Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 676 of 2021

Pratap Technocrats (P) Ltd. & Ors. **...Appellants**

Versus

Monitoring Committee of Reliance Infratel Limited & Anr. **...Respondents**

J U D G M E N T

Dr Justice Dhananjaya Y Chandrachud, J

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A The Appeal

1 This appeal arises under Section 62 of the Insolvency and Bankruptcy Code[1], against a judgment the dated 4 January 2021 of the National Company Law Appellate Tribunal[2]. Reliance Infratel Limited[3] is the corporate debtor. The appellants are operational creditors. By its order dated 3 December 2020, the National Company Law Tribunal, Mumbai[4], approved the resolution plan formulated in the course of the insolvency resolution process[5] of the Corporate Debtor. The NCLAT has upheld the order.

[1] **IBC**
[2] **NCLAT /Appellate Authority**
[3] **RIL**
[4] **NCLT/Adjudicating Authority**
[5] **CIRP**

B Corporate Resolution Insolvency Process

2 The CIRP of the Corporate Debtor was initiated by an order dated 15 May 2018 of the NCLT. An interim resolution professional[6] was appointed on 18 May 2018. The IRP issued a public announcement on 21 May 2018 inviting claims from the creditors of the Corporate Debtor. The order of the NCLT admitting the corporate debtor to the CIRP was challenged in appeal, and the order of admission was stayed on 30 May 2018. On 30 April 2019, the NCLAT vacated the stay on the CIRP. The appeal was withdrawn.

3 The CIRP resumed on 7 May 2019. A fresh public announcement was issued by the IRP on 7 May 2019 for inviting claims from creditors. The Committee of Creditors[7] was constituted on 24 May 2019. On 30 May 2019, the CoC replaced the IRP with Mr. Anish Niranjan Nanavaty as the Resolution Professional[8]. This appointment was confirmed by the NCLT on 21 June 2019.

4 During the course of the process, the RP invited 'Expressions of Interest'[9] from prospective resolution applicants on 15 July 2019. Fifteen EOIs were received, and a provisional list was prepared and furnished to the CoC on 16 August 2019. A request for resolution plan[10] was then issued to the prospective resolution applicants on 21 August 2019, together with an information memorandum and evaluation

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[6] **IRP**
[7] **CoC**
[8] **RP**
[9] **EOI**
[10] **RFRP**

matrix. With the consent of the CoC, the last date for submission of resolution plans was extended till 25 November 2019. The RP received resolution plans from the four prospective resolution applicants:

a) Bharti Airtel Ltd.;

b) Reliance Digital Platform & Project Services Limited, through its division Infrastructure Projects;

c) VFSI Holdings Pte. Ltd.; and

d) UV Asset Construction Company Ltd.

5 The CoC engaged with the prospective resolution applicants between 2 January 2020 and 2 March 2020, in pursuance of which revised resolution plans were submitted. At the 16th meeting of the CoC held on 9 January 2020 (reconvened on 13 January 2020), further discussions were held and the resolution plan submitted by Reliance Digital Platform and Project Services Limited[11] was taken forward as a preferred resolution plan on the basis of its "feasibility, viability and implementability". The Resolution Applicant submitted a revised resolution plan on 13 January 2020, and upon due verification of its eligibility under Section 29A of the IBC, was declared a successful resolution applicant at the 19th meeting of the CoC held on 2 March 2020. The resolution plan was approved with a 100 per cent voting share of the CoC. A letter of intent (**"LoI"**) was then issued by the RP on 4 March 2020, which the Resolution Applicant unconditionally accepted on 6 March 2020.

[11] the **Resolution Applicant**

6 The NCLT has indicated the following extensions which were granted, consistent with the provisions of the IBC, for completing the CIRP:

> "5…
>
> i The period of stay between 30.05.2018 and 30.04.2019 was excluded from the calculation of the CIRP vide order dated 09.05.2019.
>
> ii. Extension of 90 days was granted vide order dated 29.09.2019. The CIRP thus stood extended from 12.10.2019 to 10.01.2020.
>
> iii. Further exclusion of 24 days was granted from the CIRP period vide order dated 07.01.2020, owing to time spent in litigation from the date of approval of the Applicant as RP till the date of publication of order confirming the said appointment.
>
> iv. It was clarified by order dated 24.01.2020 that the RP and the CoC were at liberty to complete CIRP within 330 days, which was expiring on 10.03.2020."

C Approval of Resolution Plan

7 An application was submitted under Section 30(6) of the IBC by the RP, seeking the approval of the resolution plan by the NCLT. The NCLT discussed the salient aspects of the resolution plan in the course of its order on the approval application. The financial terms envisaged in the resolution plan have been tabulated thus:

Particulars	Amount Admitted	Amount Proposed under the Plan	% of recovery under the Plan
CIRP Costs	-	To be paid in priority in full. [Refer Note 1]	100%
Workmen / Employees	1,81,27,767/-	1,81,27,767/-	100%
Related Parties / potential Related Parties	269,94,30,465/-	NIL	NIL
Statutory Creditors	31,32,81,573/-	404,45,218/-	12.91% [Refer Note 2]
Operational Creditors (other than Related Parties, Statutory Creditors)	1,29,28,99,328/-	25,36,38,128/-	19.62% [Refer Note 2]
Other Creditors	904,45,24,882/-	43,87,534/-	100% [Refer Note 3]
Financial Creditors	41055,38,58,711/-	4235,77,87,067/- [Refer Note 4]	~10.32% [Refer Note 4]

Note 1: CIRP Costs:

Payment of unpaid insolvency resolution process costs (CIRP Costs) in full and in priority to all other stakeholders. In case the cash flows of the Corporate Debtor on the Effective Date are not sufficient to meet the entire Unpaid CIRP Costs, then such amount shall be deducted from the Infused Resolution Amount and paid in priority of the other stake holders.

Note 2: Operational Creditors (other than workmen and employees) –

Payment to them shall be as follows:

a. Operational Creditors with verified/admitted claims of up to INR 1 Crore: 50% of the verified claims to all Operational Creditors (other than Workmen and Employees) whose verified claims is up to INR 1 Crore;

b. Operational Creditors with verified/admitted claims of more than INR 1 Crore: For claims of more than INR 1 Crore, the Resolution Applicant proposes to pay:

   i. 50% of amount of up to INR 1 Crore of the verified claims; and

   ii. 10% of the amount over and above INR 1 Crore of the verified claims.

Note 3: Payments to Other Creditors –

Out of the total verified other creditors debt, claim of INR 904,01,37,349/- belongs to the Affiliates of the Resolution Applicant, i.e. RJIL and JDFPL. RJIL and JDFPL have agreed to waive their rights towards any payments under this Plan and accordingly, any payments due to RJIL and JDFPL shall stand expressly extinguished on the Effective Date. Payment of 100% amount to the remaining creditors in this category has been envisaged under the Plan.

Note 4: Payments to Financial Creditors under the Plan –

Out of the Total Resolution Amount, the RA will make payment to the financial creditors, as consideration for transfer, assignment, acquisition or

novation of the admitted financial creditor debt in favour of the RA or entity specified by it, along with the encumbrances and mortgages. Post the payment of Unpaid CIRP Costs, Workmen & Employees and the Operational Creditors, the balance amount of the Infused Resolution Plan of INR 3720 crores, would be distributed between and amongst the Financial Creditors on pro-rata basis to their Debt.

The plan envisages the following payments for the insolvency resolution of the Corporate Debtor as a going concern:

"G. Overall payment under the Plan:

Resolution Plan contemplates following payments for the insolvency resolution of the Corporate Debtor as a going concern:

Sr No.	**Particulars**	Amount (INR)
1.	Amount to be infused by Resolution Applicant (Infused Resolution Amount)	3720,00,00,000/-
2.	Fund infusion from Effective Date to meet working capital, capital expenditure requirements and/or funding other operational improvements of the Corporate Debtor	450,00,00,000/-
3.	Upfront equity infusion against allotment of equity shares of Corporate Debtor (Upfront Equity Infusion)	5,00,00,000/-
4.	Payment to Financial Creditors from the value realised from the preference shares in Reliance Realty Limited	800,00,00,000/-

	(Refer Note I)	
Total (Refer Note 2 & 3)		49,75,00,00,000/-

Note-I to the table is as follows:

"Note 1:

Reliance Bhutan Limited (RBL)(wholly owned subsidiary of the Corporate Debtor) holds preference shares in one of the other group companies of Reliance Communications Group, i.e. Reliance Realty Limited (RRL), which holds certain real estate assets. RA provides that:

a. In the event RRL is able to sell its real estate assets for an amount of INR 800 Crore or more, the RA shall cause that amount of INR 800 Crore (less any taxes and transaction costs) from the value realised from the preference shares held by RBL in RRL to be distributed to the Approving Financial Creditors on a *pro rata* basis to their Admitted Financial Debt within 30 days of the completion of the sale and all related approvals.

b. In the event the amount expected to be realised from the sale of the real estate assets of RRL is less than INR 800 Crore, the RA will purchase the real estate assets of RRL for INR 800 Crore and said amount of INR 800 Crore (less any taxes and transaction costs) shall be distributed to the Approving Financial Creditors on a *pro rata* basis to their Admitted Financial Debt, as would be mutually agreed between the RA, RRL and the Approving Financial Creditors."

8 In the course of deciding upon the approval plan, the NCLT noted that Doha Bank, which was one of the financial creditors of the Corporate Debtor, had instituted proceedings[12] challenging the admission of the claims of a few other creditors and a proceeding[13] to impugn the decision of the RP to recognize the indirect lenders of the Corporate Debtor as financial creditors. The NCLT noted that the applications were pending, but it came to the view that the pendency of these and other applications would not stand in the way of the approval of the resolution plan, particularly since it had been unanimously approved by the CoC. However, it clarified that the distribution of payments to creditors, financial or operational, shall be subject to the orders which are passed in the interim applications, within the ambit of the IBC. In the above backdrop, the NCLT by its order dated 3 December 2020 approved the resolution plan in terms of the following directions:

> "14. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of **the** provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved.
>
> 15. Doha Bank one of the Financial Creditors has filed IA No. 1960 of2019 inter alia, challenging the admission of claims of few other Creditors and IA No. 3055 of 2019 impugning the decision of the Resolution Professional recognising the Indirect Lenders of the Corporate Debtor as Financial Creditors. The Applications are pending consideration. We are of the considered opinion that pendency of these and other Applications would not come in the way of approval or otherwise of the Resolution Plan. More so, when the Resolution Plan has been unanimously approved by the CoC.

[12] IA 1960 of 2019
[13] IA 3055 of 2019

The distribution of the payments to the Creditors, Financial or Operational, as the case may be, shall be subject to orders to be passed in the respective Interim Applications within the ambit of the Code. We are thus inclined to dispose of this Application in the following terms. Hence ordered.

ORDER

i. The Application be and the same is allowed. The Resolution Plan submitted by Reliance Digital Platform & Project Services Limited through its division Infrastructure Projects annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

ii. The distribution of the payments to the Financial Creditors shall abide by and be subject to the orders passed in IA Nos. 1960 of 2019 and 3055 of 2019 pending consideration of this Bench. The amount sought to be infused by the Resolution Applicant shall be kept in an interest bearing deposit in any Nationalised Bank till disposal of the said Applications.

iii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

v. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in Para 6 *supra*.

vi. The moratorium under Section 14 of the Code shall cease to have effect from this date.

vii. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.

viii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information…."

D Challenge before Appellate Tribunal

9 The appellants challenged the decision of the NCLT approving the resolution plan in appeal before the NCLAT. The grounds of challenge of the appellants were:

(i) The appellants were kept unaware of the CIRP and no details were provided by the RP as regards the disposal of the fund towards their claims;

(ii) The claims of the appellants had not received a fair and equitable treatment;

(iii) The fair market value and the liquidation value of the Corporate Debtor had not been taken into account and an amount of Rs 800 crores, being the value of certain preference shares, did not form a part of the corpus of payments to the operational creditors;

(iv) There were material irregularities in the accumulation and disbursal of funds that constituted the corpus of the corporate debtor; and

(v) The appellants were made to suffer a reduction of 90 per cent of their total claims, while substantial claims of nearly Rs 120 crores have been rejected.

10 The NCLAT by its judgment dated 4 January 2021 rejected the appeal. The NCLAT noted that there was no substance in the grievance that the operational creditors had been unfairly or inequitably treated in regard to the distribution of funds. As a matter of fact, operational creditors (other than related parties and statutory creditors) were allocated 19.62 per cent of the up-front payment of Rs 3720 crores, while the financial creditors were paid only an amount of 10.32 per cent of the upfront payment. The approved resolution plan, the NCLAT observed, ensures restructuring and revival of the corporate debtor.

11 The appellants were not excluded from the CIRP as they had filed their claims, which had been partly admitted. In dealing with the submission that there was an absence of equitable treatment of the operational creditors, the NCLAT held that equitable treatment can be claimed only by similarly situated creditors. Operational creditors stand on a different footing as compared to financial creditors. They are entitled to receive payment not less than liquidation value, which does not apply to financial creditors. In this backdrop, the NCLAT relied upon the decisions of this Court in **Swiss Ribbons (P) Ltd.** vs **Union of India**[14] (**"Swiss Ribbons"**) and

[14] (2019) 4 SCC 17

Committee of Creditors of Essar Steel India Limited vs **Satish Kumar Gupta**[15] (**"Essar Steel India Limited"**). Finally, the NCLAT did not find substance in the grievance in regard to the preferential shares. It held that the distribution mechanism conforms to the provisions of Section 53 and was in accordance with the provisions of the IBC. The appeal was accordingly dismissed.

E Submissions

12 When the present appeal came up on 10 March 2021, this Court noted the submission of the learned Senior Counsel that as a consequence of the order of the NCLT of 2 March 2021, certain entities which were recognized as financial creditors in the resolution plan have been de-recognized as financial creditors. The issue, then, was whether this decision would have any bearing on the requisite majority required to pass a resolution plan. The Court noted the submission of Senior Counsel for the Monitoring Committee, that the resolution plan has been approved by 100 per cent of the voting shares and the exclusion of some financial creditors from the CoC would be of no consequence. However, since the issue had been raised during the course of the submission, by an order dated 10 March 2021, opportunities were granted to the parties to file affidavits explaining the position. Affidavits have accordingly been exchanged between the parties, to which a reference would be made. It is in this backdrop that the appeal has been heard finally at this stage.

[15] (2020) 8 SCC 531

13 Mr Dushyant Dave, learned Senior Counsel has appeared on behalf of the appellants. Mr Neeraj Kishan Kaul, learned Senior Counsel addressed the submissions on behalf of the Monitoring Committee.

14 Mr Dushyant Dave, learned Senior Counsel, submitted on behalf of the appellants that:

(i) The stated object and purpose of the IBC is to balance the interest of all stakeholders and to maximize the value of assets. The long title to the IBC elucidates that the legislation seeks to:

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

(ii) The CIRP must be just, fair and equitable to all stakeholders, and cannot place the interest of the financial creditors at a higher pedestal at the cost of other stakeholders. In the present case, the operational creditors are small and medium scale companies who have supplied goods and services to the Corporate Debtor and their interests have not been taken into consideration;

(iii) The CIRP has been conducted in a secretive manner, in violation of the principles of natural justice and there has been an absence of information to the operational creditors in regard to the contents of the resolution plan.

As a result, it was only after an order approving the resolution plan was passed by the Adjudicating Authority, that the appellant became aware of the specifics of the resolution plan;

(iv) The appellants are telecom service providers of the Corporate Debtor. The total operational debt owed to them amounts to Rs 190.40 crores (approx.), constituting over 90 per cent of the total operational debts of the Corporate Debtor. These operational creditors have provided core service in the nature of operation and maintenance of telecom towers and the optical fiber network and associated passive infrastructure equipment. The interest of the operational creditors, who are small and medium size companies, have not been borne in mind by the CoC by placing certain assets of the Corporate Debtor outside the resolution amount. The assets of the Corporate Debtor, held directly or indirectly through subsidiaries, should be available for distribution to all stakeholders;

(v) The resolution plan segregates and reserves a portion of the Corporate Debtor's assets amounting to Rs 800 crores for distribution to certain financial creditors alone, despite there being no specific charge on such sums in their favor. This vitiates the object of the IBC which is to maximize the value of the assets of the Corporate Debtor and balance the interest of all stakeholders;

(vi) The resolution plan has reserved a sum of Rs 800 crores exclusively for distribution to the financial creditors, and the said amount does not form a part of the total resolution amount of Rs 3720 crores being paid by the

resolution applicant to acquire the Corporate Debtor. This sum of Rs 800 crores is realizable from the preference shares held by Reliance Bhutan Limited, a wholly owned subsidiary of the Corporate Debtor in Reliance Reality Limited. On the other hand, if Reliance Realty Limited is unable to sell such real estate assets for Rs 800 crores or more, the Resolution Applicant would itself buy such assets for Rs 800 crores and make such funds available for distribution to the specified financial creditors. In apportionment, a sale of Rs 800 crores exclusively for the benefit of specified financial creditors is a violation of Section 30(2)(b) of the IBC;

(vii) The NCLT on an application filed by Doha Bank, a financial creditor of the Corporate Debtor, by its order dated 2 March 2021, set aside the inclusion of these banks (State Bank of India, Bank of India, UCO Bank, Syndicate Bank, Oriental Bank of Commerce and Indian Overseas Bank) from the CoC. Similarly, on the same analogy, various indirect creditors of the Corporate Debtor have also been excluded. The basis of the inclusion of certain financial creditors (this being challenged in the Doha Bank proceedings) was that the Corporate Debtor had executed a deed of guarantee in favour of these banks for securing a rupee loan facility availed by Reliance Communications Limited, the holding company of the Corporate Debtor and Reliance Telecom Limited in violation of the facilities agreement between the consortium of the corporate debtor. The NCLT excluded these banks from the CoC, *albeit* prospectively, without implications on the decisions which were taken until the date of the order;

(viii) It is the appellant's understanding that in the case of two other indirect creditors as well, the Corporate Debtor had executed corporate guarantees to secure fund based/non-fund based facilities. Since at the time of the application preferred by Doha Bank, the indirect creditors were not members of the CoC, no directions were issued in that regard. However, it is the understanding of the appellants that the exclusion of the indirect creditors would have significant implications on the distribution of funds under the resolution plan, if not on the validity of the plan. The claims of the six banks which were excluded by the NCLT were admitted by the RP on the basis of a legal opinion, which is also the basis of admitting the claims of twenty-one similarly situated indirect creditors of the Corporate Debtor;

(ix) The NCLT failed to properly appreciate and consider the implication of the exclusion of certain creditors from the CoC, on the ground that the pendency of the applications by Doha Bank would not come in the way of the approval of the resolution plan. In the event that the twenty-one indirect creditors are excluded, this would have implications on the constitution of the CoC as well as on the rate of recovery for the financial creditors which may stand increased from 10.32 per cent to 91.98 per cent. On the other hand, the operational creditors would have a mere recovery of 19.62 per cent; and

(x) There has been an absence of transparency in the process leading up to the approval of the resolution plan. The IBC mandates that the CoC

consist only of financial creditors, while the operational creditors are only allowed to attend the meetings without voting rights in case the amount of their aggregate dues is not less than 10 per cent of the total debt of the Corporate Debtor. As a result, operational creditors are left unaware of the process and the entire decision making is left to the CoC based on its commercial wisdom. One of the grounds of appeal under Section 61(3)(ii) is a material irregularity in the exercise of powers by the RP during the CIRP. The issues faced by operational creditors have also been recognized in the report of the Insolvency Committee Report of February 2020.

15 Opposing the above submissions, Mr Neeraj Kishan Kaul, learned Senior Counsel submits that:

(i) In the provisions of the IBC, specific stipulations have been framed in respect of the operational creditors, namely:

a. Under Section 30(2)(b), the payment of debts to the operational creditors in the resolution plan shall not be less than the amount to be paid in the event of a liquidation under Section 53;

b. Priority in terms of the water fall mechanism contained in Section 53 is provided; and

c. Representation of their views in the CoC is envisaged under Section 24(3)(c), through the operational creditors themselves or the

representatives if they have aggregate dues which are not less than 10 per cent of the debt of the Corporate Debtor;

(ii) If the proceedings were to take place strictly in accordance with the provisions of the IBC, the liquidation value would be zero. However, despite this, the resolution plan has provided for the operational creditors to receive 19.62 per cent of their dues as against 10.32 per cent for the financial creditors;

(iii) The order of the NCLT by which six banks were excluded from the CoC has been stayed in appeal by the NCLAT. However, this issue is a *non sequitur* since the decision of the CoC to approve the resolution plan is with a voting share of 100 per cent. The exclusion of any financial creditors from the CoC has no significance to the requisite majority required for passing a resolution plan;

(iv) The issue in regard to the exclusion of twenty-one indirect creditors is sought to be raised for the first time in this Court in the additional affidavit. Even if, for the sake of argument, it were to be conceded that twenty-one indirect creditors are excluded and financial creditors will receive 90 per cent of their dues, there is a fundamental difference under the IBC between the position of operational creditors and financial creditors which is emphasised by the decision of this Court in **Essar Steel India Limited** (supra);

(v) The principle of equitable treatment applies as between creditors belonging to the same class, which is emphasised by Explanation 1 to Section 30(2)(b);

(vi) There is a fundamental error on the part of the appellants in overlooking that the sum of Rs 800 crores, which is the realisable value of the preference shares, is a part of liquidation value. Thus, the value of these preference shares has been duly taken into account; and

(vii) The CoC has approved the resolution plan based on its commercial wisdom. The NCLT in declining to scrutinize the commercial wisdom of the CoC has acted in accordance with the provisions of the IBC as well as the decisions of this Court.

16 The rival submissions will now be analyzed.

F Analysis

F.1 Clearing the ground

17 Before we deal with the legal submissions which have been canvassed during the course of the hearing, it is necessary to clear the ground on three factual aspects bearing on the outcome of the appeal:

(i) Valuation of Preference Shares

18 The *first* aspect is in relation to the inclusion of the realisable value from the sale of preference shares held by Reliance Bhutan Limited, in Reliance Realty

Limited, in determining the liquidation value of the Corporate Debtor. It has been clarified in the affidavit filed by the insolvency professional, in pursuance of the order of this Court dated 10 March 2021, that under the IBC and its regulations, the RP appointed two registered valuers in accordance with Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016[16] to carry out the valuation of the Corporate Debtor and to determine the liquidation value and fair value in accordance with Regulation 35(1). These values were placed before the CoC, in accordance with Regulation 35(2) of the CIRP Regulations, upon receipt of the resolution plans. The submission of the appellants that the realisable value from these preference shares is excluded from the liquidation value of the Corporate Debtor has been rebutted by a specific clarification contained in the Monitoring Committee's affidavit, which was filed in these proceedings. As a matter of fact, the realisable value for the Corporate Debtor on account of any proceeds realised from the preference shares held by its subsidiary (Reliance Bhutan Limited), is included in the determination of the liquidation value of the Corporate Debtor. This statement in the affidavit is duly supported by relevant excerpts from the valuation reports dated 2 January 2020 and 6 December 2019, issued by the appointed valuers. The relevant extract from the report by Mr. Rakesh Narula on the fair value and liquidation value of the Corporate Debtor is set out below:

[16] **CIRP Regulations**

"**Basis of valuation & assumptions:**

Non-Current Assets:

1) Investment:

The balance of investment as per provisional financial statements was Rs 5 lakhs as on valuation date. It represents investment in equity shares of Reliance Bhutan Limited.

The only asset in the audited financial statements of the subsidiary is investment in preference shares of Reliance Realty Limited.

Based on our independent analysis of the value of real estate sitting on the balance sheet of Reliance Realty, we are of the opinion that the investment in Reliance Realty Limited is fully recoverable in the books of Reliance Bhutan Limited.

The book value of this investment is Rs 200 crores at which Reliance Bhutan Limited had purchased these shares from Reliance Infratel Limited. The original issue price of the preference shares was Rs 2,000 crores at which Reliance Realty Limited had issued the shares to Reliance Infratel Limited in the financial year 2016 - 17, these shares were subsequently in the year 2016 - 17 were sold to Reliance Bhutan Limited for Rs. 200 Crores.

We have considered such shares to be redeemed at the original issue price of Rs 2,000 crores. Out of this receipt of Rs 2,000 crores, Reliance Bhutan Limited has existing liability of Rs 200 crores in the balance sheet which shall be paid first. The remaining balance of Rs 1,800 crores shall flow to the parent company, Reliance Infratel Limited, which is considered as the fair value of this investment

The liquidation value is determined by discounting the fair value by 30% as the prevailing discount rate considering the current status of operations of the company.

2) **Financial Assets:**

The carrying amount of the financial assets was Rs1 crore as per the provisional financial statements as on the valuation date. It comprises of the following:

a) **Other Financial Assets:**

It comprises of Rs 1 crores of deposits with bank having maturity of more than 12 months. We had requested for

> balance confirmation for these deposits. We were not provided with either balance confirmations/ bank statements.
>
> Since the same balance was disclosed in audited financials for the period ended 31 st March 2018 and in the provisional financial statements as on the valuation date, we……"

Therefore, the submission that the value of preference shares has not been included in calculating the liquidation value of the Corporate Debtor is factually incorrect.

(ii) Liquidation Value

19 The *second* aspect relates to the liquidation value. On this, it has been clarified that the liquidation value due to the unsecured operational creditors would remain nil in all scenarios, including if the corpus of Rs 800 crores is separately considered. The liquidation value of the Corporate Debtor is Rs 4339.58 crores. The amount being infused by the successful resolution applicant is Rs 3720 crores. The amount of Rs 800 crores is a value ascribed under the approved resolution plan to be realised by the Corporate Debtor, pursuant to the remittance of proceeds in respect of the preference shares. Hence, cumulatively, the value being distributed under the approved valuation plan is Rs 4520 crores. It has been clarified that even if the liquidation value of the realisable value of the preference shares were to be considered in isolation for distribution amongst all the operational creditors, in terms of the priority contained in Section 53(1) of the Code, the liquidation value due to the appellants would still remain at nil.

(iii) The impact of exclusion

20 The *third* aspect relates to the order of the NCLT in Doha Bank proceedings. The order of the NCLT in the application which was moved by Doha Bank for the removal of certain financial creditors from the CoC, has no bearing on the status of the approval of the resolution plan for the reason that it had received a unanimous approval with the 100 per cent voting share in the CoC. The exclusion of certain financial debts and hence, the exclusion of certain financial creditors from the CoC, pursuant to the order of the NCLT in the Doha Bank proceedings, has no practical implication since the resolution plan continues to be approved with a 100 per cent majority even after their exclusion.

21 The order of the NCLT in the Doha Bank proceedings did not provide for the inclusion of any new financial creditors. The consequence of the Doha Bank order would be that the *inter se* distribution between the financial creditors would be affected, which has no consequence for the operational creditors. In the affidavit which has been filed by the Monitoring Committee in pursuance to the order of the 10 March 2021 of this Court, it has also been stated that:

> ".. in terms of the Doha Bank Order, upon the exclusion of certain erstwhile financial creditors from the COC of the Corporate Debtor (and correspondingly the financial debt of such creditors), the revised financial debt in respect of the Corporate Debtor shall be INR 3,11,84,51,89,041/- (Thirty one thousand one hundred eighty four crores fifty one lakhs eighty nine thousand and forty one). Being an amount which is more than 7 times the liquidation value of the Corporate Debtor, such exclusion will have no implication in respect of the distribution to operational creditors under the resolution plan."

The above statement has not been controverted during the course of the submissions.

F.2 Jurisdiction to approve a Resolution Plan

22 The resolution plan was approved by the CoC, in compliance with the provisions of the IBC. The jurisdiction of the Adjudicating Authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). The NCLT is within its jurisdiction in approving a resolution plan which accords with the IBC. There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC.

23 Now, it is in this backdrop that it becomes necessary for this Court to revisit some of the provisions of the IBC and to take note of the interpretation which has been placed upon them in successive decisions of this Court. Section 30(1) envisages the submission of a resolution plan by a resolution applicant. On the submission of the resolution plan, the RP is required to examine it and to confirm, in terms of sub-Section (2) of Section 30, that the plan abides by the statutory requirements spelt out in clauses (a) to (f)[17].

[17] "(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

24 The RP has to present to the CoC, for its approval, such resolution plans which conform to the conditions specified in sub-Section (2) of Section 30. The approval of the resolution plan is a statutory function which is entrusted to the CoC, under sub-Section (4) of Section 30. The CoC may approve a resolution plan with a voting percentage of not less 66 per cent of the voting shares of financial creditors after considering: *(i)* its feasibility and viability; *(ii)* the manner of distribution proposed having regard to the order of priority amongst creditors laid down in Section 53(1) of the IBC, including priority and value of the security interest of the secured creditors; and *(iii)* such other requirements as may be specified by the

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(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under Section 61 or Section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board."

Insolvency and Bankruptcy Board of India. In other words, the decision to approve a resolution plan is entrusted to the CoC.

25 The function of the Adjudicating Authority under Section 31 is to determine whether the resolution plan "**as approved by the CoC**" under Section 30(4) "meets the requirements" under Section 30(2). If the Adjudicating Authority is satisfied that the resolution plan, as approved, meets the requirements under sub-Section (2) of Section 30, "**it shall by order approve the resolution plan**" which shall then be binding on the Corporate Debtor and all stakeholders, including those specifically spelt out:

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

26 The jurisdiction which has been conferred upon the Adjudicating Authority in regard to the approval of a resolution plan is statutorily structured by sub-Section (1) of Section 31. The jurisdiction is limited to determining whether the requirements which are specified in sub-Section (2) of Section 30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions

of the statute. The Adjudicating Authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.

27 The jurisdiction of the Appellate Authority under Section 61(3), while considering an appeal against an order approving a resolution plan under Section 31, is similarly structured on specified grounds. Section 61(3) provides:

> "61…..(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—
>
> (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
>
> (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
>
> (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
>
> (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
>
> (v) the resolution plan does not comply with any other criteria specified by the Board."

28 Section 5(7) defines the expression 'financial creditors' while Section 5(8) defines the expression 'financial debt'. The expression 'operational creditor' is defined in Section 5(20), while the expression 'operational debt' is defined in Section 5(21). Now, insofar as the operational creditors are concerned, there are specific

requirements which have been spelt out in sub-Section (2)(b) of Section 30. Section 30(2)(b) requires the RP to confirm upon examination that the resolution plan:

> "30…(2)….(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
>
> (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
>
> (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,
>
> whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.
>
> Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors…."

In other words, the amount which is payable to the operational creditors towards their debts must at least be either what is provided in sub-clause (i) or sub-clause (ii) of clause (b), whichever is higher. Sub clause (i) refers to the amount paid to the operational creditors in the event of a liquidation under Section 53. Sub-clause (ii) refers to the amount that would have been paid to the operational creditors, if the amount to be distributed under the resolution plan was distributed in accordance with the order of priority under Section 53(1)(b), which provides for a waterfall mechanism.

29 These provisions indicate that the ambit of the Adjudicating Authority is to determine whether the amount that is payable to the operational creditors under the resolution plan is consistent with the above norms which have been stipulated in clause (b) of sub-clause (2) of Section 30. Significantly, Explanation-1 to clause (b), which is clarificatory in nature, provides that a distribution which is in accordance with the provisions of the clause "shall be fair and equitable" to such creditors. Fair and equitable treatment, in other words, is what is fair and equitable between the operational creditors as a class, and not between different classes of creditors. The statute has indicated that once the requirements of Section 30(2)(b) are fulfilled, the distribution in accordance with its provisions is to be treated as fair and equitable to the operational creditors.

30 The appellants are challenging the treatment of operational creditors on the ground that it has not been fair and equitable. The entitlement of the operational creditors being defined by sub-clause (b) of sub-section (2) of Section 30, the clarification contained in Explanation-1 must apply. As such, as long as the payment under the resolution plan is fair and equitable amongst the operational creditors as a class, it satisfies the requirements of Section 30(2)(b).

31 The nature of the jurisdiction which is exercised by the Adjudicating Authority, while approving a resolution plan under Section 31, has been interpreted in the judgment of a two-Judge Bench in **K Sashidhar** vs **India Overseas Bank**[18] (**"K Sashidhar"**). The decision emphasizes that the Adjudicating Authority is

[18] (2019) 12 SCC 150

circumscribed by Section 31 to scrutinizing the resolution plan "as approved" by the CoC under Section 30(4). Moreover, even within the scope of that enquiry, the grounds on which the Adjudicating Authority can reject the plan is with reference to the matters specified in sub-Section (2) of Section 30. Similarly, the Court notes that the jurisdiction of the Appellate Authority to entertain an appeal against an approved resolution plan is defined by sub-Section (3) of Section 61. Now, it is in this context, that the consistent principle of law which has been laid down is that neither the Adjudicating Authority nor the Appellate Authority can enter into the commercial wisdom underlying the approval granted by the CoC to the resolution plan. The commercial wisdom of the CoC in its collegial capacity is, hence, not justiciable.

32 In **K Sashidhar** (supra), Justice A M Khanwilkar, speaking for the two-Judge Bench, held:

> "57. On a bare reading of the provisions of the I&B Code, it would appear that the remedy of appeal under Section 61(1) is against an "order passed by the adjudicating authority (NCLT)", which we will assume may also pertain to recording of the fact that the proposed resolution plan has been rejected or not approved by a vote of not less than 75% of voting share of the financial creditors. Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in NCLT or NCLAT as noticed earlier, have not made the commercial decision exercised by CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order "approving a resolution plan" under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers "by the resolution professional" during the corporate insolvency resolution period. Third, the debts owed

> to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds—be it under Section 30(2) or under Section 61(3) of the I&B Code—are regarding testing the validity of the "approved" resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision.
>
> 58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. **Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.**
>
> 59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (Nclat) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors….."
>
> **(emphasis supplied)**

The Court, also held (in paragraph 62) that the legislative history of the IBC indicated that "there is a contra indication that the commercial or business decisions of financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority".

33 The above principles have been re-emphasised and taken further by a three-Judge Bench in **Essar Steel India Limited** (supra). The Court, speaking through Justice R F Narminan, held:

> "73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(*e*), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximize the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

34 The precedents laid down by this Court are in tandem with recommendations made in the UNCITRAL's Legislative Guide on Insolvency Law, which states that it is desirable that a court does not interfere with the commercial wisdom of the decisions taken by the creditors. The relevant extract is reproduced below[19]:

> "63. The more complex the decisions the court is asked to make in terms of approval or confirmation, the more relevant knowledge and expertise is required of the judges and the greater the potential for judges to interfere in what are essentially commercial decisions of creditors to approve or reject a plan. In particular, it is highly desirable that the law not require or permit the court to review the economic and commercial basis of the decision of creditors (including issues of fairness that do not relate to the approval procedure, but rather to the substance of what has been agreed) nor that it be asked to review particular aspects of the plan in terms of their economic feasibility, unless the circumstances in which this power can be exercised are narrowly defined or the court has the competence and experience to exercise the necessary level of commercial and economic judgement."

F.3 Exercise of jurisdiction

35 Mr Dushyant Dave, learned Senior Counsel, sought to place emphasis on the abovementioned observations in paragraph 73 of the decision in **Essar Steel India Limited** (supra) to submit that the decision of the CoC must reflect that it has taken into account the need to:

(i) Maximize the value of assets of the CD; and

[19] Available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf> accessed 6 August 2021, pg. 228-229

(ii) Adequately balance the interest of all stakeholders, including of operational creditors.

The submission of learned Counsel is that in the present case, there was a failure to maximise the value of the assets and to balance the interests of the stakeholders.

36 The submission that there has been a failure to maximise the value of the assets has not been substantiated by any concrete material before the Court, apart from the reference to the preference shares which has already been clarified earlier in this judgment. Whether the interest of all stakeholders, including the operational creditors, has been adequately balanced has to be determined within the four corners of the statutory provisions of the IBC. It must be borne in mind that the jurisdiction of the Adjudicating Authority is circumscribed by the terms of the provisions conferring the jurisdiction. In the present case, the approved resolution plan has in fact provided for the payments to operational creditors, the percentage of recovery being 19.62 per cent. On the other hand, the payment to financial creditors is 10.32 per cent.

37 The observations in paragraph 73 of the decision in **Essar Steel India Limited** (supra) clarify that once the Adjudicating Authority is satisfied that the CoC has applied its mind to the statutory requirements spelt out in sub-Section (2) of Section 30, it must then pass the resolution plan. The decision also emphasises that equitable treatment of creditors is “equitable treatment” only within the same class.

In this context, the judgment contains an elaborate foundation on the basis of which it has held that financial creditors belong to a class distinct from operational creditors. This distinction was emphasised in the earlier decision in **Swiss Ribbons** (supra), where a two-Judge Bench of the Court, speaking through Justice R F Nariman, observed:

> "51. Most importantly, financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganisation of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do. Thus, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code."

38 In **Essar Steel India Limited** (supra), this Court held that "the UNCITRAL Legislative Guide…makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors"[20]. The Court finally also observed that the 'fair and equitable' norm does not mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, it noted:

> "88…Fair and equitable dealing of operational creditors' rights under the said regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they

[20] Available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf> accessed 6 August 2021, pg. 218

> must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors."

The Court also noted that:

> "89...by vesting the Committee of Creditors with the discretion of accepting resolution plans only with financial creditors, operational creditors having no vote, the Code itself differentiates between the two types of creditors."

39 These decisions have laid down that the jurisdiction of the Adjudicating Authority and the Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the Adjudicating Authority or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment

40 Certain foreign jurisdictions allow resolution/reorganization plans to be challenged on grounds of fairness and equity. One of the grounds under which a company voluntary arrangement can be challenged under the United Kingdom's Insolvency Act, 1986 is that it unfairly prejudices the interests of a creditor of the

company[21]. The United States' US Bankruptcy Code provides that if a restructuring plan has to clamp down on a dissenting class of creditors, one of the conditions that it should satisfy is that it does not unfairly discriminate, and is fair and equitable[22]. However, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature to not confer any independent equity based jurisdiction on the Adjudicating Authority other than the statutory requirements laid down under sub-Section (2) of Section 30 of the IBC.

41 An effort was made by Mr Dushyant Dave, learned Senior Counsel, to persuade this Court to read the guarantees of fair procedure and non-arbitrariness as emanating from the decision of this Court in **Maneka Gandhi** vs **Union of India**[23] into the provisions of the IBC. 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

[21] "Section 6 – Challenge of Decisions
1)Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—
(a)that a voluntary arrangement which has effect under section 4A unfairly prejudices the interests of a creditor, member or contributory of the company;
(b)that there has been some material irregularity at or in relation to the meeting of the company, or in relation to the relevant qualifying decision procedure."
[22] "Section 1129 – Confirmation of a Plan
[…]
(b) (1)Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan."
[23] (1978) 1 SCC 248

regulations. To argue that a residuary jurisdiction must be exercised to alter the delicate economic coordination that is envisaged by the statute would do violence on its purpose and would be an impermissible exercise of the Adjudicating Authority's power of judicial review. The UNCITRAL, in its Legislative Guide on Insolvency Law, has succinctly prefaced its recommendations in the following terms[24]:

> "C. 15. Since an insolvency regime cannot fully protect the interests of all parties, some of the key policy choices to be made when designing an insolvency law relate to defining the broad goals of the law (rescuing businesses in financial difficulty, protecting employment, protecting the interests of creditors, encouraging the development of an entrepreneurial class) and achieving the desired balance between the specific objectives identified above. Insolvency laws achieve that balance by reapportioning the risks of insolvency in a way that suits a State's economic, social and political goals. As such, an insolvency law can have widespread effects in the broader economy."

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.

[24] Available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf> accessed 6 August 2021, pg. 14-15

G Conclusion

42 In the present case, the resolution plan has been duly approved by a requisite majority of the CoC in conformity with Section 30(4). Whether or not some of the financial creditors were required to be excluded from the CoC is of no consequence, once the plan is approved by a 100 per cent voting share of the CoC. The jurisdiction of the Adjudicating Authority was confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC. As such, once the requirements of the statute have been duly fulfilled, the decisions of the Adjudicating Authority and the Appellate Authority are in conformity with law.

43 For the above reasons, we find no merit in the appeal. The appeal shall accordingly stand dismissed.

44 Pending application(s), if any, shall stand disposed of.

…….....J.
[Dr Dhananjaya Y Chandrachud]

…….....J.
[M R Shah]

New Delhi;
August 10, 2021