**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1798 of 2024**

(Arising out of order dated 29.08.2024 passed by the National Company Law Tribunal, Mumbai Bench-IV, in I.A. No. 34 of 2024 in Company Petition (IB) No. 1057/MB-IV/2021).

**In the matter of:**

**Vilas Transcore Limited**
Through Its Authorized Representative
Having Its Registered Office at:
Plot. No.435-437 Near Galaxy Hotel,
NH-8, Village Por, Vadodara
Gujarat- 391243 **...Appellant**

**Vs.**

1. **Rakesh Kumar Tulsyan**
   Resolution Professional,
   Nik-San Engineering Company Limited
   B-4 Vinay Tower, Kranti Nagar,
   Lokhandwala, Kandivali East,
   Mumbai, Maharashtra 400101

2. **Committee of Creditors**
   **OF NIK-SAN ENGINEERING (COC)**
   Stressed Asset Management Branch,
   Bank of Baroda, First Floor,
   17-B Horniman Circle, Fort
   Mumbai Maharashtra 400021

3. **Aesthetic Stampings & Laminations Limited**
   **Alongwith Abhishek Naresh Choudhary**
   201-204 Vikas Chamber Junction,
   Of Link and Marve Road, Mith Chowky,
   Malad, West Mumbai Maharashtra- 400064

**...Respondents**

**Present:**

**For Appellant:** **Mr. Abhijeet Sinha, Sr. Advocate with Mr. Malak Bhatt, Mr. Rishabh Shah and Ms. Sukanya Joshi, Advocates.**

**For Respondents:** **Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Abhishek Nair, Mr. Agam H. Maloo, Mr. Vansh Shrivastava, Mr. Prakhar Tandon, Advocates for R-1.**

**Mr. Gaurav Mitra, Sr. Advocate with Ms. Honey Satpal, Ms. Tanya Gupta, Mr. Moksh B. Godani, Mr. Akash Agarwalla and Mr. Aman, Advocates for R-3.**

**WITH**

**Company Appeal (AT) (Insolvency) No. 1667 of 2024**

(Arising out of order dated 03.07.2024 passed by the National Company Law Tribunal, Mumbai Bench-IV, in I.A. No. 3351(MB) of 2024 in Company Petition (IB) No. 1057/(MB)/2021).

**In the matter of:**

**VILAS TRANSCORE LIMITED**
Through Its Authorized Representative
Having Its Registered Office at:
Plot. No.435-437 Near Galaxy Hotel,
NH-8, Village Por, Vadodara
Gujarat- 391243 **...Appellant**

**Vs.**

1. **Rakesh Kumar Tulsyan**
   Resolution Professional,
   Nik-San Engineering Company Limited
   B-4 Vinay Tower, Kranti Nagar,
   Lokhandwala, Kandivali East,
   Mumbai, Maharashtra 400101

2. **Sterling Enamalled Wires Private Limited**
   Shed No. 48, Okhla, Industrial Area,

West Delhi, New Delhi-110020

**...Respondents**

**Present:**

**For Appellant:** **Mr. Abhijeet Sinha, Sr. Advocate with Mr. Malak Bhatt, Mr. Rishabh Shah and Ms. Sukanya Joshi, Advocates.**

**For Respondents:** **Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Abhishek Nair, Mr. Agam H. Maloo, Mr. Vansh Shrivastava, Mr. Prakhar Tandon, Advocates for R-1.**

**Mr. Gaurav Mitra, Sr. Advocate with Ms. Honey Satpal, Ms. Tanya Gupta, Mr. Moksh B. Godani, Mr. Akash Agarwalla and Mr. Aman, Advocates for R-3.**

**WITH**
**Contempt Case (AT) No. 7 of 2025**
**in**
**Company Appeal (AT) (Insolvency) No. 1798 of 2024**

(Arising out of order dated 13.09.2024 passed in Company Appeal (AT) (Insolvency) No. 1798 of 2024).

**In the matter of:**

**Vilas Transcore Limited**
Through Its Authorized Representative
Having Its Registered Office at:
Plot. No.435-437 Near Galaxy Hotel,
NH-8, Village Por, Vadodara
Gujarat- 391243 **...Appellant**

**Vs.**

1. **Aesthetic Stampings & Laminations Limited**
Through Its Managing Director**,**
201-204 Vikas Chamber Junction,
of Link and Marve Road, Mith Chowky,
Malad, West Mumbai Maharashtra- 400064

**2. Abhishek Naresh Choudhary**
Director, Nik San Engineering Co. Ltd.
R/O Saral Apartment,
Vanshree Compound, Malad West
Maharashtra - 400064

**3. Pratik Karshanbhai Parabadia**
Director, NIK SAN Engineering Co. Ltd.
R/o Opp. Shreeji Cinema, Gadhada, Botad

**4. Nikulkumar Vitthalbhai Dhameliya**
Director, NIK SAN Engineering Co. Ltd.
R/O 25, Shivam Monreve Near Shantanu,
Bunglows, Bodakdev-Ahmedabad,
Gujarat- 380054

**...Respondents**

**Present:**

**For Appellant:** **Mr. Abhijeet Sinha, Sr. Advocate with Mr. Malak Bhatt, Mr. Rishabh Shah and Ms. Sukanya Joshi, Advocates.**

**For Respondents:** **Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Abhishek Nair, Mr. Agam H. Maloo, Mr. Vansh Shrivastava, Mr. Prakhar Tandon, Advocates for R-1.**

**Mr. Agam H. Maloo, Advocate for RP.**

**Mr. Gaurav Mitra, Sr. Advocate with Ms. Honey Satpal, Ms. Tanya Gupta, Mr. Moksh B. Godani, Mr. Akash Agarwalla and Mr. Aman, Advocates for R-3.**

**J U D G M E N T**

**(18th November, 2026)**

**Indevar Pandey, Member (T)**

These three Appeals arise out of the Corporate Insolvency Resolution Process ("CIRP") of **Nik-San Engineering Company Limited (Corporate**

**Debtor)**, in C.P. (IB) No. 1057/MB-IV/2021, filed by Sterling Enamelled Wires Private Limited under Section 9 of the **Insolvency and Bankruptcy Code, 2016** (hereinafter referred to as '**Code**'). The National Company Law Tribunal, Mumbai Bench-IV **(Adjudicating Authority)** admitted the application by order dated 03.11.2022. The principal matter for our consideration is **Company Appeal (AT) (Ins.) No. 1798 of 2024**, filed by **Vilas Transcore Limited** (**Appellant**) the original Resolution Applicant, whose Resolution Plan had initially been approved by the **Committee of Creditors**/**Respondent No.2**. This appeal challenges the order dated 29.08.2024 passed by the Adjudicating Authority, whereby the Resolution Plan submitted by **Respondent No.3**/**Aesthetic Stampings & Laminations Limited along with Abhishek Naresh Choudhary (Successful Resolution Applicant)** for the Corporate Debtor was approved by the Adjudicating Authority. **Rakesh Kumar Tulsyan**, **Resolution Professional** of Corporate Debtor is the **Respondent No.1** herein. and the Committee of Creditors are among the Respondents in the said Appeal.

2. The **second appeal**, being **Company Appeal (AT) (Ins.) No. 1667 of 2024**, has been filed by **Appellant/Vilas Transcore Limited** against **Rakesh Kumar Tulsyan, Resolution Professional** of Corporate Debtor, and Sterling Enamelled Wires Private Limited, challenging the order passed by the Adjudicating Authority in **I.A. No. 3351(MB)/2024** on **03.07.2024**. The appeal challenges the order of the Adjudicating Authority allowing reconsideration of the resolution plans following the order dated 06.12.2023, whereby the Resolution Professional was directed to place the resolution plan

submitted by Vilas Transcore Limited before the reconstituted Committee of Creditors for fresh consideration.

3. The **third connected proceeding**, being **Contempt Case (AT) No. 7 of 2025 in Company Appeal (AT) (Ins.) No. 1798 of 2024**, has been instituted by Vilas Transcore Limited under Section 425 of the Companies Act, 2013, read with Section 12 of the Contempt of Courts Act, 1971, alleging non-compliance with the directions issued by this Tribunal on 13.09.2024 in Company Appeal (AT) (Ins.) No. 1798 of 2024. The proceedings are directed against Aesthetic Stampings & Laminations Limited, Abhishek Naresh Choudhary, Pratik Karshanbhai Parabadiya and Nikulkumar Vitthalbhai Dhameliya. The contempt case is connected with the principal appeal, which challenges the order dated 29.08.2024 approving the resolution plan submitted by Aesthetic Stampings & Laminations Limited along with Abhishek Naresh Choudhary in the CIRP of Nik-San Engineering Company Limited. The contempt allegations arise from the subsequent steps allegedly taken in relation to the approved resolution plan despite the directions issued by this Tribunal.

**Facts of the case**

4. The brief facts of the case relevant to deciding these Appeals are given in brief below:

**i.** The CIRP of Nik-San Engineering Company Limited/ Corporate Debtor commenced pursuant to filing of C.P. (IB) No. 1057/MB-IV/2021, by Sterling Enamelled Wires Private Limited under Section 9 of the Code on 26.10.2021. The Adjudicating Authority admitted the

application by order dated 03.11.2022 and appointed Rakesh Kumar Tulsyan as the Interim Resolution Professional.

**ii.** By the fourth CoC meeting held on 09.02.2023, four Prospective Resolution Applicants had submitted their proposals. Each Prospective Resolution Applicant was required to furnish an Earnest Money Deposit of Rs.50 lakh. Appellant was one of the Prospective Resolution Applicants.

**iii.** The Appellant submitted its Resolution Plan on 16.03.2023, which was thereafter considered along with the other Resolution Plans during the subsequent CoC meetings.

**iv.** The 11th meeting of the CoC was held on 25.08.2023, in which the Resolution Plans of the two leading Prospective Resolution Applicants, namely Aesthetic Stampings & Laminations Limited along with Abhishek Choudhary and Vilas Transcore Limited, were considered and put to vote. At that stage, Bank of Baroda was the sole member of the CoC.

**v.** The Resolution Plan submitted by **Appellant was approved with 100% voting share** in the said CoC meeting. Pursuant to the approval of its Resolution Plan, a **Letter of Intent dated 26.09.2023** was issued in favour of Appellant. Thereafter, the Appellant furnished Performance Bank Guarantee No. 0003NDDG00104124 dated 29.09.2023 for Rs.1 crore. Thereafter, RP filed I.A. No. 4903/2023 before the Adjudicating Authority seeking approval of the Resolution Plan.

**vi.** During the pendency of the plan approval proceedings, **Varsha Engineers** filed **I.A. No.4997/2023**, seeking its inclusion in the CoC and voting rights in the CIRP. Another application, **I.A. No. 5507/2023**, was filed by the Respondent No.3 seeking reconsideration of its Resolution Plan.

**vii.** By order dated **06.12.2023** passed in I.A. No. 4997/2023 the Adjudicating Authority directed the induction of Varsha Engineers into the CoC. Consequent upon the reconstitution of the CoC, the Resolution Plan pending consideration in I.A. No. 4903/2023 was remanded to the CoC for fresh consideration. The CoC was also directed to consider the proposal of the Respondent no.3 in I.A. No. 5507/2023 vide the same order. In the meantime. The period of CIRP was extended from time to time by the Adjudicating Authority.

**viii.** The Appellant filed **I.A. No. 3351(MB)/2024** before the Adjudicating Authority in challenging the order dated 06.12.2023 and the subsequent proceedings concerning the Resolution Plans.

**ix.** Following the induction of Varsha Engineers, the CoC was reconstituted. The **Form-H** placed on record shows that the voting share of Bank of Baroda in the **reconstituted CoC** as 90.6% and Varsha Engineers as 9.4%. The Form-H also records the fair value of the Corporate Debtor as Rs.13,94,95,493/- and its liquidation value as Rs.9,97,57,804/-.

**x.** The Resolution Plan submitted by Respondent No.3/ Aesthetic Stampings & Laminations Limited along with Abhishek Naresh

Choudhary was thereafter considered by the reconstituted CoC. The Impugned Order dated 29.08.2024 records that the Resolution Plan of Aesthetic Stampings & Laminations Limited along with Abhishek Naresh Choudhary was approved with 100% voting share in the 14th CoC meeting held on 15.02.2024. On the other hand, the Appeal refers to the approval in the 15th CoC meeting held on 26.02.2024.

**xi.** The Resolution Plan submitted by Respondent No.3/Aesthetic provided for a total amount of Rs.30,65,84,377/-. The Plan contained provisions for payment of CIRP costs, financial creditors and operational creditors, besides provisions relating to working capital and implementation of the Plan. Against the secured financial creditor claims of Rs.15,09,94,786/-; the Plan provided for payment of Rs.8,74,64,280/-. The Plan also contained provisions concerning working capital and business operations, including an amount of Rs.10 crore towards working capital within 24 months.

**xii.** On **03.07.2024**, the Adjudicating Authority directed the placing the e-voting records of the relevant CoC meetings and filing of the records relating to the 14th and 15th CoC meetings by way of an additional affidavit. The requisite records were thereafter placed on record.

**xiii.** By the same order dated 03.07.2024, the Adjudicating Authority dismissed **I.A. No. 3351(MB)/2024**. The said order is the subject matter of the connected **Company Appeal (AT) (Ins.) No. 1667 of 2024**. The Appeal was filed under Section 61 of the Code and arises

from the proceedings concerning the recall of the order dated 06.12.2023.

**xiv.** This Appellate Tribunal By order dated **28.08.2024**, issued notice in the Company Appeal (AT) (Ins.) No. 1667 of 2024 and directed that the action in the CIRP would abide by the result of the pending proceedings.

**xv.** The Adjudicating Authority by its order dated **29.08.2024**, the allowed I.A. No. 34/2024 in C.P. (IB) No. 1057/MB-IV/2021 and approved the Resolution Plan submitted by Respondent No.3 for the Corporate Debtor.

**xvi.** The approval of the Resolution Plan by the Adjudicating Authority vide the order dated 29.08.2024 passed in I.A. No. 34/2024 is the subject matter of challenge in principal Appeal **Company Appeal (AT) (Ins.) No. 1798 of 2024**. On **13.09.2024** the appeal was taken up by this Appellate Tribunal and Notice was issued and it was directed to be connected with **Company Appeal (AT) (Ins.) No. 1667 of 2024**. It was further directed that any action taken by the Successful Resolution Applicant pursuant to the Impugned Order would abide by the result of the Appeal, and further directed that no further steps shall be taken.

**xvii.** The Appellant instituted **Contempt Case (AT) No. 7 of 2025 in Company Appeal (AT) (Ins.) No. 1798 of 2024**, invoking Section 425 of the Companies Act, 2013 read with Section 12 of the Contempt of Courts Act, 1971, in relation to the order dated 13.09.2024 passed by the NCLAT. The Contempt Case names Aesthetic Stampings &

Laminations Limited, Abhishek Naresh Choudhary, Pratik Karshanbhai Parabadiya and Nikulkumar Vitthalbhai Dhameliya as the Alleged Contemnors.

**xviii.** The Contempt Case records that, during the hearing on 13.09.2024, counsel appearing for the Successful Resolution Applicant stated that the Resolution Plan had been implemented as of 31.08.2024, following which the NCLAT passed the aforesaid directions concerning actions taken pursuant to the Impugned Order. The Contempt Case was instituted as a subsequent proceeding arising out of the directions dated 13.09.2024 in Company Appeal (AT) (Ins.) No. 1798 of 2024, and is directly connected with the implementation of the Resolution Plan approved by the NCLT's order dated 29.08.2024.

5. The Company Appeal (AT) (Ins.) No. 1798 of 2024 is the principal appeal for the purpose of the consolidated factual chronology, as consequent to approval of the Resolution Plan submitted by Respondent No.3, all previous orders and challenges to those orders are subsumed into it. The contempt matter also arises from the orders of this Appellate Tribunal in Principal Appeal only. Company Appeal No. 1667 of 2024 and the Contempt matter are therefore dealt within the same framework.

**Submissions of Appellant**

6. Learned Sr. Counsel Abhijeet Sinha for the Appellant submits that the present Appeal arises out of the Impugned Order dated 29.08.2024 passed by the Ld. Adjudicating Authority in I.A. No. 34/2024 in CP (IB) No. 1057/MB-

IV/2021, whereby the Resolution Plan submitted by Respondent No.3, Aesthetic Stampings & Laminations Limited along with Abhishek Naresh Choudhary, was approved in the CIRP of Nik-San Engineering Company Limited. The Appellant and Respondent No.3, were the two Resolution Applicants whose Plans were considered by the CoC. In the 11th CoC Meeting held on 25.08.2023, the Appellant's Resolution Plan was approved with 100% voting share and the Resolution Professional was authorised to issue the Letter of Intent. Pursuant thereto, the LOI was issued to the Appellant on 26.09.2023, the Appellant furnished the Performance Bank Guarantee, and the Resolution Professional filed I.A. No. 4903/2023 under Sections 30(6) and 31 of the Code seeking approval of the Appellant's Plan.

7. Subsequently, Varsha Engineers filed I.A. No. 4997/2023 seeking its inclusion in the CoC, while Respondent No.3 filed I.A. No. 5507/2023 seeking reconsideration of its Resolution Plan. By order dated 06.12.2023, the Adjudicating Authority directed inclusion of Varsha Engineers in the CoC and also directed consideration of Respondent No. 3's proposal.

8. The Appellant submits that the subsequent inclusion of Varsha Engineers did not render the earlier decision of the CoC invalid, particularly in view of **Regulation 12(3) of the CIRP Regulations**, which preserves the validity of decisions taken by the CoC prior to the subsequent inclusion of a creditor. There was also no finding that the Appellant's Plan was defective, non-compliant with Section 30(2), or that the Appellant was ineligible under Section 29A. Nevertheless, the Plans were subsequently reconsidered, Respondent No. 3's earlier unsuccessful Plan was revived, the Appellant's

Letter of Intent was cancelled on **19.03.2024**, and Respondent No. 3's Plan was ultimately approved by the Impugned Order.

9. The Appellant's principal grievance is that its already-approved Resolution Plan was reopened and displaced, without any finding of defect in the Plan, and without meaningful notice or opportunity to oppose such reopening. The Appellant therefore submits that the present Appeal concerns the legality and validity of the process adopted in reopening the approved Plan, and does not seek interference with the commercial wisdom of the CoC.

10. Learned Counsel submits that on 25.08.2023, after considering the competing Resolution Plans, the CoC approved the Appellant's Plan with 100% voting share and authorised issuance of the Letter of Intent. The Letter of Intent was thereafter issued on 26.09.2023, the Appellant furnished the Performance Bank Guarantee of Rs. 1 crore, and the Resolution Professional filed I.A. No. 4903/2023 seeking approval of the Plan under Sections 30(6) and 31 of the Code. Thus, the Appellant was not merely a prospective Resolution Applicant; it had already been declared the Successful Resolution Applicant and its Plan had proceeded to the stage of statutory approval.

11. Ld. Sr. Counsel submits that Respondent No.3 had also participated in the original resolution process and its Plan had not been approved by the CoC. The subsequent reconstitution of the CoC could not, by itself, confer upon an unsuccessful Resolution Applicant an automatic right to have its Plan revived and reconsidered. The Appellant relies upon **Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd., 2021 SCC**

**OnLine SC 707**, and the decisions relied upon in the party's submissions, in support of the requirement of certainty and finality in the resolution process.

12. He submits that even assuming that Varsha Engineers was subsequently entitled to inclusion in the CoC, such inclusion could not retrospectively invalidate the decisions already taken by the CoC. Regulation 12(3) of the CIRP Regulations specifically preserves the validity of decisions taken by the CoC prior to the subsequent inclusion of a creditor. The Appellant's Plan was approved when the then-constituted CoC had 100% voting share and there is no finding that the decision dated 25.08.2023 was otherwise invalid.

13. It is further submitted that there is no finding that the Appellant's Plan was defective or contrary to Section 30(2), nor any finding that the Appellant was ineligible under Section 29A. The subsequent inclusion of Varsha Engineers therefore cannot, by itself, convert the Appellant's otherwise compliant Resolution Plan into an invalid Plan. Reliance is placed upon **Jatinder Pal Builders Pvt. Ltd. v. Sandeep Goel, 2023 SCC OnLine NCLAT 1829**, and the other authorities relied upon by the Appellant.

14. Ld. Sr. Counsel submits that the practical effect of the subsequent process was to keep alive both the Appellant's already-approved Plan and Respondent No. 3's Plan which had failed to obtain approval in the original voting. The Code does not contemplate an unsuccessful Resolution Applicant retaining a continuing right to have its rejected Plan revived merely because the composition of the CoC subsequently changes.

15. The Appellant submits that once its Plan had been approved, Letter of Intent issued, Performance Bank Guarantee furnished and approval application filed, the process could not be converted into a fresh contest between the same Resolution Applicants without a specific legal basis for reopening the concluded decision. Otherwise, an unsuccessful Resolution Applicant could repeatedly seek reconsideration whenever there was a change in the composition of the CoC, thereby defeating finality in the CIRP.

16. Ld. Sr. Counsel submits that the Appellant does not dispute the settled principle that the CoC's commercial wisdom is entitled to deference. However, commercial wisdom cannot be treated as an unrestricted power to review or reverse a decision already taken. On 25.08.2023, the CoC had already exercised its commercial wisdom and approved the Appellant's Plan with 100% voting share.

17. The Appellant's challenge is therefore not to the commercial merits of Respondent No. 3's Plan. It is to the jurisdiction and legality of reopening an already-approved Plan and reviving an unsuccessful Plan. The CoC's commercial wisdom must operate within the statutory framework of the Code and the CIRP Regulations and cannot itself create a power to reopen a concluded process where no statutory basis for doing so has been established.

18. Ld. Sr. Counsel submits that there is no finding anywhere that the Appellant's Resolution Plan suffered from any statutory or substantive defect. There is no finding of non-compliance with Section 30(2), ineligibility under Section 29A, failure to furnish the required security or breach of the Plan by

the Appellant. On the contrary, the Plan had been examined by the Resolution Professional, approved with 100% voting share, followed by issuance of the Letter of Intent and furnishing of the Performance Bank Guarantee.

19. The Appellant therefore submits that the subsequent process effectively displaced a compliant and approved Plan without identifying any defect in it, merely because the CoC was subsequently reconstituted and Respondent No. 3 sought reconsideration of its earlier unsuccessful Plan. According to the Appellant, alteration in the composition of the CoC and invalidity of the Appellant's Resolution Plan are distinct issues and cannot be treated as interchangeable.

20. Ld. Sr. Counsel submits that the Appellant's grievance is particularly with the manner in which the reopening took place. The decision to reconsider the Resolution Plans was taken in the 14th CoC Meeting dated 15.02.2024, at which the Appellant was not present. The Appellant was thereafter informed about the 15th CoC Meeting. However, according to the Appellant, mere notice of a subsequent CoC meeting was not meaningful notice that its already-approved Resolution Plan was itself being reopened and could be rejected in favour of Respondent No. 3's Plan.

21. The Appellant had already acquired the position of Successful Resolution Applicant, had received the Letter of Intent, furnished the Performance Bank Guarantee and had a pending application for approval before the Adjudicating Authority. Learned Counsel submits that before such an existing position was disturbed, the Appellant was entitled to a meaningful

opportunity to address the proposal for reopening its Plan. Reliance is placed upon **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni, (2024) 6 SCC 767**, as relied upon by the Appellant.

22. Ld. Sr. Counsel submits that the Appellant's recall application was not directed against the mere inclusion of Varsha Engineers in the CoC. The Appellant was not a party to I.A. No. 4997/2023 filed by Varsha Engineers and did not challenge the inclusion of Varsha Engineers merely on that account. The Appellant's grievance arose when the order dated 06.12.2023 was subsequently acted upon to reopen its approved Plan and revive Respondent No. 3's unsuccessful Plan.

23. At the relevant time, the Appellant was already the Successful Resolution Applicant and I.A. No. 4903/2023 seeking approval of its Plan was pending. Appellant submits that Respondent No. 3's request for reconsideration directly affected the Appellant's existing rights and status, and the Appellant was not afforded an effective opportunity, before that course was adopted. The Appellant therefore submits that the recall application was maintainable, particularly where an order adversely affecting an existing approved position was passed without meaningful hearing.

24. Ld. Sr. Counsel submits that the present Appeal is directed against the Impugned Order dated 29.08.2024, whereby Respondent No. 3's Resolution Plan was approved and the Appellant's Plan was displaced. The present Appeal is within limitation. The Appellant's challenge is therefore not merely a belated challenge to the order dated 06.12.2023.

25. The Appellant submits that the adverse consequence to it arose when its approved Plan was reopened, its Letter of Intent was cancelled and Respondent No. 3's Plan was ultimately approved. The present Appeal challenges that final consequence and the legality of the process culminating in the Impugned Order.

26. Ld. Sr. Counsel submits that subsequent inclusion of Varsha Engineers did not automatically invalidate decisions already taken by the CoC. **Regulation 12(3)** expressly protects prior decisions. There is also no finding that the Appellant's Plan itself was defective, contrary to Section 30(2), or that the Appellant was ineligible under Section 29A. Therefore, reconstitution of the CoC cannot by itself be treated as nullifying the earlier approval.

27. Regarding the submission of the Respondents that it should have challenged I.A. No. 4997/2023 and the order allowing the same, the Appellant submits that it was not a party to I.A. No. 4997/2023 and was not aggrieved merely by inclusion of Varsha Engineers. Its grievance arose from the subsequent reopening of its approved Plan and revival of Respondent No. 3's unsuccessful Plan. The Appellant could not reasonably have been expected to challenge proceedings of which it was not a party merely to anticipate the subsequent consequence.

28. Learned Counsel submits that even if the Plans were to be reconsidered pursuant to the order dated 06.12.2023, such reconsideration could not automatically mean that the Appellant's already-approved Plan stood extinguished and that Respondent No. 3 acquired an unrestricted second

opportunity. The scope of reconsideration had to remain within the Code and the CIRP Regulations, including Regulation 12(3), and could not be treated as a power to reopen the entire resolution process indefinitely.

29. The Appellant submits that subsequent intimation of the 15th CoC Meeting does not cure the fact that the decision to reconsider the Plans had already been taken in the 14th CoC Meeting dated 15.02.2024, when the Appellant was not present. The relevant question is whether the Appellant was specifically informed that its already-approved Plan was liable to be displaced and Respondent No. 3's unsuccessful Plan was being revived.

30. Learned Counsel submits that the Appellant is not challenging the relative commercial merits of the two Plans. The issue is whether the CoC could lawfully reopen an already-approved Plan and revive a previously unsuccessful Plan. The subsequent approval of Aesthetic's Plan with 100% voting share cannot, by itself, validate the process by which the earlier approval in favour of the Appellant was displaced.

31. The Appellant reiterates that the present Appeal challenges the Impugned Order dated 29.08.2024, whereby Aesthetic's Plan was finally approved. The Appellant's grievance concerns the consequences flowing from the earlier order and the subsequent process by which its approved Plan was displaced. The present Appeal is therefore directed against the final adverse order and is within limitation.

32. Ld. Sr. Counsel submits that subsequent implementation cannot retrospectively cure an illegality in the process by which the Plan was

approved. This Appellate Tribunal had already issued directions on 28.08.2024 and 13.09.2024 that actions taken pursuant to the Impugned Order would abide by the result of the Appeal. The subsequent implementation, therefore, cannot itself create a bar against examining the legality of the Impugned Order.

33. He further submits that the essential factual position remains that the Appellant's Resolution Plan was approved with 100% voting share on 25.08.2023, followed by issuance of the Letter of Intent, furnishing of the Performance Bank Guarantee and filing of the application for approval of the Plan. Thereafter, without any finding of defect in the Appellant's Plan, the resolution process was reopened, Respondent No. 3's previously unsuccessful Plan was revived and the Appellant's Plan was ultimately displaced.

34. The Appellant submits that the subsequent inclusion of Varsha Engineers did not retrospectively invalidate the earlier CoC decision in view of Regulation 12(3). Further, commercial wisdom cannot be invoked as an unrestricted power of review, particularly where no defect in the Appellant's Plan has been identified.

35. The Appellant further submits that it was not given meaningful notice that its already-approved Plan itself was under reconsideration and liable to be displaced. The decision to reopen the Plans was taken in its absence, and the subsequent invitation to a later CoC meeting could not cure the prejudice already caused.

36. Summing up Ld. Sr. Counsel submits that the present Appeal does not seek interference with the commercial merits of the CoC's decision. It challenges the legality of the process by which an approved Resolution Plan was reopened, an unsuccessful Resolution Plan was revived and the Appellant's Plan was ultimately displaced. In view of the aforesaid submissions, the Appellant respectfully submits that the Impugned Order dated 29.08.2024 approving Respondent No. 3's Resolution Plan is liable to be set aside.

**Submissions of Respondent No.1 (reply)**

37. Ld. Counsel submitted that the Appellant, being an unsuccessful Resolution Applicant, has no locus to challenge a Resolution Plan approved by the Committee of Creditors (CoC) and the Ld. Adjudicating Authority, or its implementation. It was contended that the Appellant is not a stakeholder contemplated under Section 31(1) of the Insolvency and Bankruptcy Code, 2016, and cannot claim to be an aggrieved person entitled to appeal under Section 61(1) of the Code.

38. Ld. Counsel further pointed out that neither the members of the CoC nor any other stakeholder had objected to the approval or implementation of the Resolution Plan. The Appellant, having participated in the CIRP without objection and been afforded equal opportunities to submit and revise its Plan, could not challenge the process merely because its Plan was rejected on commercial considerations.

39. Ld. Counsel contended that the appeal was an afterthought, filed approximately five months after rejection of the Appellant's Plan and declaration of another Resolution Applicant as successful. It was emphasised that the Appellant could not approbate and reprobate, having participated in the process without challenging the constitution of the CoC and raising objections only after an adverse outcome. The commercial wisdom of the CoC in assessing the viability and feasibility of Resolution Plans, it was submitted, ought not to be interfered with.

40. Ld. Counsel submitted that, if the Appellant was aggrieved by the order dated 06.12.2023, its remedy was to file an appeal under Section 61 of the Code within the prescribed period of 30 days. Instead, the Appellant filed IA No. 3351 of 2024 after approximately 165 days, seeking recall of the order without even seeking condonation of delay.

41. Ld. Counsel accordingly argued that the recall application was an attempt to circumvent the statutory appellate mechanism after the Appellant had failed to challenge the order within the prescribed period. The Ld. Adjudicating Authority had, therefore, rightly dismissed the application.

42. Ld. Counsel submitted that IA No. 5507 of 2023 was never decided on merits but had become infructuous consequent to the order passed in IA No. 4997 of 2023. It was contended that, if the Appellant was aggrieved by the directions in IA No. 4997 of 2023, it ought to have challenged that order under Section 61 of the Code instead of seeking recall of the order dated 06.12.2023.

43. Ld. Counsel further explained that, while dealing with IA No. 4997 of 2023, the Ld. Adjudicating Authority had directed reconstitution of the CoC

and re-voting on the Resolution Plans. Consequently, IA No. 5507 of 2023 became infructuous. The subsequent recall application, it was argued, was misconceived and intended to derail the CIRP.

44. Ld. Counsel submitted that the order dated 06.12.2023 recorded the reasons for the directions issued in IA No. 5507 of 2023. Since IA No. 4997 of 2023 had resulted in a direction to include Varsha Engineers, an unsecured financial creditor, in the CoC, the CoC was reconstituted and the Resolution Plans were required to be put to a fresh vote.

45. Ld. Counsel further pointed out that the order dated 06.12.2023 merely remitted both Resolution Plans for fresh consideration by the reconstituted CoC; it did not direct any Resolution Applicant to increase or revise its bid. The Appellant's request in IA No. 3351 of 2024 for permission to make fresh bids, therefore, could not constitute a ground for recall of the order.

**PRAYER**

46. In light of the submissions, it is prayed that this Tribunal may dismiss the present appeal with exemplary costs and pass such other order as it may deem fit and proper in the facts and circumstances of the case.

**Submissions of Respondent No.3**

47. Mr. Gaurav Mitra Ld. Sr. Counsel for Respondent No. 3 submitted that the controversy mainly arises from the exclusion of Varsha Engineers from the Committee of Creditors, despite its claim having been admitted by the

Resolution Professional. Since the CoC which approved the Appellant's Resolution Plan was not properly constituted, the Adjudicating Authority rightly directed reconstitution of the CoC and reconsideration of the Resolution Plans.

48. He submits that Varsha Engineers' claim was admitted by the Resolution Professional and was reflected in the list of financial creditors and the Information Memorandum. The Resolution Plans, including that of the Appellant, also treated Varsha Engineers as an unsecured financial creditor. Despite this, Varsha Engineers was not included in the CoC and was not given an opportunity to participate in the voting process.

49. It was submitted that Regulation 12(3) of the CIRP Regulations required its inclusion in the CoC once its claim had been filed and admitted. Consequently, the Appellant's Resolution Plan, approved on 25.08.2023 when the voting was effectively undertaken by Bank of Baroda alone, was approved by an erroneously constituted CoC. The defect went to the root of the approval process and could not be cured by invoking the doctrine of commercial wisdom.

50. Ld. Sr. Counsel submitted that the Order dated 06.12.2023 did not interfere with the commercial wisdom of the CoC. The remand was necessitated because the CoC itself was not legally constituted. The Adjudicating Authority therefore directed that Varsha Engineers be included in the CoC and that the Resolution Plans be reconsidered afresh.

51. It is submitted that the proviso to Regulation 12 could not assist the Appellant, since the present case was not one where a creditor had failed to submit its claim. Varsha Engineers had already submitted its claim and the same stood admitted. Permitting exclusion of an admitted creditor would enable a Resolution Professional to obtain approval of a plan by excluding a creditor otherwise entitled to participate in the CoC.

52. Ld. Sr. Counsel submitted that the plea of violation of natural justice is contrary to the record. The Appellant was itself impleaded in I.A. No. 5507/2023, through which Respondent No. 3 had challenged the approval of the Appellant's plan. The Order dated 06.12.2023 was communicated to the Appellant on 19.12.2023 and, on 02.01.2024, the Resolution Professional informed the Appellant about fresh consideration and voting pursuant to the said order. No objection was raised by the Appellant at that stage.

53. It is further submitted that the Appellant itself acknowledged receipt of the notice concerning the fifteenth CoC meeting. Thus, the Appellant had adequate notice of the reconstituted CoC process and cannot subsequently contend that the reconsideration took place behind its back.

54. Ld. Sr. Counsel submitted that the Appellant did not challenge the Order dated 06.12.2023 within the prescribed period, despite having knowledge of it. It participated in the subsequent process and challenged the earlier order, only after its Resolution Plan was rejected in the fresh voting process. On 20.06.2024, it filed I.A. No. 3351/2024 seeking recall of the Order dated 06.12.2023.

55. The said application was dismissed on 03.07.2024, with the Adjudicating Authority observing that the Order dated 06.12.2023 had attained finality. Learned Counsel submitted that recall could not be utilised as a substitute for an appeal after the limitation period had expired.

56. Ld. Sr. Counsel submitted that after reconstitution, the CoC was required to reconsider the Resolution Plans afresh. On 15.02.2024, the plans of the Appellant and Respondent No. 3 were considered, and upon conclusion of voting on 13.03.2024, the plan of Respondent No. 3 was approved with 100% voting share. The earlier approval of the Appellant's plan by an improperly constituted CoC could not create an obligation upon the reconstituted CoC to approve the same plan again.

57. It was further submitted that Respondent No. 3's plan was also financially higher, providing Rs. 20.31 Crores as against Rs. 18.60 Crores proposed by the Appellant. Thus, the subsequent approval was the result of fresh consideration by the duly constituted CoC and was within its commercial domain.

58. Learned Counsel submitted that the Resolution Plan of Respondent No. 3 has already been approved and fully implemented. An aggregate amount of Rs. 20,24,56,083/- has been paid to the creditors, including Rs.8,74,64,280/- to Bank of Baroda, Rs. 1,56,66,256/- to Varsha Engineers and Rs. 2,32,95,040/- to operational creditors. It was submitted that interference at this stage would unsettle an already implemented resolution

and directly affect creditors who have received payments under the approved plan.

59. Ld. Sr. Counsel submitted that the Impugned Order records compliance of the Resolution Plan with Section 30(2) of the Code and the applicable Regulations, including payment of CIRP costs, payment to operational creditors and provisions concerning implementation and supervision. The Appellant has not identified any specific non-compliance with Section 30(2) which could justify rejection of the approved plan under Section 31.

60. He submitted that the Order dated 28.08.2024 did not stay the Order dated 03.07.2024. It merely directed that the CIRP would be subject to the outcome of the pending Appeal. Since the approval application had already been heard and reserved, the pronouncement of the order approving Respondent No. 3's plan on 29.08.2024 did not amount to acting in breach of any stay.

61. The Respondent relied upon **Jayanta Banerjee v. Shashi Agarwal, Liquidator of INCAB Industries Limited & Anr., Company Appeal (AT) (Insolvency)** Nos**. 348 & 720 of 2020, decided on 04.06.2021**, wherein this Hon'ble Tribunal held that where the constitution of the CoC itself violates the statutory provisions, such constitution is a nullity and the decisions of such CoC cannot be validated merely by invoking commercial wisdom.

62. Reliance was also placed upon the judgement of this Appellate Tribunal in **Hindalco Industries Limited v. Hirakud Industrial Works Limited & Ors.**, **CA (AT) (**Ins**.) No. 42 of 2022**; wherein the same principle was

reiterated, namely that commercial wisdom cannot validate decisions taken by a CoC, which itself was improperly constituted. The Respondent submitted that the principle directly applies where an admitted financial creditor was excluded from the CoC.

63. Ld. Sr. Counsel further relied upon **Dauphin Cables Private Limited v. Praveen Bansal, Resolution Professional & Ors., Company Appeal (AT) (Insolvency) Nos. 634-636 of 2023, decided on 18.05.2023**, wherein, upon a change in the composition of the CoC, this Hon'ble Tribunal upheld the direction for reconstitution of the CoC and fresh examination of the Resolution Plan.

64. Learned Counsel relied upon **Boorugu Infra Projects Private Limited in Consortium with Vishwanath Projects Limited & Anr. v. Birendra Kumar Agarwal, Resolution Professional of M/s Manjeera Retail Holding Private Limited & Ors., Company Appeal (AT) (CH) (Insolvency) Nos. 342 & 343 of 2024, decided on 20.12.2024,** wherein this Tribunal held that once a Resolution Plan submitted by a prospective resolution applicant is rejected and such rejection is not challenged, no legally enforceable right crystallises in favour of the unsuccessful applicant to challenge the approval of the successful Resolution Plan.

65. The said judgment further holds that compliance with Section 30(2) falls within the domain of the Adjudicating Authority and does not confer upon an unsuccessful resolution applicant an independent right to challenge the approved plan on that ground.

66. Summing up, Ld. Sr. Counsel submitted that the Appellant's plan was reconsidered by the duly constituted CoC and was not approved, whereas Respondent No. 3's plan was approved with 100% voting share and thereafter implemented. The Appellant, having failed to establish any statutory non-compliance in the approved plan and having not successfully challenged the order directing fresh consideration, has no basis to seek interference with the Impugned Order.

**Analysis and Findings**

67. We have heard Ld. Counsels for the parties and examined the documents on record.

68. *Issue No. 1:* Whether the Adjudicating Authority was justified in approving the resolution plan submitted by Respondent No. 3 after the resolution plan of the Appellant had been approved by the CoC with 100% voting share and a Letter of Intent had been issued in its favour, and whether the subsequent reconsideration and approval of Respondent No. 3's plan were in accordance with the Insolvency and Bankruptcy Code, 2016 and the applicable CIRP Regulations.

69. The issue requires us to examine the effect of the earlier approval of the Appellant's resolution plan, the subsequent inclusion of Varsha Engineers in the CoC, the orders dated 06.12.2023 and 03.07.2024, the manner in which the competing plans were reconsidered, and the correctness of the impugned order. The central question is not whether this Tribunal considers one plan

commercially better than the other, but whether the process through which Respondent No. 3's plan was ultimately approved complied with the law.

70. The Appellant submits that its resolution plan was approved with 100% voting share by the CoC in its 11th meeting held on 25.08.2023, pursuant to which a Letter of Intent was issued on 26.09.2023, a performance bank guarantee of Rs1 crore was furnished, and the Resolution Professional filed I.A. No. 4903 of 2023 seeking approval of the plan. It is contended that, following the inclusion of Varsha Engineers in the CoC, the competing plans were reconsidered and Respondent No. 3's plan was approved despite there being no material change in the comparative information placed before the CoC. The Appellant further submits that it was not invited to the 14th CoC meeting held on 15.02.2024, although the plans were placed for consideration, in violation of Section 30(5) of the Code. Reliance is also placed on Regulation 12(3) of the CIRP Regulations, the earlier approval of its plan, and the order dated 28.08.2024 passed by this Tribunal in Company Appeal (AT) (Ins.) No. 1667 of 2024, directing that action in the CIRP would abide by the outcome of that appeal.

71. The R1/Resolution Professional supports the impugned order and submits that the CoC was reconstituted in compliance with the order dated 06.12.2023 and that the competing plans were thereafter reconsidered in accordance with law. It is contended that the plan of Respondent No. 3 was approved by 100% voting share of the reconstituted CoC after consideration of its feasibility and viability, and that the plan satisfies Section 30(2) of the Code and the applicable CIRP Regulations. The Resolution Professional

further submits that notice of the subsequent CoC meeting was issued to the Appellant and that the voting process was duly completed before I.A. No. 34 of 2024 was filed seeking approval of Respondent No. 3's plan.

72. Respondent No. 3 submits that Varsha Engineers, being an unsecured financial creditor, was wrongly excluded from the CoC and that the order dated 06.12.2023 required the CoC to be reconstituted and the competing plans to be reconsidered. It is contended that the earlier approval of the Appellant's plan and the issuance of the Letter of Intent could not prevent the reconstituted CoC from taking a fresh decision, particularly when Respondent No. 3's plan offered higher value. Respondent No. 3 submits that its plan was approved by 100% voting share of the reconstituted CoC in exercise of its commercial wisdom and complied with Section 30(2) of the Code. It further contends that the Appellant's recall application was dismissed on 03.07.2024, the order dated 28.08.2024 did not stay the earlier order or prohibit further proceedings, and the plan has since been substantially implemented, with significant payments already made to creditors. Reliance is placed on Hindalco Industries Limited v. Hirakud Industrial Works Limited & Ors., Company Appeal (AT) (Ins.) No. 42 of 2022 and connected appeals, decided on 09.01.2023, and Dauphin Cables Private Limited v. Praveen Bansal, Resolution Professional & Ors., Company Appeal (AT) (Ins.) Nos. 634–636 of 2023, order dated 18.05.2023.

73. The record shows that, in the fourth CoC meeting held on 09.02.2023, Varsha Engineers was treated as an unsecured financial creditor, but it was

classified as a related party and was therefore excluded from the CoC. The Appellant relies upon the minutes of that meeting to submit that its exclusion was not an accidental omission, but followed a decision recorded by the Resolution Professional. The relevant portion of CoC's decision in 4th meeting of CoC held on 09.02.2024 are extracted below: -

> ***"Item No. A1:*** *To take note of the claims and updated Committee of Creditors based on claim received till date:*
>
> *IRP has received claim from various parties in the prescribed form. Based on the documents received and on verification of claims, the IRP has admitted the following claims* on provisional basis : -*

| ***Name of Creditors*** | ***Total Claim*** | ***Amount Claimed*** | ***Amount Admitted*** | ***Vote Share (%)*** |
|---|---|---|---|---|
| ***Financial Creditors*** | | | | |
| *Bank Of Baroda* | *1* | *15,09,94,786* | *15,09,94,786* | *100* |
| *Varsha Engineers* | *1* | *1,69,25,856* | *1,56,66,256* | *-* |
| *Operational Creditors* | *25* | *12,48,48,176* | *10,35,33,507* | *-* |
| *Total Creditors* | *27* | *33,55,71,749* | *27,01,94,549* | *-* |

> **Claim admitted based on Claim filed by the parties.*
>
> *Updated claim register will be uploaded on the website of the IBBI and website of the company. The COC has decided that now onward no claims should be admitted as 90 days has already over and if any creditors want to file their claim, they must approach to the AA in this regard. COC appreciated the work of RP and went to extra mile for accepting the claim even after 14 days for the benefit of all the creditors and try to accommodate maximum creditors for claims. Updated claim register is enclosed herewith in Annexure A.*
>
> *On verification of claim of sterling Enameled Wires Private Limited we have checked the bills available with the company which does not mention of the interest payable and hence taken only principal amount as valid claim and provisionally accepted their claim in the final list*

*before publishing claim version 3 which will be final for providing to the PRAs.*

***In the claim of Varsha Engineers, since the director has given guarantee to the loans of Vars ha Engineers, we have considered the same as related party and admitted their claim as financial creditors without voting rights.***

*For other creditors, RP has accepted the claim based on documents available and on the basis of books of accounts.*

*Accordingly, the constitution of CoC on account of receipt of claim and the voting percentage is as under:*

| **Name of Creditor/** | **Total Claim** | **Amount Claimed** | **Amount Admitted** | **Vote Share (%)** |
|---|---|---|---|---|
| ***Financial Creditors*** | | | | |
| *Bank of Baroda* | *1* | *15,09,94,786* | *15,09,94,786* | *100* |

***Decision: Noted and Approved by CoC with 100% voting rights."***

*(Emphasis Supplied)*

74. We note from the above that the RP had considered the claim of Varsha Engineers, and in view of the guarantee given by the Director to the loan of Varsha Engineers the same was treated as related party and therefore their claim was admitted as financial creditor without voting rights. The CoC duly approved the constitution of the CoC with 100% voting by sole member Bank of Baroda.

75. The resolution plan of appellant was approved with 100% voting share by the CoC in its 11th meeting held on 25.08.2023, pursuant to which a Letter of Intent was issued on 26.09.2023, a performance bank guarantee of Rs1

crore was furnished, and the Resolution Professional filed I.A. No. 4903 of 2023 in September 2023 seeking approval of the plan.

76. We further note that Varsha Engineers after a gap of more than eight months on 20.10.2023 filed I.A. No. 4997 of 2023, seeking its inclusion in the CoC and proportionate voting rights. After the Resolution Plan of the Appellant has been approved by the CoC and the same was pending for approval before the Adjudicating Authority.

77. Respondent No.3 also filed I.A. No. 5507 of 2023 on 06.11.2023, contending that its plan offered higher value, but had not been approved. By order dated 06.12.2023, the Adjudicating Authority directed the inclusion of Varsha Engineers and consequential reconsideration of the resolution plans. The Appellant contends that this order affected its previously approved plan without giving it an opportunity to oppose the relief sought by Varsha Engineers. The order passed by Ld. Adjudicating Authority in IA No. 4997(MB)/2023, IA No. 5507(MB)/2023 and IA No. 4903/2023 on 06.12.2023 is extracted below:

***"ORDER***

*1. Mr. Rohit Gupta a/w Mr. Aniruth Purusothaman, Ld. Counsel for the Applicant in IA-4997 /2023 present. Mr. Na usher Kohli i/b Ritesh Aedge, Ld. Counsel for the Applicant present in IA-5507/2023. Mr. Prakhar Tandon i/b Agam H. Maloo, Ld. Counsel for the Resolution Professional present.*

***IA-4997(MB)2023***

*2. The Applicant submits that though it is an Unsecured Financial Creditor of the Corporate Debtor, the Applicant has not been able to participate in the meetings of the CoC as the Respondent (RP) has not sent any notice for the meetings of the CoC to the Applicant. The Applicant further sub1nits that it is categorised as an Unsecured*

*Financial Creditors in the details of Unsecured Financial Creditor of the Corporate Debtor uploaded by the Respondent on the online portal of the IBBI (placed at exhibit M of the petition).*

*3. Hence, the Applicant prays that:*

*a. "Be pleased to declare that the decision of the Respondent to not allow the Applicant to participate in the CoC of the Corporate Debtor and to deny the Applicant a proportionate voting share and a right to vote in the meetings of the CoC are incorrect and illegal;*

*b. Be pleased to direct the re-constitution of the CoC of the Corporate Debtor with the inclusion of the Applicant;*

*c. Be pleased to set aside the approval of the Resolution plan for the Corporate Debtor granted by the Committee of Creditors and consequentially the Respondent be directed to put the Resolution Plan to vote before the reconstituted CoC of the Corporate Debtor with the participation of the Applicant."*

*4. The RP was given a liberty to file reply vide order dated 01.11.2023. Till date the RP has not filed any reply. The Counsel for the RP has not been able to provide any reasons for not considering the claim of the Applicant and not issuing notice of meeting even though the Applicant has been included in the list of Unsecured Creditors.*

*5. In view of the submissions made by the Applicant and after perusing the document at Exhibit M of the petition, wherein the name of the Applicant is shown as an Unsecured Creditor on the website of IBBI, this Bench is of the considered view that, it is a fit case to remitted back to the CoC to reconsider the case and include the Applicant as a member of the CoC. Accordingly, the resolution plan is remanded back for re-consideration of the CoC to file afresh after considering the claims and submissions of the Applicant in IA-4997 /2023.*

*6. In view of the above, IA-4997(MB)2023 is allowed and disposed of.*

***IA-5507(MB)2023***

*7. This is an application filed by the Applicant challenging the decision of the Respondent No.2 of arbitrarily approving a Resolution Plan, which is much lower value as compared to the Applicant's Resolution Plan. Ld. Counsel for the Applicant submits that he is a MSME and one of the Resolution Applicant. The CoC has not considered their application. As the Bench has remanded the resolution plan to the CoC in IA-4997/2023, the CoC is directed to also consider the proposal of the Applicant on merits and take a decision as per law. In view of above directions, IA5507 /2023 is allowed and disposed of.*

*8. **IA-4903/2023:** In view of the direction contained in IA-4997/2023, the resolution plan is remanded back to the CoC for reconsideration."*

78. In findings related to IA no. 4997, the Para 4 of the order is particularly relevant. We note that RP was the only contesting party here, and he was allowed time to file reply to the IA, but he did not file any reply. The counsel for the RP also could not reply to the query of Adjudicating Authority regarding non-consideration of the claim of the Applicant and not inviting it to the meetings of the CoC. Ld. Adjudicating Authority based solely on the submission of Applicant Varsha directed the CoC to reconsider the case and include Varsha Engineers as a Member of the CoC.

79. Based on the findings in IA 4997, which went uncontested by RP, the Adjudicating Authority passed a series of consequential orders. It remanded the Resolution Plan back to the CoC to file afresh after considering the claims and submissions of the Applicant Varsha. Based on decision in IA 4997, the Adjudicating authority remanded back the plan approval application IA No. 4903 of 2023. In IA No. 5507/2023 the Adjudicating authority directed the CoC to also consider the proposal of Respondent No.3 as the Resolution Plan was being remanded back in IA 4997.

80. We have already seen that Varsha Engineers approached the Adjudicating Authority after a gap of nearly 8 months from its exclusion from CoC and only after the Appellant's plan had been approved and the application for its approval had been filed. The appellant relies upon Regulation 12(3) of the CIRP Regulations, which provides that the inclusion

of a creditor in the CoC shall not affect the validity of decisions taken by the CoC before such inclusion. The Regulation 12(3) is extracted below:

> ***"Regulation 12: Submission of proof of claims.***
>
> *(3) Where the creditor in sub-regulation (1) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim:*
>
> *Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion."*

81. Respondent No. 3, on the other hand, submits that Varsha Engineers was entitled to participate as a financial creditor and that the earlier approval could not be preserved, if it had been obtained by a CoC that was not properly constituted. It relies upon Hindalco Industries Limited v. Hirakud Industrial Works Limited & Ors., Company Appeal (AT) (Ins.) No. 42 of 2022 and connected appeals, decided on 09.01.2023, and Dauphin Cables Private Limited v. Praveen Bansal, Resolution Professional & Ors., Company Appeal (AT) (Ins.) Nos. 634–636 of 2023, order dated 18.05.2023, in support of its submission that a defect in the constitution of the CoC may require its reconstitution and fresh consideration of a resolution plan.

82. The Appellant also relies upon the order dated 03.07.2024, by which the Adjudicating Authority dismissed I.A. No. 3351 of 2024, seeking recall of the order dated 06.12.2023. The Appellant's case is that the Adjudicating Authority clarified that it had not directed the reconsideration of the plans submitted by the prospective resolution applicants. Respondent No. 3, however, maintains that the order dated 06.12.2023 required the plans to be

reconsidered and that the Appellant failed to challenge that order within the prescribed period.

83. We note that the Appellant's recall application was dismissed and that the order dated 06.12.2023 was not set aside by the Adjudicating Authority. The present appeal, which challenges the subsequent approval of Respondent No. 3's plan, cannot be treated as a substitute for an appeal against that earlier order. We must, therefore, assess the legality of the subsequent approval in the light of the orders then operating, rather than proceed on the assumption that the order dated 06.12.2023 had ceased to have effect.

84. However, even if the reconstituted CoC was entitled to reconsider the plans, such reconsideration had to comply with Section 30(5) of the Code. The order directing reconsideration could not dispense with the statutory opportunity available to a resolution applicant to attend the meeting in which its plan was considered. We accordingly proceed to examine the minutes of the subsequent CoC meetings and the explanation offered by the Resolution Professional.

85. The Appellant relies upon *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd. & Anr., 2021 SCC OnLine SC 707*, in support of its submission that the resolution process must remain within the statutory framework and that an approved plan cannot be reopened or renegotiated at will. Respondent No. 3 submits that the Letter of Intent could not prevent reconsideration pursuant to the order dated 06.12.2023 and that final approval under Section 31 had not yet been granted.

86. The above principle finds support in the recent judgment of the Hon'ble Supreme Court in Bank of India & Ors. v. S.M. Kamal Pasha & Ors., Civil Appeal No. 12045 of 2026, decided on 26.10.2026, reported as 2026 INSC 1154, wherein it was held that once a resolution plan has been approved by the CoC and placed before the Adjudicating Authority, the CoC cannot withdraw its approval merely because the financial position of the corporate debtor has subsequently improved. It was reiterated that a resolution plan is governed by the statutory framework of the Code and that its binding nature cannot be displaced at the discretion of the CoC. The relevant paras in this connection are extracted below: -

> ***"9. Ebix Singapore (P) Ltd.*** *1 considered three stages, on an overview of the CIRP procedures; the first, prior to and ending with the approval of the Resolution Plan by the CoC; the second, the interim period between the approval of the CoC and the confirmation by the Adjudicating Authority; and the third, after the Adjudicating Authority approves the Resolution Plan. Therein the period which came up for consideration was the second stage as is the situation in the present case, i.e. between the approval of the CoC and confirmation by the NCLT. Elaborately considering the source of the binding nature of the Resolution Plan; whether it be the IBC or the law of contracts, it was held as under: -*
>
> > *113……*
> >
> > *In the pure contractual realm, an agreement binds parties who are privy to the contract. In the context of a resolution plan governed by IBC, the element of privity becomes inapplicable once the adjudicating authority confirms the resolution plan under Section 31(1) and declares it to be binding on all stakeholders, who are not a part of the negotiation stage or parties to the resolution plan. In fact, a commentator has noted that the purpose of Bankruptcy law is to actually solve a specific "contracting failure" that accompanies financial distress……*
> >
> > *It was also held that: -*
> >
> > *115….*
> >
> > *……. the resolution plan even prior to the approval of the adjudicating authority is binding inter se the CoC and the successful resolution*

*applicant. The resolution plan cannot be construed purely as a "contract" governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the adjudicating authority. Even at that stage, its binding effects are produced by IBC framework.*

***10.*** *It was categorically held, 'that ability of the Resolution Plan to bind those who have not consented to it, by way of a statutory procedure, indicates that it is not a typical contract'. Dilating upon Section 30(4) which requires only 66% vote for an approval of the Resolution Plan, it was noticed that even the dissenting creditors are bound by the Resolution Plan, by virtue of the statutory provisions. It was held that:*

*112 ……..*

*….. Other elements governing the resolution plan indicate that the entire process from initiation and leading up to its acceptance by the CoC takes place within the framework of IBC. In addition, IBC provides penalties for non-compliance with the resolution plan after its approval under Section 31 and forfeiture of the PBG for failing to implement the resolution plan or contributing to the failure of its implementation. The violation of the terms of the resolution plan does not give rise to a claim of damages, rather it leads to prosecution and imposition of punishment under Section 74 IBC. On the contrary, a CoC's withdrawal of the CIRP under Section 12-A is coupled with a requirement of payment of CIRP costs, but no damages are statutorily payable to the resolution applicant, irrespective of the stage of the withdrawal.*

*It was categorically held that: -*

*116….*

*….The binding effect of the resolution plan has the consequence of preventing the CoC or the resolution applicant to renege from its terms after the plan has been approved by the CoC through a voting mechanism……*

***11.*** *……..*

***12.*** *……..*

***13.*** *As has been reiterated in* ***Ebix Singapore (P). Ltd.*** *based on the binding precedents of this Court, the Adjudicating Authority, the NCLT, cannot second guess the commercial wisdom of the parties or direct unilateral modification to the Resolution Plan. When there is no clear legal provision, by a process of interpretation, no power can be conferred on the Adjudicating Authority to direct an unwilling CoC to renegotiate a submitted Resolution Plan or agree to its withdrawal at the behest of the Resolution Applicant. The direction to re-consider has to be only to ensure*

*compliance under Section 30(2) IBC, before exercising its powers of approval or rejection under Section 31 was the categoric finding."*

87. In the present case, the Appellant's resolution plan had been approved by the CoC on 25.08.2023 and an application seeking its approval had been filed before the Adjudicating Authority. The subsequent course of events, including the reconsideration of resolution plans pursuant to the order dated 06.12.2023, therefore, had to be examined in the light of the applicable statutory provisions and the directions issued by the Adjudicating Authority. While the aforesaid judgment does not determine the merits of the Appellant's plan or mandate its approval, it reinforces the requirement that a resolution plan already approved by the CoC and placed before the Adjudicating Authority cannot be displaced except in accordance with law. The legality of the subsequent process must, accordingly, be assessed independently, particularly with reference to compliance with the order dated 06.12.2023 and the Appellant's right under Section 30(5) of the Code to attend the CoC meeting in which its resolution plan was considered.

88. We also agree with Respondent No. 3 to the extent that approval by the CoC does not automatically entitle a resolution applicant to final approval under Section 31. The Adjudicating Authority must examine whether the plan meets the requirements of Section 30(2) and the applicable regulations. Nor can the Letter of Intent override a valid judicial direction or cure a defect in the constitution of the CoC.

89. The record does not disclose any finding that the Appellant was ineligible under Section 29A, that its plan violated Section 30(2), or that it had

breached an obligation under the Letter of Intent. Instead, the Appellant's plan was displaced following the reconstitution of the CoC and the reconsideration of the competing plans. While these circumstances do not confer an absolute right to approval upon the Appellant, they make it necessary to examine carefully whether the subsequent decision was taken in accordance with the prescribed procedure.

90. We have examined the sequence of meetings reflected in the documents. The minutes of the 14th CoC meeting dated 15.02.2024 show that the resolution plans formed part of the agenda for consideration. It is admitted fact that the Appellant was not invited for that meeting. The subsequent 15th CoC meeting was notified to the Appellant by email dated 23.02.2024, and the record refers to further voting proceedings in March 2024. The Resolution Professional's application for approval, as recorded in the impugned order, refers to approval by the reconstituted CoC on 13.03.2024. These dates must be distinguished carefully: the meeting at which the plans were placed for consideration, the subsequent meeting and the completion of voting are not necessarily the same event.

91. The minutes of the 11th CoC meeting contain a comparative assessment of the competing plans, including their proposed distribution and sources of funds. The record indicates that Respondent No. 3 had furnished an in-principle approval letter from Kotak Mahindra Bank for Rs.26 crore, while the Appellant had disclosed sources of funds comprising bank cash-credit limits, fixed deposits and investments valued at Rs.52.80 crore. Bank of Baroda, as the sole member of CoC with 100% votes, after considering the

merits of both the plans, approved the Appellant's plan. The plan value of Respondent No.3 at that stage also was higher than that of the appellant. However, the CoC, after due consideration of information before it approved the plan of appellant.

92. The Adjudicating Authority, by the impugned order dated 29.08.2024, approved the resolution plan submitted by Respondent No. 3. It recorded that the plan provided for payment of CIRP costs, repayment of operational creditors, management of the corporate debtor after approval, and implementation and supervision of the plan. It further recorded that the Resolution Professional had complied with Section 30(2) and the applicable CIRP Regulations.

93. The Adjudicating Authority was correct in recognising that its jurisdiction under Sections 30 and 31 is limited. It cannot substitute its own commercial assessment for that of the CoC. However, the limitation on judicial review does not relieve it of the obligation to ensure that the plan placed for approval has been approved through a process compliant with the Code.

94. The Appellant's objection was not confined to the comparative financial merits of the two plans. It concerned the manner in which the plans were reconsidered, not inviting the appellant for the 14th CoC meeting, despite earlier approval by CoC of his plan and issue of Letter of Intent. These matters required examination independently of whether Respondent No. 3's plan complied with the substantive requirements of Section 30(2).

95. We find that the impugned order primarily addresses the substantive requirements of the plan and the commercial decision of the reconstituted CoC. It does not adequately address the specific objection arising from Section 30(5), namely that the Appellant was not invited to the meeting in which its plan was placed for consideration. Compliance with Section 30(2) and compliance with the procedure governing consideration of the plan are distinct questions. Satisfaction of the former does not dispense with the latter.

96. We therefore find that the Adjudicating Authority's reliance upon the commercial wisdom of the CoC was insufficient to answer the Appellant's statutory objection. The impugned order does not demonstrate an adequate examination of whether the subsequent process complied with Section 30(5). This is a material deficiency, not a mere disagreement with the commercial outcome.

97. There is one further circumstance that requires consideration. On 28.08.2024, this Tribunal, in *Company Appeal (AT) (Ins.) No. 1667 of 2024*, issued notice and directed that any action in the CIRP of the corporate debtor would abide by the result of that appeal. The impugned order approving Respondent No. 3's plan was passed on 29.08.2024.

98. Respondent No. 3 submits that the order dated 28.08.2024 did not stay the order dated 03.07.2024 and did not expressly prohibit further proceedings. We agree that a direction making the outcome of the CIRP subject to the result of an appeal is not the same as an express stay of all proceedings.

99. Nevertheless, the earlier direction required the subsequent action in the CIRP to remain subject to the outcome of the pending appeal. The fact that the challenge concerned the earlier orders and the reconsideration of the resolution plans was a relevant circumstance. The impugned order ought to be understood in that context and cannot be treated as conclusively resolving the legality of the reconsideration process.

100. Respondent No. 3 has also submitted that its resolution plan has been substantially implemented and that payments aggregating approximately ₹20.24 crore have been made to creditors, including Bank of Baroda, Varsha Engineers and operational creditors. It contends that interference at this stage would unsettle payments already made and adversely affect the creditors who have received them.

101. We recognise that the implementation of a resolution plan and the interests of creditors who have received payments are relevant considerations while determining the appropriate relief. The objective of the Code is to resolve the insolvency of the corporate debtor and preserve value, and the consequences of disturbing an implemented plan cannot be ignored.

102. However, implementation does not, by itself, answer whether the plan was approved through a process compliant with the Code. The consequences of any procedural defect must be considered along with the stage of implementation, the rights of affected parties and the nature of the relief required. The record does not justify treating the alleged implementation of the plan as sufficient to foreclose examination of the statutory objection raised by the Appellant.

103. At the same time, we do not consider it appropriate to direct automatic approval of the Appellant's plan merely because the impugned order is found unsustainable. The Appellant's plan remains subject to the requirements of Sections 30 and 31, and this Tribunal cannot replace the statutory approval process with its own direction to approve a particular plan. The appropriate relief must therefore correct the procedural deficiency while ensuring that any consequential steps are taken in accordance with law and with due regard to the orders already passed in the CIRP.

104. We have examined the order dated 06.12.2023 passed by the Adjudicating Authority in I.A. Nos. 4997 of 2023, 5507 of 2023 and 4903 of 2023. The order records that Varsha Engineers, claiming to be an unsecured financial creditor of the Corporate Debtor, had approached the Adjudicating Authority on the ground that it had not been issued notices of CoC meetings or permitted to participate in them, despite its name appearing in the list of unsecured creditors uploaded on the IBBI website. Significantly, the order records that the Resolution Professional (RP) had been given liberty to file a reply but had not filed any reply till that date. The counsel appearing for the RP was also unable to provide reasons for not considering the claim of Varsha Engineers or issuing notices to it.

105. In view of the material placed on record, including the document showing Varsha Engineers as an unsecured creditor on the IBBI website, the Adjudicating Authority considered it appropriate to remit the matter to the CoC for reconsideration. It directed that Varsha Engineers be included in the CoC and that the resolution plan be reconsidered after taking into account its

claims and submissions. In I.A. No. 5507 of 2023, filed by Respondent No. 3, the Adjudicating Authority further directed the CoC to consider its proposal on merits and take a decision in accordance with law. Consequently, in I.A. No. 4903 of 2023, the Appellant's resolution plan, which had already been approved by the CoC with 100% voting share and was pending approval before the Adjudicating Authority, was also remitted to the CoC for reconsideration.

106. The absence of a reply from the RP is a relevant circumstance because it left the Adjudicating Authority without an explanation for the exclusion of Varsha Engineers. We have already noted that Varsha Engineers had already been classified as a related party in the minutes of the fourth CoC meeting and that its application was filed approximately eight months after that classification. As the reason for exclusion of Varsha Engineers as Related party was not brought to the notice of Ld. Adjudicating Authority, it solely relied on the submission of Varsha Engineer and vide its order dated 06.12.2023 directed its inclusion in the CoC. In the same order, relying on its decision in IA No.4997/2023, the Adjudicating Authority passed a direction in IA No. 4903 of 2023 filed by RP for approval of the resolution plan of appellant back to CoC for reconsideration. Again, relying on its findings in IA No. 4997 of 2023, that Varsha Engineers should be a member of CoC, the Adjudicating Authority in IA No.5507 of 2023, directed the CoC to consider the proposal of applicant (Varsha Engineers) on merits and take a decision as per law. If the RP had placed the correct position before the Ld. Adjudicating Authority, such consequential orders may not have been passed solely on the basis of stated claims of applicant (Varsha Engineers).

107. The Appellant relies upon Regulation 12(3) of the CIRP Regulations, which provides that the inclusion of a creditor in the CoC shall not affect the validity of decisions taken before such inclusion. We find merit in this contention of appellant. The reconstitution of CoC would not make the earlier decision of the CoC invalid as provided in Regulation 12(3).

108. In this regard, it is important to note that the Ld. Adjudicating Authority in their order dated 06.12.2023 in IA No. 5507 of 2023 had specifically recorded that ***'CoC is directed to also consider the proposal of the applicant on merits and take a decision as per law***.' The direction of Ld. Adjudicating Authority would therefore have required compliance with Regulation 12(3) also. However, the RP did not bring the Regulation to the notice of CoC.

109. In the order passed by Ld. Adjudicating Authority in IA No.3351 of 2024, on 03.07.2024, filed by the appellant herein, the Adjudicating Authority had made the following observation in para 7 of the order:

> *On 06.12.2023, this bench passed an order directing that the Applicant Unsecured Financial Creditor be included as a member of the CoC. In the said order no directions were given to the RP to consider the bid of any PRA (as claimed by the Applicant in this IA in prayer clause 'a').*

110. It is clear from the above that the Adjudicating Authority did not give any direction for reconsideration of any other proposal of any PRA. This decision was taken by RP and CoC after the reconstitution. What it means is that if such reconsideration was not specifically directed by the Ld.

Adjudicating Authority and it was in violation of Regulation 12(3), such decision would be in violation of the provisions of the Code.

111. The records show that the same comparative table showing the distribution under the competing resolution plans was used in the 11th and 14th CoC meetings. While the Appellant's plan was selected in the 11th meeting, Respondent No. 3's plan was subsequently selected after the CoC was reconstituted. The record indicates that Bank of Baroda's voting share was reduced to approximately 90.6%, while Varsha Engineers held approximately 9.4%. Despite retaining sufficient voting share to approve a resolution plan, Bank of Baroda subsequently voted in favour of Respondent No. 3's plan.

112. The change in outcome, despite substantially similar comparative information, warrants examination. The same facts were placed before the CoC regarding competing resolution plans. Bank of Baroda had 100% voting rights in the first occasion when the resolution plan of the appellant was approved and it had 90.4% voting share on the second occasion when the resolution plan of Respondent No.3 was approved. On both the occasions, Bank of Baroda was the deciding authority. If based upon the same information, an earlier decision is overturned without providing reasons for the same, such a decision cannot be upheld merely on the principle of supremacy of commercial wisdom of CoC. Particularly, when such a decision is also protected by Regulation 12(3) of the CIRP Regulations.

113. We further note that Section 30(5) permits a resolution applicant to attend the CoC meeting in which its resolution plan is considered, although

it does not confer a right to vote merely because the applicant has submitted a plan. The right to attend the relevant meeting is distinct from the right to vote. In the present case, the plans were placed for consideration at the 14th CoC meeting, but the Appellant was not invited. The RP's explanation that voting took place subsequently does not satisfactorily answer why the Appellant was not given the opportunity to attend the meeting in which the plans were placed for consideration.

114. We find this omission material. The Appellant's plan had previously been approved and was thereafter remitted for reconsideration. The subsequent process resulted in the selection of Respondent No. 3's plan and the displacement of the Appellant's plan. In these circumstances, the statutory opportunity to attend the meeting in which the Appellant's plan was considered could not be treated as a mere formality.

115. The subsequent approval of Respondent No. 3's plan by 100% voting share of the reconstituted CoC does not, by itself, cure the failure to establish compliance with Section 30(5). Commercial wisdom governs the CoC's assessment of the competing plans, but it cannot be invoked to dispense with a statutory procedural requirement.

116. We find that the order dated 06.12.2023 directed the inclusion of Varsha Engineers and reconsideration of the competing resolution plans. The RP's failure to file a reply in I.A. No. 4997 of 2023 was a relevant circumstance in the passing of orders in relevant IA's which were based solely on the contention of Varsha Engineers. The subsequent action of CoC was clearly in violation of Regulation 12(3) of CIRP Regulation, whereas the Adjudicating

Authority had clearly stated that the proposal of Respondent No. 3 be considered on merits and as per law.

117. On the material before us, the plans were placed for consideration at the 14th CoC meeting held on 15.02.2024, but the Appellant was not invited to attend. The RP's reliance upon notice of the subsequent meeting does not satisfactorily establish compliance with Section 30(5). The impugned order dated 29.08.2024 primarily relies upon the commercial wisdom of the reconstituted CoC and does not adequately address this statutory objection.

118. We are therefore of the view that the reconsideration of the plan of Respondent No. 3 was done in violation of the Code. All the relevant material facts were not brought to the notice of Ld. Adjudicating Authority which approved the plan solely on the basis of supremacy of commercial wisdom of CoC.

119. As noted earlier, Hon'ble Supreme Court in *Ebix Singapore Pvt. Ltd. (supra),* held that the resolution plan, upon approval by the CoC, attains binding contractual force between the parties, and neither party can unilaterally withdraw from it. This principle has been subsequently reaffirmed by the Hon'ble Supreme Court in its latest judgment in *Bank of India v. S.M. Kamal Pasha (supra),* holding that the CoC cannot resile from its commitment merely due to a subsequent change in circumstances.

120. Respondent No.3 has relied upon several judgments of this Appellate Tribunal in support of his contentions. They have been discussed in detail in subsequent paras.

121. The judgments in ***Jayanta Banerjee v. Shashi Agarwal, Liquidator of INCAB Industries Limited & Anr., Company Appeal (AT) (Ins.) Nos. 348 and 720 of 2020***, decided on 04.06.2021, and **Hindalco Industries Limited v. Hirakud Industrial Works Limited & Ors., Company Appeal (AT) (Ins.) Nos. 42, 43, 52 and 53 of 2022,** decided on 09.01.2023, do not, by themselves, support the conclusion that the procedure followed in the present case was valid. Those decisions emphasise that the commercial wisdom of the CoC cannot cure a fundamental defect in its constitution or override mandatory statutory requirements. The present case, however, requires examination of the effect of the order dated 06.12.2023, whereby the Adjudicating Authority directed the inclusion of Varsha Engineers in the CoC and remitted the Appellant's resolution plan for fresh consideration, while also directing that Respondent No. 3's proposal be considered on merits. The question is not merely whether the CoC could reconsider the plans following a change in its composition, but whether the subsequent process was conducted in accordance with the aforesaid directions and the applicable provisions of the Code. These judgments, therefore, cannot be relied upon to justify a process that otherwise fails to comply with the statutory requirements or the directions of the Adjudicating Authority. At the same time, they do not establish that the Appellant's plan must automatically be approved; the legality of the subsequent process must be determined on its own facts.

122. The decision in **Dauphin Cables Private Limited v. Praveen Bansal, Resolution Professional & Ors., Company Appeal (AT) (Ins.) Nos. 634–636**

**of 2023**, decided on 18.05.2023, does not advance Respondent No. 3's case beyond the limited proposition that a change in the classification of a creditor and the consequent restructuring of the CoC may require reconsideration of a resolution plan. The said principle is not disputed. However, a direction to reconstitute the CoC and re-examine a resolution plan does not dispense with compliance with the statutory procedure governing such reconsideration. In the present case, the order dated 06.12.2023 must be read as a whole, and the subsequent proceedings must be examined to determine whether the plans were reconsidered in accordance with its directions and whether the Appellant was afforded the opportunity required under Section 30(5) of the IBC to attend the CoC meeting in which its resolution plan was considered. The judgment in Dauphin Cables cannot be construed as conferring an unrestricted power upon the CoC to disregard the prescribed procedure or the rights available to a resolution applicant under the Code.

123. The decision in **Boorugu Infra Projects Private Limited in Consortium with Vishwanath Projects Limited & Anr. v. Birendra Kumar Agarwal, Resolution Professional of M/s Manjeera Retail Holding Private Limited & Ors., Company Appeal (AT) (CH) (Ins.) Nos. 342 and 343 of 2024**, decided on 20.12.2024, is distinguishable on facts. In that case, the Appellant's resolution plan had been rejected by the CoC, and the rejection had not been challenged.

124. In view of the findings above, the impugned order dated 29.08.2024 passed by the Adjudicating Authority in I.A. No. 34 of 2024 in C.P. (IB) No.1057/MB-IV/2021 is set aside. The second appeal, being CA (AT) (Ins.)

No.1667 of 2024 is disposed of as infructuous. The third appeal Contempt Case (AT) No.7 of 2025 in CA (AT) (Ins.) No.1798 of 2024 is also dismissed as the matter has been finally decided. The IA No.4903 of 2023 vide which the resolution plan submitted by appellant was placed for approval stands revived. Ld. Adjudicating Authority is directed to take a final decision on approval of resolution plan within a period of one month from this order. Pending IA's, if any, are closed. There shall be no order as to costs.

**[Justice Sharad Kumar Sharma]**
**Member (Judicial)**

**[Arun Baroka]**
**Member (Technical)**

**[Indevar Pandey]**
**Member (Technical)**

**Place: New Delhi**

*Harleen/*
*Pragya (LRA)*