2023 INSC 1013

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1527 OF 2022

RAMKRISHNA FORGINGS LIMITED … APPELLANT

VERSUS

RAVINDRA LOONKAR, RESOLUTION PROFESSION OF ACIL LIMITED & ANR.[1] … RESPONDENTS

R1 : Ravindra Loonkar, Resolution Profession(al) of ACIL Limited

R2 : Committee of Creditors of ACIL Ltd.

[1] Cause-title should correctly include 'Resolution Professional' instead of '*Resolution Profession*'.

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. The present appeal under Section 62[2] of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") is directed against the Judgment dated 19.01.2022 (hereinafter referred to as the "Impugned Judgment") passed by the National Company Law Appellate Tribunal (hereinafter referred to as the "NCLAT") in Company Appeal (AT)(Ins) No.845 of 2021 which has upheld the order passed by the Adjudicating Authority (National Company Law Tribunal[3]) [hereinafter referred to as the "Adjudicating

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[2] '***62. Appeal to Supreme Court***.—*(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.*

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.'

[3] The National Company Law Tribunal is a creature of Section 408 of the Companies Act, 2013. Under Section 60 of the Code, it has been designated as the Adjudicating Authority for corporate persons.

Authority-NCLT" or "Adjudicating Authority" or "NCLT"], Principal Bench dated 01.09.2021 by which the application seeking approval of a Resolution Plan for ACIL Limited (hereinafter referred to as either "ACIL" or the "Corporate Debtor") being I.A. No.1636 of 2019 in CP(IB) No.170(PB)/2018 (hereinafter referred to as the "Approval Application") was kept in abeyance while directing the Official Liquidator (hereinafter referred to as the "OL") to carry out a re-valuation of the assets of the Corporate Debtor and to provide exact figures/value of the assets and exact valuation details.

BRIEF FACTS:

3. ACIL is a manufacturer of precision engineering and automobile components, namely crankshafts for tractors, HCVs, LCVs as well as two-wheelers, as also connecting rods, steering knuckles and hubs. It was the subject-matter of a

Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) which was initiated on an application filed by IDBI Bank Ltd. Mr. Ravindra Loonkar was appointed as the Interim Resolution Professional and subsequently confirmed as the Resolution Professional (hereinafter referred to as the “RP”) by the NCLT under order dated 16.10.2018. Against the total claim filed for about Rupees one thousand eight hundred and thirty crores, the amount of admitted claim in the CIRP was Rupees one thousand seven hundred and eighty-two crores.

4. The RP published Expression of Interest on 15.10.2018 which was subsequently revised on 31.10.2018, 28.01.2019 and 13.02.2019. The appellant-Resolution Applicant (hereinafter referred to as the “appellant”) submitted its first Resolution Plan on 11.04.2019 providing to pay Rupees seventy-four crores to all the stakeholders including Rupees sixty-three and a

half crores to Financial Creditors (hereinafter referred to as the “FC(s)”). After a series of negotiations, the appellant submitted an Addendum to its Resolution Plan on 21.05.2019 by raising the payment to FC(s) to Rupees seventy-three crores and eighteen lacs. On and at the request of the Committee of Creditors (hereinafter referred to as the “CoC”), once again, the appellant submitted a Revised Plan on 27.05.2019 wherein the total pay-out was Rupees eighty crores and fifty-five lacs and the FC(s) were to be paid Rupees seventy five crores and forty-two lacs. The final Resolution Plan was submitted on 05.08.2019, in which the financial proposal/total pay-out was increased to Rupees one hundred twenty-nine and a half crores and FC(s) were to get upfront payment of Rupees eighty crores and forty-four lacs. This Resolution Plan further provided that proceeds from the monetization of

the land situated at Manesar will go to the FC(s).

5. This final Resolution Plan submitted by the Appellant-Resolution Applicant on 05.08.2019 was finally approved by the CoC on 14.08.2019 by a majority of 88.56% votes. In terms of such approval of the Resolution Plan by the CoC, the RP moved Approval Application under Sections 30(6)[4] and 31[5] of the Code seeking approval of the

[4] '***30. Submission of resolution plan***.—
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(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.'

[5]'***31. Approval of resolution plan***.—*(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan:*

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

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

(a) the moratorium order passed by the Adjudicating Authority under Section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

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

Resolution plan before the Adjudicating Authority-NCLT on 16.08.2019. In terms of the Resolution Plan, for which approval was being sought, ACIL would be allowed the benefit of carrying forward its losses in terms of Section 79[6] of the Income Tax Act, 1961.

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or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in Section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.'

[6] '***79. Carry forward and set off of losses in case of certain companies***.*—(1) Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent. of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent. of the voting power on the last day of the year or years in which the loss was incurred:*

Provided that even if the said condition is not satisfied in case of an eligible start up as referred to in Section 80-IAC, the loss incurred in any year prior to the previous year shall be allowed to be carried forward and set off against the income of the previous year if all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of ten years beginning from the year in which such company is incorporated.

(2) Nothing contained in sub-section (1) shall apply,—

(a) to a case where a change in the said voting power and shareholding takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift;

(b) to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent. shareholders of amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company;

(c) to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;

6. This ultimately resulted in the order dated 01.09.2021, by which the approval of the Resolution Plan was kept in abeyance and the OL was directed to provide exact figures/value of assets. The same was carried in appeal under

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(d) to a company, and its subsidiary and the subsidiary of such subsidiary, where,—

(i) the Tribunal, on an application moved by the Central Government under Section 241 of the Companies Act, 2013 (18 of 2013), has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under Section 242 of the said Act; and

(ii) a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under Section 242 of the Companies Act, 2013 (18 of 2013) after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Explanation.—For the purposes of this section,—

(i) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;

(i-a)"erstwhile public sector company" shall have the same meaning as assigned to it in clause (ii) of the Explanation to clause (d) of sub-section (1) of Section 72-A;

(i-b) "strategic disinvestment" shall have the same meaning as assigned to it in clause (iii) of the Explanation to clause (d) of sub-section (1) of Section 72-A;

(ii) "Tribunal" shall have the meaning assigned to it in clause (90) of Section 2 of the Companies Act, 2013 (18 of 2013).

(e) to a company to the extent that a change in the shareholding has taken place during the previous year on account of relocation referred to in the Explanation to clauses (vii-ac) and (vii-ad) of Section 47.

(f) to an erstwhile public sector company subject to the condition that the ultimate holding company of such company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty-one per cent. of the voting power of such company in aggregate.

(3) Notwithstanding anything contained in sub-section (2), if the condition specified in clause (f) of the said sub-section is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.'

Section 61[7] of the Code by the present appellant before the NCLAT which passed the Impugned Judgment on 19.01.2022, dismissing the appeal, thereby upholding the order of the NCLT, which is impugned herein.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

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[7] '***61. Appeals and Appellate Authority***.—*(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under Section 31 may be filed on the following grounds, namely—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

4) An appeal against a liquidation order passed under Section 33, or sub-section (4) of Section 54-L, or sub-section (4) of Section 54-N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of Section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order.'

7. Mr. Shyam Divan, learned senior counsel for the appellant submitted that the Resolution Plan initially submitted by the appellant was negotiated further on various dates and, ultimately the final outcome was the Resolution Plan submitted on 05.08.2019. This was finally approved by the CoC through a majority of 88.56% votes on 14.08.2019, after extensive consideration. It was submitted that there were 11 revisions in respect of the Resolution Plan made by the appellant before the final version was approved by the CoC. It was indicated that the final Resolution Plan was approximately 48% higher as compared to the pay-out under the initial Resolution Plan submitted by the appellant. At this juncture, it was also pointed out that the RP had also got two reports prepared by two approved/registered valuers: (a) BDO India LLP’s Report dated 11.02.2019 with regard to assets of ACIL which indicated fair market value

to be Rupees one hundred thirty-five crores and ten lacs with liquidation value as Rupees one hundred eight crores and fifty-seven lacs; whereas the Report of (b) Adroit Technical Services Limited dated 14.02.2019 indicated fair market value of Rupees one hundred twenty-five crores and eighty-five lacs and liquidation value of Rupees ninety-four crores and eighty-seven lacs. Thus, it was submitted that after taking care of all the statutory procedural requirements and on the basis of such reports and proper examination of the materials on record and having exercised its commercial wisdom, the CoC-approved Resolution Plan was put up before the NCLT for approval, but the NCLT, exceeding its jurisdiction and without ascertaining any reason for such course of action, passed the direction for revaluation.

8. Learned senior counsel in this connection submitted that there was no occasion for the NCLT

to embark upon a totally alien procedure of getting the OL involved in such valuation, for which a mechanism is already provided under the Code and which, as per him, was strictly adhered to in the present case. It was contended that the NCLT had limited power of judicial review given the supremacy of the CoC under the Code. At best, learned senior counsel contended, that it could have disapproved the Resolution Plan on cogent ground(s) relevant for doing so after testing whether it complies with the requirements of Section 30(2) of the Code, but it could not have acquired jurisdiction, where no such residuary or equity based jurisdiction is available under the Code by interfering with the CoC's decision without pointing out any non-conformity with the provisions of the Code and the Regulations thereunder. For such proposition, he relied upon the decision of this Court in ***Pratap Technocrats Private Limited v Monitoring Committee of***

***Reliance Infratel Limited*, (2021) 10 SCC 623**, the relevant being at Paragraphs 25, 26 and 44, where it has been held that the jurisdiction conferred upon the Adjudicating Authority-NCLT in regard to the approval of a Resolution Plan is statutorily structured by Sub-Section 1(1) of Section 31 of the Code and such jurisdiction is limited to determine whether the requirements which are specified in Sub-Section (2) of Section 30 of the Code have been fulfilled. Further, it has been explained that such jurisdiction which is statutorily defined, recognised and conferred, cannot be equated with the jurisdiction in equity that operates independently of the provisions of the statute for the reason that the Adjudicating Authority-NCLT, which is a body owing its existence to the Code, must abide by the nature and extent of its jurisdiction as defined therein. Regarding the appointment of the OL for getting valuation of the assets, the stand of Mr.

Divan was that it was not in line with the Code and the Regulations made thereunder.

9. It was further canvassed by learned senior counsel that the Code provides for a mechanism for carrying out valuation of the assets of a Corporate Debtor in form of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the "CIRP Regulations"), particularly Regulations 27[8] and

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[8] '***27. Appointment of Professionals***.—*(1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with Regulation 35.*

(2) The interim resolution professional or the resolution professional, as the case may be, may appoint any professional, in addition to registered valuers under sub-regulation (1), to assist him in discharge of his duties in conduct of the corporate insolvency resolution process, if he is of the opinion that the services of such professional are required and such services are not available with the corporate debtor.

(3) The interim resolution professional or the resolution professional, as the case may be, shall appoint a professional under this regulation on an arm's length basis following an objective and transparent process: Provided that the following persons shall not be appointed, namely—

(a) a relative of the resolution professional;

(b) a related party of the corporate debtor;

(c) an auditor of the corporate debtor at any time during the period of five years preceding the insolvency commencement date;

(d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

(4) The invoice for fee and other expenses incurred by a professional appointed under this regulation shall be raised in the name of the professional and be paid directly into the bank account of such

35[9] thereof, inasmuch as Regulation 27 provides that the RP shall appoint two registered valuers to determine the fair value and liquidation value of the Corporate Debtor whereas Regulation 35 provides that the two valuers shall submit the fair value and liquidation value to the RP after

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professional.'

[9] '***35. Fair value and Liquidation value***.*—(1) Fair value and liquidation value shall be determined in the following manner—*

(a) the two registered valuers appointed under Regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

(b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).

Explanation.—For the purpose of clause (b),

(i) "asset class" means the definition provided under the Companies (Registered Valuers and Valuation) Rules, 2017;

(ii) "significantly different" means a difference of twenty-five per cent in liquidation value under an asset class and the same shall be calculated as (L1-L2)/L1, where,

L1= higher valuation of liquidation value

L2= lower valuation of liquidation value.

(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.

(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section 29.

(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.'

physical verification of the inventory and fixed assets of the Corporate Debtor and further provides that if the estimates shown by the two valuers are significantly different, or upon a proposal from the CoC, the RP may appoint a third registered valuer for valuation of the assets of the Corporate Debtor.

10. Another aspect which learned senior counsel drew the Court’s attention to was the fact that the NCLT’s observations in its order dated 01.09.2021 observing that the amount offered by the appellant was very close to the fair value of the assets of the Corporate Debtor was a non-issue and an uncalled for observation since such fair value of the assets of the Corporate Debtor was never available to the appellant at the time of submitting its first Resolution Plan. Thus, learned senior counsel submitted that the premise of the appellant’s offered amount being in close proximity to the fair value of the assets was

inherently erroneous and without basis and the decision to refer it to the OL based on such sole factor is obviously and equally without any basis and fit to be set aside.

11. It was submitted that this Court has held, in ***Maharashtra Seamless Limited v Padmanabhan Venkatesh*, (2020) 11 SCC 467,** the relevant being at Paragraphs 27 to 29, that aspects related to the valuation of the Corporate Debtor are not open to judicial scrutiny by the NCLT as the object behind such valuation process is to assist the CoC in taking a proper decision in respect of a Resolution Plan and the valuation conducted in respect of the assets of the Corporate Debtor and it has further been indicated that the Adjudicating Authority-NCLT can approve a Resolution Plan even when it is below the liquidation value and that there is no provision under the Code which states that a resolution applicant’s bid must match the liquidation value

as the liquidation value is determined merely to assist the CoC in taking a decision on the Resolution Plan.

12. On the same proposition, learned senior counsel referred to ***M K Rajagopalan v Dr Periasamy Palani Gounder*, 2023 SCC OnLine SC 574,** the relevant being at Paragraphs 167, 168 and 169, holding that when the CoC was fully satisfied with the valuation conducted in respect of the Corporate Debtor and had endorsed the same, then it was unnecessary and unjustifiable on the part of the NCLAT to presume irregularities in the Resolution Plan and interfere therewith.

13. It was submitted that the RP in statutory form had certified that the Resolution Plan received from the appellant complied with all the provisions of the Code and the Regulations and did not contravene any provisions of law.

14. It was contended that the finding of the NCLAT that an avoidance transaction of approximately Rupees one thousand crores had come to light and the present case justifies its interference since figures of crores are involved, could not have been an issue as it has no bearing in the instant case and ought not to have been considered by the NCLAT. It was submitted that safeguard against avoidance transaction and its impact upon a Corporate Debtor's CIRP has been provided in the Code and the Regulations as also expounded in judicial precedents. In this regard, attention was drawn to Section 26[10] of the Code which provides that filing of avoidance application(s) by the RP shall not affect the CIRP proceedings. It was further stated that Regulation 38(2)(d)[11], CIRP

[10] '***26. Application for avoidance of transactions not to affect proceedings***.—*The filing of an avoidance application under clause (j) of sub-section (2) of Section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process*.'

[11] '***38. Mandatory contents of the resolution plan***.—

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(2) A resolution plan shall provide:

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Regulations has been recently introduced through the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022 (hereinafter referred to as the "2022 Amendment") with effect from 14.06.2022 which requires, for all Resolution Plans submitted to the Adjudicating Authority on or after the 2022 Amendment to provide for treatment of avoidance applications post-approval of a Resolution Plan, along with the manner in which the proceeds from such proceedings will be distributed. It was contended that even though in the present case, the approval application has been filed by the RP prior to the 2022 Amendment, the Resolution Plan provides for the treatment of proceeds generated through avoidance applications and states that

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

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

all amounts received by ACIL pursuant to any avoidance transaction shall be payable to the FC(s) and no avoidance pay-out amounts shall be payable by the Corporate Debtor, which in the present case would mean that avoidance transaction of approximately Rupees one thousand crores will not affect the ongoing CIRP, in view of the Resolution Plan providing a clear way for its treatment. In this connection, learned senior counsel referred to the decision by a Division Bench of the High Court of Delhi in ***Tata Steel BSL Limited v Venus Recruiter Pvt. Ltd.*, 2023 SCC OnLine Del 155**, Paragraph 91 whereof says that when any kind of benefit is acquired from the adjudication on avoidance application and the Resolution Plan is silent on the treatment of such applications, such benefit must be given to the creditors of the Corporate Debtor.

15. Learned senior counsel submitted that the commercial wisdom of the CoC has been held to be

supreme in ***K Sashidhar v Indian Overseas Bank*, (2019) 12 SCC 150**, the relevant being at Paragraphs 52, 59 & 64 and ***Committee of Creditors of Essar Steel India Ltd. v Satish Kumar Gupta* (2020) 8 SCC 531**. Further, reliance was placed on the decision in ***Ebix Singapore (P) Ltd. v Committee of Creditors of Educomp Solutions Limited*, 2021 SCC OnLine SC 707**, holding that the Adjudicating Authority under Section 31(2) of the Code can only examine the validity of the Resolution Plan on the anvil of the stipulation in Section 30(2) of the Code and either approve or reject the Resolution Plan but cannot compel the CoC to negotiate further with a successful Resolution Applicant and also that the Adjudicating Authority is duty bound to ensure the completion of CIRP within the prescribed timeline of 330 days under the Code.

16. As far as the reference in the Impugned Judgment by the NCLAT, that interference was

justified since "*figures of crores*" are involved, learned senior counsel submitted that it has no basis in the Code or law, as it does not provide for differential treatment to a Resolution Plan, based on the quantum of the figure involved in the Corporate Debtor's insolvency.

17. With regard to the OL being given the chance of coming up with re-valuation, the stand taken by learned senior counsel was that the OL is created by the Companies Act, 2013 and is not contemplated under the Code which provides a specific mechanism for valuation to be conducted in respect of the assets of a Corporate Debtor under the CIRP Regulations, specifically Regulations 27 and 35, as noted hereinabove.

18. Learned senior counsel submitted that even if for the sake of argument, it may be accepted that the NCLT can exercise discretion in rare cases and order for re-valuation, in the present

case, the same cannot be justified as absolutely no reason has even been indicated by the NCLT or the NCLAT for undertaking such exercise in respect of the assets of the Corporate Debtor, which is arbitrary and unjustified.

19. It was submitted that there was no objection from any quarter, much less any stakeholder, with respect to the valuation of the Corporate Debtor and also the appellant's Resolution Plan and most importantly, no material was placed on record before the NCLT or NCLAT to justify interference in the CoC's commercial wisdom.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

20. Learned counsel for the respondents supported the contentions of the appellant, advanced by Mr. Divan.

ASSISTANCE BY THE SOLICITOR GENERAL AND THE ADDITIONAL SOLICITOR GENERAL FOR THE UNION OF INDIA:

21. In the present case, although the RP and CoC were arrayed as respondents but having regard to the issues raised, this Court by order dated 05.05.2022[12] had requested the learned Solicitor General, Mr. Tushar Mehta to assist. In terms thereof, he has filed written submissions. Mr. Balbir Singh, learned Additional Solicitor General has also assisted this Court.

22. In sum, the written note deals with the legal aspects and the final stand is that the Adjudicating Authority-NCLT would have no jurisdiction or power to sit in appeal over the

[12] The Order is as below:
'*Having regard to the issues involved, we have requested Mr. Tushar Mehta, learned Solicitor General to assist the Court in this matter. The relevant papers may be supplied to the office of the learned Solicitor General within two days.*
The matter may be listed on the next date while showing name of Mr. Arvind Kumar Sharma, learned counsel assisting the learned Solicitor General.
List the matter on 18.05.2022.
Short notes on the submissions may be filed in advance.'

commercial wisdom of the CoC and interference would be warranted only when the NCLT or the Appellate Authority (*viz*. NCLAT) finds the decision of the CoC to be wholly capricious, arbitrary, irrational and *dehors* the provisions in the Code or the Regulations.

23. For such proposition, he relied upon the decision in ***Vallal RCK v Siva Industries and Holdings Limited*, 2022 SCC OnLine SC 717**, the relevant being at Paragraph 24, with regard to the binding and final nature of the Resolution plan after due approval by the CoC.

24. Mr. Singh also referred to ***Arun Kumar Jagatramka v Jindal Steel and Power Limited*, (2021) 7 SCC 474**, the relevant being Paragraph 95, holding that the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principle of the Code. He also referred to ***Committee of Creditors***

of Essar Steel India Ltd. (*supra*), where at Paragraph 69, it has been observed that a harmonious reading of Sections 31(1) & 60(5) of the Code would lead to the result that the residual jurisdiction of the NCLT under Section 60(5)(c) of the Code cannot, in any manner, whittle down Section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the Adjudicating Authority-NCLT outside Section 30(2) of the Code, when it comes to a Resolution Plan pending adjudication.

25. However, it was also pointed out that in cases which warrant interference, to contend that the Adjudicating Authority-NCLT has no jurisdiction to decide any dispute with respect to valuation and take remedial steps to correct an erroneous valuation exercise would not be the correct proposition in view of the powers conferred under Section 60(5) of the Code.

26. With regard to the impact of pendency of avoidance applications on the approval of the Resolution Plan, the stand was that it has no bearing on the approval by the NCLT of the Resolution Plan approved by the CoC as it has been provided in the Resolution Plan that proceeds of avoidance transactions, if any, will go to the FC(s) and thus, on this score, the Resolution Applicant (appellant) will not be benefitted as it is the FC(s) who will get the benefit of such realisation. As regards the uncertainty of Plot/Site No.GH 38 (Land) in Sector 1, IMT Manesar, Haryana, which was allotted by the Haryana State Industrial and Infrastructure Development Corporation to the Corporate Debtor, it was submitted that the Resolution Plan itself provisions that proceeds from monetisation thereof will go to the FC(s).

ANALYSIS, REASONING AND CONCLUSION:

27. Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before

the CoC, which is the decision-maker and in the driver's seat, so to say, of the Corporate Debtor. ***K Sashidhar*** (*supra*) and ***Committee of Creditors of Essar Steel India Ltd.*** (*supra*) are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in ***Maharashtra Seamless Limited*** (*supra*), which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the CoC, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to

the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In ***Kalpraj Dharamshi v Kotak Investment Advisors Limited*, (2021) 10 SCC 401**, the Court concluded that *'… in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.'*

28. In ***Pratap Technocrats Private Limited*** (*supra*), the Court, after considering the relevant case-laws, pointed out that the Indian Legislature had departed from foreign insolvency regimes, as under:

> *'**44.** These decisions have laid down that **the jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made***

by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the adjudicating authority or the appellate authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.

45. Certain foreign jurisdictions allow resolution/reorganisation plans to be challenged on grounds of fairness and equity. *One of the grounds under which a company voluntary arrangement can be challenged under the United Kingdom's Insolvency Act, 1986 is that it unfairly prejudices the interests of a creditor of the company*[13]*. The United States' Bankruptcy Code provides that if a restructuring plan has to clamp down on a dissenting class of creditors, one of the conditions that it should satisfy is that it does not unfairly discriminate, and is fair and equitable*[14]*.* ***However, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature to not confer any independent equity based jurisdiction on the adjudicating authority other than the statutory requirements laid down under sub-section (2) of Section 30 IBC.***

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[13] ["***6. Challenge of decisions***.—*(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—(a) that a voluntary arrangement which has effect under Section 4-A unfairly prejudices the interests of a creditor, member or contributory of the company;(b) that there has been some material irregularity at or in relation to the meeting of the company, or in relation to the relevant qualifying decision procedure.*"]

[14] ["***1129. Confirmation of a Plan*******(b)(1) Notwithstanding Section 510(a) of this title, if all of the applicable requirements of sub-section (a) of this section other than para (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.*"]

46. *An effort was made by Mr Dushyant Dave, learned Senior Counsel, to persuade this Court to read the guarantees of fair procedure and non-arbitrariness as emanating from the decision of this Court in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] into the provisions of IBC.* ***IBC, in our view, is a complete code in itself. It defines what is fair and equitable treatment by constituting a comprehensive framework within which the actors partake in the insolvency process. The process envisaged by IBC is a direct representation of certain economic goals of the Indian economy. It is enacted after due deliberation in Parliament and accords rights and obligations that are strictly regulated and coordinated by the statute and its regulations. To argue that a residuary jurisdiction must be exercised to alter the delicate economic coordination that is envisaged by the statute would do violence on its purpose and would be an impermissible exercise of the adjudicating authority's power of judicial review.***

The UNCITRAL, in its Legislative Guide on Insolvency Law, has succinctly prefaced its recommendations in the following terms [Available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf> last accessed 6-8-2021, pp. 14-15.] :

> *"C. Balancing the goals and key objectives of an insolvency law*

> *15. Since an insolvency regime cannot fully protect the interests of all parties, some of the key policy choices to be made when designing an insolvency law relate to defining the broad goals of the law (rescuing businesses in financial difficulty, protecting employment, protecting the interests of creditors, encouraging the development of an entrepreneurial class) and achieving the desired balance between the specific objectives identified above. Insolvency laws achieve that balance by reapportioning the risks of insolvency in a way that suits a State's economic, social and political goals. As such, an insolvency law can have widespread effects in the broader economy."*
>
> ***47.** Hence, **once the requirements of IBC have been fulfilled, the adjudicating authority and the appellate authority are duty-bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the adjudicating authority nor the appellate authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.'***
>
> (emphasis supplied)

29. In the case at hand, we find that there was no occasion before the Adjudicating Authority-NCLT to be swayed only on the *per se* ground that the hair-cut would be about 94.25% and that it

was not convinced that the fair value of the assets have been projected in proper manner as the bid of the appellant was very close to the fair value of the assets of ACIL. Ordering re-valuation of the assets, by the OL, Ministry of Corporate Affairs, Government of India, in-charge of the particular area, cannot be justified. As explained in ***Innoventive Industries Ltd. v ICICI Bank*, (2018) 1 SCC 407** and ***Swiss Ribbons Private Limited v Union of India*, (2019) 4 SCC 17**, the Code was specifically introduced by Parliament for ensuring quick and time-bound resolution of insolvency of corporate entities in financial trouble, by first attempting to revive the Corporate Debtor, failure whereof would entail liquidation of the Corporate Debtor’s assets, and no unnecessary impediment should be created to delay or derail the CIRP. In the present case, both the NCLT and NCLAT erred to fully recognise that under the Resolution Plan, the Corporate

Debtor was set to be revived and not liquidated. Thus, the minimum mandatory component in the Resolution Plan was only a reflection of the actual money, including upfront payment, which would go towards the FC(s). As discussed previously, the final Resolution Plan provided for the monetization proceeds of the land as also the avoidance amounts to go to the FC(s) of the Corporate Debtor.

30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. *Stricto sensu*, it is now well-settled that it is well within the CoC's domain as to how to deal with the entire debt of the Corporate Debtor. In this background, if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been

approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. Surprisingly, the discussion in both orders is wanting, except for the difference in the figure of the total outstanding dues and the amount of money which the appellant was to put up initially for taking over the Corporate Debtor, for this Court to understand as to what other reasons, grounded in the Code's provisions, compelled the Adjudicating Authority-NCLT to embark upon the novel path of ordering revaluation by the OL. At the cost of repetition, nobody had moved before the NCLT or raised any objection challenging the Resolution Plan pending approval. Even the NCLAT has only indicated that when "*figures of crores*" are emerging stage-wise, "*then there is no harm to look at the Expert opinion*", which the Adjudicating Authority-NCLT in this case has asked for.

31. It is worthwhile to note that the Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives power not to approve only when the Resolution Plan does not meet the requirement laid down under Section 31(1) of the Code, for which a reasoned order is required to be passed. We may state that the NCLT's jurisdiction and powers as the Adjudicating Authority under the Code, flow only from the Code and the Regulations thereunder. It has been held in ***Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited*, (2022) 1 SCC 401**:

> '***273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its***

> ***limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposited by this Court.'***
> (emphasis supplied)

32. From the assistance rendered and the judicial precedents brought to notice, it is clear that the order dated 01.09.2021 by the NCLT cannot withstand judicial scrutiny, either on facts or in law. There may have been a situation where due to glaring facts, an order of the nature impugned herein could be left untouched and this Court would have refrained from interference, but only if detailed reasoning, disclosing the facts for being persuaded to embark on such path, were discernible in the order dated 01.09.2021, which unfortunately is cryptic and bereft of detail. Recording of reasons, and not just

reasons but cogent reasons, for orders is a duty on Courts and Tribunals. In the recent past, from ***Kranti Associates Private Limited v Masood Ahmed Khan*, (2010) 9 SCC 496** to ***Manoj Kumar Khokhar v State of Rajasthan*, (2022) 3 SCC 501**, the clear position in law is that a Court or even a quasi-judicial authority has a duty to record reasons for its decision. Needless to add, '*Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.*'[15] That apart, the order of the NCLT dated 01.09.2021 suffers from a jurisdictional error, as in the facts that prevailed, it was not entitled to pass the direction that it did.

33. Under the circumstances, while this Court could have adopted the course of remanding the matter back to the NCLT for fresh/*de novo* consideration, but being conscious of the fact that such course would impede quick resolution

[15] ***Raj Kishore Jha v State of Bihar*, (2003) 11 SCC 519**.

as the CIRP is in a stalemate right from 01.09.2021 and after having applied our minds to the factual aspects also, we do not find that remand for consideration afresh, now, would serve the purpose of justice or aid the objects of the Code.

34. Accordingly, and for all the reasons afore-stated, this appeal stands allowed. The order dated 01.09.2021 of the NCLT and the Impugned Judgment dated 19.01.2022 of the NCLAT are set aside. The NCLT will pass appropriate orders in terms of this judgment, on the Approval Application, being I.A. No.1636 of 2019 in CP(IB) No.170(PB)/2018, within three weeks from the date of production of a copy of this judgment. Pending avoidance application(s) on the file of the NCLT in connection herewith shall proceed on their own merits, but with expedition. No order as to costs.

35. Insofar as the pending Interlocutory Applications herein are concerned, they are dealt with below:

a. I.A. No.25463/2022: Does not survive in view of the decision in the appeal; disposed of.

b. I.A. No.25464/2022: Does not survive in view of the decision in the appeal; disposed of.

c. I.A. No.185233/2022: Wrongly shown as pending in the ordersheet; already disposed of *vide* order dated 17.04.2023.

36. Insofar as Mr. Singh’s submissions that this Court may not exclude from the NCLT’s ambit any power to direct re-valuation, we have given our anxious thought to the same. Our view is that while certainty in law and legal principles is the obvious aim, the law is to be applied in the context of the facts. If a matter where the facts are stark comes to light, the same would have to necessarily be dealt with by the NCLT within the four corners

of the Code itself, having due regard to the extant circumstances. It is for the NCLT to exercise power strictly within the domain permitted by the Code. In this behalf, one may peruse the decisions in ***Embassy Property Developments Private Limited v State of Karnataka*, (2020) 13 SCC 308** and ***Gujarat Urja Vikas Nigam Limited v Amit Gupta*, (2021) 7 SCC 209**.

.....J.
[VIKRAM NATH]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
NOVEMBER 21, 2023