NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins.) No. 179 of 2021

(Under Section 61(3) of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Order dated 16.03.2021, passed by the `Adjudicating Authority', `National Company Law Tribunal', Kochi Bench, Kerala, in IA(IBC)/13/KOB/2021 in TIBA/11/KOB/2019)

In the matter of:

M/s. Aswathi Agencies
28/442, A & B, Aswathi Building
Club Road, Kadavanthara,
Ernakulam – 682020
Represented by
Managing Partner P. Jayakrishnan ….. Appellant

v

1. Bijoy Prabhakaran Pulipra,
Resolution Professional
PVS Memorial Hospital Private Limited
Ground Floor TC 11/789/(1),
Vayal Road, Nandancode,
Kowadiar P.O.,
Thiruvananthapuram - 695003

2. **Dr. N.P. Kamalesh**
A Block, 7A1, Kent Hall Garden
Stadium Link Road,
Palarivattom,
Kerala – 682025

3. **PVS Memorial Hospital Private Limited**
No.XXIV/1484, Kaloor,
Ernakulam,
Kerala – 682017 ….. Respondents

Present:

For Appellant : Mr. M.G. Pranava Charan, Advocate

For Respondent Nos.1 & 3 : Mr. Bijoy P. Pulipra, Advocate

For Respondent No.2 : Mr. Pradeep Joy, Advocate

J U D G M E N T
(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

Preface:

Company Appeal (AT) (CH) (INS.) No. 179 of 2021:

The `Appellant' / `Aswathi Agencies', has preferred the instant Comp. App (AT) (CH) (INS) No. 179 of 2021, as an `Aggrieved Person', in respect of the `impugned order' dated 16.03.2021 in IA(IBC)/13/KOB/2021 in TIBA/11/KOB/2019, passed by the `Adjudicating Authority', (`National Company Law Tribunal', Kochi Bench, Kerala).

2. The `Adjudicating Authority', while passing the `impugned order' dated 16.03.2021 in IA(IBC)/13/KOB/2021 in TIBA/11/KOB/2019, had among other things, observed as under:

> *9. ``The Applicant submitted that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:*
>
> *A. Plan provides for the priority payment of CIRP costs in full from the fund to be infused by the Resolution Applicant.*

B. To pay the Operational Creditors of the Corporate Debtor in the manner indicated in Clause 5.1.18.1 of the Plan.

C. The average Liquidation Value of the Corporate Debtor is INR 122,90,59,890/- and average Fair Value is INR 162,22,78,150/-.

D. Provides management of the CD after approval of the resolution plan for operations of the Corporate Debtor in terms of Section 30(2)(c).

E. Provides implementation and supervision of the Resolution Plan as per Section 30(2)(d).

F. The Plan has been approved by CoC with 100% voting share.

G. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force.

10. The Applicant has also submitted that the Plan is in compliance of Regulation 38 of the Regulations in view of the following:

a) Payment to Operational Creditor will be made in priority over Financial Creditor – Clause 5.1.18.3.

b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code.

c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.

11. The Resolution Applicant has sought certain reliefs, concessions and waivers. This Tribunal, however, is not inclined to grant such concessions or waivers. The Resolution Applicant may approach the authorities concerned for permits, if required, and same would be considered on merits by the concerned authorities in accordance with law.

12. It is beneficial to refer to the observation of the Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. 2019) SCC OnLine SC 1478 as under:

> *"67. A successful Resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove."*

13. In view of the above ruling of the Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to the orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 26.12.2020 with 100% voting right.

14. In A. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 ((2019) 12 SCC 150) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percentage of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percentage of

voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

15. In CoC of Essar Steel (supra) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

> *"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."*

16. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved and hence this Tribunal pass the following:''

and allowed the `Application', by issuing necessary directions, and `approved the Resolution Plan of M/s. Lissie Medical Institutions'.

Appellant's submissions:

3. According to the Appellant (not a `Party' to the Proceedings, before the `Adjudicating Authority' in IA(IBC)/13/KOB/2021 in

TIBA/11/KOB/2019, the `impugned order', passed by the `Adjudicating Authority, (`National Company Law Tribunal', Kochi Bench, Kerala), is against `Facts' and `Law' and also, without considering its contentions.

4. The Learned Counsel for the Appellant contends that the `Resolution Professional', has committed a mistake in not taking into account the `Exact Value' of the `Land' and `Properties' of the `Corporate Debtor'. Moreover, the `1st Respondent / Resolution Professional', had purposefully, `not disclosed the Valuation of the Itemwise `Land Property', `Hospital Equipments' and `Machineries' and the `Hospital Facilities' Viz. the number of Operation Theatres, Intensive Care Units, Surgical Wards, etc., held by the `Corporate Debtor'.

5. As a matter of fact, no details were provided by the `Resolution Professional', in regard to the `Value of the Property', owned by the `Corporate Debtor'.

6. The Learned Counsel for the Appellant comes out with a plea that the `Resolution Plan', given by `Lissie', Medication Institution', is not a `Genuine one', and in fact, the intention of the said `Medical Institution' is the absolute `Purchase of another Hospital for a meagre price'. That apart, the said Institution have a prior intention to grab the `3rd Respondent' / `PVS Memorial Hospital Pvt. Ltd.', for a meagre sum.

7. It is represented on behalf of the Appellant that the `Appellant', had paid more than Rs.12 Lakhs towards the `GST', for the supply of the Medicines to the Corporate Debtor, wherein, no payment was made by them. Besides this, no provisions were made in the `Plan', at least to return the GST sum, paid by the `Appellant', in respect of the `Sale of Medicine' to the `Corporate Debtor'.

8. In reality, the Appellant had suffered an `Overdraft Loan' of around Rs.3 Crores, by giving `Collateral Security', for running a `Firm', which is still a `Financial Threat', to the Appellant's survival. The categorical plea of the Appellant that the `Present Approval Plan' and the Order passed by the `Adjudicating Authority', in approving the `Resolution Plan', by allowing the IA(IBC)/13/KOB/2021 in TIBA/11/KOB/2019, are in `Violation' of the `existing laws' and `principles of natural justice'.

9. The other emphatic stand of the Appellant is that itself and other Creditors were completely in dark about the proceedings of the `1st Respondent / Resolution Professional' and the .`Committee of Creditors'. Further, the `Appellant' was not provided with an `opportunity or any of the Workmen to present their views or claims', while determining the admitted `Claim', which is an `Irrational', `Unjust' and `Breach of Natural Justice'.

10. The Learned Counsel for the Appellant puts forward a plea that the `Resolution Applicant' / `Lissie Medical Institution', is a `Charitable Public Trust', created by a `registered Deed', under the `Indian Trust Act, and in short, a `Resolution Applicant', cannot be a `Charitable Public Trust'.

11. The Learned Counsel for the Appellant, projects an argument that the `Resolution Plan', furnished by the `Resolution Applicant', is a `Business Deal', wherein the `Resolution Applicant', is acquiring the `Corporate Debtor' and intends to do a `Profitable Business' with the Corporate Debtor. Hence, the consideration paid for the purpose, can never be construed as `Amounts spend for Charitable Purpose'.

12. It is the version of the Appellant that the Indian Trust Act, 1882, does not have any definition or specific set of Regulations, governing Charitable Trust. Besides this, the Regulations for Public Charitable Trusts are available under the Income Tax Act, 1961, only and in fact, the `Resolution Applicant', is also registered under Section 12A (Exemptions from payment of Income Tax) of the Income Tax Act, 1995.

13. According to the Appellant, Section 2 (15) `Charitable Purpose, includes relief of the poor, education, medical relief and the advancement of any other object or general public utility'.

14. In this regard, the plea of the Appellant is that the `act of acquiring the Corporate Debtor, in terms of the `Resolution Plan', cannot be placed under any of the aforesaid parameters of the `Charitable purpose' and further that the `Resolution Applicant', had not set forth any `Charitable Activity / Deed', which will be undertaken, as part of the `Resolution Plan'.

15. It is the version of the Appellant, to avail the benefits, as per `Section 12A of the Income Tax Act, a `Charitable Trust', is required to fulfil the requirements of Section 11 of the Income Tax Act, which stipulates, the manner in which the investments of a `Charitable Trust', are to be undertaken for the purpose of availing the benefits, in terms of Section 12A of the Income Tax Act.

16. Moreover, the ingredients of Section 11 of the Income Tax Act, do not visualize anything about Investments through a `Resolution Plan', under the I & B Code, 2016. Therefore, it is the contention of the Appellant that, the act of the `Resolution Applicant', is beyond the `Contours of Law' and `Violation of Section 30 (2) (e) of the Code', and hence, the `Resolution Plan', submitted by the `Resolution Applicant' is liable to be set aside.

17. The Learned Counsel for the Appellant points out that although the `Approval of the Resolution Plan', rests with the `Commercial Wisdom'

of the `Committee of Creditors', the `discrimination', ought not to be apparent `on the face of record'.

18. The `Operational Creditors', are paid Rs. 1 Crore, while Rs.125 Crores is paid as `consideration' to the `Financial Creditors'. The ratio behind the `Operational Creditors', not being given the power to exercise their `wisdom', in the `Approval of the Resolution Plan', is to curtail the `decision making process' of the `Resolution Plan'. That cannot be taken advantage of, by the `Financial Creditors', and the conduct of the `Financial Creditor' and the `Resolution Applicant' is an `abuse of process' and therefore, the `Resolution Plan' is to be `Rejected', at the very inception, itself.

19. The Learned Counsel for the Appellant, points out that the `Resolution Plan', contains obligations on the `Regulatory Authorities' and in Paragraph 15.13 of the Resolution Plan, it is mentioned that the `Order' of `National Company Law Tribunal' (approving the Plan), shall be deemed as an `Order' to the Governmental Authority in the above regard and this is beyond the ambit of Regulation 37 and 38 and `Over Powers' the Power of the `Adjudicating Authority', under the I & B Code, with functions / authorities , which they do not possess. Also that, this was made by the `Resolution Applicant', without making an `Application' to the said `Governmental Authority', are impleading them

as `Regular Party', to the proceedings, before the `Adjudicating Authority'.

20. According to the `Appellant', it is an `Operational Creditor', who regularly supplied `Life Saving Medicines', to the `Corporate Debtor', `M/s. PVS Hospital', and that the `Corporate Debtor' had purposefully withheld the payments, due to it, in respect of the period from Jun'2017 to Apr'2019. Therefore, it is the plea of the Appellant that it is an `Aggrieved Person', in respect of the `impugned order' dated 22.02.2021, modified and correct by an `Order' dated 16.03.2021. Hence, the instant `Appeal' preferred by the `Appellant', is `maintainable one'.

21. While rounding up, the Learned Counsel for the Appellant, prays for setting aside the `impugned order' of the `Adjudicating Authority' (`National Company Law Tribunal', Kochi Bench) in approving the `Resolution Plan dated 16.03.2021', in the interest of justice.

Appellant's Citation:

22. The Learned Counsel for the Appellant refers to the Decision of this `Tribunal' in Dr. Periasamy Palani Gounder v. Radhakrishnan Dharmajaran, RP of Appu Hotels Ltd. & Ors. (decided on 17.02.2022, reported in MANU/NL/0118/2022), wherein, the Decision of Resolution Professional of Appu Hotels Limited, who had disqualified a `Prospective Resolution Applicant' Viz. `Sri Balaji Vidyapeeth', a `Charitable Trust',

on the ground that the same is a `Charitable Trust', and `it cannot run a profit-making entity', was not interfered with.

Contentions of Respondent Nos. 1 & 3:

23. The Learned Counsel for the Respondent Nos. 1 & 3 (the 1st Respondent / `Erstwhile Resolution Professional'(demitted Office) and later became a `Monitoring Agent', as per `Order' in IA(IBC)/13/KOB/2021 in TIBA/11/KOB/2019) contends that Clause 5.1.18.3 clearly provides for the `payment of dues of the `Operational Creditors' of the `Corporate Debtor'. Further, in the `Resolution Plan' of Clause 5.1.18.3, payable to `unsecured Financial Creditors and Operational Creditors', shall be paid in `priority', as contemplated under the I & B Code, 2016.

24. The Learned Counsel for the Respondent Nos.1 & 3 adverts to Clause 5.1.18.2 & 5.1.18.3 of the Resolution Plan, which runs as under:

> ``*5.1.18.2: The Claim amount admitted being higher than the Plan Consideration; the same may not be enough to satisfy payments for Claims to all the Creditors. Any Claim pending unpaid shall stand extinguished, the Corporate Debtor / Demerged Properties / Resolution Applicant shall not be liable or responsible or obligated for such Claims and shall stand absolutely discharged and shall be free from all obligations (direct or incidental or related to such Claims).*
>
> *15.1.18.3: Considering the above, although not required, over and above the Plan Consideration, the Resolution Applicant will pay an amount of INR 1,00,00,000 (Indian Rupees One Crore Only) to the*

Escrow Account for the benefit of the unsecured Financial Creditors and Operational Creditors only. The same shall be distributed by the Monitoring Agent to the unsecured Financial Creditors and Operational Creditors on a pari passu basis based on their Verified Amounts. The said eligible distribution amount (as mentioned in this Clause 5.1.18.3) to unsecured Financial Creditors and Operational Creditors shall be paid in priority as required under the Code.''

25. The Learned Counsel for the Respondent Nos.1 & 3 refers to Point No. 8 (d) of the `impugned order' dated 22.02.2021 which specifically provides for the distribution schedule of the `Resolution Plan' proceeds of Rs.126 Crores, as approved by the `Committee of Creditors', wherein Serial No.4, clearly provides for the payment of the `Debts' of the Operational Creditors, other than the `related Parties of the `Corporate Debtor' and contends that because of the `Resolution Plan', approved by the `Adjudicating Authority', refers to specific provision, for the payment of debts of the `Operational Creditors', the contra stance of the `Appellant', is `devoid of merits'.

26. The Learned Counsel for the Respondent Nos.1 & 3 proceeds to point out that the `1st Respondent' had `invited the `Expression of Interest' from the `Registered Valuers', to decide the `Fair Value' and the `Liquidation Value' of the `Corporate Debtor', in accordance with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (`CIRP Regulations'). Moreover, from and

out of the `Expression of Interest', from the numerous Registered Valuers, the `Committee of Creditors', had appointed two Groups of `Registered Valuers', who fulfilled the criteria of independence of the Registered Valuers, in accordance with `Regulation 27 of the CIRP Regulations'.

27. It is the version of the Respondent Nos. 1 & 3, that the Valuation was made by the two `Independent Registered Valuers', registered with the IBBI, under the Companies (Registered Valuers and Valuation) Rules, 2017, and the `Fair Value' and the `Liquidation Value' of the `Corporate Debtor', was computed, in accordance with internationally `Accepted Valuation Standards', after physical verification of the `Inventory' and the `Fixed Assets' of the `Corporate Debtor'.

28. The Learned Counsel for the Respondent Nos.1 & 3 puts forward a plea that a `Fair Value' and the `Liquidation Value' of the `Corporate Debtor', arrived at by the respective groups of `Registered Valuers', were not significantly different and therefore, there was no need to appoint another `Registered Valuer', by the `Resolution Professional', to furnish an estimate of the `Value', computed in the same manner, as per `Regulation 35(b) of `CIRP Regulations'.

29. The Learned Counsel for the Respondent Nos.1 & 3 takes a stand that the `Value', arrived at by the `Registered Valuers', are only

estimates, and the same cannot be construed as `Accurate Value', of the `Corporate Debtor'.

30. The Learned Counsel for the Respondent Nos.1 & 3 by pointing out `Regulations 35 (2) of the CIRP Regulations', comes out with a plea that the `1st Respondent', had provided the `Fair Value' and the `Liquidation Value' of the `Corporate Debtor' to the members of the `Committee of Creditors', after the receipt of `Resolution Plans' in accordance with the Code and regulations made thereunder and after obtaining the undertaking from the `Committee of Creditors' members to the effect that they 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.

31. The Learned Counsel for the Respondent Nos. 1 and 3 points out that in the decision of Periasamy Palani Gounder v. Radhakrishnan Dharmarajan (reported in MANU/NL/0118/2022), the question of a `Charitable Trust', becoming a `Resolution Applicant', was not considered and further based on the facts and circumstances of the instant Comp. App (AT) (CH) (INS) No. 179 of 2021, the said decision in Periasamy Palani Gounder's case is inapplicable.

Citations of Respondent Nos.1 & 3:

32. The Learned Counsel for the Respondent Nos. 1 & 3 refers to the Judgment of the Hon'ble Supreme Court of India dated 22.01.2020 in Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Ors., (vide Civil Appeal No. 4242 of 2019), wherein it is held that the `Object behind prescribing the `Valuation Process', is to assist the `Committee of Creditors' (`CoC') to take decision on a `Resolution Plan' properly and there is no statutory mandate under the Code that the bid of the `Resolution Applicant' should match the `Regulation 35' of the `CIRP Regulations', relevant extracts of which is as follows:

> *26. ``No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*
>
> *27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.*
>
> *28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value*

arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of Sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront.''

33. The Learned Counsel for the Respondent Nos. 1 & 3 submits that the object behind prescribing the `Valuation' of the `Corporate Debtor', is to assist the `Committee of Creditors', to take an effective decision on the `Resolution Plan' and there was no Statutory Mandate that the Bid of the `Resolution Applicant', is to match with the `Fair Value', and `Liquidation Value' of the `Corporate Debtor'.

34. Therefore, it is contended on behalf of the Respondent Nos.1 and 3 that the `Allegation' in regard to the `Valuation of the Properties' of the `Corporate Debtor', was not properly conducted is `devoid of merits'.

35. The Learned Counsel for the Respondent Nos. 1 & 3 adverts to the Judgment of the Hon'ble Supreme Court of India (vide Civil Appeal Nos. 10673, 10719, 10971 and 29181 of 2018 in K. Sashidhar v. Indian Overseas Bank and Ors., wherein at Paragraphs 33, 35, 37, 38, 42 & 44, it is observed as under:

> *33. ``As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I & B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them*

after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.

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

backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I & B Code.

37. On a bare reading of the provisions of the I&B Code, it would appear that the remedy of appeal under Section 61(1) is against an "order passed by the adjudicating authority (NCLT)" – which we will assume may also pertain to recording of the fact that the proposed resolution plan has been rejected or not approved by a vote of not less than 75% of voting share of the financial creditors. Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in the NCLT or NCLAT as noticed earlier, has not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order "approving a resolution plan" under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers "by the resolution professional" during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds - be it under Section 30(2) or under Section 61(3) of the I&B Code - are regarding testing the validity of the "approved" resolution plan by the CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by the CoC in exercise of its business decision.

38. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I & B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I & B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I & B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I & B Code and not to act as a court of equity or exercise plenary powers.

42. The argument, though attractive at the first blush, but if accepted, would require us to re-write the provisions of the I & B Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground - to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I & B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC much less of the

dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.

44. Suffice it to observe that in the I & B Code and the Regulations framed thereunder as applicable in October 2017, there was no need for the dissenting financial creditors to record reasons for disapproving or rejecting a resolution plan. Further, as aforementioned, there is no provision in the I & B Code which empowers the adjudicating authority (NCLT) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by the CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under Section 30(4) of the I&B Code. At best, the Adjudicating Authority (NCLT) may cause an enquiry into the "approved" resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors - be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the Appellate Authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial creditors albeit by requisite percent of voting share to approve the resolution plan; and in the process authorize the adjudicating authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of

jurisdiction vested in the adjudicating authority under Section 31 of the I&B Code dealing with approval of the resolution plan.''

36. The Learned Counsel for the Respondent Nos. 1 & 3 cites the decision of the Hon'ble Supreme Court of India, in Swiss Ribbons Pvt. Ltd and Ors. v. Union of India & Ors., reported in AIR 2019 SC at page 739, wherein, at Paragraphs 10 to 12, it is observed as under:

10. ``The Preamble of the Code states as follows:

An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

11. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests

of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. [See ArcelorMittal (supra) at paragraph 83, footnote 3].

12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.''

37. The Learned Counsel for the Respondent Nos. 1 & 3 adverts to the decision of the Hon'ble Supreme Court of India in Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited and Ors., reported in MANU/SC/0273/2021 (vide Civil Appeal No.8129 of 2019, etc. dated 13.04.2021, wherein at Paragraphs 53 to 55), it is observed as under:

> *53. After discussing the relevant provisions of I&B Code, this Court observed thus:*
>
> > *"33. Under Section 30, any person who is interested in putting the corporate body back on its feet may submit a resolution plan to the resolution professional, which is prepared on the basis of an information memorandum. This plan must provide for payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the plan, and implementation and supervision of the plan. It is only when such plan is approved by a vote of not less than 75% of the voting share of the financial creditors and the adjudicating authority is satisfied that the plan, as approved, meets the statutory requirements mentioned in Section 30, that it ultimately approves such plan, which is then binding on the corporate debtor as well as its employees, members, creditors, guarantors and other stakeholders. Importantly, and this is a major departure from previous legislation on the subject, the moment the adjudicating authority approves the resolution plan, the moratorium order passed by the authority under Section 14 shall cease to have effect. The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the*

corporate body is able to pay back its debts and get back on its feet. All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins.

[emphasis supplied]

54. It could thus be seen, that one of the dominant objects of I&B Code is to see to it, that an attempt has to be made to revive the Corporate Debtor and make it a running concern. For that, a resolution applicant has to prepare a resolution plan on the basis of the Information Memorandum. The Information Memorandum, which is required to be prepared in accordance with Section 29 of I&B Code along with Regulation 36 of the Regulations, is required to contain various details, which have been gathered by RP after receipt of various claims in response to the statutorily mandated public notice. The resolution plan is required to provide for the payment of insolvency resolution process costs, management of the affairs of the Corporate Debtor after approval of the resolution plan; the implementation and supervision of the resolution plan. It is only after the Adjudicating Authority satisfies itself, that the plan as approved by CoC with the requisite voting share of financial creditors meets the requirement as referred to in Sub−section (2) of Section 30, grants its approval to it. It is only thereafter, that the said plan is binding on the Corporate Debtor as well as its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan. The moratorium order passed by the Adjudicating Authority under Section 14 shall cease to operate, once the Adjudicating Authority approves the resolution plan. The scheme of I&B Code therefore is, to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the Corporate Debtor as a going concern until a resolution plan is drawn up. Once the resolution plan is approved, the management is handed over under the plan to the successful applicant so that the Corporate Debtor is able to pay back its debts and get back on its feet.

55. This Court recently in the case of Kalpraj Dharamshi and Anr. vs. Kotak Investment Advisors Ltd. and Anr. (supra) has, in detail, considered the provisions of Sections 30 and 31 of I&B Code, the Bankruptcy Law Reforms Committee (BLRC) Report of 2015 and the judgments of this Court in the case K. Sashidhar (supra), Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors. (supra) and Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Ors. (supra) and observed thus:

> *"139. It is thus clear, that the Committee was of the view, that for deciding key economic question in the bankruptcy process, the only one correct forum for evaluating such possibilities, and making a decision was, a creditors committee, wherein all financial creditors have votes in proportion to the magnitude of debt that they hold. The BLRC has observed, that laws in India in the past have brought arms of the Government (legislature, executive or judiciary) into the question of bankruptcy process. This has been strictly avoided by the Committee and it has been provided, that the decision with regard to appropriate disposition of a defaulting firm, which is a business decision, should only be made by the creditors. It has been observed, that the evaluation of proposals to keep the entity as a going concern, including decisions about the sale of business or units, restructuring of debt, etc., are required to be taken by the Committee of the Financial Creditors. It has been provided, that the choice of the solution to keep the entity as a going concern will be voted upon by CoC and there are no constraints on the proposals that the resolution professional can present to CoC. The requirements, that the resolution professional needs to confirm to the Adjudicator, are:*
>
> *(i) that the solution must explicitly require the repayment of any interim finance and costs of the insolvency resolution process will be paid in priority to other payments;*

(ii) that the plan must explicitly include payment to all creditors not on the creditors committee, within a reasonable period after the solution is implemented; and lastly;

(iii) the plan should comply with existing laws governing the actions of the entity while implementing the solutions.

140. The Committee also expressed the opinion, that there should be freedom permitted to the overall market, to propose solutions on keeping the entity as a going concern. The Committee opined, that the details as to how the insolvency is to be resolved or as to how the entity is to be revived, or the debt is to be restructured will not be provided in the I&B Code but such a decision will come from the deliberations of CoC in response to the solutions proposed by the market.

141. This Court in the case of K. Sashidhar (supra) observed thus:

> *"32. Having heard the learned counsel for the parties, the moot question is about the sequel of the approval of the resolution plan by CoC of the respective corporate debtor, namely, KS&PIPL and IIL, by a vote of less than seventy-five percent of voting share of the financial creditors; and about the correctness of the view taken by NCLAT that the percentage of voting share of the financial creditors specified in Section 30(4) of the I&B Code is mandatory. Further, is it open to the adjudicating authority/appellate authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code as the case may be which, according to the resolution applicant and the stakeholders supporting the resolution plan, may be relevant?"*
>
> *(emphasis supplied)*

142. After considering the judgment of this Court in the case of Arcelormittal India Private Limited v. Satish Kumar

Gupta and the relevant provisions of the I&B Code, this court further observed in K. Sashidhar (supra) thus:

> *"52. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject−matter expressed by them after due deliberations in CoC meetings through voting, as*

per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non−justiciable."

(emphasis supplied)

143. This Court has held, that it is not open to the Adjudicating Authority or Appellate Authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It has been held, that the opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the Adjudicating Authority and that the decision of CoC's 'commercial wisdom' is made non−justiciable.

144. This Court in Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) after referring to the judgment of this Court in the case of K. Sashidhar (supra) observed thus:

"64. Thus, what is left to the majority decision of the Committee of Creditors is the "feasibility and viability" of a resolution plan, which obviously takes

into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, payment being provided to a certain type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place."

(emphasis supplied)

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

distribution of funds, etc. It has been held, that what is important is, the commercial wisdom of the majority of creditors, which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.

146. The view taken in the case of K. Sashidhar (supra) and Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) has been reiterated by another three Judges Bench of this Court in the case of Maharashtra Seamless Limited (supra).

147. In all the aforesaid three judgments of this Court, the scope of jurisdiction of the Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) has also been elaborately considered. It will be relevant to refer to paragraph 55 of the judgment in the case of K. Sashidhar (supra), which reads thus:

> *"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to*

such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 7196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code."

148. It has been held, that in an enquiry under Section 31, the limited enquiry that the Adjudicating Authority is permitted is, as to whether the resolution plan provides:

(i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor,
(ii) the repayment of the debts of operational creditors in prescribed manner,
(iii) the management of the affairs of the corporate debtor,
(iv) the implementation and supervision of the resolution plan,

(v) the plan does not contravene any of the provisions of the law for the time being in force,
(vi) conforms to such other requirements as may be specified by the Board.

149. It will be further relevant to refer to the following observations of this Court in K. Sashidhar (supra):

> *57. ...Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in NCLT or NCLAT as noticed earlier, have not made the commercial decision exercised by CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order "approving a resolution plan" under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers "by the resolution professional" during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds- be it under Section 30(2) or under Section 61(3) of the I&B Code- are regarding testing the validity of the "approved" resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision."*
>
> *[emphasis supplied]*

150. It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same.

151. The position is clarified by the following observations in paragraph 59 of the judgment in the case of K. Sashidhar (supra), which reads thus:

> *"59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors….."*

152. This Court in Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) after reproducing certain paragraphs in K. Sashidhar (supra) observed thus:

> *"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar."*

153. It can thus be seen, that this Court has clarified, that the limited judicial review, which is available, can in no circumstance trespass upon a business decision arrived at by the majority of CoC.

154. In the case of Maharashtra Seamless Limited (supra), NCLT had approved the plan of appellant therein with regard to CIRP of United Seamless Tubulaar (P) Ltd. In appeal, NCLAT directed, that the Appellant therein should increase upfront payment to Rs.597.54 crore to the "financial creditors", "operational creditors" and other creditors by paying an additional amount of Rs. 120.54 crore. NCLAT further directed, that in the event the "resolution applicant" failed to undertake the payment of additional amount of Rs. 120.54 crore in addition to Rs. 477 crore and deposit the said amount in escrow account within 30 days, the order of approval of the 'resolution plan' was to be treated to be set aside. While allowing the appeal and setting aside the directions of NCLAT, this Court observed thus:

> *"30. The appellate authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the adjudicating authority has to be satisfied that the requirement of Sub−section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an adjudicating authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the adjudicating authority in limited judicial review has been laid down in Essar Steel [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, MANU/SC/1577/2019 : (2020) 8*

SCC 531], the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the appellate authority ought to have interfered with the order of the adjudicating authority in directing the successful resolution applicant to enhance their fund inflow upfront."

155. This Court observed, that the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.

156. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code."

38. The Learned Counsel for the Respondent Nos. 1 & 3, refers to the Judgment of the Hon'ble Supreme Court of India, in the matter of Committee of Creditors of Essar Steel India Limited v. Satish Kumar and Ors. (vide Civil Appeal Nos. 8766 – 67 of 2019), wherein, it was held that the limited Judicial review available with the `Adjudicating Authority' or the `Appellate Tribunal', has to be within the four corners of Section 30 (2) of the Code.

39. Further, in regard to the `Adjudicating Authority' is concerned and Section 32 read with Section 61 (3) of the Code, in regard to the `Appellate Tribunal' is concerned, can in no circumstance trespass upon a business decision arrived at by the majority of the `Committee of Creditors'.

40. Moreover, it is not open to the `Adjudicating Authority', or an `Appellate Authority', to reckon any other factor, other than mentioned in Section 30 (2) or Section 61 (3) of the I & B Code, 2016.

41. The Learned Counsel for the Respondent Nos. 1 & 3 takes a plea that there is no restriction for a `Trust', registered under the `Indian Trust Act', to submit a `Resolution Plan', during the `Corporate Insolvency Resolution Process', and the `Successful Resolution Applicant', is a `Registered Charitable Trust', registered under the `Indian Trust Act' and qualified to act as a `Resolution Applicant', pursuant to Section 5 (25) of the I & B Code, 2016.

42. In this connection, the Learned Counsel for the Respondent Nos. 1 & 3, refers to the ingredients of Section 5 (25) of the I & B Code, which provides the `Resolution Applicant', means a `Person', who individually or jointly with any other `Person', submits a `Resolution Plan' to the `Resolution Professional' pursuant to the invitation made under clause (h) of Sub-section (2) of Section 25.

43. According to the Learned Counsel for the Respondent Nos. 1 & 3, the term `Person', is defined under Section 3 (23) (d) of the I & B Code, which includes a `Trust', therefore, the Learned Counsel for the Respondent Nos. 1 & 3 contends that there is no prohibition for a `Trust', to be a `Resolution Applicant', in furnishing the `Resolution Plan', under `Corporate Insolvency Resolution Process'. Furthermore, the `Plan' is fully implemented and the `Hospital' premises, owned by the `Corporate Debtor', is in final stage of its `Revival'. And further that, the `Resolution Applicant', had recruited the Employees to the New Division, which includes former Employees of the `Corporate Debtor'.

44. Added further, on completion of the ongoing revival works, the `Resolution Applicant', is expected to generate more than 1000 direct and 2000 indirect Employment opportunities and is expanding approximately Rs.75 Crores over and above the `Plan' consideration of Rs.126 Crores, for the `revival' of the `Assets' of the `Corporate Debtor'.

45. The Learned Counsel for the Respondent Nos. 1 & 3, brings it to the notice of this `Tribunal', in the matter of M/s. PVS Memorial Hospital Pvt Ltd., the `Resolution Professional' had carried out due diligence, as per Section 29A of the I & B Code, 2016, before the placing the same before the `Committee of Creditors', and that the `CoC' had approved the same with 100% vote after ensuring the compliance under Section 30 of

the Code. In fact, the Adjudicating Authority, after fully satisfying itself about the compliances under the Code, had approved the Resolution Plan, as per Section 31 of the I & B Code.

46. The Learned Counsel for the Respondent Nos. 1 & 3, prays for dismissal of the instant Comp. App (AT) (CH) (INS) No. 179 of 2021, filed by the `Appellant', before this `Tribunal'.

Pleas of 2nd Respondent / Successful Resolution Applicant:

47. According to the Learned Counsel for the 2nd Respondent, the `Resolution Plan', was implemented in its entirety and that the `Corporate Debtor' was not functional for a long period and that the implementation of the `Employee Engagement Programme', as contemplated in the `Plan' had commenced. Furthermore, the instant `Appeal', is a concocted endeavour to delay the `Revival'.

Fair Value:

48. A `Fair Value', is an estimated `Realisable Value' of the `Assets' of the `Corporate Debtor', if they were to be exchanged on the beginning of `Insolvency Commencement Date' and the `Liquidation Value' is the estimated `Realisable Value' of `Assets' of the `Corporate Debtor', if the `Corporate Debtor' were to be liquidated on the beginning of the `Insolvency Commencement Date'.

Land Value:

49. To be noted that, the `Land Value', is decided, in the manner specified in `Regulation 35 (1)' and the `Resolution Professional', ought to furnish the `Fair Value' and the `Land Value' to every `member' of the `Committee' in `Electronic Form', in terms of `Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016'.

Definition of Fair Value:

50. It cannot be gain said, that the term `Fair Value', is defined under Clause (h) (b) of Sub Regulation (1) of Regulation (2) of amended Regulation means the estimated `Realisable Value' of the `Assets' of `Corporate Debtor', if they were to be exchanged on the `Insolvency Commencement Date', between a `willing buyer' and a `willing seller' in an arm's length transaction after proper marketing and where the `Parties', had acted knowledgably, prudently and without coercion.

51. In accordance with the `amended clause (h) (a)', the words `Evaluation Matrix', means `such parameters to be applied and the manner of applying such parameters, as approved by the `Committee' for consideration of Resolution Plan(s) for its approval. On receipt of the Resolution Plan(s) as per the I & B Code, 2016, 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 receipt of an undertaking from the `Member', to the effect that such `Member', shall maintain confidentiality of `Fair Value' and `Land Value' and shall not use such value, 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 of the I & B Code, 2016.

Rumination of Resolution Plan:

52. The `Resolution Professional', in tune with the ingredients of Section 30 (2) of the I & B Code, 2016, is to examine each `Resolution Plan', received by him, to affirm that the `Resolution Plan', prescribes for the payment of `Insolvency Resolution Process Costs', payments of `Debts of Creditors', the `management of affairs of the Corporate Debtor', `implement and supervision of the Resolution Plan', other requirements as may be specified by the `Board' and does not `violate' any `Section of Law', for the time being in force. As a matter of fact, the `Committee of Creditors', may approve the `Resolution Plan', by voting of not less than 75% of voting share on `Financial Creditors', as per Section 30(4) of the I & B Code, 2016. An `Adjudicating Authority', can examine the `reasoning of accepting or rejecting or any objection or suggestion and express his views in the matter.

53. In tune with the ingredients of Section 31 of the I & B Code, 2016, even an `Adjudicating Authority', is satisfied with the `Resolution Plan', being `approved', by the `Committee of Creditors', as per Section 30 (4) of the I & B Code, that it fulfils the requirements, as visualised in Section 30 (2) of the Code, it shall by an `Order' approve the `Resolution Plan', which shall be binding on the `Corporate Debtor', `Members', `Employees', `Creditors' and other `Stakeholders', involved in the `Resolution Plan'.

54. One of the objects of the I & B Code, 2016, is to promote `entrepreneurship', `availability of credit' and `balancing interest'. It is pointed out that a `Resolution Plan' is not a `Recovery' / not a `Sale' / not an `Auction'. No individual is either buying and selling the `Corporate Debtor'. However, a `Resolution Plan', is not to be a `Discriminatory one'.

55. If there is a `Resolution Applicant', who can continue to run the `Corporate Debtor', every endeavour is to be made, to try and see that is quite possible. There is no vested right in the `Resolution Applicant', to get its / his `Resolution Plan' approved.

Application of Mind:

56. A `Judicial' mind is to be applied by an `Adjudicating Authority' to the `Resolution Plan' submitted, and he may take a call for `accepting' or `rejecting' the `Plan', ofcourse, within the `parameters of law'.

Evaluation:

57. In the instant case on hand, this `Tribunal', points out that the `1st Respondent / Resolution Professional', had averred in his `Counter', in the instant `Appeal' that the `Fair Value' and the `Liquidation Value' of the `Corporate Debtor' were arrived at by both the groups of `Registered Valuers', were not significantly different and as such, there was no requirement to appoint another `Registered Value', by the `Resolution Professional', to submit an estimate of the `Value', computed in the same manner, as per `Regulation 35 (b) of the `Corporate Insolvency Resolution Process' Regulations.

58. As a matter of fact, the `Value', arrived at by the `Registered Valuers', are only estimates and the same cannot be construed as an `Accurate Value' of the `Corporate Debtor. In this regard, it is useful to mention the summary of the `Valuation Reports', submitted by the `Two Registered Valuers', which runs as under:

Sl. No.	Name of the lead Registered Valuer	Fair Value (As on 31st March 2019 – Amount in Crores)	Liquidation Value (As on 31st March, 2019 – Amount in Crores)
1	Mr. Jigar Shah	160.85	121.46
2	Mr. Ruben George Joseph	163.61	124.35
Average of Fair Value and Liquidation Value		162.23	122.90

59. According to the Learned Counsel for the Respondent Nos. 1 and 3 is that, the `initial Bid of the Resolution Applicant', was Rs.80 Crores, which was later, upwardly revised to Rs.110 Crores and subsequently enhanced to Rs.125 Crores only and ultimately it was finalised at Rs.126 Crores only, after numerous rounds of `negotiations' and `deliberations', the `Respondents' and the `Committee of Creditors', had with the `Resolution Applicant'.

60. It is the stand of the Respondent Nos. 1 and 3 that the `Resolution Plan', which was submitted on 01.10.2020, was revised on 24.11.2020, 03.12.2020, 08.12.2020 and 22.12.2020 (`Final Resolution Plan'), to accommodate the recommendations given by the Committee of Creditors', on the numerous `Legal', `Technical' and `Financial' aspects of the `Resolution Plan'. In fact, the `Committee of Creditors', had unanimously approved the `Resolution Plan', after considering its `Feasibility' and `Viability', the manner of `Distribution' proposed and compliance with the `Provisions' of the `Code' and `Regulations', made

thereunder, and such other requirements, as may be prescribed by the `Board'.

Judicial Review:

61. The scope of `Judicial Review', by an `Adjudicating Authority', revolves around a `restricted and narrow field'.

62. Furthermore, the `Resolution Plan', given by the `Resolution Applicant', had satisfied the requirements, mentioned in the I & B Code, and the Regulations, thereunder and a `Compliance Certificate', was filed by the `1st Respondent / Resolution Professional' in this regard, before the `Adjudicating Authority' (`National Company Law Tribunal'), in terms of the Regulation 39 (4) of the `Corporate Insolvency Resolution Process Regulations'.

63. It cannot be ignored, that the `Commercial Wisdom' of the `Committee of Creditors', is not be interfered with, except in the limited ambit, as contemplated under Section 30 (2) of the I & B Code, 2016, in respect of an `Adjudicating Authority', and as per Section 61 (3) of the Code, in regard to an `Appellate Tribunal'. Besides these, in `Law', it is not open to an `Adjudicating Authority' (`Tribunal') or an `Appellate Authority' (`Appellate Tribunal'), to consider `any other feature than the one' mentioned in `Section 30 (2) or Section 61 (3) of the I & B Code, 2016', in the considered opinion of this `Tribunal'.

64. In this connection, this `Tribunal', points out the Judgment of the Hon'ble Supreme Court of India in Kalpraj Dharamshi and Anr. v. Kotak Investment Advisors Limited and Anr. (vide Civil Appeal Nos. 2943 – 2944 of 2020 dated 10.03.2021), wherein at Paragraphs 155 and 156, it is observed as under:

> *155. ``It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I & B Code.*
>
> *156. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub−section (3) of Section 61 of the I & B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, 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%.''*

65. Moreover, in `Committee of Creditors' of Essar Steel India Ltd. v. Satish Kumar Gupta, the Hon'ble Supreme Court of India (vide Judgement dated 15.11.2019, in Civil Appeal Nos.8766-8767 of 2019 (reported in MANU/SC/1577/2019) at Paragraphs 53 and 54, it is observed as under:

> *53. ``However, as has been correctly argued on behalf of the operational creditors, the preamble of the Code does speak of maximisation of the value of assets of corporate debtors and the balancing of the interests of all stakeholders. There is no doubt that a key objective of the Code is to ensure that the corporate debtor keeps operating as a going concern during the insolvency resolution process and must therefore make past and present payments to various operational creditors without which such operation as a going concern would become impossible. Sections 5(26), 14(2), 20(1), 20(2)(d) and (e) of the Code read with Regulations 37 and 38 of the 2016 Regulations all speak of the corporate debtor running as a going concern during the insolvency resolution process. Workmen need, to be paid, electricity dues need to be paid, purchase of raw materials need to be made, etc. This is in fact reflected in this Court's judgment in Swiss Ribbons (supra) as follows:*
>
> *26. The Preamble of the Code states as follows:*
>
> *An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.*

27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going Concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme - workers are paid the creditors in the long run will be repaid in full and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development or credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development or the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed or as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. (See ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, MANU/SC/1123/2018: (2019) 2 SCC 1] at para 83, fn3).

(emphasis supplied)

54. This is the reason why Regulation 38(1A) speaks of a resolution plan including a statement as to how it has dealt with the interests of all stakeholders, including operational creditors of the corporate debtor. Regulation 38(1) also states that the amount due to operational creditors under a resolution plan shall be given

priority in payment over financial creditors. If nothing is to be paid to operational creditors, the minimum, being liquidation value which in most cases would amount to nil after secured creditors have been paid - would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to resubmit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the

Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.

20. It has been further been held in the case of Essar Steel (supra):

124. The other argument of Shri Sibal that Section 53 of the Code would be applicable only during liquidation and not at the stage of resolving insolvency is correct. Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of creditors, but only to provide for a minimum payment to operational creditors. However, this again does not in creditors as any manner limit the Committee of Creditors from classifying creditors as financial or operational and as secured or unsecured. Full freedom and discretion has been given, as has been seen hereinabove, to the Committee of Creditors to so classify creditors and to pay secured creditors amounts which can be based upon the value of their security, which they would otherwise be able to realise outside the process of the Code, thereby stymying the corporate resolution process itself."

66. Dealing with the plea of the `Appellant' that a `Resolution Applicant', cannot be a `Charitable Public Trust', and that in the present case, the `Resolution Applicant' / `Lissie Medical Institutions', is a `Charitable Public Trust', and further that, the `act of acquiring the Corporate Debtor', under the `Resolution Plan', cannot be placed under any of the purview of `Charitable Purpose', this `Tribunal', aptly points out that the decision of the Hon'ble Supreme Court of India (relied on the side of the `2nd Respondent' / `Successful Resolution Applicant'), in Sole Trustee Loka Shikshana Trust v. Commissioner of Income Tax, reported in 1976 1 SCC at Page 254, wherein it is observed as under:

``The difficult question, however, still remains: what is the meaning of "charitable purpose" which is only indicated but not defined by Section 2(15) of the Act? It seems to me that a common concept or element of "charity" is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yields profit, provided that profit has to be used up for what is recognised as charity. The very concept of charity denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. Its essence is selflessness. In a truly charitable activity any possible benefit to the person who does the charitable act is merely incidental or even accidental and immaterial. The action which flows from charitable thinking is not directed towards benefitting one's self. It is always directed at benefitting others. It is this direction of thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really charitable.''

67. To put it precisely, the word `Person', is defined as per Section 3 (23) (d) of the I & B Code, 2016, which includes a `Trust', therefore, there is no `Fetter' / `Embargo' or a `Legal Impediment', for a `Trust', to be a `Resolution Applicant', in submitting a `Resolution Plan' (in the present case), the candid fact, is that the `Successful Resolution Applicant' / `Lessie Medical Institutions', being a `Registered Charitable Trust', under the `Indian Trust Act, 1882'), in `Corporate Insolvency Resolution Process', in the cocksure earnest opinion of this `Tribunal'. Looking at from that perspective, the contra plea taken on behalf of the `Appellant' is not acceded to by this `Tribunal'.

68. Indeed, the `Validation of an Approved Resolution Plan', is to `Demerge' the `Assets' of the Corporate Debtor and `Amalgamate' the same with the `Resolution Applicant', which is functioning in the same field of `Corporate Debtor' Viz. `Healthcare'.

69. It is significantly pointed out by this `Tribunal', that according to the `1st Respondent / `Monitoring Agency', the `Resolution Plan', is fully implemented, etc.

70. It is not out of place for this `Tribunal', to point out that the `Committee of Creditors', had approved the `Resolution Plan' with 100% vote after satisfying itself about the compliance of Section 30 of the I & B Code, 2016. To put it succinctly, the `Adjudicating Authority', (`National Company Law Tribunal', Kochi Bench, Kerala) was subjectively satisfied as to the compliance of the requirements under the I & B Code, 2016, and `Approved' the `Resolution Plan', in conformity with Section 31 of the I & B Code, 2016.

71. This `Tribunal', on going through the words, any person `Aggrieved', occurring in Section 61 (1) of the I & B Code, 2016, is of the view that in Section 61 (1) of the Code, the words `Party Aggrieved', are not employed. For an affected person, the `Order' of an `Adjudicating Authority', must cause a `Legal Grievance', by wrongfully depriving him

of something and in the process, his `Legal Right' is breached, by the act complained of.

72. In the present case, in view of the plea taken by the `Appellant' that as an `Operational Creditor', who had supplied `Life Saving Medicines' to the `Corporate Debtor' / `M/s. PVS Hospital' and they had purposefully withheld payments due to the `Appellant' in respect of the period from Jun'2017 to Apr'2019 and when the credit had exceeded the limits, in Nov'2018, the `Appellant', had stopped supply to the `Corporate Debtor' and further the cheques issued by it, got `Bounced', in terms of Section 61 of the I & B Code, 2016, the filing of the instant Comp. App (AT) (CH) (INS.) No. 179 of 2021 by the `Appellant' as an `Aggrieved Person', in respect of the `impugned order' dated 22.02.2021 and modified on 16.03.2021 is held `maintainable in law', by this `Tribunal'.

73. Be that as it may, in view of the detailed qualitative and quantitative upshot, this `Tribunal', taking note of the divergent contentions advanced on either side, entire gamut of the factual matrix and attendant facts and circumstances of the instant case, in an integral manner, comes to an inescapable conclusion that the `Appellant' has not made out a case in its favour and has not proved any of the grounds adumbrated in Section 61 (3) of the I & B Code, 2016, for filing an

`Appeal', against the `impugned order' dated 16.03.2021 in IA(IBC)/13/KOB/2021 in TIBA No.11/KOB/2019, passed by the `Adjudicating Authority', (`National Company Law Tribunal', Kochi Bench, Kerala), in approving the `Resolution Plan', under Section 31 of the I & B Code, 2016. Viewed in that perspective, the `Appeal' fails.

Disposition:

In fine, the instant Company Appeal (AT) (CH) (INS.) No. 179 of 2021 is dismissed. There shall be no order, as to costs. The connected pending `IAs', if any, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

05/12/2022

SR/TM