NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1041 of 2024
&
I.A. No. 3782, 3783, 3784 of 2024

IN THE MATTER OF:

Suraksha Realty Ltd. **...Appellant(s)**

Versus

Amit Gupta Resolution Professional of Mahavir Roads and Infrastructure Pvt. Ltd. & Anr. **...Respondent(s)**

Present:

For Appellant	**:**	Mr. Krishnendu Datta, Sr. Adv. along with Mr. Chitranshul A. Sinha, Mr. Sagar Bansal, Mr. Shivam Shorewala, Ms. Rakshita Bhargava, Ms. Esha Sharma, Mr. Dhruv Parwal & Ms. Alina Marin Mathew.
For Respondents	**:**	Mr. J. Rajesh, Mr. Dhrupad Vaghani, Ms. Gaytari Mohite, Md. Arsalan Ahmed, Mr. Yashwardhan Aggarwal & Mr. Ali Abbas Masoodi, for R-1. Mr. Abhijeet Sinha, Sr. Adv. along with Mr. Aman Kacheria, for R-2. Mr. Sunil Fernandes, Sr. Adv. along with Ms. Jayashree Shukla Dasgupta, Mr. R.B. Trivedi & Mr. Shivam Nayyar, for R-3.

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The present appeal has been preferred by Suraksha Realty Limited ("Appellant") under Section 61 of the Insolvency Bankruptcy Code, 2016 ("Code") against the Order dated 14.05.2024 passed in IA No. 22 of 2024 in CP (IB) NO. 2300 OF 2018 ("Impugned Order") by the National Company Law Tribunal, Mumbai Bench – I, Mumbai ("Adjudicating Authority") whereby the application filed by the Resolution Professional (RP) to Approve the Plan has been accepted.

2. Brief facts as reflected from the pleadings of the parties are in terms that the Appellant sanctioned loan of Rs. 60,00,00,000/- (Rupees Sixty Crores Only) to the corporate debtor (CD) and in lieu of the loan facility the Corporate Debtor is stated to have created equitable mortgage by depositing the original title deeds of the immovable property with the Appellant. In February 2015, the Appellant and the Corporate Debtor entered into a Supplementary Loan Agreement dated 18.02.2015. The Corporate Debtor defaulted in repayment of the loan in terms of the Loan Agreement read with the Supplementary Agreement dated 18.02.2015 and post-dated cheques were stated to have been issued as security under the Loan Agreement read with the Supplementary Agreement, however they were also dishonoured.

3. It is also reflected that the appellant filed a complaint against the Corporate Debtor and its' directors before the Court of Magistrate at Andheri, Mumbai. However, during the pendency of same, the Corporate Debtor requested the Appellant to withdraw the complaint and modify the terms of the repayment of Loan. Accordingly, the Loan Agreement was modified and it is stated by Appellant that loan of Rs. 12,52,00,000/- (Rupees Twelve Crore Fifty-Two Lakh Only) was outstanding and payable to the Appellant on the date of execution of the Modified Loan Agreement. An addendum to the Modified Loan Agreement dated 09.02.2016 was also executed between the Appellant and the Corporate Debtor in order to additionally secure the loan granted in terms of the Modified Loan Agreement. It was agreed in between the Appellant and Corporate Debtor that the Corporate Debtor is liable to pay an outstanding of Rs. 69,97,00,000/- (Rupees Sixty-Nine Crore Ninety-Seven Lakh Only) and that

the Corporate Debtor would repay the same at the rate of 18% payable monthly over 75 (seventy-five) months starting from 01.02.2016. The Corporate Debtor again failed to repay the loan facilities provided by the Appellant, as required in terms of the Loan Agreement, Supplementary Agreement, Modified Loan Agreement and Addendum.

4. It is further reflected that on 21.02.2019, the Ld. Adjudicating Authority admitted CD in CIRP on an application filed under Section 7 of the Code and appointed Mr. Ankur Kumar as the IRP. Appellant submitted its claim in Form C dated 25.11.2019 to the IRP of the Corporate Debtor for an amount of Rs. 109,63,47,940/- (Rupees One Hundred and Nine Crore Sixty-Three Lakh Forty-Seven Thousand Nine Hundred and Forty Only) as a secured financial creditor. The IRP, however, vide email dated 16.12.2019 admitted the claim of the Appellant only to the tune of Rs. 40,84,24,363/- (Rupees Forty Crore Eighty-Four Lakh Twenty-Four Thousand Three Hundred and Sixty-Three Only) and also categorised the Appellant as an unsecured financial creditor. In the 29th CoC meeting convened on 15.02.2022 the Appellant was treated as a Secured Financial Creditor in the books of the Corporate Debtor and in the 30th CoC meeting the Appellant was considered as a Secured Creditor. The CoC proposed to change the RP and Mr. Amit Gupta was appointed as a new RP on 13.02.2023.

5. It is further evident that in the 35th meeting of CoC was convened on 04.09.2023 wherein the resolution for Liquidation of Corporate Debtor was approved with 78.83% voting share and the Liquidation Application was filed by the RP before the Ld. Adjudicating Authority. On 10.10.2023 two interested Prospective Resolution Applicants (PRA) Mr. Pankaj Kikavat and

Bermaco Energy Systems Limited (SRA/Respondent No. 2) filed IA No.4498 of 2023 and IA No.4500 of 2023, respectively, before the Ld. Adjudicating Authority seeking approval to submit their Resolution Plans. Accordingly, the Adjudicating Authority granted opportunity to the said PRAs to submit their Resolution Plans.

6. It is also reflected that in the 38th CoC meeting convened on 23.11.2023 the Resolution Plan of Respondent No. 2 was discussed and it was asked to submit an unconditional Resolution Plan. The Resolution Plan submitted by Mr. Pankaj Kikavat the Promoter and Suspended Director of the C D was not considered because they failed to submit the EMD within the stipulated period of time. It is also stated that the charge in favour of the Appellant was registered on 14.12.2023 by the Ministry of Corporate Affairs thereby confirming its status as a secured creditor prior to submission of the revised Resolution Plan by the Respondent no. 2, which was filed on 16.12.2023 by Respondent no. 2 along with addendum to the Plan, however the Respondent no. 2 failed to categorize the Appellant as a secured creditor.

7. It is further reflected that Authorised Representative of Appellant pointed out at the 40th CoC meeting convened on 20.12.2023 that the Respondent No.2 is involved in certain questionable transactions which were being prosecuted by the Enforcement Directorate (ED) and the CoC deferred the agenda for approval of Resolution Plan. The Appellant also stated to have sent a letter dated 21.12.2023 to the Respondent no. 1 to elaborate on the illegalities in the resolution plan submitted by Respondent no. 2, and also that the Respondent no. 1 had not correctly classified the Appellant as secured creditor. In the 41st CoC meeting convened on 19.01.2024 the RP

apprised the CoC members that he had appointed Bagchi & Gupta, Chartered Accounts, to verify the eligibility of the Resolution Applicant under Section 29A of the Code whereby no disqualification has been reported. Thereafter, Resolution Plan as submitted by Bermaco Energy Systems Limited was put for E–voting. RP at the said COC meeting also informed that he had been informed by the Respondent no. 2 that the proceedings under PMLA had been stayed by the Hon'ble Bombay High Court. The Appellant was thereafter sent emails to the Respondent No. 1 and members of the CoC on 24.01.2024 and 31.01.2024 protesting against the undue haste in voting on the Resolution Plan stating that the clarification provided by the Respondent no. 2 was incorrect, and submitted a memo of inquiry of the PMLA proceedings pending against the Respondent No. 2 along with the relevant orders of the PMLA Adjudicating Authority, PMLA Appellate Tribunal and the Hon'ble Bombay High Court and also that the liquidation value of the Corporate Debtor is much higher than the liquidation value provided by the RP. However, E-voting for the Resolution Plan concluded thereafter on 06.03.2024. wherein the CoC approved the plan of respondent No. 2 Bermaco Energy Systems Limited by voting percentage of 78.83%.

8. It is also reflected that R P filed an IA No.22 OF 2024 under Section 30(6) of Code read with Regulation 39(4) of CIRP Regulations, 2016 seeking approval of Resolution Plan dated 16.12.2023 before the Ld. Adjudicating Authority and the same was allowed vide Order dated 14.05.2024 and aggrieved by the same instant appeal has been filed by the Appellant.

9. We have heard Ld. Counsels for the parties and have perused the record as well the written submission's filed by the parties.

10. Ld. Counsel for the Appellant submits that the Appellant has challenged the approval of the Resolution Plan primarily on the grounds of, material concealment and false information provided and given by the SRA to the CoC ,Resolution Plan not having provisions for its effective implementation in view of the order of attachment by the Enforcement Directorate, non-classification of the Appellant as a secured financial creditor and incorrect liquidation value and violation of the entitlements of the Appellant as a dissenting financial creditor and on account of other non-compliances with Section 30(2) of the Code.

11. It is further submitted during the pendency of the insolvency process, the Appellant came to know about the involvement of the SRA in questionable transactions, pursuant to which, the Enforcement Directorate had published a press note on 22nd September 2022, wherein the SRA and its promoters were alleged to have been involved in money laundering and It is also known that the Central Bureau of Investigation (CBI) registered an FIR on 07.02.2022 for commission of offences under Section 420 and 120-B of the Indian Penal Code, 1860 ("IPC") read with Prevention of Corruption Act, 1988 against ABG Shipyard Ltd. and its directors and other unknown persons and ED also registered ECIR against ABG Shipyard Ltd. and other connected individuals and entities for causing loss of about INR 22,842 Crores to a consortium of banks.

12. It is further submitted that The ED under Section 3 of the Prevention of Money Laundering Act, 2002 ("PMLA") attached certain properties related

to the said criminal activity and found money trail from group companies of ABGSL to the SRA and subsequently, assets of the SRA and its promoters of the amount of more than INR 19 Crore were attached. The said order was subsequently confirmed by the PMLA Adjudicating Authority.

13. It is further submitted that the PMLA Appellate Tribunal, while dismissing the interim stay application moved by the SRA, in its order dated 3 August 2023, prima facie held that the SRA is part of organized crime and involved in money laundering. The matter was taken before the Hon'ble High Court of Bombay by filing Criminal Appeal no. 879 of 2023 wherein only the eviction of the SRA was directed not to be proceeded with and there was no stay on the order of the PMLA Appellate Tribunal and during the pendency of the said proceedings, the SRA and its promoters had argued before the Hon'ble High Court of Bombay that the writ would be maintainable on the criminal side and not on the civil side which was affirmed by the Hon'ble High Court of Bombay vide judgment dated 02.12.2024, however here a different stand is being taken by the SRA by pleading that proceedings of attachment under PMLA are civil proceedings. However, the said Writ was subsequently withdrawn vide order dated 19.12.2025 to pursue the appeal before the Hon'ble PMLA Appellate Tribunal.

14. It is also submitted that the Appellant pointed out to the CoC in its 40th meeting held on 20.12.2023 about the nature of transactions the SRA is involved in and that the same are currently pending investigation – a fact which had been concealed by the SRA in its Resolution Plan. In pursuance of the same, the CoC deferred the agenda for the approval of the Resolution Plan and a detailed letter was also sent by the Appellant on 21.12.2023

highlighting the involvement of the SRA in the ED case. Subsequently in the 41st meeting of the CoC held on 19.01.2024 the RP apprised the CoC on the basis of a report submitted by Bagchi & Gupta, Chartered Accounts pertaining to the eligibility of the Resolution Applicant under Section 29A of the Code contending that the SRA is eligible to submit their resolution plan. However, the said report does not even refer to the alleged antecedents of the SRA nor to the pending investigations against the same but is only confined to eligibility under Section 29A of the Code.

15. It is also submitted that wrong information was given by the SRA pertaining to the order passed by the Hon'ble High Court of Bombay as in pursuance of the order, only the eviction of the SRA was not to be proceeded with and there was no stay on the order of attachment made under the PMLA. In this regard Appellant also wrote an email dated 24.01.2024 to the RP and the CoC and submitted a memo of enquiry stating the details of the alleged criminal antecedents of the SRA, details of the pending investigation and litigation and the misrepresentation of the order of the Hon'ble High Court of Bombay. Another email was also sent to the RP and the CoC on 31.01.2024 whereby Appellant again pointed out the misrepresentation and concealment made by the SRA in the 42nd meeting of the COC which were not addressed/clarified by the RP and the resolution plan of the SRA was approved by the CoC by 78.83% voting share with the Appellant dissenting.

16. It is further submitted that the SRA was required by the RFRP to clarify and share details of any criminal proceedings, investigations, inquiries, etc., which have been commenced or are pending against the Resolution Applicant or with regard to any connected persons, however the

SRA in appendix submitted along with the Resolution Plan provided wrong information by writing "No" indicating no such proceedings/investigations/enquiries etc. are pending on the date and the same which is contrary to the record and amounts to material concealment in the light of the observations contained in the press release of the ED and the orders of the PMLA Authority and Appellate Authority. Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") is also highlighted in order to show that the SRA was mandated to provide an undertaking that every information provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the Resolution Applicant ineligible to continue in the CIRP, forfeit any refundable deposit and would also attract penal action under the Code.

17. It is further submitted that the aforesaid regulation is mandatory in nature and clearly provides for the penal consequences as affirmed in Gaurav Katiyar vs. Nisus Finance and Investment Managers LLP & Ors. CA (AT) (Ins) No. 963-965 of 2024 wherein it has been held that Regulation 39(1)(c) stipulates that discovery of false information and record at any time will render the applicant ineligible to continue in CIRP. It is respectfully submitted that the said judgment squarely applies to the present case.

18. It is further submitted that the present misrepresentation cannot be deemed to be a mere infraction/immaterial declaration, but goes to the issue of the effective implementation of the Resolution Plan as the source of funds runs the risk of being tainted and thus prone to attachment in future and having regard to the scheme of the Code an SRA with alleged criminal

antecedents and prima facie involved in money laundering and organized crime should not be allowed to be part of the resolution of the Corporate Debtor. In this regard it is submitted that provision under Regulation 39(1)(c) is distinct from Section 29A of the Code as the latter is applicable to the threshold for determination of 'eligibility' at the time of submission of the plan, while Regulation 39(1)(c) would be applicable after submission of plan to ensure that the sanctity of a CIRP is not violated.

19. It is further submitted that contention of the SRA that the proceedings of attachment of property in PMLA case are civil proceeding is patently false and could not be accepted in the background of their own admission that these are criminal proceedings. Reliance has been placed on the law laid down by the Hon'ble Supreme Court in the case of ***Vijay Madan Lal Choudhary & Ors. vs. Union of India & Ors. (2023) 12 SCC 1***.

20. It is further submitted that even if the CoC had considered and deliberated on the issue of false declaration by the SRA, the same cannot be within the purview of its commercial wisdom as the CoC cannot bypass the statutory consequences provided under Regulation 39(1)(c) and moreover no clarification provided by the Appellant except communication of the misrepresented "stay order" and the CoC proceeded on the incorrect information that the proceedings had been stayed and no details/clarification was ever provided, thus any acts taken in pursuance of the same cannot be deemed to the commercial wisdom of the CoC. A Resolution Applicant's eligibility under section 29A of the Code would not absolve contravention of other requirements under law including compliance of Regulation 39(1)(c) of the CIRP Regulations. Reliance gas been placed on

the law laid down by the Hon'ble Supreme Court in the case of ***M/s. Lamba Exports Pvt. Ltd. v. M/s. Dhir Global Industries Pvt. Ltd. and Ors. 2026 SCC Online SC and CoC of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. Civil Appeal no. 8766-8767 of 2019***.

21. It is further submitted that the Hon'ble Supreme Court in the case of ***Independent Sugar Corporation Ltd. vs. Girish Sriram Juneja & Ors. 2025 SCC Online SC 181*** has held that after the feasibility and viability is considered by the CoC, there exists a further requirement of the effective implementation of a resolution plan which has to be satisfied by the Adjudicating Authority as a threshold criterion as per Section 31 of the IBC which is independent of commercial and Regulation 38 of CIRP Regulations,2016 also mandate that the resolution plan should provide for its effective implementation. However, in this case the resolution plan proceeds on material concealment of the attachment details of the SRA without considering whether the SRA is capable of implementing the present resolution plan in view of the same.

22. It is also submitted that the Appellant's charge over the assets of the Corporate Debtor, arising from the equitable mortgage created by deposit of title deeds on 06.12.2014 was registered with the Ministry of Corporate Affairs on 14.12.2023, i.e. prior to the submission of the revised Resolution Plan dated 16.12.2023. Despite the registered charge being within the knowledge of both the Respondents, the Resolution Plan does not treat the Appellant as a secured financial creditor, contrary to Section 30(2)(b) read with Section 53 of the Code and upon correct classification of the Appellant as a secured financial creditor, the entire distribution matrix under the

Resolution Plan would change, and the plan is therefore liable to be rejected or remanded to the CoC.

23. It is further submitted that the liquidation values ascribed by the two registered valuers deviated by more than 25% for particular asset classes (INR 52.78 crore as against INR 35.04 crore), whereupon the Respondent No. 1 was bound to appoint a third valuer under the CIRP Regulations. Despite the issue being specifically raised by the Appellant at the 42nd meeting of the CoC and by email dated 31.01.2024, no third valuer was appointed. Appreciating assets (land) have been undervalued while depreciating assets have been overvalued, thereby artificially depressing the liquidation value of the Corporate Debtor to the benefit of the SRA. Further, the value of the Resolution Plan has been misrepresented as INR 60 crore whereas the true plan value is only INR 39.80 crore, the balance being attributable to future liabilities towards invocation of bank guarantees of Bank of India which cannot form part of the plan value. The plan value is thus lower than the liquidation value of the Corporate Debtor and the Resolution Plan is liable to be rejected on this ground alone.

24. Ld. Counsel for the Appellant has relied on following judicial precedents: -

(i)Gaurav Katiyar vs. Nisus Finance and Investment Managers LLP & Ors., CA (AT) (Ins) No. 963-965 of 2024.

(ii) Vijay Madan Lal Choudhary & Ors. vs. Union of India & Ors. (2023) 12 SCC 1.

(iii) Independent Sugar Corporation Ltd. vs. Girish Sriram Juneja & Ors., 2025 SCC Online SC 181.

(iv) Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-8767 of 2019.

(v) M/s. Lamba Exports Pvt. Ltd. vs. M/s Dhir Global Industries Pvt. Ltd. and Ors., (2026) SCC Online SC 459.

(vi) Bermaco Energy Systems Ltd. vs. Directorate of Enforcement & Anr., Criminal Appeal No. 879 of 2023, decided on 02.12.2024.

(vii) Bermaco Energy Systems Ltd. vs. Directorate of Enforcement & Anr., Criminal Appeal No. 879 of 2023, decided on 19.12.2024.

(viii)Viren Vinod Ahuja vs. Directorate of Enforcement, FPA-PMLA-5869-71/AHD/2023.

25. Ld. Counsel for the Respondent No. 1/RP of Mahaveer Roads and Infrastructure Pvt. Ltd. (CD) submits that the appellant has concealed from this Appellate Tribunal that on 03.02.2020 Suraksha ARC had submitted a resolution plan for Rs. 22.40 Crore and in the 25th meeting of the CoC this resolution plan was rejected by 85.11% of the CoC and the Respodent No. 1 was appointed as the RP at the 30th meeting of the CoC held on 13.02.2023.

26. It is further submitted that after a decision taken by the CoC to liquidate the CD on 04.09.2023 in 35th meeting of the CoC two resolution applicants Pankaj Kikavat and Bermaco Energy Systems Ltd. filed two IA's 4498-4500 of 2023 seeking consideration of their resolution plans which were allowed in the 40th and 41st meeting of the CoC. It was during the 40th and 41st meeting of the CoC, the CoC members were apprised of the verification of the Respondent No. 2 eligibility under Section 29 A of the Code regarding any past criminal convictions and in the e-voting of the

resolution plan the resolution plan of the SRA was approved by a voting percentage of 78.83% and an IA moved by the RP for approval of this plan was also allowed by the adjudicating authority vide order dated 14.05.2024.

27. It is further submitted that appellant has relied on provisional attachment orders and orders of the PMLA Appellate Tribunal in order to show that the non-disclosure of these proceedings is violation of RFRP and Regulation 39 (1) (c) of the CIRP regulations, 2016, however it is only under Section 29 A (d) of the Code a person, who has been convicted in the manner provided therein could be disqualified from submitting a plan and therefore the SRA was not disqualified from presenting Resolution Plan. More over the CoC was aware of the underlying proceedings against the SRA and discussed the same during 41st meeting of the CoC and thereafter Bagchi and Gupta CA were appointed to consider the eligibility of SRA and as per their report the resolution applicant is eligible as he has not been convicted for any offence and in 40th and 41st meeting of the CoC this issue was considered.

28. It is further submitted that the SRA has submitted an affidavit dated 25.10.2023, under Section 29 A of the code to demonstrate its bona fide. The object and purpose of Regulation 39 is to ensure that the resolution applicant acts in a bona fide manner and Section 31 of the Code which prescribes the approval of the resolution plan only restricts the adjudicating authority to satisfy itself that plan approved by the CoC meets the requirement under Section 30 (2) of the Code.

29. It is further submitted that the resolution applicant had neither provided any false information nor has the CoC discovered any such

information and the CoC was cognizant of the proceedings and after discussing the same consciously approved the plan in its commercial wisdom. More over the delegated legislation which is procedural in nature cannot enlarge the scope of substantive law i.e. Section 29 A of the Code. Reliance in this regard has been placed on ***Shreedhar C. Shetty vs. Additional Collector and Competent Authority and Ors. (2020) 9 SCC 537***.

30. It is further submitted that the provisional attachment and its confirmation in PMLA are in the nature of civil proceedings and cannot be equated with Section 29 A (d), which requires conviction and the only object of provisional attachment under the PMLA is similar to the attachment before judgment in civil procedure which is only to preserve the property. Reliance is placed on ***DBS Bank vs. Ruchi Soya (2024) 3 SCC 752***.

31. Ld. Counsel for the Respondent No. 2 submits that the whole foundation of the appeal preferred by the Appellant is based on the presumption that mere existence of proceedings under PMLA or the registration of an FIR is sufficient to render the resolution applicant ineligible under Section 29A of the Code. However, such a proposition finds no support either from the language of the various principles enshrined in the Insolvency and Bankruptcy Code, 2015, nor from any precedent. It is an admitted case of the Appellant that the SRA or its director has never been convicted of any offence.

32. It is further submitted that the Appellant has fundamentally misconstrued Section 29A by equating pending proceedings with ineligibility under Section 29A which contemplates a conviction wherever such

disqualification is sought to be invoked, and that no such conviction existed as on the date of approval of the Resolution Plan. Mere proceedings resulting in a provisional attachment order issued under Section 5 of the Prevention of Money Laundering Act may not be sufficient to debar the Appellant as such, proceedings are preventive in nature, and the whole purpose of these proceedings is to preserve the property pending adjudication. By any stretch of imagination, the same may not be sufficient to infer the guilt of any person, more so, when the Hon'ble Bombay High Court has granted interim protection in favour of the respondent No. 2 by directing that the Enforcement Directorate would not act upon the eviction notices during the pendency of the proceedings.

33. It is further submitted that the Insolvency and Bankruptcy Code does not provide that every person whose assets are provisionally attached becomes ineligible to submit a resolution plan. Had the Parliament intended to create such a disqualification, it would have expressly said so and therefore the courts cannot add in Section 29A, which was not intended by the Parliament. Mere recording of FIR neither records guilt nor constitutes proof of commission of an offence and the same cannot result in disqualification of the appellant as a resolution applicant and the FIR relied on by the applicant is such that respondent No. 2 is not even named in the same. Neither respondent No. 2 nor its directors are shown to be persons against whom investigation has been initiated in the state proceedings. No charge sheet has been placed on record, and no cognizance order has been produced which may suggest that the prosecution against respondent No. 2 has started.

34. It is further submitted that when the appellant first raised the issue during the 40th meeting of the CoC, the resolution professional did not summarily reject the objection. He deferred consideration of the resolution plan, sought independent verification, and thereafter placed the issue before Bagchi and Gupta, the chartered accountant specially appointed to see the eligibility under Section 29A of the Code. After examining the material, the chartered accountant concluded that no disqualification under Section 29A may be attached to the resolution applicant. That report was thereafter placed before every financial creditor during the 41st meeting of the COC. The resolution professional informed the CoC that proceedings concerning attachment were pending before the Hon'ble High Court, and also that interim protection had been granted and that respondent No. 2 continued to remain eligible under Section 29A. Thus, it could not be said that the CoC has not considered this aspect of the matter in detail and when the CoC has taken a decision considering the issue highlighted by the appellant, the appellant cannot raise a finger on the commercial wisdom of the CoC.

35. It is further submitted that the appellant's reliance upon Regulation 39(1)(c) of the CIRP Regulation is wholly misconceived and deserves to be rejected at the threshold. As no such ground has ever been pleaded in the Memorandum of Appeal, the appeal neither alleges any violation of Regulation 39(1)(c) nor there is any structural foundation in support thereof. Regulation 39 nowhere provides that an approved resolution plan shall stand vitiated merely because an undertaking is subsequently alleged to have been breached. A delegated legislation cannot create substantive rights or consequences which the parent statute itself does not envisage.

Therefore, Regulation 39 must be read harmoniously with Sections 29A, 30, and 31 of the Code, and cannot be interpreted so as to create an additional ground for setting aside an approved resolution plan.

36. It is further submitted that it is not a case where the COC was unaware of the alleged PMLA attachment proceedings or where any material information was concealed from it. To the contrary, the CoC was fully aware of every allegation relied upon by the appellant, and a conscious decision has been taken by the CoC considering all aspects of the matter and the same could not be doubted.

37. It is further submitted that what the CoC itself cannot do directly could not be permitted to be achieved indirectly by one dissenting financial creditor i.e. the appellant. Once the Resolution Plan has been approved by the requisite majority and thereafter comes to be approved by the Ld. Adjudicating Authority under Section 31 of the Code, the collective commercial decision and the commercial wisdom of the COC, which has attained finality, may not be subject to the judicial review as contemplated under Section 61 of the Code.

38. It is further submitted that an alleged breach of an undertaking furnished by the Resolution Applicant could not entitle the Appellant to seek annulment of the Resolution Plan. The undertaking contemplated under Section 39 is furnished to the resolution professional as part of the insolvency process. Whether such undertaking has been breached and the consequences it may follow is not a matter falling within the private domain of an individual member of the COC. The grievance of the appellant is to be seen in the background of the collective decision taken by the COC. Instant

Appeal is nothing but an attempt by a dissenting financial creditor to reopen and disapprove a resolution plan after having participated in every stage of the CIRP with full knowledge of all material facts. Such an attempt strikes at the certainty, finality, and commercial wisdom of the COC, which constitute the very foundation of the Code and therefore deserve to be dismissed with cost.

39. It is also submitted that the entire basis of the appeal filed by the Appellant rests upon the assertion that Respondent No. 2 allegedly concealed material facts from the COC and consequently procured approval of the resolution plan in violation of Regulation 39(1)(c) of the CIRP Regulations. However, this allegation is not merely incorrect but is directly contradicted by the record maintained by the RP, the minutes of the Committee of Creditors, the email correspondence exchanged between Respondent No. 1 and Respondent No. 2, the independent verification undertaken by the Resolution Professional, the reports submitted by the chartered accountants appointed by the Resolution Professional and the successive clarifications submitted by the respondent No.2. It can be inferred from the established facts that all the allegations which have been alleged by the appellant have been debated, considered, and taken into consideration by the COC while taking the decision of approval of the resolution plan submitted by the respondent No. 2.

40. It is further submitted that the present appeal has not been instituted bona fide and is a calculated attempt by a dissatisfied financial creditor to frustrate the successful resolution of the corporate debtor after having failed to secure a commercially favourable outcome during the CIRP. The

Appellant has raised identical issues before the COC, asking the COC to reject the Resolution Plan of the Respondent, and when failed, now seeks to re-agitate the very same issues under the guise of an Appeal, which is contrary to settled principles governing insolvency jurisprudence and deserves no indulgence from this Appellant Tribunal.

41. It is also submitted that the record establishes that the appellant was not an uninformed creditor as it participated in each meeting of the COC, sought repeated clarifications from respondent number two, questioned the resolution professional regarding the eligibility of respondent number two under Section 29A of the Code, raised issues concerning the alleged proceedings before the Directorate of Enforcement, and participated in discussions regarding the source of funds. It deliberated upon the revised resolution plans and ultimately exercised its voting right after every material fact was placed before the COC. Therefore, the appellant was fully aware of every circumstance which it now seeks to portray as having been suppressed.

42. It is further submitted that the bona fide of the Appellant is under the shadow, as it has been widely reported that investigative agencies have initiated proceedings concerning alleged diversion of funds in relation to the Suraksha group, including registration of an FIR and a complaint by the ED in connection with the JP matter. A look-out circular has also been issued in an alleged bank-linked fraud. First of all, these proceedings are not relied upon as proof of the allegations reported, but only to demonstrate that the appellant, while seeking to disqualify Respondent No. 2 on the basis of pending proceedings and allegations, itself stands associated with entities

that have become the subject matter of serious investigative scrutiny. Therefore, the appellant cannot be permitted to selectively rely upon mere allegations against respondent No. 2 while simultaneously expecting this appellate tribunal to disregard reported proceedings concerning its own group.

43. Ld. Counsel for the Respondent No.2 has relied on following judicial precedents: -

(i)Kalpraj Dharamshi and Anr. vs. Kotak Investment Advisors Ltd. & Anr., [(2021) 10 SCC 401].

(ii)Ghanashyam Mishra and Sons Pvt. Ltd. through Authorised Signatory vs. Edelweiss Asset Reconstruction Company Ltd. Through the director & Ors. [Civil Appeal No. 8129 of 2019]

(iii) Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Ltd. & Anr. (2022) 2 SCC 401.

(iv) Essar (India) Ltd. vs. Prabhat Technologies (India) Ltd. [CA (AT) (Ins) No. 183 of 2024]

(v) Deccan Value Investors L.P. and Anr. vs. Dinkar Venkatasubramanian and Anr. [2024 SCC Online SC 4075]

(vi)S.M. Kamal Pasha and Anr. vs. S. Rajendran, Resolution Professional of TD Toll Road Pvt. Ltd. & Ors.[CA (AT) (Ins) No. 211 of 2026]

(vii)Karad Urban Cooperative Bank Ltd. vs. Swwapnil Bhingardevay and Ors.[(2020) 9 SCC 729]

(viii) Bhagwani Bai vs. Life Insurance Corporation of India, Jabalpur [1983 SCC Online MP 10]

(ix) Harjas Rai Makhija (D) Thr. Lrs. Vs. Pushparani Jain & Anr. [(2017) 2 SCC 797]

(x) Lalita vs. Vishwanath & Ors. [2025 INSC 173]

(xi) Nisar Alia vs. State of Uttar Pradesh [1957 SCC Online SC 42]

(xii) Bachhaj Nahar vs. Nilima Mandal & Anr. [Civil Appeal Nos. 5798-5799 of 2008]

(xiii)Srinivas Raghavendrarao Desai (Dead) by Lrs. Vs. V. Kumar Vamanrao @ Alok and Ors. [2024 INSC 165]

(xiv)Deepak Parkash vs. Sunil Kumar [2014 (1) Him. L.R. 654]

(xv) Rajiv Chakraborty Resolution Professional of EIEL vs. Directorate of Enforcement [2022 SCC Online Del 3703]

(xvi) Directorate of Enforcement vs. Manoj Kumar Agarwal [SCC Online NCLAT 121]

(xvii) Om Prakash & Ors. vs. Gian Chand & Ors. [2014 SCC Online HP 2537]

(xviii)Shridhar C. Shetty (Deceased) Through Legal Representatives vs. Additional Collector and Competent Authority and Ors. [(2020) 9 SCC 537].

44. Ld. Counsel for the Respondent No.3 submits that it is an admitted position that the issue regarding the alleged ED/PMLA proceedings was raised by the Appellant for the first time during the 40th CoC Meeting held on 20.12.2023. Consequently, the agenda to put the Resolution Plan of the SRA to vote was deferred, so that allegations raised by the Appellant can be duly examined. It was thereafter on 21.12.2023, the Appellant addressed a letter stating that SRA's assets are attached by PMLA and the plan of the SRA is barred by Section 29A of the IBC. Simultaneously, the Appellant

objected of its treatment as an unsecured creditor. However on 21.12.2023, the RP addressed an email to the SRA seeking clarifications regarding the eligibility of the SRA, In response, the SRA furnished detailed clarifications vide letter dated 26.12.2023 and e-mail dated 28.12.2023 explaining the status of the PMLA proceedings and further stated that the Hon'ble Bombay HC vide order dated 09.08.2023 has accepted the statement made by the Counsel of ED and stayed further action qua Notice of Eviction issued by the ED, thereafter, a Third-Party Chartered Accountant, namely Bagchi & Gupta, was appointed to examine the eligibility of the SRA to submit the Resolution Plan and on 17.01.2024, the Report was submitted by the CA observing that the SRA is eligible under Section 29A.

45. It is further submitted that the aforesaid report of the CA, along with the objections raised by the Appellant, the clarifications furnished by the SRA, and the order passed by the Hon'ble Bombay High Court, was placed before the CoC during the 41st CoC meeting held on 19.01.2024 and the CoC deliberated upon the issue regarding the eligibility of the SRA and also on the feasibility & viability of the Resolution Plan and considered all relevant material before taking the decision on the Resolution Plan and after being fully aware of all relevant facts took a decision in its commercial wisdom.

46. It is further submitted that there is no violation of Regulation 39(1)(c) of the CIRP Regulations and the FIR dated 07.02.2022 was registered by CBI against ABG Shipyard Ltd. and its directors and certain unknown persons. However, neither the SRA nor any of its directors were named as accused in the said FIR.

47. It is further submitted that the answer given against the query in Appendix-9 pertains to the existence of "any criminal proceedings, investigations, enquiries, etc.". A plain and grammatical reading of this query indicates that the adjective "criminal" has to be read with the entire series that follows, namely "proceedings", "investigations" and "enquiries". The query is therefore concerned with criminal proceedings or criminal investigations and not every civil, regulatory or enforcement action. However, in the present case, the Appellant has failed to place on record any complaint, prosecution, conviction or finding of guilt recorded by any competent criminal court against the SRA or its directors. Moreover, attachment proceedings under Sections 5 and 8 of the PMLA are of civil in nature and do not amount to a finding of criminal guilt. Thus, there is no false statement and wilful concealment in terms of Regulation 39(1)(c) of the CIRP Regulations, as no criminal proceedings are placed on record by the Appellant [Reliance placed on ***Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1*** (Para 369, 370 and 382.26)].

48. It is further submitted that Regulation 39(1)(c) uses the expression "false information and record" and merely "incomplete" or "incorrect" information inadvertently given by the Resolution Applicant may not be deemed its violation and the same cannot be equated with furnishing false information within the meaning of Regulation 39(1)(c).

49. It is submitted that neither the IBC nor the CIRP Regulations require a Resolution Applicant to disclose every pending civil, criminal, regulatory or enforcement proceeding and there is no provision under the IBC or the CIRP Regulations that mandates that every query or disclosure sought under the

RFRP must be answered in a particular manner, failing which the Resolution Plan would be rendered invalid. The reliance placed by the Appellant on Gaurav Katiyar v. Nisus Finance & Investment Managers LLP, CA(AT)(Ins.) No. 963-965, NCLAT New Delhi, is misplaced and distinguishable on facts.

50. It is further submitted that the allegations pertaining to violation of Regulation 39(1)(c) are founded on the very same facts and allegations which were earlier relied upon by the Appellant to question the eligibility of the SRA under Section 29A and on due examination, the SRA was found eligible under Section 29A.

51. It is further submitted that mere breach of Regulation 39(1)(c) of the CIRP Regulations does not ipso facto vitiate the resolution process, unless such breach qualifies as a material irregularity. Reliance has been placed Dorni Vinimoy Private Limited v. Rachna Anchalia Resolution Professional of Imperial Tubes Private Limited & Ors., CA(AT)(Ins.) No. 411/2025, NCLAT. In the present case, all the relevant facts concerning the alleged PMLA proceedings were admittedly placed before the CoC and considered prior to voting and the Appellant has failed to demonstrate any prejudice, distortion, non-transparency or adverse impact on the commercial wisdom of the CoC due to the alleged non-disclosure.

52. It is also submitted that the Resolution Plan envisages paying a total amount of Rs. 60.16 Cr. (out of which Rs. 41 Cr. is towards payment of creditors and Rs. 19.16 Cr. towards the Bank Guarantee extended by BOI) and the SRA in Clause 6 has mentioned the source of funds. The said clause provides that the SRA would utilise internal sources to fund the amount

proposed. The SRA would also infuse funds by availing debt from the Banks/ FIs or Inter-Corporate Loans/ Deposit. The SRA further proposed to raise finance from a NBFC, namely, Renaissance Fiscal Services Pvt. Ltd. towards which a letter of interest is received by the Resolution Applicant, a copy of which is annexed as Exhibit to the Plan.

53. It is also submitted that attachment orders relied upon by the Appellant itself show that the aggregate value of the attached properties is approximately Rs. 19.16 Cr. Out of the said amount, properties valued at Rs. 3.69 Cr. belong to the SRA, whereas the remaining attached properties belong to the directors of the SRA.

54. It is submitted that IBC does not require the RP and the CoC to undertake an endless enquiry into the ultimate source of funds proposed to be infused by the Resolution Applicant and once the source of funds is disclosed and the feasibility and viability of the Resolution Plan are examined, the requirements of the IBC are satisfied and the forensic scrutiny is not required.

55. It is further submitted that erstwhile RP appointed two registered valuers in terms of Regulation 27 of the CIRP Regulations2016 and the two valuers provided their respective valuation reports and determined the fair value and liquidation value of the Corporate Debtor. The issue regarding variation in the valuation reports was raised during the 41st CoC Meeting and the CoC deliberated upon the issue and decided to proceed with the existing valuation, considering the advanced stage of the CIRP and time bound process. Regulation 35(1)(b) of the CIRP Regulations provides that if the 2 valuation reports are significantly different, the RP may appoint a third

valuer upon receipt of a proposal from the CoC. The use of the term “may" in the provision indicates that the appointment of a third valuer is not mandatory but rather left to the discretion of the RP and the CoC. Hon’ble Supreme Court in the case ***Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467*** (Para 28 & 29) has held that it is not mandatory for a resolution applicant to match the liquidation value arrived at in the manner provided in Regulation 35.

56. It is further submitted that the Appellant had filed its claim as a secured Financial Creditor. However, upon verification, the Resolution Professional admitted the claim as that of an unsecured Financial Creditor. Aggrieved by the aforesaid treatment, the Appellant filed I.A. No. 318 of 2021 before the Ld. NCLT seeking recognition as a secured Financial Creditor. The said IA was decided by the Ld. NCLT vide order dated 01.11.2023. The said order passed by the Ld. NCLT is presently under challenge before this Appellate Tribunal in CA (AT) (Ins.) No. 42 of 2024 filed by Respondent No. 3. Accordingly, the issue relating to the Appellant’s status as a secured Financial Creditor is sub judice and has not attained finality.

57. Having heard Ld. Counsel for the parties and having perused the record, it is reflected that So far as the objections raised by learned counsel for the appellant pertaining to the non-recognition of the appellant as secured financial creditor, suffice is to recall that the appellant had filed an IA No. 318 of 2021 before the Ld. Adjudicating Authority seeking recognition as a secured financial creditor and the said IA was decided vide order dated 1st November 2023 and the order passed by the Ld. Adjudicating Authority has been challenged by the Respondent No.3 by filing an appeal before this

Appellate Tribunal being CA (AT) (Ins) No. 42 of 2024 which is pending. Thus, the issue of the Appellant being a Secured Financial Creditor or not, is sub judice.

58. Perusal of the record would reveal that there are certain facts in this appeal which appear to be admitted to the parties. The corporate debtor was inducted into the CIRP vide order dated 21/2/2019 passed by the Ld. Adjudicating Authority on 21/2/2019 under Section 7 of the Court, and Mr. Ankur Kumar was appointed as the IRP and in pursuance of the public announcement made by the IRP, the applicant submitted its claim in Form C on 25-11-2019 with regard to an amount of ₹1,09,63,47,940/- as secured financial creditor of the corporate debtor.

59. The IRP by way of email dated 16/12/2019 admitted the claim of the appellant to the tune of Rs. 40,84,24,363/-and categorized the appellant as unsecured financial creditor. In the 35th meeting of the CoC, convened on 4/9/2023, the resolution for liquidation of the CD was passed with 78.83%, and the liquidation application was also filed by the RP before the Learned Adjudicating Authority. In the meantime, two interested prospective resolution applicants, namely Mr. Pankaj Kikawat and Barmaco Energy Systems Limited filed IA No. 4498 of 2023 and IA No. 4500 of 2023, respectively, seeking approval to submit the Resolution Plans and vide order dated 25/10/2023, Learned Adjudicating Authority granted opportunity to them to file the resolution plan. The plan was submitted by Mr. Pankaj Kikawat, the promoter and suspended director of the CD, however, the same could not be considered because the EMD was not deposited. The plan of the Respondent No. 2 was discussed in the 38th CoC meeting convened on

23-11-2023, and he was directed to submit an unconditional resolution plan. The revised resolution plan along with the addendum was submitted by the Respondent No. 2.

60. It is further reflected that the authorized representative of the Appellant pointed out in the 40th CoC meeting convened on 20/12/2023 that Respondent No. 2 is involved in certain questionable transactions which were being prosecuted by the Enforcement Directorate (ED). Thus, the agenda was deferred by the COC. The appellant also sent a letter dated 21/12/2023 to the RP with regard to the Resolution Plan submitted by the Respondent No. 2, and also indicating that the RP has not classified the appellant as secured creditor. The 41st CoC meeting was convened on 19-1-2024. The RP informed the CoC that he has appointed Baghchi and Gupta to verify the eligibility of the resolution applicant under Section 29A of the Code. No disqualification with regard to the Section 29A of the Code was reported by the Chartered Accountants. It is also informed in this COC meeting that the proceedings under the PMLA have been stayed by the Hon'ble Bombay High Court. However, an email was written by the appellant on 24/01/2024 to the RP and members of the COC, whereby certain documentation pertaining to the proceedings under PMLA against respondent number two were submitted. Another email was written by the Appellant on 31/01/2024 raising certain objections with regard to the proposed resolution plan submitted by the respondent No. 2. The E-Voting on the Resolution Plan was concluded on 6th March 2024, wherein the Plan of Respondent No. 2 was approved with a voting percentage of 78.83%. The Resolution Professional has filed an IA No. 22/2024 under Section 30(6) of

the Code read with Regulation 39(4) of the CIRP Regulation 2016, seeking approval of the Resolution Plan dated 16-12-2023 before the Learned Adjudicating Authority and the same was allowed vide order dated 14-05-2024 (impugned order).

61. The foremost submission of the applicant is that the respondent No. 2/SRA, has concealed its criminal antecedent in the undertaking filed by it under Regulation 39(1) (C) of the C.I.R.P. Regulation 2016, on the day of filing the undertaking, SRA and its promoters have been alleged to be involved in money laundering. The Central Bureau of Investigation registered an FIR on 7/2/2022 for commission of offenses under Section 420 and 120 of the Indian Penal Code, 1860 read with the Prevention of Corruption Act, 1988, against ABG Shipyard Limited and its directors and other unknown persons. Based on this investigation, the ED also registered an ECIR bearing ECIR No. 11 of 2022 against ABG Shipyard Limited and other connected individuals and entities for causing a loss of above Rs. 22,842 crores to a consortium of banks.

62. It is further the case of the appellant that, under relevant provisions of the Prevention of Money Laundering Act, 2002 (PMLA), certain properties of SRA and its promoters were attached by Provisional Attachment Order No. 08/2022 dated 21-09-2022. The said order was subsequently confirmed by the PMLA Adjudicating Authority vide order dated 14th March 2023. On an appeal preferred before the Appellate Tribunal of the PMLA, the Stay Application moved by the SRA was dismissed on 03-08-2023. It was observed that the SRA is a part of organized crime and involved in money laundering, wherein proceeds of crime of ABG Shipyard and Group

Companies were taken by the SRA and its promoters. The order dated 3/8/2023 passed by the Appellate Tribunal was further challenged before the Hon'ble High Court of Bombay by filing Criminal Appeal No. 879 of 2023, the eviction of the SRA was stayed. Thus, it is argued that since the SRA, in pursuance of the requirement of the RFRP, was under obligation to clarify and share details of any criminal proceedings, investigations, inquiries, etc., commenced or pending against it or against any connected persons, material information has been concealed by the SRA in the undertaking filed under Regulation 39(1)(c) of the CIRP Regulation 2016 and the appellant had become disqualified and his plan should not have been considered by the CoC. However, despite the objections raised and materials supplied by the Appellant, the plan submitted by the SRA has been passed by the COC and approved by the and adjudicating authority, and the same was liable to be rejected.

63. It is also the case of the appellant that the concealment of the criminal proceedings by not giving correct information as provided under Regulation 39(1)(c) of the CIRP Regulation 2016 was affecting the eligibility of the SRA, and in view of Regulation 39(1)(c), the SRA should have been disqualified from submitting any resolution plans and if the resolution plan was submitted, the same should have been rejected by the CoC as well as by the learned adjudicating Authority.

64. While the case of the respondent No. 2 and 3, SRA and financial creditor, respectively, is that it is an admitted case of the appellant that neither the SRA nor any of its directors has suffered a conviction attracting disqualification contemplated under Section 29A of the Code. This is

sufficient to demonstrate that the appeal is an attempt to enlarge the scope of Section 29A beyond what the Parliament has consciously enacted.

65. It's also the case of the respondents that the provisions provided under Regulation 39(1)(c) of the CIRP Regulations 2016 could not be equated with Section 29A of the Code and proceeding of attachment under relevant provisions of the PMLA may not attract any disqualification provided under Section 29A of the Code.

66. It is also the case of the respondents that the attachment proceedings may not be equated with any criminal proceedings, as the same is only with regard to the attachment and could not be attached with any culpability unless and until any charge sheet or complaint has been filed by the ED against the SRA.

67. It is also highlighted by Ld. Counsel for the Respondents that the FIR relied on by the Appellant is pertaining to the transactions involving **Varddraj Cement Limited** and ABG Shipyard Limited and mere registration of an FIR neither records nor constitutes proof of commission of an offence and so far as FIR is concerned, the SRA is not named therein as an accused.

68. It has been also argued before us that it is not a case where the issues with regard to criminal proceedings allegedly pending against the SRA were raised by the appellant and were not considered by the CoC. When, for the first time, this issue was raised by the appellant in the court meeting of the CoC, the same was taken seriously and Bagchi and Gupta, chartered accountants, were appointed to examine the eligibility of the SRA under Section 29A of the Code and after examining the material, the chartered accountants have submitted a report and concluded that no disqualification

under Section 29A is attracted with regard to SRA. Thereafter, the CoC has deliberated on the issue and has taken a conscious decision, in pursuance of its commercial wisdom, to approve the resolution plan submitted by SRA / Respondent No. 2. Thus, the commercial wisdom of the CoC cannot be questioned by the appellant, who had voted against the plan in the CoC meeting and has filed this appeal to derail the insolvency resolution process.

69. Much thrust has been given by the Learned Counsel for the appellant on Regulation 39(1)(c) of the CIRP Regulations 2016, and for convenience, the same is reproduced as under: -

> ***Regulation 39: Approval of resolution plan.***
>
> ***39.****(1)(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.*

70. Perusal of this regulation would reveal that a prospective resolution applicant may submit a resolution plan prepared in accordance with the Code and Regulations to the Resolution Professional within the time given in RFRP. He will have to file an affidavit stating its eligibility under Section 29A of the Code and also an undertaking that every information and reports provided in connection with or in the resolution plan are true and correct. Discovery of false information and record at any time will render the prospective resolution applicant ineligible to continue in the insolvency

resolution process, and the EMD deposited by said resolution applicant would also be forfeited. It will further attract penalty under the Code.

71. Perusal of the resolution plan submitted by the Respondent No. 2, SRA, would reveal that the following information was provided, which has been highlighted by the appellant.

> *(iii)Please clarify if the Resolution Applicant(s) and/or any connected person has been convicted of any offence in the preceding five years, and if so, please share all relevant details of the same-No.*
> *(iv) Please clarify of there are any criminal proceedings, investigations, enquiries etc. commenced or pending against the Resolution Applicant(s) and/or any connected person, and if so, please share all relevant details of the same-No.*

72. Thus, admittedly, in reply to the query as to whether there are any criminal proceedings, investigations, inquiries, etc., commenced or pending against the resolution applicant and/or any connected person, the answer has been given by the SRA, as: No.

73. Perusal of the Resolution Plan would also reveal that it has been mentioned therein that, in compliance with Regulation 39(1)(c), the resolution applicant also undertakes that every information and records provided in connection with or in the resolution plan are true and correct. Discovery of false information and record at any time will render it ineligible to continue in the corporate insolvency resolution process and will be subject to any refundable deposit and attract penal action under the Code.

74. The appellant has brought on record the copy of the order of the Adjudicating Authority confirming the provisional attachment order, Wherein the name of the SRA is appearing at serial no. 14, and of its directors Viren Vinod Ahuja and Kabir Viren Ahuja appearing at serial no. 15 and 16 and certain properties of the SRA and Director Viren Vinod Ahuja are shown to have been attached. The copy of order dated 3rd August 2023 passed by the Appellate Tribunal of the PMLA has also been brought on record, whereby the stay application filed by the Director, Viren Vinod Ahuja, Kabir Viren Ahuja, and Barmaco Energy Systems Limited, filed in the Appeal, was dismissed. It is also mentioned in this order that a huge amount was rotated in an illegal manner through associated companies in an organized manner, the value of the attached properties after the order of adjudicating authority is only a sum of ₹2,041 Crore out of the properties worth ₹2,747 Crore, as against the proceeds of crime of ₹22,842 Crore. It is also mentioned therein that facts are sufficient to prima facie show that appellant is part of the organized crime.

75. The Order of the Hon'ble High Court of Judicature at Bombay, passed in Criminal Appeal No. 879 of 2023, dated 9th August 2023, has also been placed on record, which shows that a statement was given by the counsel for the Enforcement Directorate that they will not act upon the eviction notice till the next date, and his statement was accepted.

76. Both parties have relied on the law laid down by the Hon'ble Supreme Court in **Vijay Madan Lal Choudhary & Ors. vs. Union of India & Ors. (2023) 12 SCC 1** to buttress their point for and against the submission that

the proceedings of attachment before the adjudicating authority created under PMLA or appellate Forum are or not criminal proceedings.

77. Hon'ble Supreme Court in **Vijay Madan Lal Choudhury and others vs Union of India and others (2023)12 Supreme Court cases1** in paragraph number 370 has opined that the fact that such a ECIR has not been recorded does not come in the way of the authorities referring to Section 48 of the PML Act to commence an inquiry, investigation, and initiation of civil action for attachment of property being proceeds of crime by following the prescribed procedure in that regard and on the basis of it, it has been argued by Ld. Counsel for the SRA that the proceeding of attachment of the properties under PMLA is civil proceeding, while Ld. Counsel for the Appellant has placed its reliance on the order passed by the Honourable Bombay High Court in criminal appeal wherein he SRA has stated before the Bombay High Court that the proceeding would lie on the criminal side. Relevant Paragraphs of the aforesaid **Vijay Madan Lal Choudhury (Supra)** are reproduced as under: -

> ***"101.*** *Needless to underscore that the authorities referred to in Section 48 PMLA are distinct from the adjudicating authority referred to in Section 6 of the 2002 Act. The adjudicating authority referred to in Section 6 is entrusted with the task of adjudicating the matters in issue for confirmation of the provisional attachment order issued under Section 5 of the 2002 Act, passed by the Authority referred to in Section 48 PMLA. The confirmation of provisional attachment order is done by the adjudicating authority under Section 0 of the 2002 Act, and if confirmed, the property in question is ordered to be confiscated and then it would vest in the Central Government as per Section 9 of the 2002 Act subject to the outcome of the trial of the offence under the 2002 Act (i.e. Section 3 of offence of money laundering punishable under Section 4). Suffice it to observe that the expression*

"proceedings" must be given expansive meaning to include actions of the authorities (i.e. Section 48) and of the adjudicating authority (i.e. Section 6), including before the Special Court (i.e. Section 43).

102. *The task of the Director or an authority authorised by the Central Government under the 2002 Act for the collection of evidence is the intrinsic process of adjudication proceedings. In that, the evidence so collected by the authorities is placed before the adjudicating authority for determination of the issue as to whether the provisional attachment order issued under Section 5 deserves to be confirmed and to direct confiscation of the property in question. The expression "investigation", therefore, must be regarded as Interchangeable with the function of "inquiry" to be undertaken by the authorities for submitting such evidence before the adjudicating authority.*

369. *Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money laundering, analogy cannot be drawn from the provisions of the 1973 Code, in regard to registration of offence of money laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law.*

370. *There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in the 2002 Act requiring authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. <u>The fact that such ECIR has not been recorded, does</u>*

> *<u>not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard</u>".*

(Emphasis Ours)

78. We, at the outset, are of the view that in the aforesaid paragraphs of Vijay Madan Lal Chaudhary (supra), the Hon'ble Supreme Court has referred to the nature of the action pertaining to the attachment of property with regard to the proceeds of crime as a civil action (As the attachment and Confiscation of properties are civil process) but simultaneously it should also be remembered that the attachment under PMLA is done for the properties which prima facie appears to be the proceeds of the crime, subject to the final adjudication by the competent Criminal Court in the trial, thus it could not be construed that the attachment of the property under the relevant provisions of the PMLA Act would be having civil consequences. Rather, the Hon'ble Supreme Court has emphasized that even if the ECIR has not been recorded, the same may not be a hurdle for commencement of inquiry or investigation, so far as initiation of process of attachment of property, being proceeds of crime, is concerned. Thus, the procedure of attachment of property (which appears to be the proceeds of crime) is an action having civil nature, but the same cannot be construed as having civil consequences as the same is being done with regard to the properties, which according to the ED, are proceeds of some crime (offence) defined in the schedule appended with the PMLA. Therefore, the action of attachment of the property of a person under the relevant

provisions of the PMLA may not be termed as having civil consequences. It would be proper to say that, though the action of attachment is of civil in nature, it would have criminal consequences and attachment is with regard to the properties which prima facie appears to be proceeds of crime.

79. We also notice that the legislature, in its wisdom, has enacted Section 29A of the Code, which apart from other, also provides that no person shall be eligible to submit a Resolution Plan if such a person or any other person acting jointly or in concert with such person has been convicted for any offence punishable with imprisonment for two years or more under any Act specified under the 12th Schedule, or for seven years or more under any other law for the time being in force. It is further provided in the Proviso appended with section 29A(d) that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment.

80. Thus, it is evident that the legislature, in its wisdom, has also provided that a person, either alone or acting jointly or in concert with any other person, who is convicted in the manner provided under Section 29A(d), may not be eligible for submitting a resolution plan. However, such a person would be eligible to submit a Resolution Plan after two years of his release from imprisonment. Thus, it shows that even a convicted person, if he has undergone full imprisonment, may be eligible for submitting a Resolution Plan after the expiry of a period of two years from the date of his release from the prison.

81. Therefore, in our considered opinion, the pendency of any criminal proceedings or investigation against a prospective resolution applicant may not be a ground to debar him from presenting a Resolution Plan. However, it would be the CoC to assess the viability and credibility of such Resolution Applicant and Plan by exercising its commercial wisdom. But the sole fact that some inquiry, investigation, or proceedings have been initiated against a person would not be sufficient to brand him ineligible from submitting the resolution plan. In this regard Section 29A is to be harmoniously construed with Regulation 39 (1) (c) of CIRP Regulations, 2016.

82. We also notice that though the SRA in the resolution plan has given the answer to the query pertaining to the pendency of any criminal proceedings, inquiry, investigation, etc. in negative, however, when this matter was brought to the knowledge of the CoC, the CoC deliberated on this issue, a chartered accountant was also appointed to assess the eligibility of the SRA and when the chartered accountant has given a clean chit, the matter was further deliberated by the CoC and after being satisfied with regard to the eligibility and credentials of the SRA and the feasibility of the resolution plan, the same was approved by the CoC.

83. Perusal of the minutes of the 37th meeting of the CoC held on 27th October 2023 would reveal that the RP had apprised the CoC about the orders dated 10 October 2023 passed in interlocutory applications No. 4498 of 2023 and No. 4500 of 2023 by the prospective resolution applicants, namely Mr. Pankaj Kikawat and Barmaco Energy

Systems Limited and also that the Ld. Adjudicating Authority has directed the resolution applicants to submit their plans by 25th October 2023. The resolution plans submitted by the above prospective resolution applicants were opened and discussed. The RP was directed to confirm as to whether the plan submitted by the Resolution Applicant/Respondent No. 2 is compliant with Section 29A of the Code. The RP in pursuance of the same appears to have written an email to Respondent No. 2 on 27-10-2023.

84. Perusal of the minutes of the 38th meeting of the CoC held on 23rd November 2023 would reveal that the authorized representative of the appellant has raised the issue of the order dated 11/11/2023 passed by the Ld. Adjudicating Authority in favour of the Appellant, recognizing their charge against the property and recognizing them as a secured creditor. Further, the Adjudicating Authority has directed the Regional Director to register the charge, for which they have already filed an application. It is also highlighted that in the resolution plan which was being discussed, they have treated the appellant as unsecured creditor. In this meeting, the plans were further discussed, and some directions were given by the CoC. In pursuance of the discussion held in the 38th meeting of the CoC, the Respondent No. 2 provided the revised resolution plan with necessary modifications.

85. In the 40th meeting of the CoC held on 20th December 2023, the RP informed the CoC that the decision with regard to the Appellant of its treatment as secured creditor or not, has been taken into consideration by the Resolution Applicant. The CoC further discussed

the feasibility and viability of the Resolution Plan received by the Respondent No. 2. At this point, the representative from the appellant informed that the resolution applicant is involved in certain questionable transactions, which were highlighted by the Enforcement Directorate in the case of ABG Shipyard Limited. In the press release of 22 September 2022, ED named the Resolution Applicant and promoter of the Resolution Applicant, stating that they are not only involved in the scam but their assets are also attached. He further stated that these facts were not brought to their knowledge until now by the resolution applicant, and they would want to know the details of these transactions and the status of the ongoing investigation. It is also reflected in this meeting at item number 9 the liquidation of the CD was also discussed, and it was resolved that if the plan is not approved, the liquidation of the CD may be initiated. This agenda item was passed by a voting percentage of 78.83%. The appellant significantly voted against liquidation of the CD in this meeting.

86. On 21-12-23, the appellant wrote a letter to Respondent No. 1 raising serious concerns on the resolution plan submitted by the respondent No. 2 highlighting the involvement of the Resolution Applicant in the proceedings of Enforcement Directorate (ED), and also that the resolution applicant is not eligible under Section 29A of the Code. The Respondent No. 2 on 26-12-2023 has responded via email to the RP, informing that the Hon'ble High Court of Bombay has granted interim relief to it. It has also contended that no such order has been passed that hampers the ability of the resolution applicant to submit

the resolution plan. It has also contended that the said objections raised by the applicant were without any basis. On 5/1/2024, the Respondent No. 2 received an email from the RP calling upon it to provide additional details to assess eligibility under Section 29A of the Code. It was on 9/1/2024, the Respondent No. 2 responded to the email dated January 5, 2024, and provided all the details.

87. The 41st meeting of the CoC was held on 19th January 2024. In the report submitted by Chartered Accountants Baghchi and Gupta, it was discussed that the clean chit has been given to the Respondent No. 2. It was informed by the RP that the respondent No. 2 has provided clarification pursuant to the press release by the Enforcement Directorate. They have stated that they have filed an application (writ petition) and have been granted an ad interim stay by the order of the Hon'ble High Court till the next date of hearing. Since no order has been passed by the ED, the said matter is pending adjudication. The auditor has not disqualified the resolution applicant under Section 29A of the Code. The members of the CoC also discussed the eligibility of the resolution applicant under Section 29A of the Code. The CoC in this meeting also discussed the feasibility and viability of the Resolution Plan submitted by the Respondent No. 2.

88. The Appellant appears to have sent another email to the RP on 24-01-2024 and apprehended that the source of funds may be tainted and that the PRA has been actively concealing material information from the CoC and the RP. The Appellant further highlighted that there is some undue haste in voting on its resolution plan, which might result

in violation of the Code. Response was sent by the resolution applicant to the RP by stating that there is no order of conviction against the Respondent No. 2 or any charge sheet filed by the ED in the PMLA proceedings and also that there is no embargo or bar under Section 29A on the resolution applicant to submit the Resolution Plan of the corporate debtor, if any criminal legal proceedings or investigation is being carried out against the resolution applicant.

89. The 42nd meeting of the COC was held on 26th February 2024 wherein the report submitted by the chartered accountants Bagchi and Gupta, giving clean chit to the resolution applicant under Section 29A, was accepted and the resolution plan of the respondent No. 2 was also approved with the majority of 78.83% voting share.

90. Ld. Counsel for the appellant has relied on **Gaurav Katiyar Vs. Nisus Finance and Investment Managers LLP & Ors CA (AT) (Ins) 963-965 of 2024** wherein this tribunal has opined as under:

> ***"57.*** *From above, it is evident that the PRA is required to give certification that every information and record provided in the Resolution Plan is true and correct. The Regulation further stipulates that discovery of false information and record at any time will render the applicant ineligible to continue in CIRP. We have already noted that the factual position regarding the Luvnest project and Urban Woods Project was not factual and correctly submitted by the SRA while submitting their experience. Thus, we find that SRA will be covered by Regulation 39 of IBBI CIRP Regulations.*
>
> *(i) Further, we note from Section 30(2) of the Code which stipulates that Resolution Plan shall be in conformity to such other requirements as may be specified by the board. We need to factor into this requirement along with Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations, 2016 which we have discussed earlier.*

Thus, we find that the Adjudicating Authority was correct in dismissing the application of Resolution Professional for approval of Resolution Plan of SRA.

*(ii) We take into consideration the recent judgement of the Hon'ble Supreme Court of India delivered on 02.05.2025 in the matter of **Kalyani Transco vs. M/s Bhushan Power and Steel Limited & Ors.** [Civil Appeal No. 1808 of 2020] wherein in Para 79 the Hon'ble Supreme Court of India has categorically stated an illegality of any nature cannot be permitted to be perpetuated. The relevant portion of the para reads as under: -*

*"79. An illegality of any nature cannot be permitted to be perpetuated, and a plea of fait accompli cannot be permitted to be raised by any party to cover up their illegal acts, after achieving the ill motivated intentions circumventing the law.****"*

91. Relying on above law it is submitted that the compliance of Regulation 39 of IBBI CIRP Regulations is mandatory, which has not been complied by the SRA.

92. Respondent No. 2 has relied on **Bhagwani Bai v. Life Insurance Corporation of India, Jabalpur, 1983 SCC OnLine MP 10 and Harjas Rai Makhija v. Pushparani Jain, (2017) 2 SCC 797 to** show that on every misrepresentation or concealment of a fact, the contract cannot be avoided merely on trivial and inconsequential misstatement or non-disclosure. The ratio laid down in **Lalita v. Vishwanath, 2025 SCC OnLine SC 370 and Nisar Ali v. State of U.P., (1957) 1 SCC 350 has** also been relied to show that the first information report is not by itself a substantive piece of evidence and the statement made therein

cannot be considered as evidence unless it falls within the purview of Section 32 of the Evidence Act.

93. The reliance of the Respondent No. 2 is also on **Era Infra Engineering Ltd. (Resolution Professional) v. Enforcement Directorate, (2022) 7 HCC (Del) 38 and** on **Enforcement Directorate v. M.K. Agarwal, (2022) 235 Comp Cas 402** in order to show that the proceedings of attachment are civil in nature is of no use in view of the law laid down by the Hon'ble Supreme Court in Vijay Madan Lal Chaudhry (Supra).

94. Respondent No. 3 has also relied on **Dorni Vinimoy (P) Ltd. V. Rachna Anchalia, 2025 SCC Online NCLAT 1678**, in order to buttress his point that mere breach of a regulation by itself would not render the insolvency process vitiated ipso facto if the same has not resulted in material irregularity and the duty of Ld. Adjudicating Authority as well as of this Appellate Tribunal is to assess the impact of this violation. The relevant part of this judgment is reproduced as under: -

> ***"12.*** *The bottom line of every legislation-driven action is that every action must be done in the manner prescribed, and no other. The instruction is to trek along the track which law has laid and not to lay any track, howsoever superior its convenience might be. Besides establishing the legitimacy of the action, this doctrine shuts the door on arbitrariness from seeping into erode the fairness which ought to associate with every action in law. Obedience to rule of law may be considered as non-negotiable, still law does not hurry to negate and nullify everything that is done in contravention of its prescription, nor does it become unduly anxious to restore status quo ante. Here steps in the rule of material irregularity. To explain, while every deviation from the manner prescribed by law*

necessarily constitutes an irregularity, yet law takes cognizance of only those which falls within the contours of material irregularity for its response.

13.1 *What then constitutes material irregularity? In Amit Sangal v. Kairav Trivedi [2025 SCC OnLine NCLAT 228], this tribunal has explained it as follows:*

> *"56. ….. Material Irregularity refers to a significant deviation from established rules, practices, or procedures that is substantial enough to influence the outcome of a legal proceeding or decision. It involves failure to adhere to prescribed methods, either by omitting necessary actions or performing them improperly or untimely. Such irregularities are not merely formal defects but have material impact,* ***affecting the merit of a case or the rights of the parties involved****. Unlike illegality, which denotes a violation of law, material irregularity pertains to procedural defects that can undermine the fairness or validity of legal proceedings…..* ***that a material irregularity in the conduct of the CIRP is one that significantly impacts the fairness, legality and integrity of the process. Such irregularities can lead to delays, financial losses, and litigation, thereby defeating the objectives of the Code****. Material irregularities may arise from non-compliance with the statutory provisions, rules, and regulations governing the CIRP. Any deviation from these prescribed legal provisions, both procedural or substantive, may amount to a material irregularity and affect the legitimacy of the resolution process."*

(emphasis supplied)

13.2 *Material irregularity, accordingly, is not auto-generated from every act of irregularity, but is determined by the quality of their impact and the nature of the consequence an alleged irregular act produces. In other words, it is the ex-post facto consequence of an ex-ante breach that will decide whether an apparently irregular act may qualify to be termed as material irregularity as to render void what has been done.*

13.3 *In the context of a CIRP, as stated in the above extracted passage from Amit Sangal case, for a material irregularity to infect a CIRP, there must be, not just a violation of statutory provision or rules or regulations but it should be also of such a nature that it has landed the resolution process in palpable unfairness or plain illegality which affects the integrity of the resolution process. This is* *the litmus test. To state it differently, a breach of a regulation ipso facto need not necessarily render every act done in violation thereof void, but requires an impact assessment of such violation on the resolution process, not superficially or subjectively, but most objectively. In other words, when a violation of Regulation is alleged, and is also found, there is hardly any need for a panic-response. An Adjudicating Authority is then required to undertake an impact assessment analysis of such violation on the resolution process. Indeed, if every statutory provision or rules (in the context of IBC, also the Regulation) is considered inviolable, then how to explain situations where the Court interprets what may apparently be seen as a mandatory provision as directory? It depends on the nature of provision, the objective sought to be achieved and whether any deviation therefrom has affected the objectives which the law-makers have conceived…..*

13.5 *Having stated thus, deviation in the manner of achieving the legislative intent, as a rule, is neither prescribed nor recommended, but when it occurs, it does not always invalidate what is done in violation of a regulation either. It depends on multiple factors, and hence the focus must be to engage objectively in an impact assessment of the consequence an alleged violation of the Regulation has produced: has it (deviation from regulation) produced a result which are plainly illegal, or has been so unfair that it offends the integrity of the resolution process. If despite the violation of any Regulation, the consequences it produced falls short of what is stated herein above, why should there be a hurry to invalidate an act so done?*

15…..*Being a procedural law, the CIRP Regulations are but facilitatory provisions through which accomplishing, inter alia the statutory objective of value maximization of the CD is conceived. They principally aim to provide clarity, consistency and transparency for ensuring optimum fairness in the resolution process and also insulating it from any temptations eroding the ethical fidelity (defined by non-arbitrariness or subjectivity or personal preferences) associated with their respective duties. In other words what ought to be the norm of self-discipline for the RP or the CoC is given a statutory status through the Regulations.*

17. *For appreciating the allegation of material irregularity, it is necessary to remind that the statutory philosophy behind the resolution process:*

> *a) First, it aims to optimize the asset-value of the stressed assets of a debt trapped company. The entire resolution process is designed, devised and geared to gyrate around this philosophy.*
>
> *b) Loss of time is loss of value of the CD.*
>
> *c) the Adjudicating Authority is an on-field regulator merely with well earmarked authority delineated in the Code, coupled with inherent powers for sparse use. It cannot hold an enquiry into the correctness of the valuation of the CD nor can it override the commercial wisdom of the CoC or substitute it with its wisdom.*
>
> *d) The Code does not distinguish between one member CoC or a multi-member CoC vis-à-vis its design for the resolution process.*
>
> *Therefore, when an impact assessment analysis in the context of an allegation of breach of Regulation is undertaken, these aspects cannot be forsaken."*

Thus, from the conjoint reading of the aforesaid precedents it would emerge that even if the information pertaining to aforesaid attachment proceedings were not furnished by the SRA the sole act of not furnishing the required information would not be itself sufficient to assume that the whole CIR process has been polluted, rather the duty of the Adjudicating Authority is/was to assess the impact of such violation taking a holistic view of the matter.

95. The aforesaid sequence of events would clearly reflect that, though the resolution applicant SRA has not stated anything with regard to the pendency of any criminal proceedings or attachment proceedings under PMLA, in the resolution plan (in compliance with Regulation 39(1)(c) of the CIRP Regulations 2016), this matter was brought to the knowledge of the CoC by the Appellant and the CoC discussed it in depth and thereafter

appointed a chartered accountant to assess the eligibility of the SRA under Section 29A of the Code.

96. It was only when the report submitted by the chartered accountant has been accepted by the COC, the plan of the Respondent No. 2 was approved. Thus, it is not a case where the CoC, without discussing the proceedings pending against the SRA, has approved the plan submitted by it. Rather, it is a case where the CoC has vigorously discussed the proceedings pending against the resolution applicant and thereafter has taken a conscious decision in its commercial wisdom to approve the plan of the respondent No. 2/SRA, even after getting knowledge of the pendency of the ED proceedings against it. As we have already discussed, the pendency of criminal proceeding, either of investigation or even at the stage of trial, may not be a bar for a resolution applicant to submit the resolution plan under Section 29A of the Code and it is only on account of conviction in the manner provided therein, he may be found ineligible from submitting any resolution plan, which is not a case with the Respondent No. 2.

97. Now, we will have to see as to whether the CoC, in its commercial wisdom, can approve the resolution plan submitted by the resolution applicant (SRA) against whom criminal proceedings are pending and whose properties have also been attached under PMLA or whether the Ld. Adjudicating Authority or this Appellate Tribunal would be justified in interfering with the commercial wisdom of the COC by exercising the power of judicial review. Learned counsel for the appellant has relied on the law laid down by the Hon'ble Supreme Court **in Lamba Exports Private Limited versus Deer Global Industries Private Limited and others,**

reported in 2026 SCC Online SC 459. In paragraph number 12 of the report, it has been highlighted that the primacy of commercial wisdom does not mean that every action taken in the insolvency process is altogether immune from scrutiny in every situation. Where a challenge is laid in an appropriate proceeding on a legally sustainable foundation, such as history, legality, or a judicial infirmity, the matter would naturally be considered in accordance with law.

98. The extent of powers and jurisdiction of the Ld. Adjudicating Authority or this appellate tribunal, so far as the same are concerned with the interference in the commercial wisdom of the CoC, for the purpose of approval or non-approval of the resolution plan, is now no more res integra and the same has been set at rest by catena of judgments passed by the Hon'ble Supreme Court as well as by this appellate tribunal.

99. Section 31 of the code provides as under:

> ***Section 31: Approval of resolution plan.***
> *31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.*
> *[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]*
> *[Provided further that the Adjudicating Authority may, on an application made by the resolution professional, with the approval of the committee of creditors, by a vote of not less than sixty-six per cent. of the voting share, in such*

form and manner, and subject to such conditions as may be specified, first approve the implementation of the resolution plan and thereafter approve the manner of distribution provided therein within a period of thirty days from the date of approval of implementation of such resolution plan.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.
[Provided that the Adjudicating Authority may, before rejecting the resolution plan, give notice to the committee of creditors to rectify any defects in the resolution plan.] [(2A) The Adjudicating Authority shall pass an order under sub-section (1) or (2), within a period of thirty days from the date of receipt of the resolution plan:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.]

(3) After the order of approval under sub-section (1), —

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval[J6] of the Competition Commission of India under that Act [4][before the resolution plan is submitted to the Adjudicating Authority under sub-section (6) of section 30].]

[(5) Notwithstanding anything contained in any other law for the time being in force and subject to sub-section (6), where a resolution plan has been approved under sub-

section (1), a licence, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, associated with such resolution plan, shall not be suspended or terminated during the subsistence of the remaining period of such grants or rights, if the corporate debtor or, if applicable, the person whose resolution plan is approved under sub-section (1), complies with the obligations in respect of the remaining period of such grants or rights.

(6) Where the Adjudicating Authority approves the resolution plan under sub-section (1), —

(a) unless otherwise provided in the resolution plan, any claim, against the corporate debtor and its assets under any other law for the time being in force, prior to the date of approval, shall be extinguished; and

(b) no proceedings shall be continued or instituted against the corporate debtor or its assets on the basis of such claims, including proceedings for assessment of the claims.

Explanation I.—For the purposes of this section, it is hereby clarified that nothing in this section shall affect a claim or any proceeding in respect of a person who was a promoter or in the management or control of the corporate debtor, a guarantor of the corporate debtor or any person having a joint liability or a joint and several liability with the corporate debtor, as the case may be.

Explanation II.—For the purposes of this section, it is hereby clarified that if a person has a joint liability or a joint and several liability with the corporate debtor for payment of debt owed to a creditor before the approval of resolution plan, and such person makes a payment for such debt after the approval of the resolution plan, then any right of such person to be indemnified by the corporate debtor shall be extinguished.

Explanation III.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (5) and (6) shall be deemed to apply to the resolution plan that is approved under sub-section (1), on and from the date of commencement of this Code, except for matters that have attained finality under this Code.]

100. Relevant part of Section 30 of the code is also reproduced as under;

> ***30. Submission of resolution plan.*** *(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29-A] to the resolution professional prepared on the basis of the information memorandum.*
>
> *(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-*
>
> *(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the (payment] of other debts of the corporate debtor;*
>
> *[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*
>
> *(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
>
> *(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*
>
> *Explanation 1. For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*
>
> *Explanation 2. For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
(d) the implementation and supervision of the resolution plan;
(e) does not contravene any of the provisions of the law for the time being in force;
(f)conforms to such other requirements as may be specified by the Board".

101. Section 32 of the Code provides as under:

Section 32: Appeal.
32. *Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.*

102. Regulation 38 of the CIRP Regulations, 2016 is also relevant and reproduced as under:

Regulation 38: Mandatory contents of the resolution plan.

38. *[(1) The amount payable under a resolution plan –*

(a) to the operational creditors shall be paid in priority over financial creditors; and
(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the [plan:]
[Provided that where a resolution plan provides for payment in stages, the financial creditors who did not vote in favour of the resolution plan shall be paid at least pro

rata and in priority over financial creditors who voted in favour of the plan, in each stage.]

[(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]
[(1B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]

[(d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:

Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.]

[(2A) A resolution plan shall not provide for assignment of any avoidance transactions under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code that were not:

(a) disclosed in the information memorandum; and
(b) intimated to all prospective resolution applicants under sub-regulation (3A) of regulation 35A before the last date for submission of resolution plans:

Provided that this sub-regulation shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025.]

[(3) A resolution plan shall demonstrate that –

(a) it addresses the cause of default;
(b) it is feasible and viable;

(c) it has provisions for its effective implementation;
(d) it has provisions for approvals required and the timeline for the same; and
(e) the resolution applicant has the capability to implement the resolution plan.]]

[(3A) Every resolution plan shall include:

(a) statement of beneficial-ownership, in a format to be notified through circular by the Board, covering details of all natural persons who ultimately owns or controls the resolution applicant, together with the shareholding structure and jurisdiction of each intermediate entity; and

(b) an affidavit, in a format specified by the Board, that the resolution applicant is eligible/not eligible for the benefit of section 32A.]

[(4) (a) The committee shall consider setting up a monitoring committee for monitoring and supervising the implementation of the resolution plan.

(b) The monitoring committee may consist of the resolution professional or any other insolvency professional, or any other person, including representatives of the committee and representatives of resolution applicant(s), as its members:

Provided that where the resolution professional is proposed to be part of the monitoring committee, the monthly fee payable to him shall not exceed the monthly fee received by him during the corporate insolvency resolution process.

(c) The monitoring committee shall submit quarterly reports to the Adjudicating Authority regarding the status of implementation of resolution plan.]

103. Ld. Counsel for the Respondent No.3 has relied on **Kalpraj Dharamshi v. Kotak Investment Advisors Limited, 2021 SCC Online SC 204,** relevant part of the same is reproduced as under: -

"155. *The Committee also expressed the opinion, that there should be freedom permitted to the overall market, to propose solutions on keeping the entity as a going concern.*

> *The Committee opined, that the details as to how the insolvency is to be resolved or as to how the entity is to be revived, or the debt is to be restructured will not be provided in the I&B Code but such a decision will come from the deliberations of CoC in response to the solutions proposed by the market.*

Thereafter the Apex Court after considering the ratio of **K. Sashidhar and ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta** and the relevant provisions of the I&B Code observed as under: -

> *"**158.** This Court has held, that it is not open to the adjudicating authority or appellate authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It has been held, that the opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority and that the decision of CoC's "commercial wisdom" is made non-justiciable.*
>
> ***159.** This Court in Essar Steel India Ltd. Committee of Creditors after referring to the judgment of this Court in K. Sashidhar observed thus: (Essar Steel India case, SCC p. 584, para 64)*
>
> > *"64. 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."*

(emphasis supplied)

160. *This Court held, that what is left to the majority decision of CoC is the "feasibility and viability" of a resolution plan, which is required to take into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. It has further been held, that CoC is entitled to suggest a modification to the prospective resolution applicant, so that carrying on the business of the corporate debtor does not become impossible, which suggestion may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, etc. It has been held, that what is important is, the commercial wisdom of the 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.*

161. *The view taken in K. Sashidhar and Essar Steel India Ltd. Committee of Creditors has been reiterated by another three-Judge Bench of this Court in Maharashtra Seamless Ltd.*

162. *In all the aforesaid three judgments of this Court, the scope of jurisdiction of the adjudicating authority (NCLT) and the appellate authority (Nclat) has also been elaborately considered. It will be relevant to refer to para*

55 of the judgment in K. Sashidhar which reads thus: (SCC pp. 185-86)

> *"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code."*

> ***163.*** *It has been held, that in an enquiry under Section 31, the limited enquiry that the adjudicating authority is permitted is, as to whether the resolution plan provides:*
>
> ***163.1.*** *The payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor.*
>
> ***163.2.*** *The repayment of the debts of operational creditors in prescribed manner.*
>
> ***163.3.*** *The management of the affairs of the corporate debtor.*
>
> ***163.4.*** *The implementation and supervision of the resolution plan.*
>
> ***163.5.*** *The plan does not contravene any of the provisions of the law for the time being in force.*
>
> ***163.6.*** *Conforms to such other requirements as may be specified by the Board.*
>
> ***165.*** *It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or Nclat, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same."*

104. In another case relied on by Ld. Counsel for Respondent No. 3 i.e. **Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467**, Hon'ble Supreme Court reminded about the extent of judicial review in plan approval cases as under: -

> ***"28.*** *No provision in the Code or Regulations has been brought to our notice under which the bid of any resolution applicant has to match liquidation value arrived at in the manner provided in Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in Essar Steel. We have quoted above the relevant passages from this judgment.*
>
> ***29.*** *It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the adjudicating authority under Section 31(1) of the Code is to*

ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the adjudicating authority in approving the resolution plan."

105. Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, 2021 SCC ONLINE SC 313** held as under: -

***"57.** It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by Adjudicating Authority is limited to the extent provided under Section 31 of I&B Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of Section 61 of the I&B Code, is no more res integra.*

***58.** Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.*

***86.** As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is* *made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable."*

106. The Hon'ble Supreme Court again in **Deccan Value Investors L.P. v. Metalyst Forgings Ltd. (Resolution Professional), (2026) 6 SCC 624** Opined as follows:

*"**15.** Resolution plans are not prepared and submitted by lay persons. They are submitted after the financial statements and data are examined by domain and financial experts, who scan, appraise evaluate the material as available for its usefulness, with caution and scepticism. Inadequacies and paltriness of data are accounted and chronicled for valuations and the risk involved. It is rather strange to argue that the super specialists and financial experts were gullible and misunderstood the details, figures or data. The assumption is that the resolution applicant would submit the revival/resolution plan specifying the monetary amount and other obligations, after in-depth analysis of the fiscal and commercial viability of the corporate debtor. Pointing out the ambiguities or lack of specific details or data, post acceptance of the resolution plan by the Committee of Creditors, should be rejected, except in an egregious case where data and facts are fudged or concealed. Absence or ambiguity of details and particulars should put the parties to caution, and it is for them to ascertain details, and exercise discretion to submit or not submit resolution plan."*

107. The Hon'ble Supreme Court again in **Karad Urban Coop. Bank Ltd. v. Swwapnil Bhingardevay, (2020) 9 SCC 729** Opined that the question of viability and feasibility, is to be left to the commercial wisdom of CoC and the same cannot be lightly interfered with by the Tribunal, in view of the law laid down by this Court in **Essar Steel (India) Ltd.** and **K. Sashidhar**.

108. In ***K. Sashidhar Vs. Indian Overseas Bank & Ors.*** ***(2019) ibclaw.in 08 SC*** it was provided that the provisions investing jurisdiction and authority in the NCLT or NCLAT has not made the commercial decision exercised by the CoC justiciable. This position is evident from the limited grounds specified for instituting an appeal that too against an order "approving a resolution plan" under Section 31, that First 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 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.

109. Therefore, the limited judicial review available to the Adjudicating Authority and NCLAT, which cannot eclipse the business decision of the majority of the CoC, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as this Appellate Tribunal is concerned. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the CoC, the limited judicial review available is to see that the CoC has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process, that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. It is only if the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been complied, it may send a resolution plan back to the CoC to re-submit such plan after satisfying the aforesaid parameters. Therefore, the reasons given by the CoC while approving a resolution plan may thus be looked into by the Adjudicating Authority only from this point of view, and once it is satisfied that the CoC has paid attention to these key features, it must then pass the resolution plan.

110. It is also highlighted in K. Shashidhar (Supra) that there is vital difference between the jurisdiction of the High Court under Section 392 of the Companies Act, 1956 and the jurisdiction of the Adjudicating

Authority under the Code that must be kept in mind when the Adjudicating Authority is to decide on whether a resolution plan passes muster under the Code. When this distinction is kept in mind, it is clear that there is no residual jurisdiction not to approve a resolution plan on the ground that it is unfair or unjust to a class of creditors, so long as the interest of each class has been looked into and taken care of.

111. **In Kalyani Transco vs. Bhushan Power & Steel Ltd., [(2025) ibclaw.in 388 SC] : 2025 SCC OnLine SC 2093 while discussing the power of judicial review vested in NCLT or NCLAT it is opined that** the legislature purposefully did not include to challenge the commercial wisdom exercised by the CoC and a challenge cannot be raised against the decision making of the CoC unless and until the grounds for challenge as given in the Code are satisfied and any interference in the paramount objective of the CoC of exercising its commercial wisdom would amount to the Court rewriting the law and going against the very objectives of the IBC.

112. In **Pratap Technocrats Private Ltd. vs. Monitoring Committee of Reliance Infratel Limited, [(2021) ibclaw.in 148 SC] : (2021) 10 SCC 623** it is categorically held as follows:

> *"29. The jurisdiction which has been conferred upon the adjudicating authority in regard to the approval of a resolution plan is statutorily structured by sub-section (1) of Section 31. The jurisdiction is limited to determining whether the requirements which are specified in sub-section (2) of Section 30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The adjudicating authority as a body owing its*

existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.

> *44. …the jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity-based jurisdiction in the adjudicating authority or the appellate authority_to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment."*

113. Perusal of the Resolution plan will reveal that the COC at the time of approval of plan by it was constituted and also the manner in which COC members have acted at the time of approval of Resolution Plan. The same is shown as under;

1- Bank of India, 54.53% voting share, Voted for Plan.

2- UCO Bank, 12.75% voting share, Voted for Plan.

3- Bank of Baroda, 11.55% voting share, Voted for Plan.

4- Suraksha Realty Limited, 15.52% voting share, Dissented

5- Panoromic Construction Pvt. Ltd, 5.49% voting share, Dissented

6- Kashyab Rajesh Shah, 0.03% voting share, Abstained

7- Rima Rajesh Shah, 0.03 % voting share, Abstained

8- Smita R Dak, 0.03 % voting share, Abstained

9- Dhanraj K Shah (HUF), 0.02 % voting share, Abstained

10- Usha Gulabchand Jain, 0.02 % voting share, Abstained

11- Shahrokh R. Tavakkuli, 0.03% voting share, Abstained

114. The Resolution plan would further reveal that it provides the SRA would utilize the internal sources to fund the amount proposed. The SRA shall also infuse funds by availing debt from the Banks/ Financial

Institutions or Inter Corporate Loans/Deposit and it proposes to raise finance from Renaissance Fiscal Services Pvt. Ltd., a non-banking financial corporation, towards which a letter of interest is received by the Successful Resolution Applicant.

115. It is further revealed that Amount of upfront payment to Financial Creditors and Operational Creditors and Unpaid CIRP Cost (upfront cash recovery) is to be paid within 30 days from effective date as Rs. 11,00,00,000 and balance repayment obligations to Secured payment) - Within 1 year from effective date 30,00,00,000 + 19,16,00,000 towards Bank Guarantee and thus total Payment offered in the Resolution Plan is **60,16,00,000**.

116. Significantly the treatment for Appellant (Suraksha Realty Ltd) is given in terms that the Resolution Professional has provided the Resolution Applicant with a copy of Order dated 1 November 2023 passed in Interlocutory Application No. 318 of 2021, and of 6 and 7 December 2023 passed in Interlocutory Application No. 5559 of 2023 by the Adjudicating Authority in relation to Suraksha Realty Limited's claim of being a Secured Financial Creditor of the Corporate Debtor. It is clarified that the total financial commitment under this Resolution Plan will remain unchanged, irrespective of Suraksha Realty Limited's position on the Corporate Debtor's Committee of Creditors. It is expressly clarified that should Suraksha Realty Limited's claim be admitted as a Secured Financial Creditor either (i) before approval of this Resolution Plan by the Committee of Creditors; (ii) after approval by the Committee of Creditors and prior to the Adjudicating Authority's approval; or (iii) after approval by the Adjudicating Authority, the distribution proposed under this Resolution Plan shall stand automatically

modified and will be divided amongst the Secured Financial Creditors as on the date of submission of this Resolution Plan, as stated above, and Suraksha Realty Limited, in proportion to their respective inter se claims, in the manner to be decided and settled by the Secured Financial Creditors of the Corporate Debtor.

117. It is reflected that in case the Appellant is finally declared as secured financial creditor its position would be at par with the other secured financial creditors. Therefore, the apprehension of the appellant has also been adequately addressed in the Resolution plan. Thus, no illegality appears in the appraisal of the Ld. Adjudicating Authority with regard to the treatment of the Appellant in the plan.

118. Hon'ble Supreme Court in recently in **Torrent Power Ltd. v. Ashish Arjunkumar Rathi and Ors.,** **<u>(2026) ibclaw.in 109 SC</u>** held as under: -

> *"**12.5** The issue is no longer res integra, the law having been settled that the commercial wisdom of the CoC enjoys primacy and cannot be supplanted by judicial review. Neither the NCLT, nor the NCLAT nor even this Court is empowered to substitute its assessment in place of the commercial decision arrived at by a requisite majority of the CoC.*
>
> ***14.** Before parting, we wish to add a few words of caution. The IBC represents a conscious legislative choice to privilege speed, certainty, and creditor-driven decision-making over exhaustive judicial scrutiny. Experience shows that unsuccessful bidders will always try to spin commercial decisions of the CoC as procedurally faulty in order to secure a second shot through litigation by filing applications or making representations. However, courts need to remain vigilant against any temptation to expand the scope of review beyond the narrow boundaries prescribed by the IBC.*

> ***14.1*** *From an ex-post perspective, excessive judicial review in the CIRP carries significant economic costs that run counter to the objects of IBC. The IBC is premised on the recognition that delay and uncertainty are value-destructive in distressed situations. When commercial decisions taken by the CoC are subjected to expansive judicial scrutiny, resolution timelines lengthen, transaction costs rise, and the going-concern value of the Corporate Debtor erodes. The consequence therefore is not merely delay, but a tangible loss of economic value for all stakeholders.*
>
> ***14.2*** *From an ex-ante perspective also, the expectation of expansive judicial review distorts incentives for future bidders. Future resolution applicants may price legal uncertainty into their bids, either by discounting their offers or by refraining from participation in the CIRP altogether. This will weaken competition in the resolution process and reduce recoveries for creditors.*
>
> ***14.3*** *Excessive review also encourages strategic litigation. Stakeholders with little to no economic interest in the Corporate Debtor may resort to litigation as a bargaining tool to delay implementation of the Resolution Plan or extract concessions, thereby converting the insolvency process into an adversarial contest. Such conduct takes the process away from its objective of value maximisation."*

119. Therefore, it is evident that neither this Appellate Tribunal nor Adjudicating Authority can sit over the resolution Plan approved by the COC, as a court of appeal and the limited jurisdiction which is available is to ensure statutory compliances as provided in Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, so far, this Appellate Tribunal is concerned.

120. Having considered the above stated facts, circumstances and the legal position we do not find any good ground to interfere in the impugned judgment. Resultantly the Appeal being devoid of force is **dismissed**.

121. There is no order as to costs.

122. Pending IAs are also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
17.09.2026
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