolution Plan modifies the terms of the concluded contract between NHAI and the Corporate Debtor, i.e., the Settlement Agreement dated 12.08.2024;*
    b) *The Resolution Plan modifies the existing permissions under the Concession Agreement, namely, Treatment of permissions, Treatment of default notices, Treatment of Non-FASTag liability (Double Charges from Non-FASTag Vehicles), and Treatment of contingent claims;*
    c) *The COC has failed in its duty to protect the interests of all stakeholders by taking out 417 crores out of total plan value of Rs. 419 crores, thus leaving only 1.96 crores to Operational Creditors against Rs. 489 crores of admitted claims;*
    d) *The COC has failed to comply with amended Section 30(4), IBC requiring recording of reasons for approval;*
    e) *The terms of the resolution plan are to become operational even prior to approval of the plan by this Tribunal as SRA has been seeking confidential data from the RP and the CoC including data related to toll collection and other pieces of information pursuant to clause IX (2) of the resolution plan;*

42. NHAI also submits that the project in question involves serious and urgent public interest, and that CoC has failed to exercise its commercial wisdom by bypassing the process for selecting the concessionaire and by failing

to comply with the terms of the concession agreement, particularly in relation to MMR obligations. The resolution plan is contrary to RFRP, as it does not identify the approvals required by SRA for implementation of the Plan.

43. Further, in its rejoinder dated 15.08.2026 to the RP's reply, NHAI contended that the RP had failed to invite it to the first six CoC meetings and that its objection was not to the adjudication of its claims but to the extinguishment of its contractual rights arising from defaults under the Concession Agreement. NHAI alleged that the RP's submissions on the continuation of existing contracts and the application of the clean-slate principle were contradictory, particularly because the Notice of Intention to Terminate remained outstanding. It further contended that making the implementation of the Resolution Plan dependent on NHAI's approval would render the Plan conditional and that a consultative mechanism ought to have been adopted before its approval. Relying on the definition of "Project Agreements" under the Concession Agreement, NHAI submitted that the Settlement Agreement dated 12.08.2024 was a concluded contract whose terms could not be modified or nullified by the Resolution Plan. Relying on ***Tata Consultancy Services Ltd. v. SK Wheels (P) Ltd., (2022) 2 SCC 583***, NHAI contended that the Resolution Plan could not impose a haircut that would effectively defeat the specific performance of the Settlement Agreement.

44. In its rejoinder dated 16.08.2026 to Respondent No. 2/CoC's reply, NHAI contended that its non-attendance at CoC meetings did not absolve the CoC of its obligation to ensure compliance with applicable law and to give equitable consideration to stakeholders' interests. It alleged that the CoC had primarily secured the interests of financial creditors, who were allocated Rs. 417 crores out of the total plan value of Rs. 419.50 crore, and that the proposed use of the Corporate Debtor's cash balance for their benefit was contrary to Clause 25 of the Concession Agreement. NHAI further submitted that the CoC and RP were aware of the requirement for

its approval but failed to undertake the promised consultation after the selection of the SRA. It contended that changes in the Corporate Debtor's shareholding, management and control were material to the Concession Agreement and public project obligations. NHAI also alleged that the Resolution Plan was unimplementable and lacked feasibility and viability, as it did not provide for the consequences of NHAI withholding the requisite approvals, thereby rendering its implementation conditional. Finally, NHAI contended that Clause IX (2), which allegedly envisaged the SRA's participation in decision-making before the Tribunal's approval, amounted to the premature implementation of the Plan, and that the CoC had failed to apply its commercial wisdom to these issues, thereby vitiating the plan approval process.

45. In its rejoinder dated 15.08.2026 to Respondent No. 3/SRA's reply, NHAI contended that the Resolution Plan was incomplete and unimplementable because it failed to identify the requisite approvals from NHAI and to provide a clear mechanism and timelines for obtaining them. It submitted that, given the Corporate Debtor's sole dependence on the highway project, the SRA's selection, made without consulting NHAI, disregarded the Concession Agreement and public interest. NHAI further alleged that the Plan unfairly favoured financial creditors, failed to adequately address its contractual and supplementary claims, and sought to extinguish liabilities arising under the Settlement Agreement and pending arbitration proceedings. It also objected to the proposed treatment of the Corporate Debtor's cash balance, the allocation of responsibility for pending Major Maintenance Works and CIRP-period liabilities, and Clause IX(2), contending that it enabled the SRA to influence the Corporate Debtor's decisions before approval by the Tribunal. Accordingly, NHAI maintained that the Resolution Plan failed to ensure compliance with applicable law, contractual obligations, and the requirements of feasibility and viability, and therefore ought to be rejected.

SUBMISSIONS OF RP, CoC and SRA to the NHAI Objections:

46. RP, vide affidavit in reply dated 08.08.2026, contended that the present Application is a belated collateral challenge to NHAI's claim determination and is barred by laches and acquiescence, as NHAI approached the Tribunal only after the CoC had approved the Resolution Plan. RP further submitted that treating NHAI as an operational creditor under the Resolution Plan complies with the requirements of the Code. It was also submitted that the Plan expressly provides for the continuation of existing contracts, including the Concession Agreement and the Settlement Agreement, without altering or modifying their terms. RP further contended that RP had afforded NHAI sufficient opportunities to participate in the CIRP, but NHAI had failed to avail itself of those opportunities.

47. RP further submitted that the amendments to Section 30(4) of the IBC and Regulation 39(3) of the CIRP Regulations, which require the CoC to record reasons for approving a resolution plan, are not applicable to the present proceedings. The voting process commenced at the 12th CoC meeting on 12.05.2026, and e-voting opened on 15.05.2026, both before the respective amendments came into force on 26.05.2026 and 08.06.2026. Although e-voting concluded on 09.06.2026, the RP contended that the amendments cannot be applied retrospectively to a deliberative and voting process already initiated and substantially conducted under the unamended provisions, as this would introduce a new substantive requirement midway through the process.

48. RP further submitted that no terms of the Resolution Plan had been implemented before its approval by the Tribunal and that all decision-making authority continued to vest exclusively with the CoC during the intervening period. He further stated that any information shared with the SRA would be limited to what was appropriate and legally permissible, subject to strict compliance with confidentiality obligations and applicable laws. The RP contended that the Applicant had failed to place any material or evidence on record to establish that any provision of the

Resolution Plan had been implemented before its approval by the Tribunal.

49. CoC, vide affidavit in reply dated 13.08.2026, denied the allegations raised by NHAI and submitted that NHAI had been invited to and kept informed of CoC meetings from the 7th meeting onwards but chose not to attend, citing its lack of voting rights. The CoC contended that the Resolution Plan proceeds on an "as is where is" basis, places the responsibility for obtaining NHAI's approvals on the SRA, and does not modify the Concession Agreement or trigger any event of default thereunder. It further submitted that the interests of all stakeholders had been duly considered, NHAI's challenge was belated, and the licenses and permits of the Corporate Debtor were required to continue under Section 31(5) of the Code. The CoC also contended that the Settlement Agreement was not immune from treatment under the Resolution Plan, and the judgment of the Hon'ble Supreme Court of India in the matter of ***Gujarat Urja Vikas Nigam Limited vs. Mr Amit Gupta & Ors. [Civil Appeal No. 9241 of 2019*** does not assist NHAI's case; the amendment to Section 30(4) was inapplicable or substantially complied with, contingent liabilities and pending arbitration counterclaims stood extinguished under the clean-slate principle, NHAI was receiving more than its lawful entitlement, and no part of the Resolution Plan had been unlawfully implemented before approval by the Tribunal.

50. SRA, vide affidavit in reply dated 09.08.2026, denied the allegations against it and submitted that the treatment of NHAI's claims under the Resolution Plan complies with Section 30(2) of the Code. It further submitted that, upon approval and implementation of the Plan, the claims against the Corporate Debtor, including those arising from the Settlement Agreement and pre-CIRP Fast-Tag penalties, would stand extinguished, while Fast-Tag penalties, if any, for the CIRP period would be treated as CIRP costs. It further contended that the Resolution Plan does not modify the Concession Agreement and that any approval required from NHAI

cannot be linked to the payment of past dues. It also submitted that it had requested the RP, vide emails dated 23.07.2026 and 05.08.2026, to address the alleged defaults and urgently commence pending maintenance works. It further contended that Clause IX (2) merely enables it to monitor decisions affecting shareholder value and the Corporate Debtor's going-concern status, without conferring control over the Corporate Debtor or its business decisions.

Discussion and Decision on NHAI's Objections

51. NHAI has challenged the Resolution Plan, inter-alia, broadly on the following grounds: (i) procedural irregularities, namely, its exclusion from the SRA selection process and decisions on the technical and other selection criteria, as well as its failure to invite NHAI till 6th CoC meeting; (ii) the CoC's failure to judiciously balance the interests of all stakeholders; (iii) non-compliance with the statutory requirement under section 30(4) to record reasons for approval; (iv) modification of the concession agreement, particularly in relation to NHAI approval for a change of management and the establishment of an escrow account; (v) extinguishment of NHAI's financial claims; and (vi) extinguishment of overdue Major Maintenance & Repair (MMR) obligations.

52. The RP, CoC and SRA argued that NHAI's objections lacked merit. The RP and CoC agreed that overdue MMR obligations had to be completed, but the SRA argued that any unfulfilled MMR obligations had to be extinguished under the approved resolution. They also differed on how the obligations should be performed and who should bear the cost if they were required under the concession agreement. The RP and CoC contended that the SRA should complete any MMR obligations remaining unfulfilled as of 30.6.2026, at its own cost and in addition to the financial proposals in the Resolution Plan. They argued that these pending obligations could not be treated as CIRP costs or funded from the corporate debtor's cash balances available as of 30.6.2026, which would otherwise accrue to the CoC. By contrast, the SRA contended that any

unfulfilled MMR obligations should be extinguished under the approved resolution and, in any event, that it should not be responsible for obligations due as of 30.6.2026. Accordingly, the SRA argued that, if those obligations were to be fulfilled, they should be funded from the corporate debtor's cash balances available as of 30.6.2026.

53. It is trite that this Tribunal has limited jurisdiction to interfere with the commercial wisdom of the CoC while approving the resolution plan. A perusal of section 31(1) of the Code demonstrates that the NCLT is required to examine three things while approving a resolution plan, namely

    a. whether such a Plan is approved by the COC in terms of section 30(4) of the Code;
    b. whether such a Plan is in accordance with section 30(2) of the Code and the regulations made in furtherance thereto and
    c. whether the Plan has set out a mechanism for its effective implementation.
    d. If the aforesaid three conditions are satisfied, then the NCLT "***shall***" approve the resolution plan. Therefore, the NCLT has no discretion beyond the tenets set out in section 31(1), to reject a resolution plan. In other words, there is only scope for limited judicial review under section 31(1) of the IBC.

54. In the case of ***K. Sashidhar vs. Indian Overseas Bank & Ors., CIVIL APPEAL NO.10673 OF 2018, it is held at Para 37 that:***

> *37. ……..... Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in the NCLT or NCLAT as noticed earlier, has not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order*

"approving a resolution plan" under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers "by the resolution professional" during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds - be it under Section 30(2) or under Section 61(3) of the I&B Code - are regarding testing the validity of the "approved" resolution plan by the CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by the CoC in exercise of its business decision.

55. In case of ***M.K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr.,*** ***(2023) ibclaw.in 60 SC***, it was explained at Para 47 that "*the commercial wisdom of CoC means a considered decision taken by CoC with reference to the commercial interests and the interest of revival of the corporate debtor and maximization of value of its assets. This wisdom is not a matter of rhetoric but is denoting a well-considered decision by the protagonist of CIRP i.e., CoC……. This Court also observed in* ***K. Sashidhar*** *that 'there is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan……It follows as a necessary corollary that to be worth its name, the commercial wisdom of CoC would come into existence and operation only when all the relevant information is available before it and is duly deliberated upon by all its members, who have direct and substantial interest in the survival of corporate debtor and in the entire CIRP*". It is concluded at para 47.1

that "*In light of the aforesaid position of law and its operation in relation to the decision-making process of CoC, it needs hardly any emphasis that each and every aspect relating to the resolution plan, and more particularly its financial layout, has to be before the CoC before it could be said to have arrived at a considered decision in its commercial wisdom.*" The Objector has not brought forth any cogent material to demonstrate that all the relevant information was not available before the CoC or was not deliberated upon by its members, except contending that the CoC and RP had ignored objective consideration of Major Maintenance & Repair Work ('MMR obligations') while approving the resolution plan.

56. In the case of ***Dharampal Premchand Ltd. v. Jitendra Bhandari and Ors., (2026) ibclaw.in 706 NCLAT****, it is held that* "***50.*** *At the outset, it is necessary to note that the jurisdiction under Section 61 of the Insolvency and Bankruptcy Code is limited. Interference with an approved Resolution Plan can be made, only if the Appellant is able to show patent illegality, material irregularity, violation of mandatory provisions of law, or perversity in the findings of the Adjudicating Authority. Mere dissatisfaction with the outcome of the CIRP or disagreement with the manner in which a claim was treated cannot by itself become a ground to reopen a completed insolvency process, particularly after approval of the Resolution Plan. The object of the Code is to ensure resolution, revival of the Corporate Debtor, and finality of the insolvency process within prescribed timelines*."

57. **Vallal RCK vs. M/S. Siva Industries and Holdings Ltd. and Ors., though in relation to Section 12A of the Code,** has reiterated as follows –

> ***27.*** *This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the*

case ***of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another***

95. ....However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC....."

58. It is argued by NHAI that the Resolution Plan settles its claim under the Settlement Agreement dated 12.08.2024 for an amount less than provided in that Agreement, extinguishes its rights under the Arbitration proceedings while preserving the rights of the Corporate Debtor under those Arbitral proceedings, settles NHAI's notices and contingent claims liabilities at NIL, does not provide for NHAI's share in the FASTag penalty collections.

59. It is noted that Hon'ble Supreme Court, in case of ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531,*** has stated at Para 64 that *"Thus, what is left to the majority decision of the Committee of Creditors is the "feasibility and viability" of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of*

Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, payment being provided to a certain type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place."

60. Hon'ble Supreme Court in Essar Steel (Supra), after taking note of its decision in ***K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150***, reiterated at Para 72/73 that *"This is the reason why Regulation 38(1A) speaks of a resolution plan including a statement as to how it has dealt with the interests of all stakeholders, including operational creditors of the corporate debtor. Regulation 38(1) also states that the amount due to operational creditors under a resolution plan shall be given priority in payment over financial creditors. If nothing is to be paid to operational creditors, the minimum, being liquidation value – which in most cases would amount to nil after secured creditors have been paid – would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational*

*creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors.***"**

61. It is noted that, in Essar Steel (Supra), while recognising the necessity of balancing the interests of stakeholders, it was stated that if nothing is to be paid to operational creditors, the minimum, being the liquidation value – which in most cases would amount to nil after secured creditors have been paid – would certainly not balance the interests of all stakeholders or maximise the value of the assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. It also said that stakeholders should be paid to ensure that the corporate debtor's business does not become impossible for want of the most basic and essential element for its continuation.

62. In this backdrop, it is noted that the total resolution money, including the transfer of the cash balance as of 30.6.2026, is less than the total admitted claims of the secured financial creditors under the resolution plan, thus leaving a NIL liquidation value for the unsecured creditors of the corporate debtor, as the total plan value is also higher than the average liquidation value of the corporate debtor. The resolution plan, in its present form, proposes to pay 74% of admitted claims to secured financial creditors and only about 2% to operational creditors (other than government dues).

63. NHAI argued that the entire increase in resolution money arising from the Swiss Challenge is going to the secured financial creditor. The resolution of the corporate debtor envisages settlement of debt owed by the corporate debtor in a manner that enables it to stand on its own feet after settlement, as the liquidation of the corporate debtor would not only deplete its economic value but also be prejudicial to the interests of employees and

other persons gainfully employed with it, besides causing loss to the exchequer in terms of tax collections. It is relevant to note that, in the present case, the corporate debtor's only asset is a concessionaire agreement vesting toll collection rights in the corporate debtor, and its liquidation shall not even yield what NHAI is proposed to receive against its claims.

64. As regards extinguishment of NHAI's claim in Arbitral Proceedings while preserving corporate debtor's claim against NHAI, in case of ***Ujaas Energy Ltd. v. West Bengal Power Development Corporation Ltd.,*** ***(2026) ibclaw.in 127 SC***, the Hon'ble Supreme Court, while upholding extinguishment of claims against the corporate debtor post-resolution, protected creditor's counterclaims on equitable grounds in arbitral proceedings, holding that "*Upon a cumulative consideration of all relevant factors, we hold that the respondent, although not entitled to independently pursue its claim by way of counterclaim post approval of the resolution plan, ought to be permitted to raise the plea of set-off at least by way of defence. We, however, clarify that the respondent shall not derive any positive or affirmative relief on the basis of the said defence and may only defend itself against the claim raised by the appellant. In other words, the respondent may rely upon the same in defence, to the extent necessary to prevent the appellant from succeeding in the arbitration proceedings either entirely or in part*." Accordingly, NHAI's right to defend to the extent of claim of corporate debtor in arbitral proceedings does not extinguish.

65. It is relevant to note that NHAI is receiving money against its claim more than the liquidation value, and it is trite that the claims of the creditors are to be settled in accordance with the Resolution Plan approved by CoC after exercising their commercial wisdom. Further, Explanation 1 to section 30(2) expressly clarifies that "a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors". Section 30(2)(b) provides for payment to operational creditors the amount

which shall not be less than the liquidation value receivable by it in liquidation. Undoubtedly, NHAI will not receive any money in liquidation, hence, it can not be said that proposal to pay about 2% only does not adequately balance of all creditors. Further, it can also not be held that the concessionaire agreement would stand terminated if the NHAI's dues are settled in the manner proposed in the resolution plan, so long as MMR obligations under the Concessionaire Agreement are addressed. We shall deal with this aspect in detail in the later part of this order.

66. Hence, it cannot be said that the proposed resolution plan does not balance the interests of stakeholders, and the financial proposals set out in the resolution plan cannot be said to violate the principle of value maximisation and the balancing of stakeholders' interests. It can not be said that the COC has failed in its duty to protect the interests of all stakeholders by taking out 417 crores out of total plan value of Rs. 419 crores, thus leaving only 1.96 crores to Operational Creditors against Rs. 489 crores of admitted claims.

67. Ordinarily, the approved resolution plan overrides the provisions of a contract in view of section 238 of the Code. However, an exception is carved out by judicial precedents in relation to the covenant concerning public interest or breach of which may cause prejudice to the public interest. In case of covenants involving public interest, the resolution plan cannot alter the contract between the parties unless the counterparty consents to such modification; the contract to such extent does not stand modified, and any proposal in the Resolution Plan contrary to such covenant cannot be approved by this Tribunal. Nonetheless, it is trite that the financial obligations due from the corporate debtor under the contract till the date of resolution are dealt with in accordance with the financial proposals set out in the approved resolution plan unless discharge of an obligation entailing financial implications is a condition precedent for

transfer of rights or benefits arising from the contract, being subject matter of Resolution Plan, in view of public interest.

68. For this proposition, it is relevant to refer decision in ***Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2022) 1 SCC 401,*** wherein the Hon'ble Court, while interpreting the concessionaire agreement executed by YEIDA (Yamuna Expressway Industrial Development Authority) with the concessionaire who was under CIRP, held at Para 140.1 that *"Applying the principles aforesaid to the facts of the present case, we are clearly of the view that the agreement in question does not acquire the status of a statutory contract merely for having been executed in terms of the powers with YEIDA under Section 6-A of the U.P. Act of 1976."* It is also held thereafter at Para 141 that *"The contract in question, the CA, even though not a statutory one, is nevertheless a contract entered into between the concessionaire and statutory authority, that is, YEIDA. It is needless to observe that even if in the scheme of IBC, a resolution plan could modify the terms of a contract, any tinkering with the contract in question, that is, the Concession Agreement, could not have been carried out without the approval and consent of the authority concerned, that is, YEIDA. Any doubt in that regard stands quelled with reference to Regulation 37 of CIRP Regulations that requires a resolution plan to provide for various measures including 'necessary approvals from the Central and State Governments and other authorities'. The authority concerned in the present case, YEIDA, is the one established by the State Government under the U.P. Act of 1976 and its approval remains sine qua non for validity of the resolution plan in question, particularly qua the terms related with YEIDA. The stipulations/assumptions in the resolution plan, that approval by the Adjudicating Authority shall dispense with all the requirements of seeking consent from YEIDA for any business transfer are too far beyond the entitlement of the resolution applicant. Neither any so-called deemed approval could be foisted upon the governmental*

authority like YEIDA nor such an assumption stands in conformity with Regulation 37 of the CIRP Regulations."

69. RFRP defines "Required Approvals" to include approvals, consents, no-objections and sanctions from any statutory, governmental or regulatory authority or third party, including NHAI. It provides at Clause 10.10(N) that "*the Resolution Applicant shall bear the responsibility for the receipt of any Required Approvals and the implementation of the Resolution Plan should not be conditional upon receipt of any such Required Approvals*", and at Clause 13.7 that the applicant "*shall be solely responsible for procuring/obtaining and maintaining any Required Approvals for the implementation of the Resolution Plan, at their sole cost and expense*".

70. Clause 32.1.1(6) of the Concession Agreement provides that any dilution in shareholding which causes the Single Entity's shareholding to fall below the prescribed minimums constitutes a breach requiring cure within ninety (90) days. Further, *Clause 11.1(xiii) of the Concession Agreement requiring the concessionanair to maintain , on which NHAI relies, is in terms a representation and warranty of the concessionaire as to the shareholding of the Single Entity. It is not a consent or prior-approval clause. NHAI has not identified any clause of the Concession Agreement which requires its prior approval for a change in control or management of the concessionaire. The only consequence which a fall in the stipulated shareholding could attract is a right of termination, and the exercise of that right is now barred by Section 31(5) of the Code and is in any event deemed not to have arisen by operation of Clause XVI(C) of the Resolution Plan. It is further pertinent that the Single Entity referred to in Clause 11.1(xiii) is Reliance Energy Limited, being the promoter and erstwhile management of the Corporate Debtor, whose shareholding cannot lawfully be retained under a resolution plan having regard to Section 29A of the Code.*

71. However, the change in shareholding and control contemplated under the Resolution Plan is an integral consequence of the resolution process,

pursuant to which the existing promoter/shareholding structure will necessarily be altered upon implementation of the approved Resolution Plan. The same cannot therefore be treated as an independent or voluntary act so as to enable NHAI to frustrate implementation of the Resolution Plan on the basis of the existing shareholding requirements under the Concession Agreement.

72. Admittedly, NHAI is a statutory authority in the present case; however, it is noted that the Resolution Plan itself requires SRA to seek approval from NHAI to transfer the management of the corporate debtor in its favour pursuant to approval of the resolution plan. Hence, it can not be said that the Resolution Plan dispense with the approval from NHAI, if contemplated under the Concession Agreement, for change in management or change in shareholder.

73. Ld. Counsel for NHAI relied upon the decision in ***Municipal Corporation of Greater Mumbai v. Abhilash Lal & Ors., (2020) 13 Supreme Court Cases 234***, wherein, at para 47, it is held that "*In the opinion of this Court, Section 238 cannot be read as overriding MCGM's right—indeed its public duty—to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92-A of the MMC Act. This Court is of the opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like MCGM is involved. Therefore, in the absence of approval in terms of Sections 92 and 92-A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM's properties.*"

74. In the MCGM case, the Resolution Plan contemplated the creation of a fresh security interest (by way of mortgage by SRA) in the properties

owned by MCGM without its consent, which was held impermissible without the express consent/approval of MCGM under section 92 of the MMC Act. However, in the present case, there is no such stipulation, and the Resolution Plan only contemplates change in ownership and management structure of the corporate debtor, who is a concessionaire, pursuant to resolution under the provisions of Code. The Resolution Plan requires SRA to seek approvals/permissions, as are required under the Concessionaire Agreement. Hence, the said Resolution Plan does not violate section 30(2) of the Code.

75. In our considered view, the Resolution Plan neither modify the terms of the concluded contract between NHAI and the Corporate Debtor, i.e., the Settlement Agreement dated 12.08.2024, nor the existing permissions under the Concession Agreement, namely, Treatment of permissions, Treatment of Non-FASTag liability (Double Charges from Non-FASTag Vehicles), and Treatment of contingent claims, as these aspects are dealt with in accordance with the provisions of the Code .

76. As regards the alleged exclusion of NHAI from participation in the CIRP process, it is an admitted fact that NHAI was issued notices for CoC meetings from the 7th meeting onwards; however, NHAI didn't attend the meetings. It is relevant to note that NHAI became entitled to receive such notice(s) from 7th meeting only, as its claim was admitted on 7.1.2026 and thereafter 7th CoC meeting was convened on 19.1.2026. Section 24(3)(c) of the IBC requires issuance of notice to operational creditors only if the amount of their aggregate debt is not less than 10% of the debt, a condition which came into existence only on 7.1.2026. It is also relevant to note that such operational creditor is not entitled to vote in the meeting as provided in section 24(4), accordingly, insistence of NHAI to allow it to vote was unfounded and not permissible.

77. The minutes of the 8th CoC meeting held on 24.2.2026 record that the six Resolution Plans were to be opened on that day, after the last day for receipt thereof, which was 23.3.2026. Expressions of Interest (EOIs) were

invited on 3.10.2025, and RFRP, including the Evaluation Matrix and IM, were issued on 21.11.2025. These timelines clearly indicate that NHAI had occasion to attend CoC meetings when the Resolution Plans were discussed and evaluated by CoC members. It is argued by NHAI that the Resolution Applicant's eligibility criteria were finalised in its absence, and it cannot be obligated to accord its approval for a change in the management of the corporate debtor pursuant to the approved resolution plan if the incumbent management does not meet its internal eligibility criteria. Since the Project in the present case involves a significant public interest in the construction and maintenance of part of NH 68, NHAI's rigorous bidding process for eligible parties cannot be ignored.

78. It is noted that NHAI had never apprised CoC or RP if they had any such specific criteria for parties to be eligible for the bidding process. Further, such criteria are not prescribed in the concession agreement in the event of a change in the concessionaire's management, and the agreement also does not contemplate any approval from NHAI for a change in shareholding. The Code requires that criteria for resolution applicants be prescribed by the RP with the approval of the CoC under Section 25(2)(h) of the Code read with Regulation 36A of the CIRP Regulations, having regard to the complexity and scale of the CD's operations, and admittedly it was done in the said manner. NHAI, which had lodged its claim on 02.09.2025 and had been in correspondence with the IRP/RP since September 2025, never asked for the same. Nonetheless, it is noted that the CoC's evaluation matrix specifically weighed past experience in NHAI toll projects, and one member of the SRA consortium, V.K. Gupta & Associates, is an existing NHAI contractor. Hence, it can not be said that the resolution process is vitiated by any irregularity on account of this.

79. As regards approval mandated under the concession agreement, it is noted that clause 11.1(13) is only a representation given by Reliance Energy Limited to maintain its shareholding in the Corporate Debtor at least up

to a specified threshold, and such representation cannot be taken as a condition precedent for change in the management of the Corporate Debtor in view of the concession agreement not contemplating it as a criterion for according approval for change in any management or control of the concessionaire in the future. Nonetheless, the change in control of management shall take place pursuant to operation of law. It is not the case that the SRA has no experience in the related field. On the contrary, the SRA is already a concessionaire for some highway projects. Nonetheless, the SRA shall comply with the condition regarding the single-entity shareholding if deemed desirable and imperative to secure the public interest, and such condition are not in capable of being performed necessitating rejection of Resolution Plan at threshold.

80. Further, Clause 44.4 provides that "*The Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by NHAI and executed by the person expressly Authorised by a resolution of NHAI in this behalf".* However, it is relevant to note that the Resolution Plan does not contemplate modification of the terms and conditions of the concession agreement. As regards extinguishment of shares held by Reliance Energy Limited in the Corporate Debtor violating the warranty, it is relevant to note that the said extinguishment is taking place by operation of law in terms of Legal provisions providing for change in management and control in case of Financial stress of the Company for its revival and, amongst others, to promote entrepreneurship and availability of credit.

81. It is noted that the section 30(4) of the Code was amended w.e.f. 26.5.2026 requiring recording of reasons for approval by CoC. Further, Regulation 39(3)(b) of the CIRP Regulations was amended w.e.f. 8.6.2026 requiring CoC to record its deliberations and rationale on the feasibility and viability of each resolution plan, which earlier required

recording of deliberations only. It is alleged that the COC has failed to comply with the amended Section 30(4) of the IBC, which requires the recording of reasons for approval.

82. In the present case, all six eligible resolution plans were placed before the CoC, evaluated plan-wise, and put to e-voting at the 12th CoC meeting on 12.05.2026. The e-voting window opened on 15.05.2026 and was originally scheduled to close on 21.05.2026, i.e., before the amendment took effect on 26.05.2026; it was thereafter extended and concluded on 09.06.2026. Accordingly, the recording of deliberations on the feasibility and viability of each Resolution Plan had to take place on or before 12.5.2026, when all the Resolution Plans were put to a vote. There is no dispute that the CoC minutes record deliberations on the feasibility and viability of each resolution plan, and there is no contravention in this regard. Since the requirement to record 'rationale' was introduced w.e.f. 8.6.2026, when the deliberations had already been concluded, in our considered view, there is no violation of Regulation 39(3)(b) as it stood at the relevant time. Further, sub-clause (c) contemplates that all the resolution plans be put to vote simultaneously. This conclusion is also supported by the additional requirement of recording embodied in sub-clauses (ii) and (iii) thereof, which relate to deliberations on all the plans, and by clause (c), which requires voting on all the plans simultaneously thereafter.

83. As regards recording of reasons for its approval, it is noted that the CoC had concluded its deliberations on feasibility and viability of the Resolution Plan on or before 12.5.2026, and decided on 12.5.2026 to put all the Resolution Plan to vote for approval of its members. At the outset, the recording of reasons for approval of the plan required by the amendment does not introduce any additional threshold for approval of the resolution plan, as it only requires recording of reasons why CoC approved a resolution plan. Ordinarily, such reasons are capable of being deciphered from the discussions and deliberations recorded in the minutes

of CoC meetings, indicating which CoC member observed what in each of the plans. Recording of such reasons does not change the voting behaviour, and it only expressly records what guided each CoC member to vote in a particular manner.

84. It is trite that amendments are prospective unless made expressly or by necessary implication retrospectively applicable. However, this presumption against retrospectivity does not apply to curative or declaratory statutes. In ***Sree Sankaracharya University of Sanskrit v. Manu, 2023 SCC OnLine SC 640***, the Hon'ble Supreme Court held that for a subsequent order/provision/amendment to be considered clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. Only when it would be impossible to reasonably interpret a provision unless the amendment is read into it is the amendment considered a clarification or declaration of the previous law and therefore applied retrospectively. Admittedly, the said amendment in section 30(4) is neither stated to be declaratory or clarificatory nor has it been expressly made retrospectively applicable. Further, the existing provision of section 30(4) was neither ambiguous nor impossible to interpret dehors such amendment. It is also noted that the IBC Amendment Act, 2026 has specifically stated wherever the amendment is proposed to be declaratory or clarificatory in nature. Accordingly, in our considered view, the said amendment cannot apply to the Resolution Plans which were deliberated and put to vote prior to the amendment of section 30(4) of the Code. In case, such reasons are required to be recorded prior to commencement of voting but after or concurrently with the deliberations, the amendment would not apply as the deliberations stood concluded prior to the amendment. Nonetheless, the requirement for recording of reasons is a curable defect, if those reasons are required to be recorded after declaration of result of voting as contended by NHAI, and such defect can be cured if this Tribunal finds this Plan otherwise compliant.

85. It is also alleged by NHAI that the terms of the resolution plan are to become operational even prior to approval of the plan by this Tribunal as SRA has been seeking confidential data from the RP and the CoC including data related to toll collection and other pieces of information pursuant to clause IX (2) of the resolution plan. It is noted from the minutes of 16th CoC meeting held on 31.7.2026 that *SRA requested that (i) toll collection, revenue and expense related information be shared on a fortnightly basis with the SRA and that the SRA be consulted on significant operational and business decisions of the Corporate Debtor, and (ii) representatives of the SRA be permitted to be present at the Corporate Debtor's office for data collection and accounting-related activities to facilitate a smooth transition upon implementation of the Resolution Plan*, and *Clarifications were given to the SRA regarding the proposed Second Periodic Overlay Maintenance Work and the current status thereof*. The said minutes of meeting also record that the RP sought the views of the CoC members regarding permitting the representatives of the SRA to join the meeting and present their submissions before the members of the CoC, and the RP drew the attention of the CoC members to Clause IX (2) of the Resolution Plan and reiterated that the provision contemplated consultation with the Resolution Applicant only in relation to major business decisions impacting shareholder value during the period between CoC approval and NCLT approval of the Resolution Plan. The RP informed the CoC that, based on legal advice received, routine operational matters and day-to-day business decisions did not fall within the scope of the said clause. Accordingly, the SRA had been informed that consultation would be undertaken only in matters where such consultation was warranted under the Resolution Plan. RP had taken views of NHAI in the said meeting separately on this aspect, and the said minutes record that :

> *13. In response, the RP Counsel clarified that certain operational, financial and project-related information had historically been*

shared with prospective resolution applicants as part of the CIRP through disclosures made in the IM and VDR pursuant to confidentiality undertakings executed by prospective resolution applicants. The RP Counsel further submitted that the proposal to share information with the prospective resolution applicants or the SRA is not intended to provide unrestricted access to information but only to share such relevant information as may be necessary in connection with CIRP of the Corporate Debtor.

14. The representative of NHAI reiterated that, while information necessary for the conduct of the CIRP and evaluation of the resolution process could appropriately be shared during the resolution process, the position following approval of the Resolution Plan by the CoC was different. It was emphasized that the SRA does not acquire any vested right in the Corporate Debtor until approval of the Resolution Plan by the Adjudicating Authority, and therefore care should be taken to avoid sharing information that is confidential in nature which may amount to implementation of the Resolution Plan prior to such approval.

15. The RP and RP Counsel acknowledged the concerns raised by NHAI and clarified that all decision-making authority continued to vest exclusively with the CoC during the period between CoC approval and NCLT approval of the Resolution Plan and agreed that any information shared with the SRA, if at all, would be restricted to information considered appropriate and legally permissible, while ensuring that confidentiality obligations and applicable legal requirements are duly complied with.

86. Finally, the minutes record that "*19. After considering the views expressed by the CoC members, their legal counsel and NHAI representatives, the CoC decided that only limited non-confidential information, namely toll collection details, may be shared with the SRA, if considered appropriate by the RP. The CoC further noted that no other*

information sought by the SRA should be shared at this stage and that any consultation with the SRA shall be undertaken strictly in accordance with the provisions of the Resolution Plan." Since no control of the corporate debtor has been parted away, and only limited non-confidential information, after obtaining a confidentiality undertaking, was shared, we are of the considered view that such sharing with the SRA, who is in the process of acquiring rights in the corporate debtor, prejudices the confidentiality of the process, thereby materially vitiating the approval process.

87. It is also argued by NHAI that the Resolution Plan violates clause 25.2 of the Concession Agreement in providing for transfer of the cash and bank balances till 30.6.2026 to the financial creditors without first utilising the same for pending MMR obligations.

88. Clause 25.2 of the Concession Agreement provides for the manner in which the toll collections deposited in escrow account are to be applied, and reads as under :

25.2. Disbursements from Escrow Account

25.2.1. The Concessionaire shall give, at the time of the opening of the Escrow Account, irrevocable instructions by way of an Escrow Agreement substantially in form set forth in Schedule Q' (the "Escrow Agreement") to the Escrow Bank instructing, inter alia, that the deposits into the Escrow Account shall subject to Clause 25.2.3, be appropriated in the following order every month and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due unless otherwise expressly provided in the instruction letter:

(i) All taxes due and payable by the Concessionaire;

(ii) All expenses in connection with and relevant to the Construction of Project Highway by way of payment to the EPC Contractor and such other persons as may be specified in the Financing Documents;

(iii) O&M Expenses including Fees collection expenses incurred by the Concessionaire directly or through O&M Contractor and/or Tolling Contractor, if any, subject to the items and ceiling in respect thereof as set forth in the Financing Documents but not exceeding 1/12 (one twelfth) of the annual liability on this account;

(iv) The whole or part of the expense on repair work or O&M Expense including Fees collection expenses incurred by NHAI on account of exercise of its right under this Agreement;

(v) All Concession Fees due to NHAI from the Concessionaire under this Agreement,

(vi) Reimbursements of expenditure incurred by NHAI, if any, or payment of insurance premia, etc., which are otherwise Concessionaire's responsibility, on account of failure on part of the Concessionaire to keep such insurance(s) effective and in force.

(vii) Monthly proportionate provision of Debt Service Payments due in an Accounting Year and payment of Debt Service Payments in the month when due;

(viii) One-half of such remuneration, cost and expenses of the Independent Consultant in case the Concessionaire does not reimburse the remuneration, cost and expenses of the Independent Consultant to NHAI within 15 (fifteen) days of receiving a statement of expenditure from NHAI.

(ix) Any payments and Damages due and payable by the Concessionaire to NHAI pursuant to this Agreement, including repayment of Revenue Shortfall Loans, recovery due to reduction in the scope of work, penalty for O&M expenses incurred by NHAI; and

(x) Balance in accordance with the instructions of the Concessionaire.

25.2.2 The Concessionaire shall not in any manner modify the order of payment specified in this clause 25.2 except with the prior written approval of NHAI.

25.2.3 In the event the Grant, if any, to the Concessionaire shall exceed 10% of the Total Project Cost, all disbursements on account of Total Project Cost other than those to the EPC Contractor in accordance with the EPC Agreement, shall be made in accordance with the express provisions contained in that behalf in the Financing Documents. Provided, however, that if the total of such disbursements exceed 10% of the Total Project Cost, prior written consent of NHAI shall be required in respect of the disbursement arrangements for such excess amounts, and such consent shall not be unreasonably withheld by NHAI."

89. Clause 25.2 prescribes the order in which the concessionaire is to apply Project revenues in the ordinary course of operating the Project, and the funds collected in the escrow account are to be first applied towards MMR obligations before such funds can be claimed by the Corporate Debtor. It is contended by RP that this clause is a payment-application mechanism, and does not create any charge, security interest or priority in favour of NHAI, nor does it constitute NHAI a secured creditor in respect of the balance standing to the credit of the Escrow Account.

90. Clause III.B.2.b.x of the Resolution Plan states that "*In addition to the amounts committed to be paid to the creditors as per the Resolution Plan, the entirety of all cash, cash equivalent, bank balances, deposits (whether freely available or lien marked), and gross trade receivables of the Corporate Debtor ("Cash Balance") accrued till June 30, 2026 or the Approval Date (whichever is earlier) after deducting CIRP cost incurred upto CUT OFF DATE, would be transferred to the Financial Creditors and would be for the benefit of the Financial Creditors, in the manner as may be decided by the CoC in its absolute discretion which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53 of the IBC*".

91. Note to Clause 7A of Form H (Compliance Certificate filed by the Resolution Professional) states that "*The above figures have been*

calculated considering the cash balance of INR 152.30 Crore as on 18th June 2026. In terms of the Resolution Plan read with Item 7 of the Clarification Letter dated 8th May 2026 ("Clarification Letter"), the cash balance of the Corporate Debtor as on 30th June 2026 (subject to deductions on account of CIRP Costs incurred or accrued up to 30th June 2026) or the date of approval of the Resolution Plan by the Hon'ble Adjudicating Authority, whichever is earlier (the "Cut-Off Date") shall be paid to the Secured Financial Creditors for the benefit of the Financial Creditors. Accordingly, since such figures are not determinable at the date of this Form H, the cash balance as on 18th June 2026 has been provided. Therefore, this is a tentative figure and is subject to change".

92. Admittedly, NHAI had filed its claim as an operational creditor and had not claimed any amount in relation to pending MMR obligations in its claim form, and the corporate debtor had failed to complete MMR work (2nd overlay) falling due in accordance with the concessionaire agreement till date. It is contended by NHAI that unless pending MMR work is completed, the amounts accumulating in the escrow account can not be transferred to lender(s), as payment for MMR work is required to be met from toll collections accumulating in the escrow account before making the balance therein available for appropriation by lender(s) or corporate debtor as they come later in the order of priority under clause 25.2. It follows therefrom that NHAI does not have any charge over the amounts collected in the escrow account so long as it has been paid its share in the said revenue, which is stated to be paid, and NHAI's opposition to the proposal of transfer of balance to creditors is arising from unfulfilled MMR obligations as on date.

93. Ld. Counsel for CoC relied upon decision in case of ***Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd., 2023 INSC 929***. It is noted from the ***NCLAT's decision*** in this case reported at ***2024 SCC OnLine NCLAT 412*** that the said decision is distinguishable on facts as the issue in that matter related to payment of premium dues and other dues

in nature of default interest, premium interest, double charge penalty, damage penalty, penal interest etc. from escrow account in preference over the lender(s)/HDFC Bank, in whose favour the rental collection deposited in escrow account was assigned by IL&FS. It was held in that case that the payments to lender(s) have priority under the escrow arrangement, as premium dues stated as a separate entry after lender(s) dues can not be included in Concession fee, which has priority over lender(s) dues.

94. In case of ***Avil Menezes (RP) v. Ministry of Coal and Ors.,*** ***(2024) ibclaw.in 676 NCLAT***, Hon'ble NCLAT held that "Annual Mine Closure Cost", required to be deposited in an Escrow Account to meet corporate debtor's obligation to fill mine space after excavation thereof, is not a money held in trust; accordingly, the corporate debtor's obligation under 'Coal Mine Development and Production Agreement' in relation thereto is to be dealt in accordance with the provisions of Code and cannot be excluded from liquidation estate to accord priority to same.

95. It is relevant to note that the Hon'ble Supreme Court, in the case of ***National Highway Authority of India vs O.J Janeesh, SLP (C) No. 22579/2025***, vide its decision dated 18.8.2025, refused to interfere with the order passed by the Hon'ble High Court suspending toll collection, holding that "*The obligation of the public to pay a user fee under statutory provisions is premised on the assurance that their use of the road will be free from hindrances. When the public is legally bound to pay a user fee, they simultaneously acquire a corresponding right to demand unhindered, safe, and regulated access to the road. Any failure on the part of the National Highways Authority or its agents to ensure such access constitutes a breach of the public's legitimate expectations and undermines the very basis of the toll regime*". The Hon'ble Supreme Court held that "***10.*** *After hearing the parties and on an overview of the facts and circumstances, we are not convinced that any interference can*

be made to the order, at this stage, especially when the arguments of the NHAI and the Concessionaire gloss over the citizen centric approach, the High Court took in the matter. As we observed at the outset and as pointed out by the learned Senior Counsel appearing for the Writ Petitioners, the High Court had issued various directions which did not evoke the response it should have, and it was in that circumstances that the impugned order was passed. We are also surprised that the further constructions on the road, constructed on BOT basis is entrusted to another Contractor, when the obligation to maintain the entire stretch is on the Concessionaire under the BOT agreement; on which we speak no further, since it is the commercial wisdom of the NHAI."

96. The decision in the case of O. J. Janeesh (Supra) supports the argument of NHAI that it can not be obligated to accord approval to the change in management in the absence of clarity on completion of overdue MMR work on the highway maintained under the Concessionaire agreement, as such obligation being a matter of public interest, can not be dispensed with even by non-obstante provisions contained in section 238 of the Code.

97. Clause 18 of the Concession Agreement deals with operation and maintenance of Highway Roads. Sub-clause 2 & 3 thereof provides as under:

> *18.2 The Concessionaire shall in consultation with the Independent Consultant prepare not later than 180 (one hundred and eighty) days before the Scheduled Project Completion Date, the repair and maintenance manual (the "Maintenance Manual") for the regular and periodic maintenance, and shall ensure and procure that at all times during the Operations Period, the Project Highway is maintained in a manner that it complies with the Specifications and Standards and the minimum maintenance requirements set forth in Schedule 'L'. The Concessionaire shall supply, at least two months before the COD, 10 (ten) copies of*

the Maintenance Manual to NHAI and 3 (three) copies each to GOTN and Independent Consultant. Copies of the Maintenance Manual shall also be made available by the Concessionaire for public inspection during office hours at a conspicuous place adjacent to each Toll Plaza on the Project Highway.

18.3 Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire, shall in consultation with the Independent Consultant prepare and provide to NHAI, its proposed programme of preventive and other scheduled maintenance of the Project Highway subject to the minimum maintenance requirements set forth in Maintenance Manual and in Schedule 'L' necessary to maintain the Project Highway at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following

i. intervals and procedures for the carrying out of inspection of all elements of the Project Highway;
ii. criteria to be adopted for deciding maintenance needs;
iii. preventive maintenance schedule;
iv. intervals at which the Concessionaire shall carry out periodic maintenance,
v. intervals for major maintenance and the scope thereof, and
vi. lane closures schedule for each type of maintenance (length and time).

98. Article 2 of the Contract Agreement, which provides for the 'Scope of the Project', includes within its ambit the widening of Two-Lane Bypasses as per Schedule 'B' including the maintenance requirements to be carried out by the Contractor, as inter-alia set out in Schedule B and Schedule L of the Contract. The Concessionaire is obligated to take up periodic overlay

(major maintenance) once in every five years as per clause 3.3.7 of Schedule L of the Concession Agreement.

99. In terms of these clauses, it is imperative that the Highway Roads are maintained on an ongoing basis, and for this purpose clause 25.2 of the Agreement requires Toll Collections to be appropriated towards that before being made freely available to the concessionaire for other business purposes. Clause 32.1 of the Concession Agreement provides for Termination for the Event of Default arising from Concessionaire's conduct. Clause 32.1.4 of the Concession Agreement provides for default in compliance with any of the terms and conditions of the Concession Agreement and empowers NHAI to require the Concessionaire to remedy the breach, failing which entitles it to terminate the Agreement.

100. Pursuant to the declaration of the Commercial Operation Date (COD), the Concessionaire was required to carry out periodic overlay as part of its major maintenance obligations and other maintenance obligations in terms of Article 18 of the Concession Agreement. For the stretch from km. 45/756 to km. 136/670, COD was issued on 28.07.2012, thus for this stretch, first periodic overlay was to be completed by 27.07.2017 and second periodic overlay was to be completed by 27.07.2022. The work for the first periodic overlay, was, however, started only by 01.05.2019 (although a small portion was carried out in Feb-March 2018) and out of total length of 90.905 kms, overlay in only 59.269 km is complete till today. Overlay of other facilities, i.e., 3 lanes fly over at km. 136.670, service roads, wayside amenities and 7 major junctions remains Incomplete. It may be noted that all these works were to be completed well before March 2020, i.e., when the COVID-19 lockdowns were in place. In about 3 months, i.e., by July 2022, the second periodic overlay should be completed. Similarly, COD for stretch from Km.0.313 to Km. 45/765 was commenced on 01.09.2013 and periodic overlay was to be completed by 01.09.2018. Till 21.02.2022, out of total length of 45.452

kms, overlay in only 44.752 kms was completed. It may be noted that even this work was to be done much before March 2020, i.e., before the imposition of the COVID lockdown. However, to date, even the first periodic overlay is stated to be not complete for this stretch.

101. Further , Monthly Progress O&M Report for the month of October 2025 submitted by SA Infrastructure Consultants Private Limited in association with Quest Engineers & Consultants Private Limited dated 7 November 2025 ("Monthly Report") notes that "*Regarding, the Major maintenance (2nd Cycle) due date of the completion for the stretch-1 between Km.45/65 to Km.136/670 which should be completed on or before 28.08.2022) and for the stretch II (from km.0/313 to Km.45/650) is ought to be completed on or before (01.10.2023), But it is pending / not completed as per CA provisions by the Concessionaire until today. Despite of various requests, instructions, reminders & subsequent notices, the Concessionaire has commenced Major maintenance, (i.e. 2nd cycle overlay) was started on 17.11.2024. But, there is no progress observed further at site. It is very pertinent to convey that there are several sections (Km. 27-28, Km. 98-99, Km. 95-96, Km. 92-93, Km. 79-80, Km. 69-70, Km.64-65, Km.75-77, Km. 79-80, Km.49-50, Km. 88-89, Km. 90-99, Km. 102-105, Km. 109-111 & Km. 126-127 etc.,) BBD results are beyond permissible limit (i.e., >0.8mm, as per table: L2, Schedule 'L' of CA) as per Concessionaire report submitted vide letter no. 844 dated 17.02.2025 which was illustrated clearly by IE in its various communications that overlay is warranted in the entire project highway. Further, there are several locations distressed conditions aggravated in the entire enormously due to the non-compliance/ delay in compliance by the Concessionaire and the reports of FWD test (conveyed Vide IE letter No.407) conducted by IE also expressing the same. Thus, the overlay is warranted in the NH-79 Project Highway to preserve the pavement condition. Therefore, Concessionaire is required to carry out the overlay*

in the Project Highway effectively & to expedite the progress without any further Laxity. Further, the Concessionaire's maintenance plan submitted vide letter no. 840 dated 05.02.2025 required to be revised (as per CA and also as per the Settlement Agreement signed on 12.08.2024) to enable to complete the second cycle over lay within six month duration in Good Industry practice, and the Concessionaire has to take expeditious action for completing the same within 6 month duration". Accordingly, the Corporate Debtor is currently in default of its obligations to undertake major maintenance (2nd cycle).

102. It clearly demonstrates that the corporate debtor remains in default of MMR obligations, and such default empowers NHAI to terminate the agreement after the moratorium u/s 14 of the Code gets vacated on approval of the resolution plan. Accordingly, compliance with these obligations to the satisfaction of NHAI is sine qua non for continuation of the concession agreement after the Plan is approved. It is not in dispute that MMR obligations in relation to 2nd overlay and deficiency in relation to other work are still pending and are required to be addressed for continued operation of the toll road.

103. Undoubtedly, the toll collections accumulating in the escrow account can be made available to the corporate debtor only after meeting the costs of maintenance and repair work (MMR work) and other heads stated therein in terms of clause 25.2; however, the proposal to transfer the accumulated balance to the lender(s) does not mean that the obligation to complete MMR work due as on date (which had fallen due 28.07.2022 and 31.08.2023 as per NHAI's claim) is not required to be done, and SRA or CoC, as the terms of the Resolution Plan provide, shall be obligated to complete the said MMR work. In our considered view, the principle laid down in the case of Avil Menezes (Supra) squarely applies to the present case; hence, it cannot be said that the proposal to transfer the accumulated

balance of toll collections to the financial creditor violates clause 25.2 of the Agreement.

104. Admittedly, the SRA has argued that the MMR work is not its responsibility, inter alia, as it constitutes costs and obligations already "incurred and accrued" as of 30.06.2026. The SRA took a similar position at the 16th COC meeting held on 31.07.2026. The case canvassed by the SRA is that costs "incurred and accrued" before 30.06.2026 are CIRP Costs and hence the responsibility of the RP/COC, and are to be paid from the cash balance in the escrow account. During the hearing on the Application, the SRA, while supporting the approval of the Plan, contended that the cost of the Second Periodic Overlay/Major Maintenance and Repair work (MMR) on the Salem–Ulundurpet Section of NH-68, which is the sole asset of the corporate debtor, must be met from the cash balance of the CD accrued up to the Cut-Off Date of 30.06.2026 rather than by the SRA. It was also argued that the pending MMR work is CIRP Costs that have fallen due as of 30.6.2026. Accordingly, the necessary costs in relation thereto, forming part of CIRP Costs, have to be met out of Cash and Cash Equivalents of the Corporate Debtor, as provided in the Resolution Plan also.

105. It is also noted that the letter dated 08.05.2026 written by SRA consortium member to the Resolution Professional again reiterated that *the cash balance as on 30.06.2026 after deduction of CIRP cost incurred or accrued upto 30.06.2026 shall be use for the benefit of financial creditor as detail in (1) of this clarification*.

106. Per contra, CoC and RP argued that the RFRP expressly provides that the Resolution Plans were invited on an "as is where is, as is what is, and whatever there is and without recourse" basis, and that the RFRP clarified that the cash balances as of the Cut-Off date shall be transferred to Financial Creditors after appropriation therefrom for CIRP costs incurred as of that date. Further, vide email dated 23.7.2026, SRA had unequivocally informed RP that *as per the Monthly Report, the IE had*

given the Corporate Debtor 6 months for undertaking the 2nd cycle of MMRP. Hence, any cost for undertaking such MMR properly relates to a period prior to 30 June 2026 and hence any costs in connection of undertaking the MMR will be paid out of the revenue generated by SU Toll up till 30 June 2026, and Consortium shall not bear any costs for the same. This clearly indicates that SRA has unequivocally taken a stand that the MMR obligations pending as of 30.06.2026 are not its responsibility and the cost thereof has to be met out of the cash balance as of 30.06.2026 thus raising a question on the implantability of the approved resolution plan in its present form as completing the due MMR obligations (2nd overlay work) is a prerequisite for collecting the toll from users of a highway being maintained and operated by a concessionaire.

107. Undisputedly, the audited financial statements of the corporate debtor as on 31.3.2026 recognise an estimated liability of Rs. 100.01 crores, while those as on 31.3.2025 estimate it at Rs. 72.73 crores. This indicates that both the RP and the SRA must have been aware of this mandatory obligation, which is now estimated at about Rs. 180 crores as of today. While the RP had called for tenders to undertake part of the work during the CIRP, nothing has moved further due to the delay in awarding the contract for even that part of the work.

108. Indubitably, the terms of the Resolution Plan are clear and unambiguous that the Cash balances as of 30.6.2026 shall be transferred to Financial Creditors. The question is whether pending MMR work is a cost incurred or accrued as of 30.6.2026 so as to entitle SRA to deduct the same from the cash balances to be transferred to Financial Creditors.

109. It is noted that SRA supplemented its proposal under the Resolution Plan by adding the word “incurred” later on, via a letter dated 08.05.2026 addressed to RP, and another communication dated 23.07.2026 after the issuance and acceptance of the LOI. It is noted that the clarification dated 08.05.2026 was sent to RP prior to the

commencement of voting on the Resolution Plans, which commenced on 12.05.2026. Indubitably, the plan was not approved on that date; however, the SRA could not have further supplemented the terms by way of clarification after the conclusion of the challenge mechanism on 13.4.2026. As regards the communication dated 23.07.2026, it was certainly issued after the resolution plan was approved by the CoC. It is trite that the Resolution Plan approved by the CoC cannot be modified by any person; hence, the insertion of the word "incurred" to expand the scope of the word "accrued" originally contemplated in the Resolution Plan is impermissible. Only those CIRP costs which have accrued as of 30.6.2026 can be deducted from the Cash balances as of 30.6.2026.

110. Another question arises: are the MMR work costs, in fact, CIRP ('Corporate Insolvency Resolution Process') costs? There is no dispute that these obligations had fallen due on 28.7.2022 and 31.8.2023, well before the commencement of CIRP on 18.8.2025.

111. Any costs incurred by the resolution professional in running the corporate debtor' s business as a going concern are included in the "Insolvency resolution process costs" as per section 5(13) of the Code read with CIRP Regulations 31. Further, other costs directly relating to the corporate insolvency resolution process and approved by the committee are also included in the Insolvency resolution process costs. Section 25(1) of the Code further requires the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

112. NHAI had asked the RP to complete the MMR work and had also issued default notice(s) in this regard, seeking termination of the agreement, which it could not do in view of the bar u/s 14 of the Code. The RP had taken up this issue with the CoC and, pursuant to discussion, had proceeded to invite tenders for completing part thereof; however, no costs were expended, and the amounts became due for payment as of 30.6.2026, as the work in relation thereto, for some reason or other, could

not commence. The Resolution Plan uses the term "accrued" and later also the word "incurred" vide letter dated 8.5.2026 while seeking deduction of CIRP costs from the cash balances, but the Resolution Plan does not contemplate incurrence of obligations from performance of which such costs may arise. Though the obligation to incur costs in relation to MMR work had arisen even before commencement of CIRP and such obligation continued to subsist, in the absence of performance of such obligations by the vendor vesting right therein to recover money from the corporate debtor, no amount became due and payable by the corporate debtor during the CIRP period. Accordingly, it cannot be said that MMR work costs, which are yet to be incurred or accrued, partake of the character of CIRP costs as of 30.6.2026, in the absence of any obligation on the part of the corporate debtor to pay.

113. Indubitably, all resolution applicants had access to the project site and the concessionaire agreement, including correspondence with NHAI uploaded to the Virtual Data Room, which clearly demonstrated the state of the Highway Road, the subject matter of the Concessionaire Agreement. RFRP invited the resolution plans from the resolution applicants on an "*as is where is, as is what is, and whatever there is and without recourse*" basis. However, it is pertinent to draw a distinction between the sale of the corporate debtor's assets and the corporate debtor's resolution for its revival. In the first case, a stipulation of sale on an "*as is where is, as is what is, and whatever there is and without recourse*" basis can discharge the owner's liability for any further financial outgoings required to make such asset operational, which, in any case, rests with the acquirer. In our considered view, this principle cannot be applied to the Resolution Process, where the CoC is required to assess the feasibility and viability of resolution proposals to ensure that such proposals shall revive the corporate debtor. It is relevant to note that the Hon'ble Supreme Court, while balancing the interests of the corporate debtor in the case of Committee of Creditors of Essar Steel India Ltd. v.

Satish Kumar Gupta (Supra), stated that "*It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity"*.

114. In the present case, the Concessionaire Agreement is the sole asset of the corporate debtor, and it was incumbent on CoC, while evaluating the Resolution Plan, to give due consideration to the pending MMR work in clear terms, leaving no doubt thereon, as it is a basic and essential element. In the absence of such consideration, the Resolution Applicant could not have carried on the corporate debtor's business unless the Resolution Plan expressly contemplated completing such work. Nonetheless, we have concluded that the pending obligations in relation to MMR as of 30.06.2026 could not be said to be part of the CIRP costs, as no costs had become payable by the Corporate Debtor in relation thereto as of that date. It is also pertinent to note that the CoC is stated to have evaluated all the resolution plans within the underlying proposition that only amounts becoming due for payment till 30.06.2026 in relation to MMR work shall only be liable for reduction from the accumulated cash balance.

115. Indubitably, the Resolution Plan and the RFRP confirm that "Cash and Cash Equivalents of the Corporate Debtors up to the CUT OFF DATE will be for the benefit of the Financial Creditors, and CIRP cost till the CUT OFF DATE shall be paid out of cash flows generated till the CUT OFF DATE". Clause III.B.2.a of the Resolution Plan states that:

- *CIRP Cost incurred till CUT OFF DATE will be paid out of the revenue of CD generated till 30.06.2026.*
- *CIRP cost incurred after CUT OFF DATE i.e. 30.06.2026 will be paid out of revenue generated by the CD after by the CD after CUT OFF DATE. The RA proposes an amount of Rs. 50,00,000/-*

(Rupees Fifty Lakhs Only) for payment of CIRP Cost upfront. However if there is any further CIRP cost after CUT OFF DATE (including regulatory fees) is in excess of proposed Rs 50.00 Lacs, same shall be paid by infusing additional fund by the RA. CIRP costs after CUT OFF DATE, as on the date of approval of the Plan by the Adjudicating Authority will be paid in full and in priority to any other creditor of the CD.

- *Further, in the event any CIRP Costs incurred after CUT OFF DATE (including regulatory fees) has been contributed by members of CoC, the same shall be reimbursed by the Resolution Applicant to the members of the CoC and paid along with the payment of the CIRP Costs.*

116. During the course of the arguments, this Tribunal inquired of the RP whether the financial outlay for carrying out such work was considered in the future cash flow submitted by the SRA along with the resolution plan, in assessing the feasibility and viability of the resolution plan. The RP placed on record a statement, namely, the Profitability Statement for three years, presumably commencing from the date of handing over or the cut-off date, which shows that a sum of Rs. 61.25 crores, Rs. 64.31 crores, and Rs. 67.53 crores, aggregating to Rs. 193.09 crores, has been considered as "Toll Operations & Maintenance Exp." in three years, and that these expenses are projected to be met from toll collections for those years, and that no other allowance has been created to meet pending MMR work separately, meaning thereby that such projected expenses also include normal maintenance costs over and above the Major Maintenance & Repair contemplated as the MMR obligation. Further, there is no provision for infusion of upfront funds to meet such pending MMR obligations.

117. It follows therefrom that, either the MMR work shall wait for toll collections to happen to commence 2nd Overlay work, which is already overdue, and the next Overlay obligation is scheduled to be due in 2027

as per Concession Agreement, or SRA must infuse additional funds to complete pending MMR obligations to entitle it to seek NHAI's approval for transfer of management of project and ownership of corporate debtor, which may be declined by NHAI for want of completion of said obligations on date of seeking such approval.

118. It follows from the above that CoC was also not diligent in discharging its obligation to examine the feasibility of the Resolution Plan, as SRA claims that the Resolution Plan proceeds on the premise that the pending MMR work, falling due as of 30.6.2026, must be met from Cash balances. The financial proposals accompanying the Resolution Plan, as well as information demonstrating the financial capability of the Resolution Applicant to implement the plan, do not support the conclusion that CoC had examined this aspect diligently.

119. Nonetheless, it is pertinent to note that SRA ought to be aware of the provisions of the Concessionaire Agreement, which vest in NHAI the power to terminate the agreement if the MMR obligations are not met. Clause 18.12 to 18.14 of the agreement are reproduced hereunder for ready reference:

> *18.12 In the event the Concessionaire does not maintain and/ or repair the Project Highway or a part thereof upto and in accordance with the Specifications and Standards and/or in accordance with the Maintenance Programme or the Maintenance Manual, and shall have failed to commence remedial works within 30 (thirty) days of receipt of notice in this behalf from NHAI or the Independent Consultant, or the O&M Inspection Report, as the case may be, NHAI shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Project Highway at the risk and cost of the Concessionaire and to recover the same from the Concessionaire. In addition to recovery of the aforesaid cost of repair and maintenance by NHAI, a sum equal to 25% (twenty five per cent) of*

such cost shall also be recovered by NHAI from the Concessionaire as Damages. NHAI shall have the right and the Concessionaire hereby expressly grants to NHAI the right to recover the same directly from the Escrow Account and for that purpose the Concessionaire hereby expressly authorises NHAI and hereby gives irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of NHAI under this Clause.

18.13 In the event NHAI does not exercise its option to undertake the required repair and maintenance after expiry of the 30 (thirty) days period stipulated in Clause 18.12 it shall recover Damages from the Concessionaire for default in operating and maintaining the Project Highway in conformity with this Agreement. Such Damages shall be payable after the aforesaid period of 30 (thirty) days and until the default is cured. The amount of Damages shall be calculated for each day of default at the higher of the following, namely (a) Rs.10,000 (Rs. Ten thousand), and (b) 0.1% (zero point one per cent) of the cost of such repair as estimated by the Independent Consultant. Recovery of such Damages shall be without prejudice to the rights of NHAI under this Agreement, including Termination thereof.

18.14 If the concessionaire commences any works for curing any defects on deficiencies in the Project Highway, it shall complete such works expeditiously in accordance with Good Industry Practice. If such works are carried out in a manner that results in a delay of more than 30 (thirty) days as compared to the time required in accordance with Good Industry Practice; NHAI shall recover Damages from the Concessionaire as if a default had occurred under Clause 18.13;"

120. It is noted that SRA neither sought any clarification regarding completion of MMR work prior to approval of the Resolution Plan, nor did it require RP or CoC to clarify who shall bear the costs in relation thereto, even though completion of such work was necessary to carry on the corporate debtor's business further and to seek NHAI approval for change in management and ownership. No material is placed on record to demonstrate whether the scope of CIRP costs, as sought to be appropriated from Cash balances, was ever inquired into, while RFRP had expressly stipulated transfer of such balance to financial creditors. Therefore, SRA's contention is contrary to the terms of the RFRP and its own Resolution Plan and is thus baseless.

121. In view of SRA's specific communication dated 23.07.2026 declining its obligation in relation to the pending MMR work, we are of the considered view that the said communication renders the implementation of the resolution plan impossible. Hence, though the resolution plan meets all the requirements of Section 30(4) r/w Regulation 37, we are of the considered view that this plan cannot be approved in its present form, as its implementation is rendered impossible by the clarifications dated 08.05.2026 and 23.07.2026. CoC and RP shall be at liberty to exercise their right against SRA, if any, flowing from rejection of this plan, which is found not feasible in its present form.

122. In view of the implementation of the resolution plan before us being rendered impossible, and the possibility of the corporate debtor's revival, as evidenced by the expression of interest from another resolution applicant as well, we required the CoC to decide the further course of action within 15 days. If the CoC decide to publish fresh Form G, the process shall be extended by the period of 120 days from the date of such decision for conclusion of the resolution process. Needless to say, the applicant herein shall apprise this tribunal about the final decision of the CoC.

123. In terms of the above, **IA (IBC) (Plan) No. of 59 of 2026** is dismissed and the **IA (IBC) No. of 3433 of 2026** is allowed.

SD/-
Prabhat Kumar
Member (Technical)

SD/-
Sushil Mahadeorao Kochey
Member (Judicial)

Vipul Ghate