# IN THE NATIONAL COMPANY LAW TRIBUNAL
# BENCH-1 AT HYDERABAD

**IA NO. 791 OF 2021**
**in**

IN CP (IB) NO. 17/9/HDB/2020

*Application under Section 60 (5) of IBC, 2016*

IN THE MATTER OF

**M/S THIRUMALA LOGISTICS vs M/S SATHAVAHANA ISPAT LIMITED**

***Filed by***

**Trimex Industries Private Limited**
Trimex Towers, No. 1 Subbaraya Avenue,
C.P Ramaswamy Road, Alwarpet,
Chennai – 600 018.

...Applicant/
Operational Creditor

-VERSUS-

1. **M/s. Sathavahana Ispat Limited**
   Represented by its Resolution Professional, Mr. Bhuvan Madan,
   A-103, Ashok Vihar Phase -3
   Delhi-110052

   ...Respondent/
   Corporate Debtor

2. **JC Flowers Asset Reconstruction Private Limited**
   12th Floor, Crompton Greaves House,
   Dr. Annie Besant Road, Worli, Mumbai, Mumbai City
   Maharashtra – 400030, Represented by its authorised signatory

   ...Respondent/
   Committee of Creditor member

3. **Jindal Saw Limited**
   A-1, UPSIDC Industrial Area,
   Nandgaon Roadkosi Kalan,
   Mathura, Uttar Pradesh - 281403

Also at,
Jindal Centre,
12 Bhikaiji Cama Place
New Delhi - 110066
Represented by its authorised signatory

...Respondent/
Prospective Resolution Applicant

**Date of order: 05.05.2022**

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member Judicial
Shri Veera Brahma Rao Arekapudi, Hon'ble Member Technical

Appearance:

For Applicant Shri Arvind Pandiyan, Senior Advocate.

For Respondents: Shri Arun Kathpalia, **Senior** Advocate assisted by Shri Shashank Agarwal for Respondent No.1,
Shri Ramji Srinivasan, Senior Advocate for Respondent No.2 and Shri S. Niranjan Reddy, Senior Advocate for Respondent No.3

**ORDER OF DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, MEMBER (JUDICIAL)**

1. This Application has been filed by the Operational Creditor of the Corporate Debtor M/s. Sathavahana Ispat Limited, which is undergoing CIRP, pursuant to the order of this Tribunal, in CP No.17/9/HDB/2020, dated 28.07.2021, under Section 60 (5) of Insolvency & Bankruptcy Code, 2016, R/w Rule 11 of NCLT Rules, for the following reliefs: -

(i) To direct the Financial Creditor JC Flowers Asset Reconstruction Company Private Limited to disclose all information as to the funding it had received towards and for the purpose of receiving the assignment of the Financial Debt of M/s. Sathvahana Ispat Limited.

(ii) To appoint the Applicant as an observer on the Committee of Creditors of M/s.Sathvahana Ispat Limited so as to ensure that the Committee of Creditors of M/s.Sathvahana Ispat Limited function in a transparent and fair manner to ensure the best interests of all the operational creditors.

(iii) To restrain the 3rd Respondent from submitting any resolution plan for the Corporate Insolvency resolution process of 1st Respondent pending the hearing and disposal of the present application.

(iv) To restrain 2nd Respondent from considering any resolution plan for the Corporate Insolvency Resolution Process of the 1st Respondent submitted by the 3rd Respondent pending hearing and disposal of the present application.

(v) Pass such further or other orders and reliefs as this Tribunal may deem fit and necessary in the facts and circumstances of the case.

2. The Applicant's contentions are: -

2.1 The Applicant herein is an admitted operational creditor of M/s. Sathavahana Ispat Limited (SIL) to the extent of Rs. 23,49,52,801/- and in terms of the debt due by SIL and represents 38.8% of all the other operational creditors of SIL and about 27% of all the operational creditors of SIL.

2.2 This Tribunal admitted the Petition filed by M/s Thirumala Logistics against Sathavahana Ispat Limited on 28.07.2021. It is averred, prior to filing of Section 9 petition under IBC, the financial debt of Sathavahana Ispat Limited in the books of three major financial lenders Canara Bank,

State Bank of India and Union Bank of India, along with non-banking Financial Company i.e. IFCI to the tune of Rs. 1660,20,00,000/- was assigned under a Swiss challenge auction to JC Flowers/2nd Respondent herein for a sum of Rs. 532,00,00,00/- which is a sole financial creditor and member of COC of Sathavahana Ispat Limited. The consideration towards the assignment of this financial credit was made by JC Flowers upon receipt of two primary sources of funding, the first around 15% of the total value to the tune of Rs. 69,65,00,000/- has been issued by the pledge of security receipts to Siddeshwari via Axis Trustee Services Limited and the charge got registered on 25.06.2021 for Rs. 69,65,00,000/- and the second around 85% from alleged private investors, whose details are unknown. JC Flowers, by way of an assignment by three financial lenders (banks) and one NBFC Financial lender, has assumed the position of financial creditor of SIL/Corporate Debtor.

2.3 The Interim Resolution Professional appointed for SIL issued Request for Proposal (RFP) for repair and maintenance works for SIL on 04.09.2021. Subsequently, due to change of Resolution Professional i.e. Mr. Bhuvan Madan, an addendum to the RFP was issued by new incumbent on 17.09.2021.

2.4 In response to the RFP issued on 14.10.2021 and 16.10.2021, Jindal Saw i.e. the 3rd Respondent was chosen by the CoC as the contractor for carrying out the maintenance works w.e.f. 18.10.2021 for a total consideration of Rs. 266,00,00,000/-, to be completed within seven months i.e. by May 2022.

2.5 The Applicant states that the matters of potential conflict of interest here are that Mr. Prithvi Raj Jindal is the owner of Siddeshwari, one of the entities which have funded the purchase of the financial debt supra and the registered email of Siddeshwari prima facie indicates that there is complete overlap of the affairs of management of Siddheshwari and Jindal Saw. Mrs. Arti Jindal, spouse of Mr. Prithvi Raj Jindal is one of the Directors of Siddeshwari and Mr. Prithvi Raj Jindal is the minority shareholder of Siddeshwari and Director and key managerial person of Jindal Saw. As per the disclosed shareholding pattern of Jindal Saw, Siddeshwari holds a total shareholding of 11.68% in Jindal Saw, while Mrs. Arti Jindal holds 1.27% in Jindal Saw.

2.6 It is submitted that 15% of the funding for assignments was obtained from Siddeshwari Tradex Private Limited (Siddeshwari) a company closely wound with Respondent No.3 the PRA i.e Jindal Saw Ltd having overlap of members and management amongst them and the

remaining funding of 85% which is around Rs. 452,00,00,000/-, raised by Respondent No.2 / JC Flowers Asset Reconstruction Private Limited from the private investors which details are unknown to the Applicant. The Applicant has questioned the transaction of raising money to the tune of Rs. 500,00,00,000/- each by Siddeshwari and Jindal Saw on 25.06.2021 as non-convertible debentures and subsequent registration of charge by Axis Trustee Services Limited on 20.03.2021 and further speculates that this transaction was in some way connected to the acquisition of security receipts by Hexa Securities or extension of funding to Respondent No. 2 by Siddeshwari.

2.7 It is alleged that the situation is of the nature of 'related parties' between the Financial Creditors and Resolution Applicants and seeking complete disclosure of these transactions for ensuring that the objective of CIRP is not defeated. Without allowing the interests of Siddeshwari, JC Flowers, 2nd Respondent herein being sole member of CoC, is acting against the interest of SIL and other operational Creditors.

2.8 The Applicant avers that, a total of 7 (seven) EOIs were received by the Resolution Professional from different RAs, out of the four Jindal Saw Limited / R-3 was also included as one of the PRAs. The due date for submission of resolution plan was extended to 20.12.2021.

2.9 Thus submitting, the Applicant prayed the Tribunal to direct the Resolution Professional not to consider the resolution plan submitted by 3rd Respondent being a relative party and to permit the Applicant being an operational creditor of the Corporate Debtor to appoint as observer on the CoC of SIL to ensure transparency in the process and to disclose all information relating to receipt of funds by 2nd Respondent herein

3.1 The 1ST Respondent filed counter *inter-alia*, contending that, the Application deserves to be dismissed qua the RP/R-1 as no allegation/case has been made out against him and that the entire basis of the application is with regard to source of funds of the sole member of CoC viz. M/s JC Flowers Asset Reconstruction Private Limited for assignment of debt from previous lenders of the Corporate Debtor in its favour and the same cannot be challenged by the Applicant in CIRP proceedings when it is on the verge of completion. The Applicant has no locus to seek its appointment as "observer" and attend the meetings of CoC as the Applicant represents only 1.2862% of the total admitted debt as against the averments made in the application that it holds 38.8% of all the other operational creditors of SIL and about 27% of all the operational creditors of SIL, and has failed to show, being an operational creditor how it meets the criteria of 10% of the total debt so

as to be entitled to even receive notice of the CoC meetings. The Resolution Professional did not include the Applicant in the provisional list of the prospective resolution applicants (PRAs) on account of certain objections for which certain clarifications were sought for from the Applicant and ultimately found place in the list of PRAs after satisfying the clarifications sought for by the Resolution Professional. Further, despite issuing 'Request for Resolution Plans', 'Evaluation Matrix' and 'Information memorandum', the Applicant failed to submit the Resolution Plan and instead filed the instant application seeking certain reliefs from the Tribunal only with an intention to stifle the resolution process. The Resolution Professional contends that the Application is completely based on speculations and inferences, hence liable to be dismissed as pre-mature and devoid of merit as even before the resolution plans are under consideration by CoC, with the sole intent to delay the proceedings. In this regard, the 1st Respondent ha relied on the ruling of Hon'ble Supreme Court in the matter of "*Arcellormittal India Private Limited vs Satish Kumar Gupta & ORs" in Civil Appeal No. 9402-9405 of 2018.* The Resolution Professional while relying on the ruling of Hon'ble Supreme Court of India in the matter of *Municipal Corporation of Greater Bombay vs Industrial Development Investment Co. Pvt. Ltd & Ors (AIR 1997 SC 482)*, contended that despite

informing Applicant vide email dated 05.11.2021 to raise any objections to the inclusion or exclusion of any other PRAs pursuant to publication of the provisional list of PRAs on 01.11.2021, no objection was received by him with regard to inclusion of 3rd Respondent in the final list of PRAs. The Resolution Professional contends that there is no collusion between the CoC and the 3rd Respondent as alleged by the Applicant and the decision to award the contract on 04.09.2021 to the sole bidder i.e. the 3rd Respondent herein for carrying out the repairs and maintenance work to revamp the plant and machinery for a total consideration of Rs. 266,00,00,000/- was taken in the 5th CoC Meeting, solely with a view to attain the best resolution value and therefore, to challenge the said action of R-1 is baseless and incorrect. Thus submitting, R-1 prayed the Tribunal to dismiss the Application.

3.2. The 2nd Respondent filed counter, inter-alia, contending that the Applicant has no locus to file the instant application as the aggregate claim amount due of the Applicant as operational creditor is minuscule 1.28% of the total debt of the Corporate Debtor and that the Code provides for inclusion of only financial creditors in the CoC, while the Operational Creditors are allowed to attend the meetings without voting rights in case the amount of their aggregate dues is not less than 10 % of the total debt. It is further contended that as the Code mandates time

bound resolution of the Corporate Debtor for maximization of the value of assets and to achieve this objective, the resolution plans submitted by the PRA including R-3 which are under consideration of CoC. Further there is no bar for any person connected to the financial creditor, either directly or indirectly from submitting a resolution plan under Section 29A of IBC. The Applicant has not put forth any evidence regarding the illegality or irregularity in the conduct of CIRP. In this context, *the 2nd R* relied on para 73 of the ruling of Hon'ble Supreme Court of India in the matter of Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors (2020) 8 SCC 531, wherein it was held that *"under no circumstances the Adjudicating Authority or the Appellate Authority can trespass upon the commercial decision of the CoC"*. JC Flowers i.e. the 2nd Respondent by way of an assignment by three financial lenders (banks) and one NBFC Financial lender which is permissible under law, has assumed the position of financial creditor of SIL and that the entire acquisition of debt process was a transparent and open process. The 2nd Respondent submitted that it does not come under the ambit of "related party" as defined under Sections 5(24) and 5(24A) of IBC. It is further stated that as per the Securitization Companies and Restructuring Companies (Reserve Bank) Guidelines and Directions, 2003 issued by the Reserve Bank of

India, asset reconstruction companies are required to mandatorily hold 15% of the security receipts in the Securitization Trust. Out of this 15%, 87% was raised by way of issuing Non-Convertible Debentures to Siddeshwari and the remaining 13% was funded from equity investment. Further Hexa Securities & Finance Co. Ltd, NBFC and a qualified buyer in terms of SARFAESI Act, has subscribed to 85% of the security receipts offered by the trust constituted by the 2nd Respondent for a total consideration of Rs. 451,35,00,000/- on 25.06.2021 which is much prior to commencement of CIRP of the SIL i.e. 28.07.2021. The Applicant in no way is prejudiced with respect to the registration of charge by Axis Trustee Services Limited recently used by Respondent No.2 for the pledge of security receipt to raise funds for the consideration towards the assignment of the financial debt of the Corporate Debtor. The purported overlap between the members of management of Siddeshwari and Jindal Saw Limited/R-3 will not be a hurdle for the 3rd Respondent in submitting its bid as a PRA.

3.3. The 3rd Respondent filed counter, *inter-alia,* contending that the Applicant has suppressed and concealed the material facts and misrepresented about holding 38.8% of all the other operational creditors of SIL and about 27% of all the operational creditors of SIL. as against 1.28% of the entire admitted debt of the Corporate Debtor

(not including contingent claims). .The 3rd Respondent claims that the Applicant is resorting to fishing and roving enquiry to halt Respondent No.3 from participating in the CIRP of the Corporate Debtor, and seeking participation as an observer despite its ineligibility to represent in the CoC meetings under Section 24 (3) of the Code, only with an intent to obtain access to confidential information required pertaining to CIR Process. Respondent No. 3 has disclosed the following facts

(1) The Respondent No.3 is a public limited company which has earned the reputation of being the 'total pipe solutions provider' across the globe. It is constantly evaluating new avenues for expansion of the business and it considers the Corporate Debtor's business to be a natural fit for its business. Given this, once the Corporate Debtor's CIR Process commenced, the Respondent No. 3 started evaluating business opportunities in its regard.

(2) Respondent No. 2, which is a registered Asset Reconstruction Company, is the sole financial creditor of the Corporate Debtor, and as available through public records, it has achieved this by acquiring debt from Canara Bank, State Bank of India, Union Bank and IFCI Limited. Evidently, the said transaction took place much before the CIR Process was commenced against the Corporate Debtor on 28 July 2021.

(3) As per publicly available information, the Respondent No. 2 has constituted a trust in relation to the account of the Corporate Debtor ("**Trust**") and Hexa Securities & Finance Co. Ltd. ("**Hexa Securities**"), an NBFC has subscribed to the **85%** of the Security Receipts offered by Trust for a total consideration of Rs.451,35,00,000/- (Indian Rupees Four Hundred and Fifty One Crores and Thirty Five Lakhs only).

(4) Hexa Securities has been disclosed to be a related party under the head "*Entities where key management personnel and their relatives exercise significant influence*" in the Annual Report of

the Respondent No.3, however Respondent No.3 does not hold any shares in Hexa Securities.

(5) Although related to Respondent No. 3, Hexa Securities is a separate entity having its standalone legal existence, and the Applicant has made out no ground for this Hon'ble Tribunal to disregard its separate legal existence.

(6) Additionally, as per publicly available records, Siddheswari subscribed to certain non-convertible debentures issued by the Respondent No.2 to the tune of Rs. 69,65,00,000/- (Rupees Sixty Nine Crores and Sixty Five Lakhs only). This appears to have been a source of a part of the monies utilised by Respondent No. 2 for the acquisition of the security receipts in the Trust that it is required to hold. Siddeshwari owns 11.68% of the shares of the Respondent No. 3, and is an entity where key management personnel and their relatives exercise significant influence, which has been duly disclosed in the annual report of the Respondent No.3 for the year2020-2021. However, this does not mean that the Respondent No.3 is one and the same entity as Siddeshwari, and there can be no ground to pierce or lift the corporate veil in this instance.

(7) The acquisition of security receipts by Hexa Securities or extension of funding to Respondent No. 2 by Siddeshwari was in no way financed by the Respondent No.3. In this regard, the Applicant's contention para 3 (BB) of its application that the charge worth INR 500 crores created by Respondent No. 3 in March 2021 was in some way connected to this acquisition is strongly denied. This is apparent from the fact that the charge was created in March 2021, a full *three* months prior to the acquisition of debt by the Respondent No. 2, and much before the financial lenders had even advertised that they would place the Corporate Debtor's account for sale, which they did only on 25 May 2021. This charge was created to secure the issue of non- convertible debentures ("**NCDs**"), and the funds were used for (a) normal capital expenditures (b) replacement of high cost long term debt (c) financing of long-term working capital and (d) general corporate purpose, which has been disclosed in the Information Memorandum dated 24th March 2021 for the issue of these NCDs. That this has been used to make repayments on previous debt has also been verified by CARE ratings (an external credit rating agency) in its report issuing a rating on Respondent No.3 on October 07, 2021.

3.4 The 3rd Respondent denied the claim of the Applicant that the charge worth INR 500 crores created by Respondent No. 3 in March 2021 was in some way connected to the acquisition of security receipts by Hexa Securities or extension of funding to 2nd Respondent by Siddeshwari. The averments of the Applicant that 3rd Respondent is connected to 2nd Respondent because of their connection with the same Trusteeship service to create a charge, is vague and premature because the monies raised by 3rd Respondent was for completely unconnected obligations. The 3rd Respondent being a prospective resolution applicant is not barred from proposing a resolution plan, as there is no conflict of interest even if its related party, has a commonality of interests with a financial creditor, and even if it is a financial creditor itself.

3.5 The 3rd Respondent has relied on the following:-

(i) Section 30(5) of the Code provides that:

"The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor." (emphasis supplied)

(ii) Order of NCLT bench in Abhijit Guhathakurta v. Korba West Power Co., I.A. No. 236 of 2019 in CP (IB) No. 190 of 2018, dated 24 June 2019.

(ii) Form-G issued on 05.10.2021 by Resolution Professional did not indicate any disqualification on grounds of having related party with a commonality of interest with the financial creditor.

3.6 It is stated that the Resolution Professional carried out due diligence while declaring the 3rd Respondent as one of the PRAs because the 3rd Respondent adhered to the criteria laid down under Section 25 (2) (h) or Section 29A. However, the Applicant did not raise any objection with regard to inclusion of the Respondent No.3 post publication of the provisional list of PRAs. The work awarded to the 3rd Respondent following due procedure during CIRP, will not bar the 3rd Respondent from submitting the Resolution Plan. There is no situation of 'related parties' between the Respondent No. 3 and the corporate debtor. The Applicant also failed to demonstrate how this tribunal lacks jurisdiction for granting reliefs as sought for at the stage of CIR process.

4. Rejoinders were filed by the Applicant to the replies / counters submitted by Respondents 1-3, refuting the contentions raised therein and reiterating the contentions made in the Application.

5. Before I proceed to *frame* the points for consideration, I wish to state that, in so far as the 3rd relief prayed by the applicant, namely, to restrain the 3rd Respondent from submitting any resolution plan for the Corporate Insolvency resolution process of 1st Respondent, it maybe stated the said relief has become *infructuous,* as the 3rd Respondent has already submitted that resolution plan when this petition was filed. Post

filing of this Application, this Tribunal, vide its order dated 07/03/2022 refused the prayer of the Applicant to stay the *process of voting on the plan submitted by the 3rd respondent but ordered the COC to hold the result.*

6. In this back drop, and in view of the contest put forth, I, *frame* the following **Points** for my due consideration;

(i). Whether the 2nd respondent can be directed to disclose all information as to the funding it had received for acquiring the Financial Debt of the 1st Respondent by way of an assignment under the SARFEASI Act?

(ii) Whether the Applicant has *locus standi*, to be appointed as an *observer* in the meetings of the members of the Committee of Creditors of the Corporate Debtor?

(iii) Whether the committee of creditors be restrained from considering the resolution plan of the 3rd respondent/prospective resolution applicant which has already been submitted by the Resolution Professional to the CoC?

7. Heard Shri Arvind Pandiyan, Ld. Senior Counsel for Applicant, Shri Arun Kathpalia, Ld. Senior Counsel for 1st Respondent, Shri Ramji

Srinivasan, Ld. Senior Counsel for 2nd Respondent and Shri S. Niranjan Reddy, Ld. Senior Counsel for 3rd Respondent, perused the records, written submissions and case law.

**Point.No 1**

**Whether the 2nd respondent can be directed to disclose all information as to the funding it had received for acquiring the Financial Debt of the 1st Respondent by way of an assignment under the SARFEASI Act?**

8.1 Shri. Aravind Pandiyan, Ld. Sr Counsel for the Applicant, submitted that the Applicant herein has an admitted operational debt to the extent of Rs. 23,49,52,801 (Rupees Twenty-three crores forty-nine lakhs fifty-two thousand eight hundred and one) and is presently, the largest operational creditor holding 28.9% of all the admitted operational debt. Ld. Sr. Counsel further stated the Corporate Debtor, has an admitted Financial Debt of Rs. 17,47,13,78,690 (Rupees One thousand seven hundred and forty-seven crores thirteen lakhs seventy-eight thousand six hundred and ninety) due towards the 2nd respondent a sole an Asset Reconstruction Company, therefore, the 2nd respondent is the sole member of the Committee of Creditors, for short, CoC of the Corporate Debtor.

8.2 Ld. Sr Counsel submits that, the 2nd Respondent which is an assignee and holder of the financial debt stated above, raised the amount of

consideration paid to the assignors through the following sources as disclosed by the 2nd Respondent.

(i). Fifteen percentage (15%) which was made as below:

a) Eighty-seven percentage (87%) comprising of Rs. 69,65,00,000 (Rupees sixty-nine crores sixty-five lakhs) as non-convertible debentures issued by the 2nd Respondent subscribed by M/s. Siddeshwari Tradex Private Limited.

b) Thirteen percentage (13%) funded by equity investment by 2nd Respondent.

(ii) Eighty-five percentage (85%) comprising of Rs. 451,35,00,000 (Rupees four hundred and fifty-one crores and thirty-five lakhs) in the form of security receipts issued by the 2nd Respondent subscribed by Hexa Securities and Finance Company Limited a non-banking financial company.

8.3 Ld. Sr. Counsel submits that, this Tribunal admitted the Petition filed by M/s Thirumala Logistics against M/s Sathavahana Ispat Limited, under Section 9 of IBC on 28.07.2021. According to the Ld. Senior Counsel, prior to filing of Section 9 petition under IBC, the financial debt of M/s Sathavahana Ispat Limited in the books of three major financial lenders Canara Bank, State Bank of India and Union Bank of India, along with non-banking Financial Company i.e. IFCI to the tune of Rs. 1660,20,00,000/- was assigned under a Swiss auction to the 2nd Respondent (JC Flowers) for a sum of Rs. 532,00,00,00/- challenged method on 25.05.2021. The consideration towards the assignment of this financial debt was made by Respondent No.2 i.e. JC Flowers upon receipt of two primary sources of funding, the first around 15% of the

total value to the tune of Rs. 69,65,00,000/- from a pledge of security receipts towards the primary and end-point allottee Siddeshwari Tradex Private Limited (Siddeshwari) and there exists a registered charge on 25.06.2021 for Rs. 69,65,00,000/- and the second around 85% from alleged private investors, whose details are unknown.

8.4 Shri Arun Kathpalia, Ld. Senior Counsel, for the 1st Respondent/Resolution Professional submits that the Application deserves to be dismissed qua the 1st respondent, as no allegation/case has been made out against Respondent No.1 and that the entire basis of the application is with regard to source of funds of the sole member of CoC viz. M/s JC Flowers Asset Reconstruction Private Limited, the 2nd Respondent herein, for assignment of debt from previous lenders of the Corporate Debtor in its favour and the same cannot be challenged by the Applicant in CIRP proceedings when it is on the verge of completion.

8.5 Shri Ramji Srinivasan, Ld. Sr. Counsel for the 2nd respondent, while strongly refuting the afore mentioned submission of the Applicant submitted that, pursuant to a Notification for Sale of Financial Asset by Canara Bank lead consortium under Swiss challenge method dated 25th May, 2021, the 2nd Respondent which is a registered Asset

Reconstruction Company (ARC) had participated in the said public e-auction (which was open for any interested party across the globe) for sale of the outstanding financial debt of M/s. Satavahana Ispat Ltd, the Corporate Debtor herein, along with many other bidders and was declared the H1 bidder. Post that a Swiss Auction was run, and the 2nd Respondent consolidated and acquired the outstanding financial debt of the Corporate Debtor. Ld. Sr. Counsel further contends that the outstanding exposure / debt owed by the Corporate Debtor to Canara Bank, State Bank of India and Union Bank of India along with non-banking financial company IFCI to the tune of Rs. 1717,89,77,143/- (Rupees Seventeen Hundred and Seventeen Crores Eighty-Nine Lakhs Seventy-Seven Thousand One Hundred and Forty-Three Only) [which comprises of Rs. 931,72,31,430 towards the principal amount and Rs. 786, 7,45,713/- towards the interest thereon] was assigned to the 2nd Respondent under a Swiss Auction for Rs. 531,00,00,00/- (Rupees Five Hundred Thirty-One Crores only).

8.6 Ld. Sr. Counsel asserts that the Applicant cannot have any grievance against the acquisition of debt of the corporate debtor under an assignment by the 2nd respondent. According to the Ld. Sr. Counsel, this Hon'ble Tribunal does not have jurisdiction to adjudicate on any issue with respect to the assignment of debt in favour of the 2nd Respondent.

8.7 Ld. Sr. Counsel would contend further that as per the Securitisation Companies and Restructuring Companies (Reserve Bank) Guidelines and Directions, 2003, issued by the Reserve Bank of India, Asset Reconstruction Companies are required to mandatorily hold 15% of the security receipts in the Securitisation Trust. Accordingly, the 2nd Respondent raised money on its balance sheet to fund the investment in 15% of the security receipts. Out of this 15%, 87% was raised by way of issuing Non- convertible Debentures to M/s. Siddeshwari Tradex Private Limited, and the remaining 13% was funded from equity investment as per the public disclosures made by the 2nd Respondent on the website of Ministry of Corporate Affairs.

8.8 Ld. Senior Counsel further submitted that, Hexa Securities & Finance Co. Ltd., a Non-Banking Financial Company (NBFC) and a qualified buyer in terms of the SARFAESI Act has subscribed to the balance 85% of the security receipts offered by the trust constituted by the 2nd Respondent for a total consideration of Rs. 451,35,00,000/- (Rupees Four Hundred and Fifty-One Crores and Thirty-Five Lakhs only) on 25" June 2021. Thus, the 2nd Respondent is compliant with the guidelines of the Reserve Bank of India.

9.1 Shri. S Niranjan Reddy, Ld. Sr. Counsel, for the 3rd respondent submits that the Applicant has no locus to maintain the present application besides indulged in suppression and concealment of material fact that Applicant is also one of the PRAs to submit its resolution plan as is evident from the final list published by the Resolution Professional in accordance with regulation 36A (12) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations". Further, the Applicant' misrepresented about holding 38.8% of all the other operational creditors of SIL and about 27% of all the operational creditors of SIL. as against 1.28% of the entire admitted debt of the Corporate Debtor (not including contingent claims).

9.2 According to the Ld. Sr. Counsel, the Applicant is resorting to fishing and roving enquiry to halt Respondent No.3 from participating in the CIRP of the Corporate Debtor, and seeking participation as an observer despite its ineligibility to represent in the CoC meetings under Section 24 (3) of the Code, only with an intent to obtain access to confidential information required pertaining to CIR Process.

9.3 Ld. Sr. Counsel, in his submissions has provided the following facts for the sake of full disclosure:

(i) The 3rd Respondent is a public limited company which has earned

the reputation of being the 'total pipe solutions provider' across the globe. It is constantly evaluating new avenues for expansion of the business and it considers the Corporate Debtor's business to be a natural fit for its business. Given this, once the Corporate Debtor's CIR Process commenced, the Respondent No. 3 started evaluating business opportunities in its regard.

(ii) In this regard, it is pertinent to mention that the 2nd Respondent, which is a registered Asset Reconstruction Company, is the sole financial creditor of the Corporate Debtor, and as available through public records, it has achieved this by acquiring debt from Canara Bank, State Bank of India, Union Bank and IFCI Limited. Evidently, the said transaction took place much before the CIR Process was commenced against the Corporate Debtor on 28 July 2021.

(iii) As per publicly available information, the 2nd Respondent has constituted a trust in relation to the account of the Corporate Debtor ("**Trust**") and Hexa Securities & Finance Co. Ltd. ("**Hexa Securities**"), an NBFC has subscribed to the **85%** of the Security Receipts offered by Trust for a total consideration of Rs.451,35,00,000/- (Indian Rupees Four Hundred and Fifty One Crores and Thirty Five Lakhs only).

(iv) It would be pertinent to note that Hexa Securities has been disclosed to be a related party under the head "*Entities where key management personnel and their relatives exercise significant influence*" in the Annual Report of the Respondent No.3, however the 3rd Respondent does not hold any shares in Hexa Securities.

(v) However, although related to Respondent No. 3, Hexa Securities is a separate entity having its standalone legal existence, and the Applicant has made out no ground for this Hon'ble Tribunal to disregard its separate legal existence.

(vi) Additionally, as per publicly available records, Siddheswari subscribed to certain non-convertible debentures issued by the Respondent No.2 to the tune of Rs. 69,65,00,000/- (Rupees Sixty Nine Crores and Sixty Five Lakhs only). This appears to have been a source of a part of the monies utilised by Respondent No. 2 for the acquisition of the security receipts in the Trust that it is required to hold. Siddeshwari owns 11.68% of the shares of the Respondent No. 3, and is an entity where key management personnel and their

relatives exercise significant influence, which has been duly disclosed in the annual report of the Respondent No.3 for the year2020-2021. However, this does not mean that the Respondent No.3 is one and the same entity as Siddeshwari, and there can be no ground to pierce or lift the corporate veil in this instance.

(vii) It is also pertinent to note that the acquisition of security receipts by Hexa Securities or extension of funding to Respondent No. 2 by Siddeshwari was in no way financed by the Respondent No.3. In this regard, the Applicant's contention para 3 (BB) of its application that the charge worth INR 500 crores created by Respondent No. 3 in March 2021 was in some way connected to this acquisition is strongly denied. This is apparent from the fact that the charge was created in March 2021, a full *three* months prior to the acquisition of debt by the Respondent No. 2, and much before the financial lenders had even advertised that they would place the Corporate Debtor's account for sale, which they did only on 25 May 2021. This charge was created to secure the issue of non-convertible debentures ("**NCDs**"), and the funds were used for (a) normal capital expenditures (b) replacement of high cost long term debt (c) financing of long-term working capital and (d) general corporate purpose, which has been disclosed in the Information Memorandum dated 24th March 2021 for the issue of these NCDs. That this has been used to make repayments on previous debt has also been verified by CARE ratings (an external credit rating agency) in its report issuing a rating on Respondent No.3 on October 07, 2021. A copy of the relevant extracts of the information memorandum and the CARE ratings report has been filed.

9.4 In so far as the allegation of the Applicant that the charge worth INR 500 crores created by the 3rd Respondent in March 2021, and in some way connected to the acquisition of security receipts by Hexa Securities or extension of funding to 2nd Respondent by Siddeshwari, Ld. Senior

Counsel denied the same contending that the charge was created by 3rd Respondent three months before this transaction.

9.5 Having given my anxious consideration to the submissions of the respective Counsels, I state that, since there is no provision in the IB Code, enabling this Adjudicating Authority to consider any kind of the questions that relate to an assignment of debt by Banks/Financial Institutions, made under the provisions SARFEASI Act, it shall first be seen whether the pleas as raised by the Applicant can be considered in exercise of the *inherent or residuary* powers of this Tribunal, under IB Code or under the NCLT Rules or not.

9.6 A full Bench of Hon'ble High Court of Punjab & Haryana , comprising. Hon'ble Justice Sanjay Kishan Kaul, C.J. (as his Lordship then was) Hon'ble Justice Augustine and Hon'ble Justice George Masih, in M/s. Rita Machine (India) Ltd. Vs. Debt Recovery Appellate Tribunal and Ors, has held that,

"If there is a breach of the Guidelines or statutory directions issued by RBI by Assignor in regard to transfer of NPA then the assignee bank can enforce such obligations vis-Ã -vis the assignor bank."

"Before concluding, we may state that NPAs are created on account of the breaches committed by the borrower. He violates his obligation to repay the debts. One fails to appreciate the opportunity he seeks to

participate in the "Transfer of Account Receivable" from one bank to the other". (Emphasis supplied)

"We have given our thoughtful consideration to the matter and find that the writ petition is completely meritless. We must note at the inception that this Court is exercising jurisdiction under Article 226 of the Constitution of India and not as an Appellate Forum and, thus, occasion for invocation of such a jurisdiction in the context of the statutory provisions of the SARFESI Act would only arise when there is perversity in the impugned order. We find no such perversity in the impugned order of the Debts Recovery Appellate Tribunal. Rather, the order is completely valid and legal in the context of the provisions of the said Act and the jurisdiction invoked by the petitioner under Section 17 of the SARFESI Act before the Debts Recovery Tribunal".

9.7 Therefore, when the legal position being that even the defaulted borrower whose debt has been assigned, is debarred from questioning the Assignment before a Tribunal or Court, we fail to understand how a third party like the Applicant herein, can demand the details as to the funding for purchase of the debt by the assignee.

9.8 Here we may state that, in *re*, Prudent ARC Limited vs Indu Techzone Private Limited CP (IB) NO. 207/7/HDB/2021, we had an occasion to deal with a similar point, namely, whether this Tribunal, under its residuary power contained in Section 60 (5) (C) of I&B Code, entertain the plea of legality or otherwise of the assignment of debt in favour of the Petitioner, wherein we held that:

"A mere look at the clause 5 (b) of section 60 of I&B Code, manifestly state that in order to exercise the residuary power as above, any question of priorities or any question of law or facts, should arise out of or in relation to the insolvency resolution or liquidation

proceedings of the corporate debtor or corporate person under this Code. Thus, the *sine qua non*, for exercising the residuary power being, the 'question' must arise either out of or in relation to corporate debtor or corporate person"

9.9. Hon'ble Supreme Court of India, in the matter between, Tata Consultancy Services Ltd vs Vishal Ghisulal Jain Resolution Professional, held that,

"The residuary jurisdiction of NCLT Under Section 60(5)© of IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5)© of IBC. Section 60(5)© would be rendered otiose if Section 14 is held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the corporate debtor and its status as a "going concern". We hasten to add that our finding on the validity of the exercise of residuary power by NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by NCLT. However, it is pertinent to mention that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)© would be in contradiction of the holding of this Court in Satish Kumar Gupta [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, MANU/SC/1577/2019 : (2020) 8 SCC 531: (2021) 2 SCC (Civ) 443].

9.10 We are certain that the case of hand *squarely* falls within the purview of the above ruling, as assignment of a debt by the Banker or a Financial Institution would fall outside the realm of IBC. Hence, we hereby hold that the Applicant is not entitled for any direction much less a direction to the 2nd respondent for disclosure as to the funding in respect of purchase of the debt of the corporate debtor by way of an assignment under the provisions of the SARFEASI Act.

Point is answered accordingly.

**Point.No 2.**

**Whether the Applicant has locus *standi*, to be appointed as an *observer* in the meetings of the members of the Committee of Creditors of corporate debtor?**

10.1 Ld. Sr Counsel for the Applicant, submitted that the Applicant herein has an admitted operational debt to the extent of Rs. 23,49,52,801 (Rupees Twenty-three crores forty-nine lakhs fifty-two thousand eight hundred and one) and is presently, the largest operational creditor holding 28.9% of all the admitted operational debt. Ld. Sr. Counsel further stated the Corporate Debtor, has an admitted Financial Debt of Rs. 17,47,13,78,690 (Rupees One thousand seven hundred and forty-seven crores thirteen lakhs seventy-eight thousand six hundred and ninety) due towards the 2nd Respondent a sole an Asset Reconstruction Company, therefore, the 2nd Respondent is the sole member of the Committee of Creditors, for short, CoC of the Corporate Debtor.

10.2 According to the Ld. Sr. Counsel, where the CoC comprises of a single member, like that of the present case, the CoC is unlikely to be able to maintain complete fairness in relation to its dealings with the resolution applicant, corporate debtor and the creditors given that a balance of power may be wielded by any one of these parties to ensure that a biased

influence is induced into the CoC towards the individual interests of such party. To remedy this situation, it was observed in the Parliamentary Debates on the Amendment Act in the in the Sixteenth Lok Sabha Session on the issue of the extreme power wielded by the CoC's that: "The Code will result in gross abuse, massive corruption, favouritism and nepotism and it may help to generate black money also."

10.3 Ld. Sr. Counsel further submitted that, with the present case. having a similar scope for arbitrariness on the part of the CoC, it is necessary that certain extreme safeguards such as appointment of Applicant as "observer" are considered by this Hon'ble Tribunal in light of the spirit of the Code.

10.4. According to the Ld. Sr. Counsel, since it is evident that as such, the power wielded in the CoC is enormous, and more so in circumstances as the present facts merit appointment of the applicant as observer in meetings of the committee of creditors, in order to ensure that all creditors are treated fairly.

10.5 Ld. Sr. Counsel also relied on the following rulings:

(i). Hon'ble National Company Law Tribunal, Kolkata in Binani Cement Limited 2018 SCC On Line NCLT 18702 – paragraph 68 has observed,

*"68. The very object of the Code is on revival and rehabilitation of the Corporate Debtor who is sinking for reason of non-payment of dues in time. The object of the Code is not to liquidate the business of the Corporate Debtor. What we expected from out a bidder who can satisfy all the claims of the lenders and operational creditors in a transparent manner without giving a chance to interrupt the process by affected parties. The CoC is consists of financial creditors. When majority of its members like EARC and IDBI get benefit of clearance of their entire debt without hair cut they are prompted to neglect minority unsecured financial creditors whose claim is accepted with hair cut exceeding 50% and larger number of operational creditors would get nothing. RP or nobody else bargained for them. Though one of the representatives of the operational creditors is entitled to attend in the meeting of CoC that right was also denied for want of quantification of the claim of 3600 and odd number of claimants in the case in hand before the approval of plan by CoC. Some of the operational creditors' claims verification not yet finished even if RP is assisted by larger number of representatives under him. Who should take care of their claim?*

*(ii) It is recognised and observed that the CoC as a source a major power in the company of the corporate debtor, it is always likely for the principles of good governance and natural justice to be unaccounted for.*

10.6 **Per Contra,** Ld. Counsel for the 1st Respondent/Resolution Professional submits that, it is a settled position of law that the IBC is a complete code in itself and the prayers sought are in teeth of the provisions of IBC and the regulations made thereunder.

Ld. Counsel placed reliance on M/s.Innoventive Industries Ltd. v. ICICI Bank & Anr.; [2017], AIR 2017 SC 4084, in support of his pleas

10.7 Ld. Counsel further submits that there is no concept or provision in the IBC or under the regulations made thereunder, for appointment of an

Observer in the COC. In fact, the prayer no.(ii) made in the Application is in the teeth of section 24(3) of the IBC which only permits participation by representative(s) from the operational creditors in the event the 'operational debt' exceeds 10% of the debts of the Corporate Debtor. The relevant extracts of the said section 24 are reproduced hereunder for ready reference:

**24**. Meeting of committee of creditors. –

(1) The members of the committee of creditors may meet in person or by such other electronic means as may be specified.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) **operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.**"

10.8 Ld. Counsel states that in the present case, the Applicant admits that the amounts due to it is Rs.23,49,52,801.00 which is much less than 10% of the total debts (Rs.1862,62,75,090.22) of the Corporate Debtor and, therefore, it does not meet the minimum threshold limit prescribed by the section 24(3) of the IBC, which operates as a condition precedent

before any operational creditor is allowed to receive even a notice for any meeting of the COC.

10.9 According to the Ld. Counsel, it is trite law that when the law requires a thing to be done in a particular manner it must be done in that manner or not at all. This proposition of law is all the more applicable to the IBC which is a complete code in itself and, therefore, prohibits what it doesn't provide for. The same has been held by the Hon'ble Supreme Court in Municipal Corpn. of Greater Mumbai v. Abhilash Lal, (2020) 13 SCC 234 : 2019 SCC OnLine SC 1479 at page 256 and states as follows:

> "39. The principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, articulated in [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] , has found widespread acceptance. In the context of this case, it means that if alienation or creation of any interest in respect of MCGM's properties is contemplated in the statute through a particular manner, that end can be achieved only through the prescribed mode, or not at all."

10.10 Ld. Counsel further submits that IB Code, does not permit or contemplate an "observer" and, therefore, this prayer is misconceived in law. In absence of fulfilment of this condition precedent, the question of this Operational Creditor participating in a meeting of the COC or

being a part of the COC, cannot and does not arise and any such purported participation would be illegal and in violation of the Code.

10.11 Ld. Sr. Counsel for the 3rd Respondent contends that, the Applicant has based its application on the basis that it is the largest operational creditor of the Corporate Debtor holding 27% or 28.9% of all admitted operational debt to the extent of Rs. 23,49,52,801/- and as one of the prayers also sought to be appointed as an observer on the CoC of the Corporate Debtor. Ld Sr. Counsel submitted that the Applicant has deliberately concealed the material fact that it is only owed about **1.28%** of the entire admitted debt of the Corporate Debtor and therefore, disentitled under Section 24(3) of the Code to participate in the CoC meetings, which entitles an operational creditor to participate in the CoC only if it constitutes at least 10 % of the total debt of the corporate debtor. Evidently, it has consciously not disclosed the said fact only in an attempt to mislead this Tribunal. Ld. Sr. Counsel further submitted that, despite not being entitled to any information relating to the assignment of debt to the Respondent No.2, the Applicant sought information relating to this. The Respondents in good faith, disclosed all relevant information in their Replies. This is now being portrayed by the Applicant as information that it has discovered, and is being used to make false and baseless allegations against the Respondents. It is

respectfully submitted that granting the Applicant any other relief it is seeking without being entitled to will only embolden the Applicant to further attempt to disrupt the CIR Process of the Corporate Debtor.

10.12 We have carefully considered the above submissions. In terms of Section 24 (3) of IB Code, *supra,* which says that the resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) **operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.**"

10.13 Even according to the Applicant, the amounts due to it is Rs.23,49,52,801.00. Whereas the total debt is Rs.1862,62,75,090.22. Therefore, the applicant's debt is much less than 10% of the total debts of the Corporate Debtor and, hence the applicant does not meet the minimum threshold limit prescribed by the section 24(3) of the IBC, which operates as a condition precedent before any operational creditor is allowed to receive even a notice for any meeting of the COC.

10.14 Therefore, when the Applicant is not even qualified to be a member of CoC, it is highly preposterous to seek entry into the meetings of the Committee of creditors in any capacity much less as an observer. When the very *lucus* of the Applicant s held to be at stake, we find that the rulings relied on by the Applicant are of no avail to the Applicant. We therefore reject this relief.

Point is answered accordingly.

**Point No 3.**

**Whether the committee of creditors be restrained from considering the resolution plan of the 3rd respondent/prospective resolution applicant which has already been submitted by the Resolution Professional to the CoC?**

11.1 Ld. Sr. Counsel for the Applicant submits that, the Interim Resolution Professional appointed for M/s Satavahana Ispat Ltd issued Request for Proposal (RFP) for repair and maintenance works for Satavahana Ispat Ltd on 04.09.2021. Subsequently, due to change of Resolution Professional i.e., Mr. Bhuvan Madan, an addendum to the RFP was issued by new incumbent on 17.09.2021, and in response to the RFP issued on 14.10.2021 and 16.10.2021, the 3rd Respondent i.e. Jindal Saw was chosen by the CoC as the contractor for carrying out the maintenance works w.e.f. 18.10.2021 for a total consideration of Rs.

266,00,00,000/-, to be completed within seven months i.e. by May 2022.

11.2 Ld. Senior Counsel further submits that a total of 7 (seven) EOIs were submitted by different RAs, out of which four were declared as PRAs, which included the 3rd Respondent i.e., Jindal Saw Limited. The due date for submission of resolution plan was extended to 20.12.2021.

11.3 Ld. Senior Counsel submitted that Mr. Prithvi Raj Jindal is the owner of Siddeshwari, one of the entities which have funded the purchase of the financial debt *supra*. The registered email of Siddeshwari prima facie indicates that there is complete overlap of the affairs of management of Siddheshwari and Jindal Saw. Ld. Senior Counsel further submitted that Mrs. Arti Jindal, spouse of Mr. Prithvi Raj Jindal is one of the Directors of Siddeshwari and Mr. Prithvi Raj Jindal is the minority shareholder of Siddeshwari and direction and key managerial person of Jindal Saw. As per the disclosed shareholding pattern of Jindal Saw, Siddeshwari holds a total shareholding of 11.68% in Jindal Saw, while Mrs. Arti Jindal holds 1.27% in Jindal Saw.

11.4 Therefore, according to the Ld. Senior Counsel, 15% of the funding for assignments was obtained from Siddeshwari Tradex Private Limited (Siddeshwari) a company closely wound with the 3rd Respondent the

PRA i.e Jindal Saw Ltd having overlap of members and management amongst them and the remaining funding of 85% which is around Rs. 452,00,00,000/-, raised by 2nd Respondent/ JC Flowers Asset Reconstruction Private Limited from the private investors which details are unknown to the Applicant but speculates that 3rd Respondent had created a charge of Rs. 500 crores issued by Axis Trustee Services Limited, a trusteeship service frequently utilised by Jindal Saw and very recently utilised by JC Flowers and the Applicant presumes it is "related" to this transaction. Thus, the situation is of the nature of 'related parties' between the Financial Creditors and Resolution Applicants and that the said transactions needs to be lucid in order to ensure that the objective of CIRP is not defeated. It is alleged that, without allowing the interests of Siddeshwari, JC Flowers being sole member of CoC, is acting against the interest of SIL and other operational Creditors.

11.5 Ld. Senior Counsel further contended that notwithstanding the definitive violation of the *principles of natural justice* in this appointment and now further, the consideration of Jindal Saw as a prospective resolution applicant, the intricate and necessary technical information that Jindal Saw has acquired during and due to undertaking contract work for the Corporate Debtor establishes a direct and

significant contravention with the spirit of the Section 5(24)(m)(iv) of the Insolvency and Bankruptcy Code, which reads

*"(iv) provision of essential technical information to, or from, the corporate debtor".*

11.6 Therefore, according to the Ld. Senior Counsel, the Tribunal shall take cognisance of the fact that, the 3rd respondent under the banner of a 'prospective resolution applicant' is orchestrating the entire insolvency process of the 1st Respondent – corporate debtor by colluding with 2nd Respondent. In this context, the Ld. Senior Counsel relied on the order passed by Hon'ble National Company Law Appellate Tribunal in Hytone Merchants Private Limited v. Satabadi Investment Consultants Private Limited Company Appeal (AT) (Insolvency) No. 258 of 2021, wherein Hon'ble NCLAT upheld the order of the Hon'ble NCLT Kolkata rejecting a petition on the grounds of 'collusion' between the parties', which is as below.

*49. In the circumstances, the Adjudicating Authority decided that the petition is filed in collusion with the Corporate Debtor and thereby rejected the Petition filed U/S 7 of the Code. There is a plausible contention to form such an opinion of collusion with the Financial Creditor that a company with a net worth of ₹ 15,36,39,015 has already given a corporate guarantee worth ₹ 4,82,42,000,00 is unable to repay a loan of ₹ 3 lakhs only. The Corporate Debtor, in its reply, has not disputed that it has extended the corporate guarantee worth ₹ 482,42,00,000. Since the master data of the Corporate Debtor reflects that the Corporate Debtor is also a Corporate Guarantor and has*

*extended the Corporate Guarantee of a considerable amount worth ₹482,42,00,000, therefore, such plausible contention cannot be ruled out that the Corporate Debtor colluded with the Financial Creditor to escape its liability as a corporate guarantor.*

11.7 Ld. Senior Counsel reiterated that the 2nd Respondent exerts a highly significant position in the CIRP of the 1st Respondent, which point to the collusive nature of the relationship of the 2nd and 3rd Respondents and as such the Applicant is apprehensive about the fate of the remaining creditors at the hands of a biased and partial CoC.

11.8 Ld. Senior Counsel submitted that the Applicant is not seeking stay of the entire CIRP but is only asking for the "non – consideration of any plan submitted by the 3rd Respondent herein in view of the inter – connected nature of the funding of the various group entities of the 3rd Respondent in the 2nd Respondent, the sole CoC member".

11.9 In response to the contention raised by 1st Respondent that the Applicant has suppressed the material facts, Ld. Sr. Counsel submits that the ruling relied by 1st Respondent in the matter of *Udai Chand v. Shankar Lal and Ors. (1978) 2 SCC 209* is not applicable to the present case since the Applicant has not made any 'misstatement". Per contra, the order of the Delhi High Court in *Experion Developers Pvt. Ltd. v. Union of India & Ors. W.P. (C) No. 1107 of 2022*, staying the voting on the

resolution plan in furtherance of a hearing to decide the vires of Section 30(5) of the Code as being against the principles of natural justice is squarely applicable in the present case, and as such, the Application is not premature.

11.10 Ld. Senior Counsel placing reliance of the full ruling of the Hon'ble Supreme Court in *Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Ors. (2019) 2 SCC 1*, reiterated that the 1st respondent ought to have been more diligent with regard to the collusive relationship of 2nd and 3rd Respondent.

12.1 Refuting the above submissions Ld. Counsel for the Resolution Professional/1st Respondent, submitted that the prayer itself is misconceived in law and in fact and, indeed, militates against the provisions of the IBC.

12.2 According to the Ld. Counsel, the submission that the 2nd Respondent, i.e. JC Flowers, the sole member of the COC, should not consider the resolution plan submitted by the 3rd Respondent for the purported reason that. The 2nd Respondent and the 3rd Respondent are allegedly connected and related party to each other; and that the 3rd Respondent No.3, is allegedly a "*related party*" to the Corporate Debtor, are *ex facie* untenable, and are made out of a complete misconception both as to

what constitutes a "related party" as also the distinction between a related party and connected person, under and for the purposes of the Code.

12.3 In this regard, Ld. Counsel submitted that the definitions of the "related party" as defined in section 5(24) of the Code and that of the "connected person" as defined under section 29A of the Code, both of which are reproduced hereunder:

"(24)"related party", in relation to a corporate debtor, means –

...

(m) **any person who is <u>associated with the corporate debtor</u> on account of –**

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or

(iv) **provision of <u>essential technical information to, or from, the corporate debtor</u>;"**

"29A. Persons not eligible to be resolution applicant. –

...

Explanation 1 – For the purposes of this clause, the expression "connected person" means –

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor;

> Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares [or completion of such transactions as may be prescribed], prior to the insolvency commencement date;

12.4 According to the Ld. Counsel it is tenuously being alleged that the 3rd Respondent is a related person of the Corporate Debtor for the reason of section 5 (24)(m)(iv), on the purported ground that, during the CIRP, it was awarded the contract of repairs and maintenance of the plant of the Corporate Debtor. Ld. Counsel submits that it is incomprehensible as to how the award of a contract of repairs and maintenance of the plant during the CIRP to an entity unrelated to the Corporate Debtor where there is no flow or licensing of any technical information to or from the Corporate Debtor would constitute or bring the 3rd Respondent within the ambit of section 5 (24)(m)(iv) of the IBC.

12.5 Ld. Counsel reiterated that the contract of repairs and maintenance of the plant was separately awarded to 3rd Respondent through an open and transparent auction and has never been a subject matter of any challenge or any dispute. According to the Ld. Counsel if the argument of the Applicant was even to be considered, the effect would be that several prospective eligible resolution applicants will never come forward to

carry out any contractual works for the corporate debtors which indeed would undermine and have a prejudicial impact on keeping the corporate debtors as going concerns.

12.6 Ld. Counsel further submitted that, in response to EOI in Form-G, the Applicant was not included in the provisional list of the prospective resolution applicants (PRAs) on account of certain objections for which certain clarifications were sought for from the Applicant. Subsequently, the Applicant was included in the list of PRAs after satisfying the clarifications sought for by the 1st respondent and despite issuing 'Request for Resolution Plans', 'Evaluation Matrix' and 'Information memorandum', the Applicant failed to submit the Resolution Plan and instead filed the instant application seeking certain reliefs from the Tribunal only with an intention to stifle the resolution process.

12.7 Ld. Counsel further submitted that, the provisional list of PRAs was published by the RP on 01.11.2021 and the despite informing Applicant vide email dated 05.11.2021 to raise any objections to the inclusion or exclusion of any other PRA, no objection was received by the Resolution Professional with regard to inclusion of the 3rd respondent in the final list of PRAs.

12.8 Ld. Counsel relied on the following rulings of Hon'ble Supreme Court of India in the matter of Municipal Corporation of Greater Bombay vs Industrial Development Investment Co. Pvt. Ltd & Ors (AIR 1997 SC 482), wherein it was held that;

> "39. The principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, articulated in [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] , has found widespread acceptance. In the context of this case, it means that if alienation or creation of any interest in respect of MCGM's properties is contemplated in the statute through a particular manner, that end can be achieved only through the prescribed mode, or not at all."

12.9 In response to the contention of the Applicant that Resolution Professional and the CoC and R-3 are in collusion, Ld. Counsel submitted that as per the decision taken in the 5th CoC meeting, publication of Request for Proposal" for repair and maintenance work was issued on 04.09.2021 and received only one bid from 3rd respondent who was awarded the contract for carrying out repairs and maintenance work for a total consideration of Rs. 266,00,00,000/- to revamp the plant and machinery with a view to attain the best resolution value and to challenge the said action of 1st respondent is incorrect.

13.1 Ld. Sr. Counsel for the 2nd Respondent would contend that the 2nd Respondent is not a related party of the Corporate Debtor. Ld. Sr. Counsel further submits that, the 2nd Respondent has its separate set of

Directors from that of the Corporate Debtor and/or the 3rd Respondent. According to the Ld. Sr. Counsel, even assuming (for the sake of an argument), whilst denying that the 2nd Respondent and the 3rd Respondents have some commonality, that does not debar the 3rd Respondent from submitting a Resolution Plan. There is no express bar or no prohibition on a related party of a member of the CoC from presenting a plan as a PRA. In fact, the provisions of IB Code contain an enabling provision allowing even a member of the CoC to present a Resolution Plan.

13.2 Ld. Sr. Counsel further submitted that, on 18.10.202, the 3rd Respondent herein was appointed as the contractor for carrying out the repair and maintenance works for M/s. Sathvahana at a total consideration of Rs. 266,00,00,000 to be completed within a period of seven (7) months i.e., May 2022. This appointment after the commencement of the CIRP has been executed by the CoC, a committee under the complete control and influence of the 3rd Respondent.

13.3 Ld. Senior Counsel further states that the Code mandates time bound resolution of the Corporate Debtor for *maximization of the value of assets* and *balancing the interest of the stakeholders* and to achieve this

objective, the RP and CoC invited applications from PRAs to submit the resolution plans including R-3 which are under consideration of CoC. Further Section 29A of IBC does not bar any person connected to the financial creditor, either directly or indirectly from submitting a resolution plan. Hence, the present application is pre-mature and not maintainable.

13.4 Ld. Senior Counsel further submits that there is no material irregularity in the process of inviting applications for a successful resolution plan of the Corporate Debtor and the procedure adopted by the RP as well as CoC was fair, transparent and equitable. The Applicant has not put forth any evidence regarding the illegality or irregularity in the conduct of CIRP. Under no circumstances *the Adjudicating Authority* or the Appellate Authority can trespass upon the commercial decision of the CoC.

13.5 In support of the above plan, Ld. Senior Counsel relied on para 73 of the ruling of Hon'ble Supreme Court of India in the matter of Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors (2020) 8 SCC 531, wherein it was held that:

*73. There is no doubt that the Amending Act of 2019 consists of several Sections which have been enacted/amended as difficulties have arisen in the working of the Code. While it is true that it may well be that the law laid down by the NCLAT in this very case forms the basis for some*

*of these amendments, it cannot be said that the legislature has directly set aside the judgment of the NCLAT. Since an appeal against the judgment of the NCLAT lies to the Supreme Court, the legislature is well within its bounds to lay down laws of general application to all persons affected, bearing in mind what it considers to be a curing of a defective reading of the law by an Appellate Tribunal. There can be no doubt whatsoever 119 that apart from the present case the amendments made by the Amending Act of 2019 apply down the board to all persons who are affected by its provisions. Also, it is settled law that bad faith, in the sense of improper motives, cannot be ascribed to a legislature making laws. This is settled law ever since the celebrated judgment of* ***B.K. Mukherjea,J. In K.C. Gajapati Narayan Deo and Others v. State of Orissa 1954 SCR 1.*** *This was felicitously laid down as follows: "...*

*"As the question is of some importance and is likely to be debated in similar cases in future, it would be necessary to examine the precise scope and meaning of what is known ordinarily as the doctrine of "colourable legislation".*

*It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power [ Vide Cooley's Constitutional Limitations, Vol 1 p 379] . A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by it which could not be challenged on the ground of incompetence, and a legislature which enjoys only a limited or a qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative 120 authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers."*

***Likewise, a 7-Judge Bench in STO v. Ajit Mills Ltd. (1977) 4 SCC 98, has also clearly stated as follows:***

*"16. Before scanning the decisions to discover the principle laid down therein, we may dispose of the contention which has appealed to the High Court based on "colourable device'. Certainly, this is a malignant expression and when flung with fatal effect at a representative instrumentality like the legislature, deserves serious reflection. If, forgetting comity, the Legislative wing charges the Judicature wing with "colourable" judgments, it will be intolerably subversive of the rule of law. Therefore, we too must restrain ourselves from making this charge except in absolutely plain cases and pause to understand the import of the doctrine of colourable exercise of public power, especially legislative power. In this branch of law, "colourable" is not "tainted with bad faith or evil motive' ; it is not pejorative or crooked. Conceptually, "colourability" is bound up with incompetency. "Colour', according to Black's Legal Dictionary, is "an appearance, semblance or simulacrum, as distinguished from that which is real ... a deceptive appearance ... a lack of reality'. A thing is colourable which is, in appearance only and not in reality, what it purports to be. In Indian terms, it is maya. In the jurisprudence of power, colourable exercise of or fraud on legislative power or, more frightfully, fraud on the Constitution, are expressions which merely mean that the legislature is incompetent to enact a particular law although the label of competency is stuck on it, and then it is colourable legislation. It is very important to notice that if the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant. To put it more relevantly to the case on hand, if a legislation, apparently enacted under one Entry in 121 the List, falls in plain truth and fact, within the content, not of that Entry but of one assigned to another legislature, it can be struck down as colourable even if the motive were most commendable. In other words, the letter of the law notwithstanding, what is the pith and substance of the Act? Does it fall within any entry assigned to that legislature in pith and substance, or as covered by the ancillary powers implied in that Entry? Can the legislation be read down reasonably to bring it within the legislature's constitutional powers? If these questions can be answered affirmatively, the law is valid. Malice or motive is beside the point, and it is not permissible to suggest parliamentary incompetence on the score of mala fides."*

*It is clear therefore for all these reasons that Sections 4 and 6 of* the Amending Act of 2019 cannot be struck down on this score.

13.6 Ld. Senior Counsel while reiterating his submissions that the 2nd Respondent is not a 'related party' under Sections 5(24) and 5(24A) of IBC, stated that the related party in terms of Corporate Debtor is anybody who can act in managerial or directional capacity. However, it is not the case of Applicant that the 2nd Respondent and/ or the 3rd Respondent are 'related party' to the Corporate Debtor.

13.7 According to the Ld. Senior Counsel, the instant application is filed with a *mala fide,* intention of eliminating/ousting a PRA and further submits that false statements were made on oath and approached the Tribunal with unclean hands. Ld. Senior Counsel submits that the Applicant has indulged in a fishing and roving exercise with the sole intent to sabotage the successful resolution of the Corporate Debtor.

13.8 Ld. Senior Counsel stated that none of the PRAs who presented their bids are a related party of the Corporate Debtor and the purported overlap between the members of management of Siddeshwari and the 3rd Respondent would not bar the 3rd Respondent from submitting bid as a PRA.

13.9 Ld. Sr. Counsel for the 3rd Respondent would contend that the 3rd Respondent is a Public Limited Company, which has earned the reputation of being the 'total pipe solutions provider' across the

globe. It is constantly evaluating new avenues for expansion of the business and it considers the Corporate Debtor's business to be a natural fit for its business. Given this, once the Corporate Debtor's CIR Process commenced, the 3rd Respondent started evaluating business opportunities in its regard.

13.10 Ld. Senior Counsel further submits that as per publicly available information, the 2nd Respondent has constituted a trust in relation to the account of the Corporate Debtor ("Trust") and Hexa Securities & Finance Co. Ltd. ("Hexa Securities"), an NBFC has subscribed to the 85% of the Security Receipts offered by Trust for a total consideration of Rs.451,35,00,000/- (Indian Rupees Four Hundred and Fifty One Crores and Thirty Five Lakhs only).

13.11 Ld. Senior Counsel submits that, Hexa Securities has been disclosed to be a *related party* under the head "*Entities where key management personnel and their relatives exercise significant influence*" in the Annual Report of the 3rd Respondent, however 3rd Respondent does not hold any shares in Hexa Securities.

13.12 According to the Ld. Senior Counsel, although related to 3rd Respondent, Hexa Securities is a separate entity having its standalone legal existence, and the Applicant has made out no ground for this

Hon'ble Tribunal to disregard its separate legal existence. Additionally, as per publicly available records, Siddheswari subscribed to certain non-convertible debentures issued by the 2nd Respondent to the tune of Rs. 69,65,00,000/- (Rupees Sixty Nine Crores and Sixty Five Lakhs only). This appears to have been a source of a part of the monies utilised by 2nd Respondent for the acquisition of the security receipts in the Trust that it is required to hold. Siddeshwari owns 11.68% of the shares of the 3rd Respondent, and is an entity where key management personnel and their relatives exercise significant influence, which has been duly disclosed in the annual report of the 3rd Respondent for the year2020-2021. However, this does not mean that the 3rd Respondent is one and the same entity as Siddeshwari, and there can be no ground to pierce or lift the corporate veil in this instance.

13.13 Ld. Sr Counsel reiterated that, the acquisition of security receipts by Hexa Securities or extension of funding to 2nd Respondent by Siddeshwari was in no way financed by the 3rd Respondent. In this regard, the Applicant's contention para 3 (BB) of its application that the charge worth INR 500 crores created by 3rd Respondent in March 2021 was in some way connected to this acquisition is strongly denied. This is apparent from the fact that the charge was created in

March 2021, a full *three* months prior to the acquisition of debt by the 2nd Respondent, and much before the financial lenders had even advertised that they would place the Corporate Debtor's account for sale, which they did only on 25 May 2021. This charge was created to secure the issue of non- convertible debentures ("NCDs"), and the funds were used for (a) normal capital expenditures (b) replacement of high cost long term debt (c) financing of long-term working capital and (d) general corporate purpose, which has been disclosed in the Information Memorandum dated 24th March 2021 for the issue of these NCDs. That this has been used to make repayments on previous debt has also been verified by CARE ratings (an external credit rating agency) in its report issuing a rating on 3rd Respondent on October 07, 2021. A copy of the relevant extracts of the information memorandum and the CARE ratings report has been annexed.

13.14 Ld. Senior Counsel submits that the contention of the Applicant that the charge worth INR 500 crores created by 3rd Respondent in March 2021 was in some way connected to the acquisition of security receipts by Hexa Securities or extension of funding to 2nd Respondent by Siddeshwari, is incorrect and baseless. According to the Ld. Sr. Counsel, the Applicant failed to place any *proof* to substantiate the

allegation that the resolution plan submitted by the 3rd Respondent fail to balance stakeholders' interest.

13.15 Ld. Senior Counsel further stated, 3rd respondent being a prospective resolution applicant, is not barred from proposing a resolution plan even if its related party, has a commonality of interests with a financial creditor, and even if it is a financial creditor itself as there is no conflict of interest. Adequate safeguards exist to ensure that interests of all stakeholders are balanced.

13.16 Ld. Senior Counsel for the 3rd Respondent relied on the order passed by NCLT bench in *Abhijit Guhathakurta v. Korba West Power Co.*, I.A. No. 236 of 2019 in CP (IB) No. 190 of 2018, order dated 24 June 2019, wherein the co- ordinate bench, Ahmedabad has approved a resolution plan submitted by a financial creditor keeping in view the text context and object of the Code.

13.17 According to the Ld. Senior Counsel Form-G issued on 05.10.2021 by Resolution Professional *did not indicate any disqualification on* grounds of having related party with a commonality of interest with the financial creditor. Further, the 3rd Respondent adhered to the criteria as laid down under Section 25 (2) (h) or Section 29A and after conducting due diligence by Resolution professional, it has been

declared as one of the PRAs in the final list published on 01.11.2021 and 10.11.2021. Post publication of the provisional list of PRAs also the Applicant did not choose to raise objections with regard to inclusion of the 3rd Respondent.

13.18 As regards to the allegations of the Applicant that award of the Repairs and Maintenance Contract, Ld. Senior Counsel for the 3rd Respondent contended that during the CIRP process of the Corporate Debtor, in response to the Request for Proposal for Repair and Maintenance Contract for Sathavahana Ispat Limited ("RFP") issued by IRP on 4 September 2021 and subsequent addendum inviting bids from person having experience of installation, erection or repair of coke oven and DI pipe manufacturing plants, 3rd Respondent was awarded the contract at a total contract Price of Rs 266 Crore for the completion of work in 7 (seven) months. It is further contended that this award of this RFP can in no way in submission of the Resolution Plan by 3rd Respondent.

13.19 Ld. Senior Counsel states that the relationship between Siddeshwari and 3rd Respondent has been disclosed in the Annual Report of FY 2020-2021, however, Applicant failed to demonstrate its correlation with the CIR Process of the Corporate Debtor. Ld. Sr. Counsel while

denying that 3rd Respondent and 2nd Respondent are related parties, however stated that, some related parties of 3rd Respondent may share commonality of interest with 2nd Respondent however, there is no situation of 'related parties' between the 3rd Respondent and the corporate debtor. Sr. Counsel submitted that; the Applicant has failed to demonstrate the jurisdiction of this Tribunal to grant the reliefs sought at this stage of the CIR Process.

13.20 According to the Ld. Sr. Counsel, decisions taken on approval of resolution plans, if any, by the committee of creditors can be questioned in terms of Section 31(2) of IB Code. Hence the present application is liable to be dismissed.

14.1. Before I proceed to decide the above point on *merits,* at the very outset I wish to state that the Applicant herein approached this Tribunal at a stage where one cannot know which of the two resolution plans namely, the resolution plan of the 3rd respondent (Jindal Saw) or Adani stated to be qualified for approval will be voted by the CoC *approving* or *rejecting* the same. In this indisputable backdrop, besides in the absence of any factual or legal *basis for the assertion that the 2nd respondent is all set to vote for the resolution plan of the 3rd respondent, the prayer* of the applicant to restrain the

2nd Respondent (CoC) from considering the corporate insolvency resolution plan of the 3rd respondent submitted by the Resolution Professional, in my considered view is *pre mature.* That apart, it is necessary to examine whether;

(a) This relief namely, 'To restrain the 2nd Respondent from considering any resolution plan submitted by the 3rd Respondent pending hearing and disposal of the application prayed as interim relief only, in the absence of main prayer restraining the 2nd Respondent from considering any resolution plan submitted by the 3rd Respondent, survive for consideration at the final disposal of the Application?

(b) The prayer being for an order restraining the 2nd Respondent from 'considering' the resolution plan of the 3rd respondent, whether granting of such relief amounts restraining the 2nd respondent from performing its lawful functions under the I B Code. If so, can such a relief be granted?

(C) Whether the prayer as made, if granted, would prevent the CoC from even *rejecting* the resolution plan of the 3rd respondent, should the CoC decides to do so? If so, can such a relief be granted.

14.2 It is a settled proposition, that any interim *relief* granted in an interlocutory application will *survive* only till the disposal of the said interlocutory application or till the main proceeding in which the said interlocutory proceeding has been filed or as ordered by the Court/Authority. It is common practice and procedure to pray for an interim order *pending* disposal of the application while also praying

similar relief as the main prayer. In the case on hand the Applicant though prayed for *multiple reliefs*, did not choose to pray the relief of 'restraining the 2nd Respondent from considering the resolution plan of the 3rd respondent' as main relief. It may be pertinent to state herein that this Tribunal had earlier refused interim relief in so far as the same relates *restraining the 2nd Respondent from considering the resolution plan of the 3rd respondent pending disposal of the application*. Therefore, in the absence of main prayer, no further relief can be granted to the applicant in this Application at the final disposal of the Application.

14.3 *Be that as it may*, the prayer of the Applicant being to restrain the 2nd Respondent from 'considering' the resolution plan of the 3rd respondent, the process of 'considering' being an exercise of *looking closely and carefully; to think or deliberate on; to take into account, and* need not always result in accepting or rejecting, restraining such a lawful and an *imperative statutory exercise* by the committee of creditors, in my considered view is impermissible under law.

14.4 Hon'ble Supreme Court of India, in Barium Chemicals Ltd and another v. SH. A.J.Rana and others (AIR 1972 SC 591), had the

occasion to interpret the word 'consider' and the interpretation and the observations are as follows:

"The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order."

The dictionary meaning of the word 'consider' is 'to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, be think oneself. to reflect' (vide Shorter Oxford Dictionary).

According to Words & Phrases-Permanent Edn: Vol. 8-A to 'consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care.

As per the Chambers Dictionary 10th Edition, the word 'consider' means "look at attentively or carefully; to think or deliberate on; to take into account; to attend to, to regard as, to think, hold the opinion, to reward, think seriously or carefully, to deliberate."

As per the Oxford Dictionary Thesaurus and Wordpower Guide, Indian Edition 2007, the word 'consider' means "think carefully about; take into account when making judgment; contemplate; reflect on; examine; review; mull over; ponder; deliberate on."

As per Collins English Dictionary, the word 'consider' means 'to think carefully about (a problem or decision); to bear in mind; to have

regard for or care about; to discuss (something) in order to make a decision; to look at."

14.5 Therefore, in view of the ruling *supra,* if the relief as prayed by the Applicant is granted, then this Tribunal would be preventing the Committee of Creditors from even applying their mind, to take into account, to deliberate, to think, hold the opinion, on the resolution plans, and thus prevent the CoC from performing the statutory function of voting on acceptance or rejection of the Resolution plans *submitted* by the resolution professional. *That apart granting of the above relief may even create a situation wherein the Committee of Creditors cannot even reject the resolution plan of the 3rd respondent, should they choose to do so, t*hus, the relief as prayed is contrary to law, besides *self-defeating.*

15.1 Since the relief sought for relates to pre-approval stage of resolution plan, I shall proceed to decide whether there can be any judicial review at this 'pre approval stage' of the insolvency resolution plan of the prospective resolution applicants submitted to the committee of creditors by the resolution professional.

15.2 Needless to say, that that the IB Code, *unlike* in the matters of post voting stage of insolvency resolution plan by the members of the

COC, did not *expressly* provide for *judicial review* of the acts/actions/non compliances of certain provisions of the IB Code. Precisely, for this reason the Applicant relied on the inherent power of this Tribunal envisaged under Rule 11 of NCLT Rules besides the residuary power of the Tribunal under Section 60(5) of IB Code. It is therefore, necessary to examine whether the inherent or the residuary power, *supra*, can be exercised by this Authority in the case on hand.

15.3 Hon'ble Supreme Court in Ebix Singapore (P) Ltd. v. Committee of Creditors of Educomp Solutions Limited, 2021 SCC OnLine SC 707 held that:

*"Any claim seeking an exercise of the Adjudicating Authority's residuary powers under Section 60(5)(c) of the IBC, the NCLT's inherent powers under Rule 11 of the NCLT Rules 2016 or even the powers of this Court under Article 142 of the Constitution must be closely scrutinized for broader compliance with the insolvency framework and its underlying objective. "*

*"The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC. Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that*

*is designed by the IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a Corporate Debtor..."*

15.4 I have already held that, the application itself is *pre mature besides the applicant has an efficacious remedy post voting of the resolution plan.* Admittedly, more than one insolvency resolution plan has been submitted by the Resolution Professional to the committee of creditors for its consideration and voting. If the 2nd respondent COC its *commercial wisdom* votes for the plan of the other prospective resolution applicant namely Vedanta, then the petitioner's entire submissions are in vain. On the other hand, if the committee of creditors votes for the resolution plan of the 3rd respondent, then the Applicant can question such an act before this Adjudicating Authority, as provided under Section 31 of IB Code.

15.5. Hon'ble Supreme Court of India, in India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (13.05.2021 - SC), MANU/SC/0367/2021, held that;

"As regards the process of consideration and approval of resolution plan, it is now beyond a shadow of doubt that the matter is essentially that of the commercial wisdom of Committee of Creditors and the

scope of judicial review remains limited within the four-corners of Section 30(2) of the Code for the Adjudicating Authority; and Section 30(2) read with Section 61(3) for the Appellate Authority. In the case of Jaypee Kensington (supra), this Court, after taking note of the previous decisions in Essar Steel (supra) as also in K. Sashidhar v. Indian Overseas Bank and Ors. MANU/SC/0189/2019: (2019) 12 SCC 150 and Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Ors. MANU/SC/0066/2020 : (2020) 11 SCC 467, summarised the principles as follows:

"In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval".

"Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational

creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan".

"The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board".

"The material propositions laid down in Essar Steel (supra) on the extent of judicial review are that the Adjudicating Authority would see if CoC has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors have been taken care of. And, if the Adjudicating Authority would find on a given set of facts that the requisite parameters have not been kept in view, it may send the resolution plan back to the Committee of Creditors for re-submission after satisfying the parameters. Then, as observed in Maharashtra Seamless Ltd. (supra), there is no scope for the Adjudicating Authority or the Appellate Authority to proceed on any equitable perception or to assess the

resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors."

"It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal."

15.6. Therefore, when the very process of **consideration and approval** of resolution plan, are beyond a shadow of doubt is essentially that of the commercial wisdom of Committee of Creditors and the scope of judicial review remain limited within the four-corners of Section 30(2) of the Code for the Adjudicating Authority, granting the relief as sought for by the applicant in exercise of the *inherent and/or the residuary* power which relief admittedly *relate* to the *pre-approval* stage of the resolution plan, in my considered view certainly results not only in ***enlargement of the limited power of Judicial Review confined to the four corners of Section 30(2) of the Code even to other sections including Sections that precede Section 30 of IB Code, but***

***also amounts to judicial creation of a procedural or substantive remedy that is not envisaged by the statute.***

15.7 I shall now address the plea that the resolution plan submitted by the 3rd respondent attracts the bar in terms of Section 29A m (iii) read with Section 5 (24) of IB Code, vehemently pressed by the Applicant and firmly denied by the Respondents.

A. At the outset I would like to emphasise that the object of the IB Code is, *inter alia*, maximization of the value of the assets of the Corporate Debtor, then to balance all the creditors and make availability of credit and for promotion of entrepreneurship of the Corporate Debtor. While considering the Resolution Plan, the creditors focus on resolution of the borrower Corporate Debtor, in line with the spirit of the IB Code. The IB Code prohibits the promoters from gaining, directly or indirectly, control of the Corporate Debtor, or benefiting from the Corporate Insolvency Resolution Process or its outcome. The IB Code seeks to protect creditors of the Corporate Debtor by preventing promoters from rewarding themselves at the expense of creditors and undermining the insolvency processes.

B. In this backdrop the Applicant's plea of the purported bar under section 29A r/w Section 5 (24) of IB Code, when examined, *firstly,* I

must say that the said plea being well within the territory of the CoC to examine while voting on the resolution plan of the 3rd respondent, any interference in the said process by this Tribunal tantamount to usurping power neither available or conferred under the IB Code, on this Tribunal. However, this observation of mine is subject the remedies available under Section 31 of the Code.

C. I find force in the submissions of the Ld. Counsels for the respondents that the above plea is feeble and also an afterthought, since this plea did not find place in the Application filed by the applicant. That apart, the Resolution Professional has included Applicant in the list of PRAs after satisfying the clarifications sought and despite issuing Request for Resolution Plans (RFRP), Evaluation Matrix and 'Information memorandum', the Applicant failed to submit the Resolution Plan and instead filed the instant application seeking certain reliefs from the Tribunal only with an intention to stifle the resolution process. In disputably, the provisional list of PRAs was published by the Resolution Professional on 01.11.2021 and despite informing Applicant vide email dated 05.11.2021 to raise objections to the inclusion or exclusion of any other PRA, no objection was received by the Resolution Professional with regard to inclusion of 3rd Respondent in the final list of PRAs.

D. Thus, the Applicant consciously waived its right to object having failed to raise the objections in terms of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). Even assuming that the Applicant has a right to object, the appropriate stage would be once the resolution professional places a successful resolution plan (duly approved by the CoC under Section 30 (4) of the Code), in the case on hand the resolution plan of the 3rd respondent before this Hon'ble Tribunal for approval under Section 31 of the Code, wherein grievance against the successful resolution plan can be heard by this Hon'ble Tribunal.

E. As rightly pointed out by the Ld. Sr. Counsel for the 3rd respondent, Shri S. Niranjan Reddy, that merely because the 3rd Respondent has been awarded the Repairs & Maintenance contract, the 3rd respondent does not have access to any '*essential technical information*' that would make it a related party of the corporate debtor as;

(i) the term 'essential technical information' and related party has to be interpreted as it would be by ordinary commercial people as the Code is a legislation of business and commerce.

Reliance in this regard can be placed on the ruling in *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors, 2021 SCC OnLine SC 253, paras 319, 326 & 330*

*319. There is no doubt on the principles that, depending upon context, the same word may be used in different parts of the statute with different meanings, as observed in Kolkata Metropolitan Development Authority (supra); and the same word in the context of one provision of the enactment may convey one meaning and another meaning in different context, as pointed out in Venkateswara Hatcheries (supra). However, it is also fundamental that construction of a statute leading to absurdity is required to be rejected and if more than one meaning or interpretation is possible, the one which favours the objects of the statute ought to be adopted. When it comes to the world of business and commerce, the observations of the majority in Rathi Khandsari Udyog (supra) are pertinent where, in paragraph 34 of the decision, this Court observed that in the legislations pertaining to the world of business and commerce, the dictionary to be referred to is the dictionary of the inhabitants of that world. It is also a settled principle of statutory interpretation that the statute is required to be read as a whole; and for that matter, it would be rather pre-elementary to say that for understanding the meaning and connotation of a particular expression in a particular statutory provision, the provision itself is required to be read as a whole. When we look at the 'context' for the purpose of a particular expression, which has otherwise not been defined*

*in the statute elsewhere, a comprehension of the sentence or phrase in which the expression occurs coupled with the frame of the provision taken as a whole and, on the broad sphere, the entire statute with its objects and intents would lead to the true construction of the expression under reference; of course, while also keeping in view the other relevant principles, including the basics that natural and ordinary meaning of a word or expression is not ignored, unless there be any reason*

*326. Significantly, the "payment", as envisaged by clause (b) of Section 30(2) as also Regulation 38(1), is of the "amount". The word "amount" in its noun form is defined in Webster's Third New International Dictionary (at page 72) in the parlance of accounting as under:— "3 accounting: a principal sum and the interest on it"*

*330. The indications as emerging from the text of other provisions as also from the scheme of the Code, are to the effect that the resolution applicant, with approval of resolution plan, is to proceed on a clean slate rather than carrying the cargo of such debts which need to be satisfied (to the extent required) and then jettisoned. The expressions "payment" and "amount to be paid", when read in the context and on the canvass of the objects and purposes of the Code, in our view, these expressions only convey their ordinary meaning, as understood in ordinary business parlance, that is, delivery of money alone; and there is no reason to construe these expressions to be conveying the meaning of 'delivery of money or its equivalent'.*

(ii) Accounting Standard - Ind AS 28 specifically refers to provision of essential technical information as a factor to determine if there is significant influence over a company. Consequently, what would constitute essential technical information would only be that information that could enable a person to have significant influence over the company. Significant influence is assessed in the Ind AS 28 as "power to participate in the financial and operating policy decisions".

(iii). Ind AS 28 itself provides that: "The loss of significant influence can occur with or without a change in absolute or relative ownership levels. It could occur, for example, when an associate becomes subject to the control of a government, court, administrator or regulator."

(iv). In the facts of the present case, the relationship between Jindal Saw and the Corporate Debtor only commenced after the commencement of the CIR Process when the Resolution Professional was in control, and will continue to be in control at the time of presenting the resolution plan, which is the relevant date to test disqualification *(ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1,*

*46. The expression "control" is defined in Section 2(27) of the Companies Act, 2013 as follows:-*

*"(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or*

*management rights or shareholders agreements or voting agreements or in any other manner;"*

(v). Section 208 of the Code read with Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 clearly provides that all decisions relating to the running of the business of the corporate debtor have to be taken by the RP independently:

"An insolvency professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not".

"An insolvency professional must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences."

15.8 Here it is pertinent to state that the applicant has not made any *specific allegation* against that the 1st respondent has acted or has been acting contrary to IBBI regulations. That apart, as already stated the IB Code does not allow the Resolution Professional to work under the influence of any other entity. The 3rd respondent is at best is a contractor engaged by the Resolution Professional to repair and maintain the plant, and same by no stretch can be termed as *essential technical information.*

15.9 Moreover, as rightly pointed out by the Ld. Sr. Counsel, when assessing their relationship, the related party definition under Section 5(24A) of the Code or Section 2(76) of the Companies Act, 2013 should be considered, both of which do not refer to 'essential technical information' as has been stated in para1.26 of the Report of Insolvency Law, March 2018

*It was stated to the Committee that certain provisions of the Code used the term 'related party' in a wider context and not just in the context of the corporate debtor. For example, section 28(1) which mandates approval of the CoC for certain transactions undertaken by the IRP/RP during CIRP requires approval for any related party transaction in terms of clause (f). Similarly, the explanation to clause (j) of section 29A which defines 'connected persons' in the context of eligibility of a resolution applicant uses the term 'related party' in the context of entities over and above the corporate* debtor.

***The Committee felt that in all such cases, the term related party would organically be interpreted as per the definition of the term 'related party' in section 2(76) of the CA 2013. This interpretation was in line with section 3(37) of the Code which states that all terms that are not defined in the Code but defined in other statutes stated therein including the CA 2013 shall have the meanings respectively assigned to them in those Acts.***

15.10 As regards the plea of the Applicant to *lift* the *corporate veil,* as the 2nd and 3rd respondents are related parties to each other, it may be stated that merely because companies are related to each other, the same by itself is not a ground to pierce the corporate veil. Hon'ble Supreme Court in Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC

407 has held that

"**71**. In recent times, the law has been crystallised around the six principles formulated by Munby, J. in Ben Hashem v. Ali Shayif [Ben Hashem v. Ali Shayif, 2008 EWHC 2380 (Fam)] . The six principles, as found at paras 159-64 of the case are as follows:

(i) Ownership and control of a company were not enough to justify piercing the corporate veil;

(ii) The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice;

(iii) The corporate veil can be pierced only if there is some impropriety;

(iv) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;

(v) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and

(vi) The company may be a "façade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done…

"Therefore, the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company_should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a

wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case. I am unable to find any such peculiar fact situation in the case on hand".

15.11 As regards the ruling in *Hytone Merchants Private Limited v. Satabadi Investment Consultants Private Limited,* Company Appeal (AT) (Insolvency) No. 258 of 2021 relied on by the Applicant, it may be stated that the same relates to initiation of CIRP and a finding of illegality was reached at, which is not the case of the Applicant. That apart, when the Code itself allows the financial creditors to be the resolution applicants, even accepting the applicants contention that the 2nd and 3rd respondent are one entity, there cannot be any question of any illegality in view of the express provisions of the Code.

15.12 In so far as the plea regarding application of constitutional principles of fair procedure and non-arbitrariness pleaded by the Applicant is concerned, the same assumes relevance only in the event of the 2nd respondent approving the resolution plan of the 3rd respondent. That apart, in *Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee), (2021) 10 SCC 623 at Para 46-47, it* has also held that the same cannot be readily imported to the Code as it defines what is *fair and equitable treatment* by constituting a comprehensive framework in the following manner:

"...The 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 the 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....

Hence, once the requirements of the 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.

15.13 Therefore, in view of my discussion above, I am fully satisfied that the Applicant has failed to demonstrate any illegality requiring lifting of the corporate veil. Even, assuming though if the 3rd respondent had directly acquired debt and presented a resolution plan itself, it could have done so completely in compliance with proviso to Section 30(5) of the Code (*as admitted by the Applicant itself*). Further, at no juncture is any public interest being affected on account of submission of a resolution plan by Jindal Saw (*as demonstrated in the subsequent sections*). Accordingly, no occasion arises for lifting of the corporate veil.

16.1 In conclusion I must say that, my discussion as above, due consideration of the submissions made by the Ld. Counsels for the respective parties and careful consideration of the record placed before me, make me to hold firmly that, *since the jurisdiction of this Adjudicating Authority arises within and as a product of a statutory frame work, and the* remedy as sought for by the applicant being not *expressly* envisaged by the IB Code, invoking the *inherent or residuary* jurisdiction in this case results not only in conferring jurisdiction on this Authority or enlarging the limited jurisdiction of this Authority but also in *judicial creation of a procedural or substantive remedy that is not envisaged by the statute,* which exercise undoubtedly prohibited under law. The application, therefore deserves to be dismissed.

16.2 That apart, any *restraint order* on the Committee of Creditors at this stage will defeat the very object and purpose of IB Code besides *jeopardizes* the time bound insolvency resolution process. Further, I am also fully convinced that, there are no *bona fides* on the part of the applicant in rushing to this Tribunal, even while the committee of creditors have not voted on any of the resolution plans placed before them. The purpose therefore, appears to be to deliberately injunct the time bound resolution process for making a wrongful gain.

16.3 I therefore, pass the following Order.

(a) The Application is hereby dismissed with cost of Rs.25,000/- payable by the Applicant to each of the Respondents.

(b) The Interim relief granted on 07/03/2022 is *hereby vacated.*

(c) In the result, IA No. 791 of 2021 is dismissed with costs.

05/05/2022

**(VENKATA RAMAKRISHNA BADARINATH NANDULA)**
MEMBER (JUDICIAL)

**ORDER OF SHRI VEERA BRAHMA RAO AREKAPUDI, MEMBER (TECHNICAL)**

1. I concur with the findings as regards to point (i) and (ii) of the reliefs sought for in the Application. The relief sought at (iii) has become infructuous. However, as regards to para (iv) of the prayer clause in the Application, my order is as follows:-

While considering this IA on 07.03.2022, at the request of the Applicant we have passed interim order, which is as under:-

***"Pending disposal of this IA, if the CoC is convened and the Resolution Plan is voted, then we direct the CoC to put the outcome on hold, till the next hearing date".***

2. On 31.03.2022, we have heard this IA in detail. This application is filed by Trimex Industries Private Limited ("**Trimex**"), which is an Operational Creditor of Sathvahana Ispat Limited ("**Sathavahana**")/Corporate Debtor. The Applicant herein has submitted that the Applicant has an admitted operational debt to the extent of Rs. 23,49,52,801 (Rupees Twenty-three crores forty-nine lakhs fifty-two thousand eight hundred and one) and is presently, the largest operational creditor holding 28.9% of the total admitted operational debt.

3. Shri Arvind Pandiyan, Ld. Senior Counsel for the Applicant further submitted that the Corporate Debtor herein was put into CIRP vide order passed in CP (IB) No. 17 /9/HDB/2020 on 28.07.2021 and interim resolution professional, Mr. Golla Ramakantha Rao was appointed. However, in the first CoC meeting the IRP was replaced by Resolution Professional Mr. Bhuvan Madan.

4. The Ld. Senior Counsel for Applicant submitted that "Request for Proposal" (RFP) for repair and maintenance works for Sathvahana Ispat Limited was issued by IRP on 04.09.2021 and subsequently after the Resolution Professional took charge, an addendum to the RFP was issued on 17.09.2021. Respondent No.3/Jindal Saw was chosen by the CoC as the contractor for carrying out the repair and maintenance works for Corporate Debtor in its 5th meeting and the contract value was Rs. 266,00,00,000/- to be completed within a period of seven (7) months i.e. May 2022. The Applicant also provided Provisional List of Resolution Applicants comprising of four Prospective Applicant, viz. Sarda Mines Private Limited, Vedanta Limited, Welspun Corp Limited and Jindal Saw Limited as on 10.11.2021.

5. The Ld. Senior Counsel for Applicant has raised various issues with regard to assignment of debt by the four financial institutions i.e. Canara Bank, State Bank of India and Union Bank of India along with

a non-banking financial company IFCI and the manner in which **JC Flowers Asset Reconstruction Company/ Respondent No.2,** the successful bidder in the swiss challenge auction conducted by the financial institutions, acquired the financial debt of the Corporate Debtor, thereby becoming the assignee and holder of financial debt of the Corporate Debtor. It is also interesting to note that the admitted financial debt owed by the Corporate Debtor to these financial institutions was Rs. 1660,20,00,000/-, whereas this debt was acquired by Respondent No.2 for a consideration of Rs. 532,00,00,000/- by way of assignment of sale. As such, the CoC was constituted with sole financial creditor i.e. Respondent No.2 herein.

6. The Applicant herein has also raised several questions on the funding given by various entities to Respondent no.2 to acquire the financial debt from the four financial institutions. As per the acquisition, the Respondent No.2 has to pay 15% acquisition price by way of down payment and the remaining 85% is funded by way of security receipts. The Applicant has given a detailed graphical representation as to how this funding has come from the group companies of the Jindals. The Applicant has also mentioned that JC Flowers/R-2 is funded by the other group companies viz. Siddeshwari Tradex Private Limited, Hexa Securities and Finance Company. The Applicant alleged that the

prospective resolution applicant Jindal Saw Limited / Respondent No.3 herein, who is also the repairs and maintenance contractor of the Corporate Debtor, Siddeshwari Tradex Private Limited, Hexa Securities and Finance Company as well as JC Flowers /R-2 are all group companies having common directors. The Applicant also mentioned that all these entities including Jindal Saw/R-3 are having inter-corporate investments as well as share common email addresses and registered offices and the Books of Accounts and papers of the respective companies including R-3 are maintained at Jindal Centre, 12 Bhikaiji Cama Place New Delhi, which clearly proves that **Jindal Saw Limited, Siddeshwari Tradex Private Limited and Hexa Securities and Finance Company Limited are related companies** and they come under the category of related parties.

7. The Learned Senior Counsel appearing for the Applicant herein has also pointed out flow of funds from various entities which are having common directors, sharing the same registered offices and email address for purchase of debt by JC Flowers/R-2 herein. Further the Applicant submitted that there was significant and *prima facie* overlap of management and control of the said entities i.e., **Jindal Saw Limited, Siddeshwari Tradex Private Limited and Hexa Securities and Finance Company Limited,** with the lifting of the corporate veil,

it is blatantly discernible that Jindal Saw has, through its group companies been instrumental in acquiring the financial debt of Corporate Debtor under the banner of JC Flowers, thereby becoming the sole Financial Creditor in the CoC having complete discretion and power to choose the successful Resolution Applicant. The Applicant also alleged the conduct of the said entities i.e. **Jindal Saw Limited, Siddeshwari Tradex Private Limited and Hexa Securities and Finance Company Limited** along with R-2 herein in the light of the facts presented, demonstrates a clear *consensus-ad-idem* between the entities to orchestrate the present CIRP and appears to form a case of collusion. To substantiate the above submissions, the Applicant has quoted the judgement by Hon'ble Supreme Court of India in *Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Ors.* (2019) 2 SCC 1 – paragraph 35,36 and 37, which clearly mandated that in the interest of public at large and interest of the stakeholders, it is imperative to lift the corporate veil to know the true nature of the entity(s) which are acting in concert. The Applicant also relied on the judgement of Hon'ble NCLAT in the matter of *Hytone Merchants Private Limited v. Satabadi Investment Consultants Private Limited* Company Appeal (AT) (Insolvency) No. 258 of 2021 – paragraph 38 to 43, which upheld the order of the Hon'ble NCLT Kolkata in a matter

rejecting a petition on the grounds of 'collusion' between the parties, and as such, 'collusion' is no new tactic employed by certain parties in an attempt to misutilise the provisions of the Insolvency and Bankruptcy Code 2016.

8. Jindal Saw, the 3rd Respondent who is one of the PRAs, was on 18.10.2021 appointed as the contractor for carrying out the repair and maintenance works for Sathvahana at a total consideration of Rs. 266,00,00,000 to be completed within a period of seven (7) months i.e. May 2022. This appointment after the commencement of the CIRP has been executed on the recommendation of the COC by the IRP/RP, a committee under the complete control and influence of the 3rd Respondent herein. It is also very curious and intriguing that only one bid was received in response to the advertisement by IRP/RP for repairs and maintenance contract.

9. The Ld. Senior Counsel for Applicant also submitted that the principles of natural justice was not followed in this appointment giving an added advantage and extra mileage to one of the PRAs i.e. Respondent No.3 which has the knowledge of intricate and necessary technical information during the contract period and also in full management control of the Corporate Debtor by virtue of revised tender. The Applicant herein therefore, alleged that it is a direct and significant

contravention with the spirit of the Section 5(24)(m)(iv) of the Insolvency and Bankruptcy Code, which reads:

***"(iv) provision of essential technical information to, or from, the corporate debtor"***

10. The Ld. Senior Counsel further alleged that the Resolution Professional has not exercised due diligence. The role and office of the Resolution Professional of any Corporate Debtor as envisaged under the Code and further elaborated by the judiciary, is of great significance and fiduciary value. In the instant case the same was not followed. The Applicant relied on Regulation 36A(8) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as extracted as follows,

*"(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-*

*(a) the provisions of clause (h) of sub-section (2) of section 25;*

*(b) the applicable provisions of section 29A, and*

*(c) other requirements, as specified in the invitation for expression of interest."*

11. The Ld. Senior Counsel for Applicant submitted that a cursory reading of the above Regulation, the role of the Resolution Profession in

conducting due diligence with respect to the resolution plans submitted ensures benefit for all the creditors and it is in such spirit that, the Resolution Professional of the 1st Respondent ought to have been diligent regarding the collusive relationship of the 2nd and 3rd Respondent and in furtherance of the resolution plan. The RP should have put the same on public record and take such other measures in the spirit of the Code for the benefit of all creditors, as held by Hon'ble Supreme Court in *Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Ors.* (2019) 2 SCC 1 – paragraph 80 and 81.

*12.* The Applicant herein also alleged that JC Flowers Asset Reconstruction Company which comprises of 100% of CoC now failed to comply with guidelines and directions issued by Reserve Bank of India in acquiring the asset. As per the guidelines ARC which is acquiring the asset should invest a minimum of 15% to have 'more skin in the game' and thereby ensure a better realisation of value for such assets of the Corporate Debtor. However, in the instant case, JC Flower/R-2, the investment of 15% was not from the funds of the ARC and the same was 87% of the total 15% consideration was also acquired by R-2 by the issue of non-convertible debentures, in essence, a borrowing, which clearly violated terms of Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and

Directions, 2003, as amended to June 30, 2015 in spirit and also in principle.

13. The Ld. Senior Counsel also alleged that the above conduct of R-2 is also in violation of the Fair Practices Code for Asset Reconstruction Companies issued by the Reserve Bank of India which are supposed to maintain the '*arm's length*' principle in its pursuit of transparency in acquiring the asset. The position of the 2nd Respondent in terms of the financing of the assigned loan and the influence of the 3rd Respondent as a result of such financing over the actions and conduct of the CoC, including that of award of the contract for repair and maintenance to the 3rd Respondent, thereby strongly precludes the 2nd Respondent from maintaining such an arm's length.

14. The events that occurred after the Corporate Debtor was put into CIRP, as regards to the financing of the said loans, conduct of CoC meetings and also awarding the contract of repair and maintenance of Corporate Debtor to R-3, clearly depicts that all are group companies which are acting in concert, thereby harming the interest of other stakeholders and also violating RBI guidelines of maintaining *arms-length distance.*

*15.* The Ld. Senior Counsel for Applicant has also brought to the knowledge of the Tribunal that the role of CoC in exercising the 'commercial wisdom' of the CoC as envisaged by the Hon'ble Supreme

Court allows for interference in the decisions of the CoC to ensure that the following parameters are maintained as held by Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v, Satish Kumar Gupta and Ors.* (2020) 8 SCC 531 - paragraph 146.

(a) That the Corporate Debtor needs to continue as a going concern during the insolvency resolution process

(b) That it needs to maximise the value of the assets of the Corporate Debtor

(c) That interests of all stakeholders, including operational creditors, have been taken care of. (emphasis added herein)

16. However, in the instant case where CoC comprises of sole member i.e. R-2 herein, the CoC is unlikely to be able to maintain complete fairness in relation to its dealings with the resolution applicant, corporate debtor and the creditors given that a balance of power may be wielded by any one of these parties to ensure that a biased influence is induced into the CoC towards the individual interests of one particular party. Similar views were expressed by Hon'ble Supreme Court in the *Binani Cement Limited* 2018 SCC OnLine NCLT 18702 – paragraph 68, wherein it was observed that *the power wielded in the CoC is enormous, and more so in circumstances as the present facts merit and it is essential to review the commercial wisdom of the CoC to ensure that all creditors*

*are treated fairly*. The facts of the above case is similar to that of the present case and the scope for arbitrariness on the part of the CoC, is very much visible in the said case prayed this Tribunal for considering extreme safeguards in light of the spirit of the Code.

17. The Ld. Senior Counsel for Applicant has also brought to the knowledge of the Tribunal the Parliamentary Debates on the Amendment Act in the in the Sixteenth Lok Sabha Session on the issue of the extreme power wielded by the CoC's as mentioned hereunder

***"The Code will result in gross abuse, massive corruption, favouritism and nepotism and it may help to generate black money also."***

18. The Ld. Senior Counsel for Applicant herein also submitted that by the flow of events that are happening to the Corporate Debtor, it is apparent that Jindal Saw Limited as the maintenance contractor as a Prospective Resolution Applicant and **JC Flowers Asset Reconstruction Company as Financial Creditor are** related parties and clearly violative of the letter and spirit of the Code. The Applicant further submitted that R-3 through its group entities collectively owing 100% of the financial debt of R-1 Company through the banner of R-2, the financial creditor and sole CoC member of the Corporate Debtor, the power and influence wielded in the hands of the 3rd Respondent are

enormous in ensuring that a Resolution Plan favouring itself, in the present case, is quite apparent and evident. The conduct of the 3rd Respondent in acquiring the financial debt of the corporate debtor even prior to the initiation of the CIRP demonstrates a considerable intent on the part of the 3rd Respondent in orchestrating these proceedings of the Corporate Debtor. As such, the Applicant herein submitted that allowing the 2nd Respondent, under the influence of the 3rd Respondent to sit on the CoC and decide upon a suitable Resolution Plan, on consideration of various plans including that of the 3rd Respondent is a direct violation of the principles of natural justice that no man can be a judge of his own cause. *(Nemo debet esse judex in propria sua causa).*

19. The Coordinate Bench, NCLT Allahabad observed that wherein the Financial Creditor being a related party to a Corporate Debtor was barred from the CoC, but further that it was related to the resolution applicant, the Tribunal directed to modify the resolution plan to ensure better equality for the creditors in the comparison with the related Financial Creditor by relying on the ruling in J.*R. Agro Industries Private Limited v. Swadisht Oils Private Limited* [2018]146C LA260 – paragraph 51, 52, 105 to 108.

20. The Ld. Senior Counsel for Applicant also brought to the knowledge of this Tribunal that the Hon'ble High Court of Delhi has stayed the voting on a resolution plan in furtherance of a hearing to decide the *vires* of Section 30(5) of the Code as being against the principles of natural justice. The matter in question was with regard to a Financial Creditor-Asset Reconstruction Company holding more than 33% of the voting right of the CoC of the Corporate Debtor therein and has as such, stalled the approval of the Resolution Plans in consideration with an alleged intent to promote and approve the plan of an individual therein, such individual being the child of a promoter of the Financial Creditor-Asset Reconstruction Company. The matter is *sub-judice* before a Division Bench of the Hon'ble High Court of Delhi with the stay in operation and as such is a binding precedent applicable squarely on the facts and circumstances of this application and relied on the ruling of *Experion Developers Pvt. Ltd. v. Union of India & Ors.* W.P. (C) No. 1107 of 2022, High Court of Delhi – Order dated 18.01.2022.

21. With the above submissions, the Ld. Senior Counsel for Applicant herein has concluded that the instant application filed under Section 60 (5) praying for the inherent jurisdiction of this Tribunal. The Applicant also submitted that the submissions of the Respondents that the present application is premature as the resolution plans are not yet considered

by the CoC does not hold good in the instant case. As per the provisions of the Code as well as judicial precedence as upheld by, the Hon'ble National Company Law Appellate Tribunal in *NUI Pulp and Paper Industries Private Limited v. Roxcel Trading GMBH* 2019 SCC OnLine NCLAT 941 (as upheld by the Hon'ble Supreme Court of India in Civil Appeal No(S). 6697 of 2019– paragraph 8 and 9), in the exercise of the inherent jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code, the Tribunal

*"...can make any such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."*

22. Thus, the Ld. Senior Counsel appearing for the Applicant prayed this Tribunal not to consider the resolution plan which is hit by 5 (24)(m)(iv) and pass necessary orders in this regard.

23. Per contra, Ld. Senior Counsel Shri Arun Kathpalia appearing for R-1/Resolution Professional has submitted that the instant application is nothing but seeking directions from the Tribunal which amounts to going into discovery mechanism which is not to be allowed by this Tribunal. He also pointed out that the funding of ARC is an extraneous matter to the present CIRP and no where there is a challenge to the

assignment deed that has been entered into between the public sector undertakings i.e. the four financial creditor mentioned supra and as such the Tribunal cannot go into the roving enquiry as to how the funding has been arranged for acquisition of the asset. Therefore, the prayer of the Applicant to disclose all the information pertaining to the source of funding on the basis of which it has been assigned the debt of the Corporate Debtor by the erstwhile lenders, is an exercise in futility.

24. As regards to prayer No.2 to appoint the Applicant herein as "observer" of the CoC, the Ld. Senior Counsel appearing for R-1 has mentioned that Section 21 and 24 of the Code clearly deals with CoC and its composition, as such the prayer is not tenable at all. As regards to the submission made by the Applicant that CoC comprised of only one Financial Creditor, the Ld. Senior Counsel appearing for R-1 contended that it is not new and in several of the cases, the COC is comprised of only one Financial Creditor as such the Applicant cannot challenge the decision of the CoC and therefore the relief sought at point (ii) is untenable. The Ld. Senior Counsel further contended that the Applicant herein is an operational creditor in the CIRP having an admitted operational debt of Rs.23.50 crores, which represents 1.28% of the total admitted debt of the Corporate Debtor and, contradicted the representation made by the Applicant that the Applicant represents

38.8% of all other Operational Creditors of the Corporate debtor and about 27% of the Operational Creditors, is far from truth. Further the Applicant failed to show how it meets the criteria of 10% of the total debt so as to be entitled to even receive notice of CoC meetings. Therefore, the prayer to appoint the Applicant as "observer" is not tenable as per the I&B Code.

25. As regards to prayer no.3 sought by the Applicant, Ld. Senior Counsel submitted that it has become infructuous as the Respondent No.3 has already submitted its resolution plan which is before the CoC for its consideration. Further, nowhere in the Application, the Applicant has challenged the eligibility criteria under Section 29A of IBC of the Prospective Resolution Applicant in the prayers made by the Applicant and now seeking relief not to consider the resolution plan of the PRA is not tenable at this stage.

26. The Ld. Senior Counsel for R-1 further submitted that besides, the participants who are entitled to attend the CoC meetings expressly under Section 24 of the Code, it is the commercial wisdom of the CoC, who all are authorized to attend the CoC Meetings. Therefore, the Resolution Professional submitted that the prayer of the Applicant is

not according to law and the Applicant cannot seek for its appointment as observer or even participate in the CoC meetings.

27. The Ld. Senior Counsel further submitted that pursuant to publication of Form-G (Expression of Interest), the Applicant had also submitted its EOI and also collected the RFRP, copy of which has been submitted by Resolution Professional as Annexure-1. However, pursuant to receipt of EOI, the PRA was not included in the provisional list of PRA on account of certain objections for which certain clarifications were sought from the Applicant. The said fact was not disclosed in the application. However, pursuant to clarification, the Applicant was also included in the final list of PRAs and the final list was circulated to the members of CoC, which is annexed as Annexure-2. The Ld. Senior Counsel submitted that the Resolution Professional issued RFRP, Information Memorandum, however despite receiving the same, the Applicant did not choose to submit the resolution plan and instead the Applicant has filed this application seeking the prayers as stated above. The Ld. Senior Counsel further submitted that a bare reading of the prayers would show that such prayers lead nowhere to an effective resolution to the issue but on the contrary, the application is filed only to stifle the resolution process of the Corporate Debtor and as such the application deserves to be dismissed. The Ld. Counsel for R-1 relied on

the judgment of the Hon'ble Supreme Court in the matter of Arcelor Mittal and submitted that the said judgment elaborately deals and interprets the provisions of section 29A of the IBC. Therefore, he submitted that the application is premature and devoid of merits as even before the CoC has come to a decision, the Applicant has made assumptions and is casting aspersions with the sole intent to delay the proceedings. The Ld. Senior Counsel further submitted that the Applicant never raised objection for inclusion of Respondent No.3 in the list of PRAs which was informed to Applicant vide email dated 01/2021 and further including R-3 in the final list of PRAs but now approaching this Tribunal to restrict R-3 from submitting resolution plan which is impermissible.

28. The Ld. Senior Counsel for R-1 further submitted that, awarding a contract of repairs and maintenance of the plant during the CIRP to R-3 for Rs.266 crores which was decided in the 5th CoC meeting held on 18.10.2021 and that there was no potential conflict of interest between the RP and the CoC as alleged by the Applicant and RP had no major role in this this regard which is the exclusive decision of the CoC. The Ld. Senior Counsel also brought to the notice of the Tribunal that RFP for repairs and maintenance work of CD was issued by the IRP/RP appointed by this Tribunal in exercise of his duties and responsibilities

under Sections 18,20 & 25 of the Code and issued request for proposal on 04.09.2021, which was published in the leading newspapers as well as the website of the Corporate Debtor. Thereafter, the present RP took over charge on 08.09.2021. The RP had received only one sole bidder i.e. Respondent No.3. No other party came forward expressing their interest to carry out the same. Accordingly, pursuant to receipt of the bid from R-3, the same was technically evaluated by leading industrial and technical expert i.e Korus Engineering Solutions Private Limited and pursuant to various discussions on technical and commercial aspects by the RP and the COC, Respondent No.3 was awarded the contract for repairs and maintenance of the CD. However, to say that the contract for repairs and _ work of the CD by the IRP and RP would cause grave injustice is factually incorrect. As such, based on the above submissions, the Ld. Senior Counsel appearing for Resolution Professional has prayed dismissal of the application which is devoid of merits and filed with malafide intention to delay the CIR process.

29. Ld. Senior Counsel Shri Ramji Srinivasan appeared for COC/Respondent No.2 herein brought to the knowledge of the Tribunal that the Applicant is one of the PRAs. However, the Applicant failed to submit the Resolution Plan despite having collected RFRP within the time line as prescribed. As such the race is no longer there. It is further contended that at the time

when the CIRP is at the fag end the Adjudicating Authority should not entertain such frivolous application which is filed to delay the CIR process. In the counter Affidavit, the Ld. Counsel for Respondent No.2 has submitted that the Applicant has no locus to file such frivolous application as per the provisions of IBC as the admitted claim of the Applicant is only minuscule 1.26% (admitted debt of the Applicant is Rs.23,49,52,801/-) of the total admitted debt of the CD which is Rs. 1826,62,75,090.22. Ld. Senior Counsel further contended that the present application seeks to defeat the very objective and purpose of the code and deserves to be rejected. It is the responsibility of the RP to ensure that the CD remains as going concern thereby ensuring maximization of the value of its assets which in turn meets the interest of the stakeholders. Therefore, both the RP and COC are required to take steps towards the timely resolution of the insolvency of the Corporate Debtor by maximizing value of its assets, reorganizing its business and protecting its stakeholders including the employees and creditors of the Corporate Debtor. Therefore the IRP/RP has invited bids for maintenance contract as such the applicant herein cannot file such frivolous application, which is not in the best interest of the corporate debtor. The Ld. Senior Counsel for the COC submitted that the provisions of IBC which put restrictions on the RAs

hit by Section 29A of IBC. Section 29A, thereby, places bar on persons connected to the CD from proposing resolution plan if they are willful defaulters. However the wordings of Section 29A itself are clear and does not bar any person connected to the financial creditor either directly or indirectly from proposing a resolution plan. Therefore the relief sought by the applicant, if granted would completely erode the overriding principles of the Code. Ld. Senior Counsel for R/2 further submitted there is no material irregularity in the procedure adopted by the RP and the CoC. The Applicant has cooked up a phony and erroneous story against the Respondents without an iota of truth in it. It is further contended that the issuance of an invitation for EOIs for submissions of the resolution plans by the PRAs was fair, transparent and equitable. It is a well settled position of law that a final decision of the CoC cannot be a matter of challenge on the ground that the 'commercial wisdom' of the COC should not be interfered with. However, if there is any material irregularity in the procedure adopted by the RP and the CoC, a challenge would be tenable. In the instant case, there has been no material irregularity, at all in the process adopted by the RP and CoC.

30. It is also submitted by the Ld. Senior Counsel for R-2 that "commercial wisdom" of the CoC has been given paramount status without any judicial intervention for ensuring completion of the process within the timelines prescribed by the Code. It has been consistently held by the Hon'ble Apex Court in plethora of judgements that it is not open to the Adjudicating Authority to take into consideration any other factor other than the provisions of the Code. Therefore, it is submitted that the decision of the CoC's 'commercial wisdom' is non-justiciable, except on limited grounds as are available for challenge under the provisions of the Code. As such, at a stage where CoC has not even finalized the results in relation to the resolution plans received by it, it is too premature to challenge the same on the grounds which are albeit false and frivolous. The Ld. Senior Counsel for R-2 relied on para 73 of the Judgement of the Hon'ble Supreme Court of India in the matter of Committee of Creditors of Essar Steel India Limited Vs Satish Kumar Gupta & Ors (2020) 8 SCC 531.

31, As regards to the claim of the Applicant that the assignment of debt to Respondent No.2 is questionable, the Ld. Senior Counsel for R-2 submitted that the sale of the Financial Asset (NPA) was by Canara Bank lead consortium under Swiss Challenge method dated 25.05.2021 and Respondent No.2 had participated in the e-auction alongwith many

other bidders. Subsequently, the Respondent No.2 had purchased the consolidated debt of the Corporate Debtor after a long process where through a bidding process Respondent No.2 was declared as H1 bidder. It is further contended that the allegations made by the Applicant is based on only unverified claims, frivolous conjectures, vague extracts of uncorroborated information mentioned with sole motive of fishing and roving exercise by the Applicant to obstruct Jindal Saw Limited/ Respondent No.3 herein from participating in the CIRP of the Corporate Debtor.

32. It is submitted by the Ld. Senior Counsel that R-2 acquired the distressed financial asset from the banks and financial institutions at a mutually agreed value and that the Respondent No.2 is registered under the Reserve Bank of India and has its separate set of Directors from that of the Corporate Debtor and/or Jindal Saw Limited/Respondent No.3 herein. The Ld. Counsel would contend, the definition of the term 'Related party', as stipulated in the IBC is constructed so as to be limited from the perspective of the Corporate Debtor. Further, the Ld. Senior Counsel would contend that Respondent No.2 is not a related party of the Corporate Debtor under Sections 5(24) and 5(24)A of IBC which provides exhaustive definition of a 'related party'. A 'related party' in terms of a Corporate Debtor is anybody who can act in

managerial or directional capacity. A 'related party' can have a substantial amount of shareholding in the Corporate Debtor or be in a position to make decisions for the Corporate Debtor or its subsidiaries, holdings or associate company. It is not the case of Applicant that Respondent No.2 and/or Respondent No3 are 'related party' to the Corporate Debtor, or otherwise.

33. The Ld. Senior Counsel would further contend that IBC itself recognizes that a financial creditor can submit its own resolution plan as a resolution applicant and can even vote on such plan. Accordingly, there is no bar on CoC member being the resolution applicant in any case. Accordingly, Respondent No.2 as a member of the CoC was allowed to present a resolution plan as PRA. As such in the present case, the alleged claim of the Applicant that Respondent No.2 is related to Jindal Saw Limited/Respondent No.3 herein is of no consequence, as the Code does not prohibit a related party of the member of the CoC i.e. a Financial Creditor from presenting a plan as a PRA.

34. The Ld. Senior Counsel would further contend that the instant application has been filed solely for malafide and self-serving purposes of the Applicant only by concealing the material facts. The Ld. Senior Counsel would contend that the Applicant is seeking to eliminate its

prospective competitor and obstructing and stalling the successful CIRP of the Corporate Debtor only.

35. Finally, the Ld. Counsel for R-2 submitted that this application is vague and speculative in nature and therefore deserves to be dismissed *in limini.*

36. Ld. Senior Counsel Shri Niranjan Reddy appeared for R-3 and submitted that the entire application is based on *only* unverified claims, frivolous conjectures and vague snippets of uncorroborated information mentioned with sole motive of creating sensationalism and weaving a dramatic story so as to serve the Applicant's self-interest by somehow managing to oust its competition, the Respondent No.3. The ulterior motive of the Applicant is also clear from the fact that the Applicant has deliberately concealed a prominent and material fact that it is an eligible PRA itself and competent to propose a resolution plan for the Corporate Debtor and therefore, stand in competition to the Respondent No. 3.

37. The Ld. Senior Counsel further contended that it is the mysterious story spun by the Applicant in trying to establish some ominous agenda on the part of the Respondent No. 3 acting in collusion with Respondent No. 2 is a figment of imagination. Ld. Senior Counsel further submitted that there is also no force in the argument of the Applicant that any

situation of the alleged nature of 'related parties' between financial creditors and resolution applicants would be detrimental to the CIR Process since the provisions of the Code permit and recognize that a financial creditor can itself be a resolution applicant and thus, can propose a resolution plan and also vote upon the same. Therefore, the allegations made by the Applicant is not tenable.

38. As regards the contract of 'repair and maintenance' awarded to the Respondent No. 3, the Resolution Professional alongwith the CoC has appointed the Respondent No. 3 after following a transparent public process. This was pursuant to rounds of technical evaluation, experts' recommendation and various discussions between the Respondent No. 3, the Resolution Professional, the technical expert and the CoC in the interest of running the Corporate Debtor as a going concern as part of the mandate of the Code.

39. The Ld. Senior Counsel submitted that the Applicant is an operational creditor only with miniscule percentage of share in the operational debt and the objections raised by Applicant is premature and need not be considered at this stage of CIRP as the Applicant is spinning a sensational story in order to tarnish the image of the PRA i.e Respondent No.3. He also submitted that the assignment of debt which was awarded

by public sector banks in an open transparent bidding process cannot be challenged and Section 5(24) of the Code deals with related parties to the Corporate Debtor and not to the Financial Creditors and if R-3 is remotely connected to R-2, it does not bar R-3 to submit the Resolution Plan as Section 29A all along deals with in relation with the Corporate Debtor only and not the Financial Creditor. Internationally too, creditors and/or their entities connected to them are allowed to propose resolution plans or purchase the whole distressed enterprise. As such the contentions raised by the Applicant is not tenable and even if we accept that R-3 is related party to R-2, it does not bar them from submitting their own resolution plan. Further, the repairs and maintenance contract to R-3 was through a bidding process that does not bar him to be a resolution applicant. As such, he prayed for dismissal of this IA.

40. In response to the above submissions, the Ld. Senior Counsel appearing for the Applicant submitted that the purpose of IBC is value maximization, as such they have brought forward the concerns to the knowledge of the Adjudicating Authority which are two-fold, one is fairness of the process, which in this case the Financial Creditor/R-2 is fully controlled by R-3. As such the fairness of the process is itself in question. The 2nd point i.e. the test of maintainability does not arise as

the entire CIRP is vitiated and the parties concerned are together working for defeating the maximization of the value of the Corporate Debtor.

41. The Ld. Senior Counsel further submitted that the spirit of Section 30 (5) is being defeated by allowing one of the PRAs i.e. the Applicant herein to attend the meetings of CoC, where the resolution plan of the Applicant is considered.

42. In response, the Ld. Senior Counsel for Applicant submitted that the contract for repairs and maintenance work is itself a very big sham as it was not awarded prior to filing of this application.

**FINDINGS:**

43. I considered the submissions made by Ld. Senior Counsels appearing for both sides and observed as under:-

43.1 That the Respondent No.2 had purchased the asset of the Corporate Debtor by way of swiss challenge method in the auction conducted by Financial Institutions on 21.06.2021 . I also found that Respondent No.2 for purchasing this asset, have mobilized the resources from various entities having common Directors and sharing a common registered office and to a certain extent sharing common email address. The Prospective Resolution Applicant i.e. R-3 also appears to be one of the group companies having common Directors, sharing

common registered offices and emails. Thus, the PRA/R-3 herein is also part and parcel of the group companies of the sole Financial Creditor/R-2. It is also curious to observe that this process of purchase by R-2 through swiss challenge method was completed and also registered by Axis Trustee Services Limited and date of creation of charge is 25.06.2021. The Corporate Debtor was admitted into CIRP on 28.07.2021 and an IRP was appointed. From June 2021 till appointment of IRP i.e. 28.07.2021, the Respondent No.2 who is the sole financial creditor has not taken any steps to protect the interest of the Corporate Debtor. However, after the IRP was appointed, the IRP curiously has issued RFP for repair and maintenance work of CD on 04.09.2021 that is after lapse of 2 ½ months. It is also observed that IRP who has been appointed by this Tribunal has published request for RFPF on 04.09.2021 for SIL which was later modified on 17.09.2021, by way of addendum to RFP by Shri Bhuvan Madan after his appointment as Resolution professional. The addendum issued by Resolution Professional has drastically changed the contours of the repairs and maintenance contract as under.

***"The Contractor can run the complete facilities during the contract period and to have full access to the entire facilities. Contractor would be required to arrange the raw material and sale the finished products. In such situation, the Contractor can retain the consideration received from sales".***

43.2 The above change in RFP, has made the successful bidder as "de facto controller" of the Corporate Debtor. In the instant case, it is none other than Respondent No.3, who is also the PRA. By issuing such RFP, the Resolution Professional has totally outsourced his role and responsibilities in entrusting the Corporate Debtor to R-3. In response to this RFP, only one bid was received from R-3. Despite the high value of contract the sole bidder was awarded the contract in violation of CVC guidelines in this regard

43.3 From the above, I observe that the entire control and management of the Corporate Debtor is given on a platter to R-3 which is also now a Prospective Resolution Applicant. Further I observe from the contract given, the repair and maintenance of Corporate Debtor to be completed within 7 months, even though the CIRP period supposed to have been completed within 180 days period. Further, the value of the repairs and maintenance contract was for an amount of Rs. 266 crores for a period of seven month. It is also very curious to observe that that Financial Creditor/R-2 herein has acquired this asset by paying 15% of the bid amount i.. Rs. 79.8 crores, whereas the group company of the Financial Creditor herein has got the contract of the Corporate Debtor for an amount of Rs. 266 crores thereby raising several questions on the process adopted in the instant case. By virtually controlling the management and the entire operational functions of the Corporate Debtor, the Respondent No.3 which is also a PRA is at an added

advantage in submitting the resolution plan as the entire technical details as alleged by Applicant herein is in the knowledge of the PRA and also the total control of the Corporate Debtor is in the hands of the R-3 in the garb of repairs and maintenance contractor and who is also a Prospective Resolution Applicant.

43.4 In the light of the above backdrop, I also consider that the duties and responsibilities of the Resolution Professional as delegated under Section 25 of the Code was compromised on two counts. First the entire control and management of the Corporate Debtor was given on a platter to the PRA/R-3, which is a group company of R-2 herein, who is the sole CoC member. Secondly, the eligibility criteria prescribed PRA under Section 29A of the Code was not meticulously followed. The Resolution Professional has also failed in not conducting due diligence based on the material on record.

43.5 I am therefore, of the view that R-3 was not only hit by Section 5 (24)(m)(iv) and also on several counts. Respondent No.3 can now be qualified to be considered as a key managerial person of the Corporate Debtor under Section 5(24)(b) who is in full control of the Corporate Debtor. In the light of the above, I am also of the view that the Resolution Plan submitted by the prospective Resolution Applicant /R-3 herein is hit by Section 5(24)(m)(iv) as well as Section 5(24)(b) and

should be barred from submitting the resolution plan. The prayer made by the Applicant herein is on a sound footing and I consider that the Resolution Plan submitted by Respondent No.3 who is one of PRAs, should not be considered at all by the CoC. By virtue of our earlier order we directed the CoC to conduct the meeting, however, to keep the result on hold. As such, even if the result is in favour of R-3, the plan should not be recommended for approval of the Adjudicating Authority and the CoC is directed to consider the resolution plans submitted by other PRAs only.

43.6 Finally, my observation is that the entire process of CIRP from the auction conducted by the original Financial Creditors stated supra onwards, the entire process is vitiated and the collusion between the parties is writ large on the face of the CIRP of the Corporate Debtor. Therefore, the contention that it is premature to pass any order at this juncture as CoC has not yet finalized the Resolution Plan does not hold any water.

43.7 When the conduct of Corporate Insolvency Resolution Process itself is compromised in favour of certain players and the same was brought to the knowledge of the Adjudicating Authority, it is the bounden duty and responsibility of the Adjudicating Authority to nip it in the bud, instead of waiting for the outcome of the CoC in this regard.

43.8 I am therefore, of the view that the entire CIRP is stage managed and apparently designed to benefit R-3, who is also the PRA and also a group company of R-2.

43.9 Accordingly, I consider the relief sought by the applicant herein against point (iv) of this IA has merit. Accordingly, this prayer is allowed by invoking the power given to the Adjudicating Authority under Section 60 (5) of the Code. In the result, the CoC is directed not to consider the resolution plan submitted by R-3.

**(VEERA BRAHMA RAO AREKAPUDI)**
**MEMBER (TECHNICAL)**

In view of the divergent opinions on Point No.(3), namely:

"Whether the CoC be restrained from considering the Resolution Plan of respondent no.3/ the Prospective Resolution Applicant, who/ which has already submitted Resolution Plan to the CoC?"

This Point needs to be answered by a Larger Bench or by the Hon'ble President as the case may be. The matter be sent to the Hon'ble President under section 419(5) of the Companies Act, 2013.

(Veera Brahma Rao Arekapudi)
Member (Technical)

05/05/2022

(Dr.N.V.Ramakrishna Badarinath)
Member (Judicial)