

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

BENCH- I

IVN. P. No. 1 of 2024

IVN. P. No. 62 of 2023

IVN. P. No. 67 of 2023

IVN. P. No. 70 of 2023

IN

IA No. 5383 of 2023

IN

CP(IB) No. 4578 of 2018

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

IVN. P. No. 1 of 2024

In the matter of

Mr. Varun Pravinchandra Aghara

...Intervenor

Versus

Mr. Rajesh Sureshchandra Sheth & Ors.

...Respondents

IVN. P. No. 62 of 2023

In the matter of

Mr. Nitin Suresh Satghare & Ors.

...Intervenors

Versus

Pancard Club Limited

...Respondents

IVN. P. No. 67 of 2023

In the matter of

Chemhub Tradelink Private Limited

...Intervenor

Versus

Satish Damodar Akole & Anr.

...Respondents

IVN. P. No. 70 of 2023

In the matter of

Mr. Vivek Ramnik Patil & Ors.

...Intervenors

Versus

Panclub Limited

...Respondents

IA No. 5383 of 2023

In the Application of

Ashdan Properties Private Limited

...Applicant

Versus

Mr. Rajesh Sureshchandra Sheth & Ors.

...Respondents

In the matter of

Mr. Nitin Suresh Satghare & Ors.

...Financial Creditor/

Petitioner

Versus

PanCARD Club Limited

**...Corporate Debtor/
Respondent**

Order Delivered on : 07.02.2024

Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Intervenor in

IVN. P. No. 67/2023 : Mr. Prateek Sakseria, Senior Advocate

For the Intervenor in

IVN. P. No. 70/2023 : Ms. Nausher Kohli, Advocate

For the Applicant in

IA No. 5383/2023 : Mr. Vikram Nankani, Senior Advocate

For the Respondent in

IA No. 5383/2023 : Mr. Mustafa Doctor, Senior Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application bearing **IA No. 5383/2023** is filed by Ashdan Properties Private Limited ("**Applicant**") in the Corporate Insolvency Resolution Process ("**CIRP**") of PanCARD Clubs Limited ("**Corporate**")

Debtor”) under the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) seeking the following reliefs :

- a) That the Adjudicating Authority be pleased to extend the time period from compliance of the Order dated November 1, 2023 by a period of 15 days from the date on which the Respondents share the necessary details/information with the Applicant and direct that the voting to commence only once the same is complied with;
- b) That the Adjudicating Authority be pleased to direct the Respondents to provide a list of the members of CoC eligible to vote along with their contact details, including email, phone and last known address and further permit the voters/depositors to interact with the Applicant and all other proposed Resolution Applicant;
- c) That the Adjudicating Authority be pleased to direct the Respondents to permit the Applicant and other Proposed Resolution Applicants to participate in the process of preparation of comparative analysis in lay man's language by the Respondent No. 2 / Resolution Plan Evaluator in a shorter document summarising only the conclusion and further be pleased to be direct this exercise be duly supervised and vetted by an IBBI appointed/nominated observer before the comparative analysis is shared with the voters/depositors;
- d) That the Adjudicating Authority be pleased to direct the Respondents to circulate the comparative analysis to all the voters/depositors at their last known address and also by email, whatsapp and also publishing the same in Hindi, Marathi and English and also publish the same in two newspapers of wide circulation across Hindi, Marathi and English languages;

- e) That the Adjudicating Authority be pleased to direct the Respondents to adopt OTP based platform for the purpose of voting on the resolution plans;
 - f) That pending the adjudication and disposal of the present application, this Adjudicating Authority be pleased so stay the voting on the resolution plans and pass an order maintaining status quo as on the date of hearing of the application;
 - g) In the alternative to clause (g), this Adjudicating Authority be pleased to pass an order directing that the voting on the resolution plans be subject to the outcome of the present application.
 - h) Further, in the event that the voting process has been completed or the voting lines are closed, this Adjudicating Authority be pleased to set aside the voting in view of the lapses on the part of the Respondents.
2. An Intervention Application, bearing **IVN.P. No. 67/2023** has been filed by Chemhub Tradelink Private Limited seeking to intervene in IA No. 5383/2023 and praying for the following reliefs :
- a) This Adjudicating Authority be pleased to allow the intervention of present Applicant/Proposed Intervener who is necessary party in IA No. 5383 of 2023 and allow present Applicant/Proposed Intervener to be heard before deciding IA No. 5383 of 2023;
 - b) This Adjudicating Authority be pleased to reject IA 5383 of 2023;
3. Another Intervention Application, bearing **IVN.P. No. 70/2023** has been filed by Mr. Vivek Ramnik Patel and Others, representing 200 investors of Pancard Clubs Limited seeking to intervene in IA No. 5383/2023 and praying for the following reliefs :

- a) This Tribunal be pleased to allow the intervention of present Applicants/Intervenors who are concerned parties in present IA No. 5383 of 2023 and allow the present Applicants to be heard before deciding IA No. 5383/2023;
 - b) This Tribunal be pleased to reject IA 5383 of 2023 filed by the prospective Resolution Applicant.
4. Since both the Applications seek to intervene in IA no. 5383/2023 and have identical sets of prayers, we consider it appropriate to decide both the applications by this Common Order. The Applicant in IVN.P. No. 67/2023 is referred as “**Intervenor No. 1**” and Applicants in IVN.P. No. 70/2023 are referred as “**Intervenor No. 2**” collectively and Applicants in both the Applications are collectively referred as “**Intervenors**” hereinafter.

Submissions made by the Ld. Counsel on behalf of the Applicant/Prospective Resolution Applicant in IA No. 5383/2023

5. The Applicant states that the Tribunal had passed Order dated 1.11.2023 (“**Order**”) in IA No. 3850/2023 directing the Resolution Professional (“**RP**”) as follows :

7.11. In view of the above, we direct the Resolution Professional to allow all the shortlisted Resolution Applicant to apprise their financial bids, place it before the Respondent No. 3, who shall seek evaluation thereof from Respondent No. 2. Thereafter, the comparative analysis, in lay man language shall be uploaded at the designated place. The Respondent No. 3 shall intimate all the depositors who have filed their claim about the next voting on these plans if they so desire. Any depositor, who claims that his/her vote was already casted by someone else or who could not cast votes due to system limitation shall be allowed one final opportunity to vote, provided such complaints are sufficient so as to influence the

decision taken by depositors who have already voted. The whole process shall be completed within period of one month.

7.12. The existing voting is cancelled consequently.

6. It is the Applicant's case that despite the aforesaid directions, the said Order has not been followed in true letter and spirit.
7. The Applicant states that after passing of the Order, the Applicant received an e-mail from the Resolution Professional ("**Respondent No. 1**") fixing the 16th CoC meeting on 09.11.2023. The Applicant requested for the meeting to be rescheduled to 16.11.2023 due to festive season and non-availability of Key Managerial Personnel, but Respondent No. 1 expressed inability to reschedule due to the timelines given under the Order.
8. The Applicant informed Respondent No. 1 that they are ready and willing to attend the 16th CoC meeting vide e-mail dated 08.11.2023. The Applicant also stated in the mail that a list of all depositors/investors should be shared with all Prospective Resolution Applicants ("**PRA**") so as to enable them to explain their respective Resolution Plans in person, as hardly 50 depositors/ investors were joining the virtual interaction sessions conducted by the Authorised Representative ("**Respondent No. 3**").
9. On 11.11.2023, Respondent No. 3 suggested vide e-mail that one meeting would be fixed on 13.11.2023 for explanation regarding plan, and multiple meetings would be conducted since the capacity was 1000 members. It was clarified that the Resolution Applicants were not obligated to attend the meetings. The Applicant vide e-mail dated 14.11.2023 replied that they would be interacting with the depositors.

10. At the 16th CoC meeting, a request was made to know whether all the PRAs could submit their Resolution Plan with increased nos. which was rejected by the Respondents.
11. The PRAs were informed by Respondent No. 3 that their contact details were shared in the Virtual Data Room (“VDR”) and it was advised to the members to contact them directly to seek any clarifications.
12. The evaluation report was uploaded on the VDR on the night of 20.11.2023 and the Applicant states that they received several calls from the members seeking clarity on what is presented therein. A copy of the said report was also shared with the Applicant by the depositors/investors.
13. The Applicant has made the following observations with respect to the evaluation report :
 - 13.1 The evaluation report runs into 48 pages and is not prepared in a lucid/lay man language for easy understanding of 15 lakh depositors/investors.
 - 13.2 The Applicant's Resolution Plan has been represented in the evaluation report in two different manners without any justification by considering the Applicant's revised resolution plan as on 26.06.2023 and then by considering the Revised Resolution Plan along with the Addendum dated 17.08.2023 whereas the Applicant's Resolution Plan along with the Addendum is a consolidated document which is to be read as a whole. It is pertinent to note that when the Applicant sought a clarification on the rationale for this dual analysis from the Resolution Plan

Evaluator (“**Respondent No. 2**”) on 21.11.2023, Respondent No. 2 represented that the scope of work defined for him was to conduct such dual analysis and suggested that the Applicant should discuss the reason for this scope of work with Respondent No. 1 directly.

13.3 The value of 6 assets (irrespective of adoption of the Applicant's value or liquidation value as determined by Respondent No. 1) has been shown under the captioned “Non-Committed” payout instead of “Committed” payout. This representation has confused the members as to whether or not these assets are carved out/committed for their sole benefit as repeatedly indicated by the Applicant during various interactions.

13.4 That different scores have been attributed to the above referred different evaluations as per the evaluation matrix and both these scores are mentioned at two different places in the evaluation report thereby deliberately creating confusion in the minds of the members and not giving the true and correct relative comparison picture of the scoring on the plans as per the evaluation matrix.

13.5 The summary of the evaluation matrix scoring as presented in the evaluation report is as follows :

| | Max. Score | Ashdan I | | Chemhub | | Shanti | | Ashdan II | |
|-----------------------|------------|----------|-------|---------|-------|---------|-------|-----------|-------|
| | | Amounts | Score | Amounts | Score | Amounts | Score | Amounts | Score |
| Upfront Cash Recovery | 25 | 33.92 | 12.43 | 16.90 | 6.19 | 68.22 | 25.00 | 33.92 | 12.43 |

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| | | | | | | | | | |
|-------------------------------------|------------|--------|--------------|--------|--------------|--------|--------------|--------|--------------|
| NPV of all payments to FC | 60 | 161.65 | 52.73 | 183.95 | 60.00 | 118.22 | 38.56 | 255.04 | 60.00 |
| NPV of all payments – Other than FC | 5 | 7.98 | 4.25 | 8.78 | 4.68 | 9.38 | 5.00 | 7.98 | 4.25 |
| Qualitative Parameters | 10 | | 10.00 | | 10.00 | | 10.00 | | 10.00 |
| | 100 | 203.55 | 79.41 | 209.63 | 80.87 | 195.82 | 78.56 | 296.94 | 86.68 |

13.6 However, the Applicant states that the true and correct comparison of the Resolution Plans considering the Applicant's Resolution Plan with the Addendum would be as below, indicating that Respondent No. 1 and Respondent No. 3 are deliberately misguiding the CoC members :

| | Max. Score | Ashdan | | Chemhub | | Shanti | |
|-------------------------------------|------------|---------|--------------|---------|--------------|---------|--------------|
| | | Amounts | Score | Amounts | Score | Amounts | Score |
| Upfront Cash Recovery | 25 | 33.92 | 12.43 | 16.90 | 6.19 | 68.22 | 25.00 |
| NPV of all payments to FC | 60 | 255.04 | 60.00 | 183.95 | 43.28 | 118.22 | 27.81 |
| NPV of all payments – Other than FC | 5 | 7.98 | 4.25 | 8.78 | 4.68 | 9.38 | 5.00 |
| Qualitative Parameters | 10 | | 10.00 | | 10.00 | | 10.00 |
| | 100 | 296.94 | 86.68 | 209.63 | 64.15 | 195.82 | 67.81 |

13.7 The Applicant states that in addition to the fixed and committed payout, the Applicant has also offered 6 identified assets for the sole benefit of the CoC members. While the fair value of these assets as per valuation carried by Respondent No. 1 is Rs. 92.84 crores, the evaluation report states that the liquidation value of these 6 identified assets is Rs. 70.50 crores. The Applicant submits that even if the liquidation value were to be considered as the amount accruing to the CoC members, the scoring would be as below :

| | Max. Score | Ashdan | | Chemhub | | Shanti | |
|-------------------------------------|------------|---------|--------------|---------|--------------|---------|--------------|
| | | Amounts | Score | Amounts | Score | Amounts | Score |
| Upfront Cash Recovery | 25 | 33.92 | 12.43 | 16.90 | 6.19 | 68.22 | 25.00 |
| NPV of all payments to FC | 60 | 301.40 | 60.00 | 183.95 | 36.62 | 118.22 | 23.53 |
| NPV of all payments – Other than FC | 5 | 7.98 | 4.25 | 8.78 | 4.68 | 9.38 | 5.00 |
| Qualitative Parameters | 10 | | 10.00 | | 10.00 | | 10.00 |
| | 100 | 343.30 | 86.68 | 209.63 | 57.49 | 195.82 | 63.53 |

13.8 The note below the tabular summary of quantitative parameters of all resolution plans indicates that the total recoveries estimated by Chemhub was INR 1,740 crores out which INR 522 crores being 30% sharing amount after deduction of recovery charge of 5% was offered by Chemhub to CoC. This by itself has led to an inflation in Chemhub's offering to the CoC. There is no basis or computation whatsoever of how Chemhub arrived at this amount

of INR 1,740 crores and none of the Respondents bothered to verify the same before putting this amount in their respective evaluation tables.

13.9 The 'Evaluation Matrix Results – Comparative Position' denotes the scoring (out of 100) awarded to all the PRAs. The total **Score (B)** is awarded on the basis of NPV of all payments to be made to FCs in a class (including the upfront payment). The NPV of all payments to be made to FCs in a class (including the upfront payment) under the Applicant's resolution plan is shown as INR 255.04 crores whereas that under Chemhub's resolution plan is shown as INR 183.95 crores. Despite the difference of over INR 71 crores between the two resolution plans, both the PRAs are awarded 60 marks each. This once again has led to an inflation in Chemhub's aggregate score as per the evaluation matrix parameters.

13.10 It is therefore the Applicant's case that their financial proposal is deliberately misrepresented and that Respondent No. 1 and Respondent No. 3 are misguiding the CoC members.

14. The Applicant has also addressed an e-mail/letter dated 15.11.2023 to the Insolvency & Bankruptcy Board of India ("**IBBI**") to bring these facts on record and also request IBBI for administering /supervising the voting process to be conducted by the Respondents, in its capacity as a Regulator, for a fair conclusion of the CIRP.
15. The Applicant has also procured an Independent Evaluation Report of comparative analysis of all resolution plans from one Finvin Turnaround and Restructuring Private Limited. This evaluation report

was prepared on the same Evaluation Matrix Criteria as per the RFRP and shows that the Applicant's Resolution Plan has the highest scoring.

16. The Applicant submits that the compilation of documents tendered by the counsel for the Respondent No. 1 on the last date of hearing reveals that only 1,63,000 depositors/investors out of the total 15,00,000 had casted their votes in favour of the resolution approving Chemhub's Resolution Plan. The claim amounts/voting share corresponding to these 1,63,000 depositors/investors is not disclosed by Respondent No. 1. Going by the sheer number of depositors/investors, only 10.86% have cast their votes. Therefore, the resolution of approving Chemhub's Resolution Plan is grossly short of the threshold of 66% of voting share of the financial creditors.

17. The Applicant further submits that the Respondents' reliance on Section 25A(3A) read with the judgment of the Hon'ble Supreme Court of India in the matter of Pioneer Urban Land & Infrastructure Ltd. is highly misplaced as the said provision only deals with the manner in which the authorised representative is to cast his vote and nothing more. The words "shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote" clearly indicate that the Authorised Representative casts his vote only on behalf of the financial creditors in a class that he represents. Thus, in the present case, at best, the Authorised Representative can be assumed to have casted his vote on behalf of 1,63,000 investors/depositors only and perhaps on an assumed majority amongst these 1,63,000 investors/depositors. This representative voting cannot be stretched to mean that the requirement of 66% of the voting share of the financial creditors under Section 30(4) is fulfilled.

18. In addition to the above, the Respondents have taken no action with regard to the need of a robust OTP based authentication for voting as expressed by the investors/depositors on several occasions. A limited voting seems to have been conducted only on the basis of two credentials viz. email ID of the voter and his password which is nothing but the identification number of such voter. Neither the RP nor the Authorised Representative has disclosed the IP addresses through which votes were cast by the investors/depositors. Such limited voting cannot be given the seal of this adjudicating Authority to give a drag-along effect over the entire class of financial creditors as the same would cause grave and irreparable injury to the rights of the stakeholders especially the investors/depositors.
19. The Applicant has further observed following certain issues at the CIRP related website of the Corporate Debtor :
- a) The summary of list of creditors as on 17.11.2023 (i.e. just three days prior to the opening of voting on the resolution plans) indicates that claims worth approximately INR 1,802 crores (Rupees One Thousand Eight Hundred and Two crores) were kept under verification.
 - b) There were about 1,95,926 (one lakh ninety-five thousand nine hundred and twenty-six) claimants whose email IDs were not functioning properly as the emails sent to them were bouncing back. Respondent No. 1 had, at the relevant page of the website, indicated that he is in the process of launching a portal so as to enable the claimants to rectify their email IDs.
 - c) Further, Respondent No. 1 had not accepted claim of 1845 depositors whose claim amount to an aggregate of INR 12.36 crores (Rupees Twelve Crores Thirty-Six Lakhs) who had filed their claims physically despite being very well aware that

majority of the depositors hail from myriad socio-economic status and humble backgrounds.

d) Respondent No. I also made the link titled 'Process to Resubmit Claims - Claims without forms/invalid names/amounts' purportedly available on the CIRP website of the Corporate Debtor. However, such a link may have been inaccessible to the depositors since the link when opened shows that the page could not be found.

20. The Applicant states that no change has been adopted to the voting process especially the misrepresentation of the financial proposal of the Applicant.

Submissions made by the Ld. Counsel on behalf of the Respondents in IA No. 5383/2023

21. Respondent No. 1 states that it is the commercial wisdom of the CoC to vote on a resolution taking into consideration its viability and feasibility and the bid amount is not the sole criteria in evaluation of the Resolution Plan.

22. Respondent No. 1 also states that the Respondent No. 3, the Authorised Representative has also filed a reply on the compliance of the Order.

23. Respondent No. 1 states that at the 16th CoC meeting, the Resolution Applicants, turn by turn, apprised their respective financial bids to the AR/CoC during which Respondent No. 2, the Resolution Plan Evaluator was also present. The revised Resolution Plans of all the three Resolution Applicants along with addendums were already available with individual CoC members, the AR and Resolution Plan Evaluator via VDR for their information.

24. Respondent No. 1 states that after the evaluation of the plans, Respondent No. 2 submitted its report in a password protected file to Respondent No. 3 vide e-mail dated 17.11.2023 and shared the password separately. Respondent No. 3 then forwarded the report to Respondent No. 1 vide e-mail dated 17.11.2023 and stated that the password shall be provided during the 17th CoC meeting.
25. At the 17th CoC meeting held on 18.11.2023, Respondent No. 2 shared the password with Respondent No. 1 so that the report could be opened in the presence of the attendees. Subsequently, Respondent No. 2 presented his report to the CoC. Respondent No. 2 submitted the updated report to Respondent No. 3 and Respondent No. 1, after incorporating the comments of Respondent No. 3 vide e-mail dated 18.11.2023 and the same was uploaded on the VDR on 20.11.2023.
26. Respondent No. 1 states that pursuant to the 17th CoC meeting, the compliant Resolution Plans were put to vote. Subsequently, Respondent No. 3 prepared a comparative analysis of the three Resolution Plans in English and Hindi language, in layman language and shared it with Respondent No. 1 vide e-mail dated 21.11.2023 at 6:26 pm. The said comparative analysis was uploaded on the VDR on 22.11.2023.
27. The three Resolution Plans were put to vote with effect from 22.11.2023 at 10 am and the voting ended for Financial Creditors in a class on 27.11.2023 by 08:00 pm. It is pertinent to mention that originally the voting for Financial Creditors in a class was to end on 27.11.2023 by 5:00 pm, however, the time for end of voting was extended by 3 hours from original scheduled time of 5:00 pm, based on requests received from Respondent No. 3 and an investor vide email dated 27.11.2023.

28. Respondent No. 1 states that during the e-voting process, communications were received by the RP from claimants/investors requesting for:

- (i) Consideration of votes casted on email
- (ii) Requests for change in votes casted on E-voting portal
- (iii) Complaints about being "unable to vote"
- (iv) Complaints citing "fraudulent voting"

Based on the above emails, Respondent No. 1 requested the E-Voting Agency to incorporate the results of category (i) and (ii) above in the voting results as computed from the E-voting portal. The voting share of eligible claimants under category (iii) and (iv) was found to be very insignificant to influence the voting result for any of the agenda items. Accordingly, as per the Order dated 01.11.2023, no subsequent opportunity to vote was provided to claimants in category (iii) and (iv).

29. Respondent No. 1 states that in terms of Regulation 16A of the CIRP Regulations, it is the duty of the Authorised Representative to facilitate the meetings between the CoC members and the Resolution Applicants and to assist the Financial Creditors in a class in evaluating the Resolution Plans submitted by the Resolution Applicants. Respondent No. 1 further states that the Applicant had communicated with Respondent No. 3 regarding such meetings with the CoC members and that Respondent No. 3 had conducted 14 meetings of CoC members of which 12 meetings had been attended by the Applicant.

30. Respondent No. 1 also states that specific request for providing list of creditor along with their e-mail id was made to Respondent No. 3 vide e-mail dated 14.11.2023, who is in possession of such details and as such Respondent No. 1 did not have any role to play in the same.

31. The suggestion of OTP based voting was ruled out due to various reasons including significant changes in infrastructure, claimants not accessing their e-mail ids, etc.
32. Respondent No. 1 submits that concerning the independent evaluation report as obtained by the Applicant, the Applicant cannot provide an evaluation of his own Resolution Plan and be a judge in its own cause and that the evaluation of Resolution Plans is within the domain of the CoC.
33. Respondent No. 1 submits that as regards the claims under verification, Respondent No. 1 has been unable to verify claim of certain claimants due to discrepancy of data in claim submitted by the claimants vis a vis the investor database, incorrect e-mail addresses and submission of physical claims. Respondent No. 1 had uploaded the Link for accessing the Claim Reconciliation Portal along with the user manual on the website of the Corporate Debtor and the submissions made on the portal were suitably incorporated while finalising list of creditors for the 17th CoC meeting. Respondent No. 1 had also uploaded list of claimants submitting physical claims on the website of the Corporate Debtor requesting them to submit claims via e-mail provided for verification of claims. For claimants not providing e-mail address, Respondent No. 1 sent physical letters on the address provided in claim from, requesting claimants to submit claim in electronic format.
34. Respondent No. 2 has challenged the maintainability of the Application and submits that the scope of the Judicial review is limited to the subjective analysis wherein an expert's opinion such as the evaluation report cannot be questioned and no judicial intervention can be sought into an expert opinion.

35. Respondent No. 2 states that the Application is not maintainable because the Applicant holds no vested right to be necessarily considered or declared as a successful resolution applicant. It is settled law that a bidder has no vested rights in the process merely by virtue of participating in the process. In *ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta [(2019) 2 SCC 1]* the Hon'ble Supreme Court observed that a resolution applicant has no vested right that his resolution plan be considered and that there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved. The NCLAT also in its judgements has held that an Unsuccessful Resolution Applicant has no locus standi to assail a Resolution Plan or its implementation since it is not stakeholder as per Section 31(1) of IBC.
36. Respondent No. 2 states that the summary of the Resolution Plans is encapsulated in two pages in the revised evaluation report with only key aspects and all other details of the proposals have been provided in the Annexure at the report. It is also pertinent to note that the CoC member, the Authorised Representative i.e. Respondent No. 3 never raised a single objection nor raised any query to the report. The depositors also never raised any observations or findings in respect of the reports submitted. Respondent No. 2 further submits that at the 17th CoC meeting held on 18.11.2023, Respondent No. 3 also appreciated and praised Respondent No. 2, on behalf of the entire Committee of Creditors for preparing the evaluation report with very comparative analysis and in simple language as per the mandate given by the Adjudicating Authority.
37. Respondent No. 2 further submits that the revised evaluation report of the Resolution Plan was presented in two different headers in line with the Order dated 01.11.2023 of this Tribunal to bring to the knowledge

of the class of depositors about the financial impact of the addendum and the Resolution Plan respectively.

38. Respondent No. 2 submits that with regards to the proposal of the payment methods in the Resolution Plan, all the Resolution Applicants proposed various payment methods which are based on future events and the amount which is not confirmed. During the previous report, it was submitted that only Committed payments proposed by all the Resolution Applicants for the purpose of Evaluation were considered, and all Non-Committed Payments were ignored to calculate the Evaluation Matrix, the same was also explained to all stakeholders. In the absence of any contrary views taken by any of the stakeholders in the meeting, it was deemed appropriate to continue with the same principle and accordingly, all Non-Committed Payments have not been considered for the Evaluation Purposes. Hence the assets have been considered under Non-Committed Payments.
39. Respondent No. 2 further submits that according to the exact clause as per the addendum of the Applicant regarding the assets and their monetization, the Applicant will only pay when the assets get realized at actuals, after deductions and it will be done on a best-effort basis. The Applicant herein had neither Committed to the timelines nor committed to the quantum of amounts because it has only been kept on the best-efforts basis and at actuals with no certainty. The Applicant also did not mention in the addendum the likelihood of what would happen if they could not sell the property within a period of 3 years. Therefore, there is no commitment which can be gleaned from the clause.
40. Respondent No. 3 states that there has been total compliance of the Order dated 1.11.2023 by the three Respondents.

41. Respondent No. 3 states that online zoom meetings were arranged with the depositors/investors between 19.11.2023 and 26.11.2023 to explain about the plans, voting process and related matters. Respondent No. 3 invited all the three Resolution Applicants to separately explain their plans to the depositors and to interact with them and except successful Resolution Applicant, both the other Resolution Applicants availed the opportunity. However, not many depositors attended the online meetings.
42. Respondent No. 3 further submits that the profile of the average investor is semi-literate, low income, no functional knowledge of computers and finance and this loophole has been exploited by interested parties to develop loyalty and succeed in directional voting by WhatsApp. Respondent No. 3 has his own apprehension whether a decision that emerges in such a situation can be called commercial wisdom of the CoC.
43. Respondent No. 3 has made the following suggestions in the interest of justice :
- a) Plan selection process be carried out under the direct supervision of NCLT. Successful Resolution Plan attributes and amount be decided by comparison of all the plans and Successful RA be given first right to match it. Inter-competitive bidding be done subsequently to decide the best plan and it should not be subject to further voting.
 - b) The Tribunal may appoint another Resolution Plan Evaluator to give a comparative evaluation of all three plans. They should also be requested to give a summary in both English and vernacular and such report and summary be uploaded on website as also made available to all the Resolution Applicants to publish freely.

Submissions made by the Ld. Counsel on behalf of the Intervenor

44. Intervenor No. 1 submits that this Tribunal by way of the Order dated 01.11.2023 in IA No. 3850/2023 was also pleased to set aside the previous CoC voting results conducted between 23.08.2023 and 28.08.2023 wherein the resolution plan of the present Intervenor No. 1 was approved with 100% voting.
45. It is submitted that despite failing to implead the other two Resolution Applicants, the Applicant has proceeded to seek interim reliefs in the said IA No. 5383 of 2023 and this Adjudicating Authority on 24.11.2023 in IA No. 5383 of 2023 while permitting the CoC voting to continue, was pleased to accept the statement of Resolution Professional that he will not declare the Successful Resolution Applicant nor issue Letter of Intent to the Successful Resolution Applicant until 29.11.2023.
46. Intervenor No. 1 submits that IA No. 5383/2023 is a prematurely filed application as it has been filed by a Prospective Resolution Applicant who as per law laid down by the Hon'ble Supreme Court of India in the matter of Arcelor Mittal, has no vested right to raise the objections to the 'CIRP' seeking to have its 'Resolution Plan' approved; and/or to have its 'Resolution Plan' being considered in exclusivity or in priority over the 'Resolution Plan' of other 'Resolution Applicants'.
47. Intervenor No. 1 also submits that Authorised Representative of Committee of Creditors who as per Order dated 01.11.2023 sought evaluation of Resolution Plans from Resolution Plan Evaluator and Authorised Representative, has at no point in time objected to the said evaluation report and as such, the Applicant in IA No. 5383 of 2023 cannot be said to have locus to challenge the said evaluation report prepared by the resolution plan evaluator.

48. Intervenor No. 2 submits that the said Application by the failed RA is not only in defiance of the Order dated 01.11.2023 passed by this Tribunal but is also a fraud played upon the millions of Investors by undermining their intellect and ability to make decision and the collective commercial wisdom based on which the COC has rejected the Resolution plan of the failed Resolution Applicant twice.
49. Intervenor No. 2 also submits that Respondent No.3, Authorised Representative of Financial Creditors in a class is impleaded as a Respondent in IA No. 5383 of 2023, but the Authorised Representative who is expected to act in the best interests of the Committee of Creditors failed to make any representation whatsoever on behalf of Committee of Creditors either in person or through a legal representative before this Tribunal on 24.11.2023 in IA No. 5383 of 2023 and filed a collusive reply to the above IA on 29.11.2023. Intervenor No. 2 states that they have through their Advocate issued a Notice dated 13.12.2023 to Respondent No. 3 who has committed various criminal offences in conspiracy with some other persons and will be proceeding against the Respondent No.3 and others under the Criminal Law as well.

Findings

50. Heard learned Counsel and perused the material available on record.
51. The major issue stems from the contention that the Order dated 01.11.2023 has not been complied with by the Respondents herein.
52. It can be seen from the documents placed on record that as per our directions, the Resolution Professional held the 16th CoC meeting on 09.11.2023 and provided the three shortlisted PRAs an opportunity to apprise their financial bids to the CoC. As per the minutes of the 16th

CoC meeting placed on record, each of the three PRAs had an opportunity to interact with the CoC as well as the RPE who was present at the meeting.

53. Subsequently, the RPE presented the Final Plan Evaluation Report to the Resolution Professional and the Authorised Representative on 18.11.2023 and the Final Plan Evaluation Report was subsequently uploaded on the Virtual Data Room for the benefit of all the depositors/investors. On perusal of the Resolution Plan evaluation report, we find that the Report provides a summary of each Resolution Plan, a summary of the comparative analysis of the Resolution Plans as well as a detailed analysis. It has also been brought to our notice that the Authorised Representative also prepared a summary of the Resolution Plan Evaluation Report, in English as well as Hindi, which was also uploaded on the Virtual Data Room. Further, we find from the minutes of the 17th CoC meeting held on 18.11.2023 stating that *AR mentioned that all the 3 plans can be treated as feasible and viable to which RPE also concurred. AR thanked RPE for making the report in word format in simple language which will probably help claimants in better understanding and AR will further try to explain the claimants in detail in his proposed meetings. RP asked CoC Legal advisor if he has any comment on the evaluation report to which he replied that he does not have any comments on the report.*” These statements in the CoC meeting further demonstrate that Authorised Representative had found the Evaluation Document in simple language for understanding of the creditors falling in the class. We are of the opinion that the Summaries in the Report coupled with the Summary prepared by the Authorised Representative are sufficiently simple and have been prepared in layman language to inform the depositors/investors of the financials of the Resolution Plans before them.

54. As regards the contention of dual analysis, we are of the opinion that the Resolution Plans have to be considered and evaluated as a whole, along with the addendums. The Resolution Plan Evaluation Report provides an analysis of the Resolution Plan with and without the addendum, however, the Authorised Representative has in his summary considered the Resolution Plan along with the addendum and clearly stated as follows :

“Please note that as per the evaluation matrix as approved by CoC, plan of Ashdan ranks no. 1, followed by plan of Chemub and lastly of Shanti.”

We are therefore of the view that the contentions of misrepresentation and collusion levied against the Authorised Representative and the Resolution Professional do not hold any ground.

55. The Applicant has submitted an evaluation of plans. However, the plans in question were evaluated by CoC approved evaluator.

56. The Applicant has also challenged the resolution approving Chemhub's Resolution Plan stating that it is short of the threshold of 66% of voting share of the financial creditors. It is essential to read Section 25A(3A) and Section 30(4) of the Code in conjunction to evaluate this contention.

57. Section 25A(3A) of the Code reads as follows:

“(3A)Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote”

and Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board”

58. The law, as stated above would require that the Authorised Representative vote in a manner as decided by a majority, i.e. 50% or more of the Financial Creditors of the class he represents. In the present case, the CoC consisted of only the Authorised Representative as there was only one class of creditors that he represented. Therefore, in effect the vote cast by the Authorised representative either in the affirmative or negative, as the case may be would constitute 100% of the voting share and decide the fate of the Resolution Plan.

59. At this stage then, it is pertinent to examine the votes as cast by the depositors/investors. As per the e-mail dated 15.11.2023 sent by the e-voting agency to the Resolution Professional, the e-voting agency had received e-mail ids of 12,93,968 depositors/investors and e-mails informing the voting details had successfully been delivered to 11,20,816 depositors/investors. The e-mail states that 1,70,042 e-mail ids were invalid and 3,110 e-mails bounced. We are of the view that a fairly large number of depositors/investors had been informed about the voting process and that the Resolution Professional undertook sufficient measures to ensure maximum participation from the depositors/investors. However, as per the Voting Certificates of the 17th CoC meeting, it is observed that around 1,63,000 depositors/investors, constituting approximately 23% of the total Financial Creditors participated in the voting process and approved the

Resolution Plan of Chemhub Tradelink Private Limited by majority of class voting on the plan. The votes in favour of the approved Resolution Plan were 19.38%, per contra 3.70% voted against it, thereby approving it by a clear majority. On the basis of such voting results, the Authorised Representative has rightly voted in favour of the plan approved by the majority. Accordingly, the plan stands approved by 100% majority and the contention of the Applicant that the voting is bereft of the requisite majority as mandated under the statute cannot be considered.

60. In the minutes of the 16th CoC meeting held on 09.11.2023, it is stated that – *“The AR and RPE had a detailed discussion with APPL on the financial bid of APPL's resolution plan. APPL categorically apprised to the AR that the 6 properties mentioned in their resolution plan are to the benefit of CoC and figure of Rs. 150 crore is just their estimate and they expects to monetize these properties within 2-3 years. However, they also clarified that neither they are committing any time frame nor the amount of realization. They submitted that CoC can decide about the properties any time and it APPL would have no beneficial ownership of these properties. The RP and RP Team mentioned that it may be advisable for AR and RPE to refer the resolution plan for detailed terms. The AR and RPE stated that they may reach out to APPL in case of any clarification is needed with respect to their financial bid.”*

61. The Applicant has taken the stand that the value of Rs. 150 crores is merely an estimate and non-binding. It is the case of the Applicant that the estimated fair value of these properties is Rs. 92.84 crores and the liquidation value is Rs. 70.50 crores. Accordingly, this Bench is of the opinion that the evaluator could not have assigned a specific value to these properties while evaluating the plan because it could have led to another controversy on the values assigned.

62. An Intervention Application No. 62 of 2023 was filed by Mr. Nitin Suresh Satghare and Others, representing 80 investors of Pancard Clubs Limited, who were the original petitioners in CP (IB) No. 4578/2018, seeking to intervene in IA No. 5383/2023 and to pray for rejection of the said IA. Since we have already held that the Resolution Plan is validly approved by the CoC, the prayers in the said Intervention Application are rendered infructuous. Another Intervention Application No. 1/2024 was filed by Mr. Varun Pravinchandra Aghara, representing 14 investors of Pancard Clubs Limited, however, this Application was not pressed by the learned counsel appearing for the Intervenor informing the Bench the intent of the Intervenor. Accordingly, IVN. P. 1/2024 is dismissed. Besides these the IVN. P. No. 67 and IVN. P. No. 70 are allowed in view of our decision to hold the Plan having been approved validly by the CoC. Further, the IA No. 5383/2023 is also dismissed.
63. It is noted that the present proceedings are arising from second round of CoC's evaluation of the plan and voting thereon. Considering the peculiar facts and circumstances of the case where sole member constituting CoC is representing large number of small depositors, the plan approved by the sole vote of authorised representative, who himself is a qualified Insolvency Professional and has affirmed that the process was followed in accordance with the mandate of this Tribunal, cannot be whittled down by this Tribunal merely because there were not enough members participating in the voting process. We are of considered view that enough opportunity has been offered in both rounds to such small depositors to come forward and vote. No process can make them move unless they are willing to participate.
64. Nonetheless, this case may be taken up as a case study by the Insolvency & Bankruptcy Board of India ("IBBI") to lay down appropriate guidelines in case of representation of large number of creditors in a class

by single Insolvency Professional, where such Insolvency Professional acting as Authorised Representative is a sole member constituting CoC to incorporate appropriate checks and balances for exercise of due wisdom by such Insolvency Professional acting on behalf of class. The IBBI may consider framing appropriate guidelines in relation to exercise of commercial wisdom by such CoC and manner of voting by the class.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)