

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 553 of 2019

[Arising out of an order dated 9th May, 2019 passed in I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad)]

IN THE MATTER OF:

1. IDBI BANK

Through its authorised signatory,
IDBI Tower, WTC Complex,
Cuffe Parade,
Mumbai- 400 005

.. Appellant

VERSUS

1. MS. MAMTA BINANI

Resolution Professional,
Deccan Chronicle Holdings Limited
2A, Ganesh Chandra Avenue,
Commerce House,
4th Floor, Room No. 6
Kolkata- 700 013.

.. Respondent No. 1

**2. VISION INDIA FUND-SREI MULTIPLE
ASSET INVESTMENT TRUST**

Vishwakarma, 86C, Topsia Road (South)
Kolkata – 700 046

.. Respondent No. 2

3. COMMITTEE OF CREDITORS

Through Canara Bank
3-5-879, Old MLA Quarters Road,
Narayanguda Andhra Pradesh,
Hyderabad, Telangana-500 029

.. Respondent No. 3

Present:

For Appellants: Mr. Abhinav Vasisht, Sr. Advocate with Mr. Sidhartha Barua, Ms. Priya Singh, and Mr. Praful Jindal, Advocates.

For Respondents: Mr. Abhijeet Sinha, Ms. Mamta Binani, Mr. sidhartha Sharma, Mr. Arjun Asthana and Mr. Saikat Sarkar, Advocates for R-1

Mr. Rishav Banerjee and Mr. Saptarshi Mandal, Advocates for R-2

Mr. Dhruv Mehta, Sr. Advocate, with Mr. PBA Srinivasan, Mr. Keith Varghese, Mr. Parth Tandon and Ms. Prerna Sabharwal, Advocates for R-3

Mr. Arvind Nayar, Sr. Advocate with Mr. Amit Mahliyan, Advocates for Kotak Mahindra Bank.

Mr. Rajshekhar Rao, Sr. Advocate with Mr. Zeeshan, Mr. Satwik Misra, Ms. Meerunissa Anand, Ms. Gunjan Dogra and Mr. Yash Vardhan, Advocates for Intervenor.

Mr. Akshat Hansari along with Mr. Tanmay Arora, Advocates for ICICI

J U D G M E N T

[2nd September, 2022]

(Per Hon'ble Mr. Justice M. Satyanarayana Murthy)

This appeal, under Section 61 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as '**IBC**'), has been filed challenging the order dated 9th May, 2019 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad (hereinafter referred as '**Adjudicating**

Authority’) in I.A. No. 24 of 2019 in Company Petition(IB) No. 41/7/HDB/2017.

2. The Appellant is a member of Committee of Creditors (hereinafter referred as ‘**CoC**’) and a Financial Creditor of Deccan Chronicle Holdings Ltd. (“**Corporate Debtor**”). The Appellant filed an Application before the Adjudicating Authority contending that the Resolution Plan dated 11.12.2018 submitted by Vision India Fund, a scheme floated by SREI Multiple Asset Investment Trust (“**Resolution Applicant**”) is illegal and discriminatory and in violation of the Code and other applicable law.

3. It is contended that the Adjudicating Authority passed the order erroneously dismissing the Application filed by the Appellant based on erroneous appreciation of facts and law, and committed an error apparent on the face of record and also arrived at a conclusion without recording specific finding on specific issue raised by the Appellant, specific grounds are as follows:

- a) The order has been passed ignoring the provision of IBC and settled principle of law and the Resolution Plan discriminating inter-se the Financial Creditor in the treatment of their respective claims. The Resolution Plan is also in direct violation of the order dated 14.11.2108 passed in “**Rajputana Properties Limited v. Binani Industries Limited**” and Company

Appeal(AT)(Insolvency) No. 82 of 2018 which was affirmed by the Hon'ble Apex Court in its order dated 19.11.2018.

- b) In the earlier Plan the Resolution Applicant had offered an amount of Rs. 50 Crores to the Appellant which is now reduced to a substantial amount for no reason and grossly discriminated the Financial Creditor – the Petitioner before the Adjudicating Authority. The offered amount to the Appellant in the Resolution Plan is only 3.9% of the total cash payment, despite the Appellant having 6.71% of the total outstanding admitted financial debt against the Corporate Debtor. As such the Financial Creditor has to receive less than the pro-rata entitlement. Therefore, the discriminatory treatment of this Appellant in offering the amount is serious illegality.
- c) The Resolution Plan ex facie discriminatory among inter-se Financial Creditors and not treated the Financial Creditors equally, who are placed on the same footing. Therefore, the order is nonest and liable to be set aside at the threshold. It is also contended that categorization of the Financial Creditors as category 'A' and 'B' is not based on any material and such identification of 'A' and 'B' categories is illegal. Apart from that, the A Category Financial Creditors are inferior and has no security in the assets, was created in their favour.

- d) The finding of the Adjudicating Authority that the Appellant is having security interest of lower in value than held by the other Financial Creditor without determining the amount of the security interest of the Appellant is prima facie erroneous.
- e) The classification of the Financial Creditors as 'A' & 'B' categories based on the security interest created in their favour is an erroneous appreciation of facts and the Adjudicating Authority failed to consider the exact value of financial security created in favour of Appellant and other categories, discriminated in the offer made to this Appellant and that the Resolution Plan is not in conformity with Section 30(2) of IBC though it is mandated as per judgment of Apex Court in "***Arcelormittal India Private Limited v. Satish Gupta and Ors.***"¹ . Thus the Adjudicating Authority committed grave error in dismissing the petition filed by the Petitioner questioning the basis of allotment of share of amount in the approved Corporate Insolvency Resolution Plan (hereinafter referred as '**CIRP**') and requested to set aside the order passed by the Adjudicating Authority and allow the Application setting aside the Resolution Plan

¹ Civil Appeal Nos. 9402-9405 of 2018

4. The Resolution Professional – Ms. Mamta Binani, Respondent No. 1 herein, filed Reply Affidavit raising several objections while denying the material grounds raised in the Appeal. The acceptance of Resolution Plan is purely within the domain of CoC which has approved the Resolution Plan with an overwhelming majority of 81.39% affirmative votes. Therefore, acceptance of the Plan is based on commercial wisdom, same cannot be set aside. The Respondent No. 1 diligently complied the requisites of Section 30(2) of IBC before presenting the Resolution Plan for its approval as evident from the order dated 03.06.2019 by Adjudicating Authority at Hyderabad. After compliance of Section 30(3) by Respondent No. 1, the Resolution Plan has been approved by CoC by majority of 81.39% vote.

5. Section 30(2)(e) of IBC does not empower Resolution Professional to decide whether the Resolution Plan does or does not contravene the provision of law, it only means that he/she will have to give prima facie opinion to the CoC that law has or had not been contravened in view of law declared by Hon'ble Apex Court in the case of "**Arcelormittal India Private Limited v. Satish Gupta and Ors**" referred supra.

6. The duties of Resolution Professional- 1st Respondent were highlighted by the Hon'ble Supreme Court in the case of "**Swiss Ribbons & Anr. Vs. Union of India & Ors.**"² and 1st Respondent acted strictly in

² (2019) 4 SCC 17

7. Canara Bank, filed Reply Affidavit, inter alia contending that the Resolution Plan envisaged the condition for each of the Financial Creditors in category-‘B’ lenders had exclusive security interest in the manner specified in Exhibit ‘E’ of the Resolution Plan on the assets of the Respondent No. 1. It is pertinent to mention here that in the Resolution Plan, it is specifically mentioned that the Corporate Debtors shall categorize each of the Financial Creditors Category-‘B’ & ‘A’ lenders without any further documentation to deal with the respective assets on which they have exclusive charge in such manner as they deem fit at their own cost and expenses without any recourse to the Corporate Debtor or the Special Purpose Vehicle or the Resolution Applicant.

³ Civil Appeal No. 10673 of 2018, (2018) 1bcLaw.in 31 SC

8. It is further contended that on 09.07.2018, the Resolution Plan was re-submitted by Resolution Applicant for CoC voting which was rejected for want of requisite percentage of votes. Therefore, the Resolution Applicant resubmitted the Resolution Plan on 11.12.2018, wherein the allocation of funds was done on the basis of categorization of the Financial Creditors into Financial Creditor Category-‘A’ and Category –‘B’. The said category was allocated by the Resolution Applicant due to lack of consensus amongst the members of the CoC. The allocation was made among the Financial Creditors based on security interest held by each Financial Creditor. The Financial Creditor based on security in their favour were categorized in two categories i.e. Category ‘A’ and Category ‘B’.

9. Canara Bank is not Resolution Applicant but one of the Financial Creditors, who, however filed I.A. No. 252 of 2018 and sought direction against the Resolution Professional to consider the liquidation value attributable to Financial Creditor on priority charge basis and placed revised claim filed on 30.06.2018 for approval by the Resolution Professional before the CoC again for voting which was allowed by the Adjudicating Authority vide order dated 06.08.2018 directing the Resolution Professional to place revised claim submitted by Financial Creditor i.e. on priority charge basis before the CoC for consideration.

10. It is specifically contended that the Hon'ble Apex Court in "**K. Sashidhar Vs. Indian Overseas Bank & Ors.**" referred supra, made an observation that if objection to the Resolution Plan is on account of infraction of grounds specified in Sections 30(2) and 61(3) that must be specified and expressly raised at relevant time. The approval of Resolution Plan can be challenged only on those grounds. Moreover, the proposed Resolution Plan is purely a commercial or business decision, the same being non justiciable, is not open to challenge before the Adjudicating Authority or before this Tribunal. The Respondent also further contends that CoC has taken due care in allotment of voting percentage but the Respondent was relying on the common amended Section 216. The Respondent contended that threshold voting of 66% was in accordance with the provision specified in IBC as the same was prior to amendment dated 17.08.2018 which reduced the voting percentage to 51%. The categorization of Financial Creditor into Category 'A' and 'B' was not discriminatory inter-se and the same was explained, contending that it was based on the value of security interest created in favour of individual Financial Creditor.

11. It is specifically contended by the Respondent that in the Minutes of 20th Meeting of the CoC, it has been duly recorded that the Appellant herein has serious objection which are mentioned as under:

“IDBI raised question that the RA has not given any basis of distribution in the Resolution Plan or to CoC members, to which the PA displayed the reply given by the RA dated 28.09.2018...

IDBI then asked the CoC legal counsel whether it has seen that Plan is discriminatory or not and why is this question not being dealt with by the legal counsel and also mention to Mr. Mishra to specifically examine in terms of its legal validity...”

12. It is further stated that the objections raised by the Appellant were discussed and the CoC rejected the objections of the Appellant in 20th Meeting of CoC as the Resolution Plan was legally complied as under:

“Mr. Mishra mentioned that as a legal counsel of the CoC, it has given the legal clearance to the Resolution Plan dated 20.11.2018 from a legal perspective and said to IDBI that the 2 clauses that has been specifically mentioned by IDBI has also been looked into and it is legally compliant.”

13. Therefore, the contention of the Appellant that it was discriminated is without any basis.

14. It is further contended that the approval of Resolution Plan by CoC is purely a commercial decision taken by CoC and the same cannot be interfered either by Adjudicating Authority or by this Tribunal, since it was accepted in the 20th CoC Meeting dated 10.12.2018 with approved majority

of 81.39%. The Respondent admitted that Memorandum of Understanding dated 30.05.2014 executed between the Axis Bank, Canara Bank, ICICI Bank Ltd., IDBI Bank Ltd., IDFC Ltd., Kotak Mahindra Bank Limited wherein the parties agreed as follows:

“1. Sale of Trademarks:

(a) The Parties hereby agree for sale of Trademarks namely “Deccan Chronicle”, “Andhra Bhoomi”, “The Asian Age” and “Financial Chronicle” without recourse to the legal process; i.e. either through a fresh tendering process in exercise of the powers conferred on IBI Bank under a power of attorney executed in its favour or through such other process/procedure as may be mutually decided by the Parties.

(b) The sale process shall include fresh valuation of Trademarks, invitation of fresh tenders etc. and each such steps shall be decided by the Parties in consultation and in agreement with each other.

(c) The Parties agree that sale of Trademarks and realization of their value shall be without prejudice to the existing rights, claims and interest of each of the Parties and the proceeds of sale shall be deposited in a designated escrow account with a third party bank as mutually agreed among the Parties. It is further agreed that nothing contained in this MOU is intended or meant to alter, modify and impair any of the rights, claims, interest of the Parties against the Company under their respective Financing Documents.”

15. The Appellant is a dissenting Creditor in the 20th Meeting of CoC and thereby the Appellant is not entitled to challenge the Resolution Plan approved by CoC, so also Adjudicating Authority, consequently, the Appellant is not entitled to claim any relief in the present appeal, requested to dismiss the appeal in toto.

16. During hearing, learned Sr. Counsel, Mr. Abhinav Vasisht, contended that the Appellant is having security interest in the property, higher in value than the security interest created, in favour of other secured Creditors thereby, the claim of Respondent No. 1 is not considered by the CoC and the Adjudicating Authority erroneously. However, the Appellant was discriminated in offering 3.9% of amount. Such discriminatory treatment of the Appellant is a serious illegality which vitiates the entire Resolution Plan and therefore the order in I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 is liable to be set aside.

17. Learned Counsel for 1st Respondent-RP contended that the order passed by Adjudicating Authority is in accordance with law and that the Appellant being dissenting Creditor is incompetent to question the Resolution Plan on any ground when it was approved by CoC and Adjudicating Authority, as it was in compliance with the legal provisions contained under Section 30 IBC and Regulation 38 of Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. Apart from that the Appellant being dissenting Creditor cannot challenge the Resolution Plan on any of the grounds, since, the Resolution Plan was approved by CoC in its commercial wisdom and is purely a commercial decision with a majority of 81.39% of voting. As such, commercial decision taken by CoC is not subject to review by Adjudicating Authority or by this Tribunal.

18. Whereas, Mr. Dhruv Mehta, learned Sr. Counsel vehemently contended that the Appellant being a dissenting Creditor is not entitled to question the commercial wisdom of CoC in approving the Resolution Plan submitted by Vision India Fund-SREI Multiple Asset Investment Trust-Resolution Applicant, relying upon several decisions, which will be referred to at an appropriate stage, while deciding the real controversy.

19. Learned Counsel for the other Respondents supported the order impugned in the appeal and they also filed their Written Submissions which will be referred to at an appropriate stage, while deciding the real controversy. However, Octopus Production Private Limited, Intervenor is sailing with the Appellant, requested to send back the Resolution Plan to CoC.

20. Considering the rival contentions, the points need be answered by this Tribunal are as follows:

- a) Whether the Appellant is entitled to claim relief under Section 60(5) when the Resolution Plan was approved and attained finality?**
- b) Whether the Appellant being dissenting secured Creditor is competent to challenge approval of Resolution Plan by filing the instant Appeal?**
- c) Whether the alleged discrimination overrides the commercial wisdom of the CoC, if so, the order passed by the Adjudicating Authority I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 is liable to be set aside.**

POINT NO. 1:

21. Admittedly, the Appellant is one of the Secured Financial Creditor but the major contention of the Appellant before the CoC is that the Appellant is having higher value security interest as the trademarks are hypothecated to this Appellant by executing Deed of Hypothecation and irrecoverable General Power of Attorney. Therefore, the Appellant got priority but the CoC divided the secured Financial Creditors into two categories and the Appellant was placed in category-A, who is not given priority in payment of debt.

22. Learned Sr. Counsel for the Appellant Mr. Abhinav Vasisht has drawn the attention of this Tribunal to the objections raised in the CoC meeting held on 12.05.2018 and the 1st Resolution Plan was submitted as

against which, he again raised objection in 12th CoC meeting dated 14.06.2018 about the categorization of A & B Secured Financial Creditors. However, on 09.07.2018, Respondent No. 3 resubmitted earlier Resolution Plan for CoC voting which was rejected, as 43.85 % of the CoC members did not vote in its favour. On the next date itself i.e., on 10.07.2018, the Respondent No. 3 made changes in the earlier Resolution Plan and modified the Resolution Plan, offering certain select Financial Creditors disproportionately admitted claims and pro-rata entitlement. Again the same was placed before the 13th CoC meeting on 22.06.2018 but it was not approved. Finally, in 20th CoC meeting which was held on 10.12.2018, the Appellant again objected the discrimination in the Resolution Plan and sought independent legal opinion on its legality. However, such suggestion was disregarded by the Resolution Professional and other Members of COC. The Minutes of 20th CoC meeting evidenced that the Resolution Professional breached the statutory obligation under Section 30(2) of IBC as it failed to provide priority to the Secured Creditors in the Resolution Plan, in compliance of IBC and bypassing such duty on to the CoC, thus failed to verify and confirm whether the Resolution Plan is in compliance of Section 30(2) of IBC and thereby committed serious error. Moreover, on 06.12.2018 and 12.12.2018, the Appellant addressed letters to the Resolution Professional reiterating apprehension against the legality of the Resolution Plan being discriminatory and contrary of law, but this

objection was not taken into consideration but approved the Resolution Plan in 20th CoC meeting.

23. Admittedly, the Appellant did not challenge the approved Resolution Plan before this Appellate Authority invoking Section 61 of IBC. The Appellant again invented a devise under Section 60(5) IBC to challenge approved plan by CoC and Adjudicating Authority, circumventing law without any basis.

24. It is undoubtedly clear that the Appellant did not vote in favour of the Resolution Plan but it was approved by a majority of 81.39 % by the CoC and the same was approved by the Adjudicating Authority vide order dated 09.05.2019 passed in I.A. No. 24/2019 in Company Petition (IB) No. 41/7/HDB/2017. The approval of the Resolution Plan was not challenged on any count by the Appellant-IDBI as on date, but, circumventing the law, invented a devise, filed an Application under Section 60(5) of IBC to pass appropriate order without assailing the approved Resolution Plan, contending that the Resolution Plan dated 11.12.2018 is discriminatory and not in compliance with the provisions of IBC. The Adjudicating Authority rejected the claim of the Appellant on various grounds.

25. Once the Resolution Plan was approved by CoC and thereafter by Adjudicating Authority, the same cannot be withdrawn or modified by inventing devise under Section 60(5) of IBC as held by Hon'ble Apex Court

in “**Committee Of Creditors Of Essar Steel India Limited vs Satish Kumar Gupta**”⁴ since the proceedings under IBC are time bound. In the recent judgment of the Hon’ble Apex Court in “**Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Anr.**”⁵ the Hon’ble Supreme Court held as follows:

“that a submitted resolution plan is binding and irrevocable as between the Committee of Creditors (“CoC”) and the successful resolution applicant in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC”) and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. (“CIRP Regulations”) and that once the resolution plan is approved by the CoC and submitted to the adjudicating authority; the successful resolution applicant cannot withdraw or modify the resolution plan”

26. Keeping in view of the law laid down by the Hon’ble Apex Court, now we shall examine the rival contentions of the parties.

27. Admittedly, the Resolution Plan was approved by the CoC with a majority of 81.39 %, voting which is in compliance of Section 30(2) of IBC

⁴ (2002) 8 SCC 531

⁵ Civil Appeal No. 3224 of 2020

and later, the Resolution Plan was approved by the Adjudicating Authority, vide order dated 09.05.2019 passed in I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 and attained finality, since, it was not challenged by the Appellant herein. Though the Appellant gave dissent during 20th Meeting of CoC and addressed letter dated 06.12.2018 and 12.12.2018, i.e., subsequent to approval of Resolution Plan by CoC, those letters are of no help to the Appellant. Those letters cannot be taken into consideration when the plan was approved by CoC and Adjudicating Authority. In case, any error or illegality is found, it is the duty of the Adjudicating Authority to send back Resolution Plan for reconsideration by CoC. But no illegality or contravention of provisions of IBC was found by Adjudicating Authority and as such approved the Resolution Plan.

28. If for any reason, I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 is allowed, it amounts to setting aside the Resolution Plan indirectly or modification of the plan directly. Therefore, filing of such Application under Section 60(5) is nothing but an abuse of process of law and it cannot be a device to delay the proceeding under IBC. When the Resolution Plan is approved and attained finality, the same cannot be altered or modified or withdrawn in view of the law declared in “***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Anr.***” referred supra. Keeping in view the law laid down by the Hon’ble Apex Court, we have no hesitation to hold that the Appellant is not entitled

to claim any relief in the present Appeal as the Resolution Plan was already approved and attained finality. On this ground alone, the Appeal is liable to be dismissed. Accordingly, the point is held against the Appellant and in favour of the Respondents.

POINT NO. 2:

29. One of the main contentions of the Appellant is that the Appellant did not agree with the approval of the Resolution Plan in the CoC and raised certain objections both in 12th and 20th CoC meetings, still Resolution Plan was approved by the CoC. Even after approval, the Appellant addressed letters on 06.12.2018 and 12.12.2018 to Resolution Professional raising a contention of discriminatory treatment of the Appellant in payment of proportionate share etc. Thus, it is clear from the allegations made in the Grounds of Appeal and in the contentions raised before the Adjudicating Authority, the Appellant is a dissenting Creditor, admittedly. The Hon'ble Apex Court in **"Indian Resurgence ARC Private Limited v. M/s Amit Metaliks Limited & Anr."**⁶ held that a dissenting secured creditor cannot challenge an approved Resolution Plan in IBC and insist for payment of higher amount to it on the basis of security interest held by it over the Corporate Debtor. It was further held that in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.

⁶ Civil Appeal No. 1700 of 2021, (2020) 8 SCC 53

30. In another judgement **“Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and others”**⁷ the Hon’ble Apex Court made it clear that a dissenting financial creditor would receive the payment of the amount as per his entitlement, and that the entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. It had never been laid down that if a dissenting financial creditor had security available with him, he would be entitled to enforce the entire security interest or to receive the entire value of the security available with him. His dealing with the security interest would be conditioned by the extent of value receivable by him. It was held by the Hon’ble Supreme Court that the financial proposal in the Resolution Plan forms the core of the business decision of the CoC.

31. In view of the principle laid down in the above two judgments, when the Appellant is dissenting Creditor, Appellant is not competent to challenge the approved Resolution Plan and file an Appeal under Section 61 of IBC before this Tribunal. Applying the principle laid down in the above judgments, we hold that the Appellant being a dissenting secured Financial Creditor is not entitled to challenge Resolution Plan on the ground of discrimination by filing separate Interlocutory Application

⁷ Civil Appeal No. 3395 of 2020, (2022) 1 SCC 401

without challenging the approved Resolution Plan. Accordingly, the point is held against the Appellant and in favour of the Respondent.

POINT NO. 3:

32. One of the contentions of the Counsel for the Appellant is that no priority was given for payment of debt, though, the security interest created in its favour is more valuable and no security interest was created in favour of Canara Bank, whereas, Mr. Dhruv Mehta, learned Sr. Counsel for Respondent No. 3 and learned Sr. Counsel, Shri Dutta contended that once, the Resolution Plan is approved by CoC and by the Adjudicating Authority recording its satisfaction of compliance of Section 30(2)(4) in an Application filed under Section 31 of IBC it can't be set aside. At best the duty of the Resolution Professional is to follow the procedures prescribed under Section 30(2) IBC. According to Section 30(2) of IBC, the Resolution Professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan provides for 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, 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 the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under Section 53 or 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. The explanations 1 & 2 annexed to it clarifies that a distribution in accordance with the provisions of this clause shall be fair and equitable to such Creditors. According to sub-clause 4, the CoC may approve the Resolution Plan by voting not less than 66% of voting share of the financial Creditor after considering its feasibility and viability, the manner of distribution proposed, which may take into consideration, the order of priority amongst the Creditors as laid down under Section 53(1) including the priority and value of security interest of the secured Creditors and such other requirements as may be specified by the Board.

33. In the instant case, Resolution Professional examined the Resolution Plan received, on the touch stone of Section 30(2), placed before the CoC, after satisfying itself about compliance of Section 30(4), approved the Resolution Plan. Thereupon, the Resolution Professional filed Application I.A. No. 24/2019 in C.P.(IB) No. 41/7/HDB/2017 under Section 31 of IBC for approval of the Resolution Plan. The Resolution Plan was approved by Adjudicating Authority with a rider. Though the approval is subject to the outcome of result of I.A. No. 155 of 2018, since, the Plan is not under challenge, this Tribunal need not examine the legality of the order passed in I.A. No. 24/2019.

34. Viewed from any angle, the Resolution Plan was approved by CoC and Adjudicating Authority, as the Plan satisfied the legal requirement

under IBC. The main endeavour of Mr. Dhruv Mehta, learned Sr. Counsel for the Respondent No. 3 is that when CoC approved the Resolution Plan taking a commercial decision, the same cannot be challenged by way of an Appeal and drawn attention of this Tribunal the judgment in “**Committee Of Creditors Of Essar Steel India Limited vs Satish Kumar Gupta**” referred supra wherein the Hon’ble Supreme Court held that it was beyond shadow of doubt that approval of the Resolution Plan fell within the domain of commercial wisdom of CoC and the scope of judicial review was limited to the four corners of Section 30(2) and 61(3) of IBC. In another judgment “**Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and others**” reiterated the same principle. In case of “**K. Sashidhar Vs. Indian Overseas Bank & Ors.**” and “**Maharashtra Seamless Ltd. V. Pandmanabhan Venkatesh & Ors.**”⁸ expressed the same view by Hon’ble Apex Court.

35. In “**Pratap Technocrats (P) Ltd. vs. Monitoring Committee of Reliance Infratel Ltd**”.⁹ held that jurisdiction of Adjudicating Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Under the Indian insolvency regime, it appears that a conscious choice has been made by

⁸ CIVIL APPEAL NOS. 4967-4968 OF 2019

⁹ Civil Appeal No 676 of 2021 (2021) 10 SCC 623

the legislature to not confer any independent equity-based jurisdiction on the Adjudicating Authority other than the statutory requirements laid down under Section 30(2) of the IBC.

36. In the Judgment “**Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Anr.**” held, in a commercial decision taken by CoC, while accepting the Resolution Plan by their commercial wisdom, it cannot be interfered.

37. The commercial wisdom of CoC is supreme all safeguards are provided to such commercial decision vide “**Vallal RCK Vs. Siva Industries Ltd**”¹⁰ dated 03.06.2002.

38. On overall consideration of law laid down in various judgments referred above, it is clear that this Tribunal does not have power of judicial review, when the decision taken by CoC in compliance of Section 30(2) and Regulations 37 & 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. Even this Tribunal is also not entitled to interfere with such decision, except where the approved Resolution Plan is contrary to the provision of IBC or any other law which would fall within Section 61(3) of IBC. But here the approved Resolution Plan is not under challenge before this Tribunal but an order dated 9th May, 2019 passed in I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 is under challenge. Therefore, this Tribunal need not

¹⁰ CIVIL APPEAL NOS. 18111812 OF 2022

advert to the findings recorded in the order under Section 31 of IBC, by the Adjudicating Authority which attained finality long ago. Moreover, it is evident from the material on record that the Appellant IDBI filed I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 circumventing the law to get appropriate relief but the very filing of such Application is nothing but an abuse of process of law. Therefore, we find no merit in the contentions of learned Senior Counsel for the Appellant and the appeal is devoid of merits. Consequently, the Appeal is liable to be dismissed.

39. In view of the foregoing discussions, we find no grounds warranting interference with the order under challenge passed by the Adjudicating Authority dated 9th May, 2019 passed in I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 and the Appeal is liable to be dismissed.

40. In the result Appeal is dismissed, confirming the order passed in I.A. No. 24 of 2019 in C.P.(IB) No. 41/7/HDB/2017 dated 19th May, 2019.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Barun Mitra]
Member (Technical)

NEW DELHI

A/c