

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 396 of 2022

(Arising out of Order dated 06th April, 2022 passed by National Company Law Tribunal, Kolkata Bench-I in I.A. (IB) No. 538/KB/2021, I.A. (IB) No. 628/KB/2021 & I.A. (IB) No. 635/KB/2021 in CP(IB) No. 349/KB/2017)

IN THE MATTER OF:

CFM Asset Reconstruction Private Limited,

In its capacity as Trustee of CFMARC Trust,
Having its registered office at A/3, Safal Profitaire,
Near Prahlad Nagar Garden, Ahmadabad –
380001 and Corporate Office at
1ST Floor, Wakefield House, Sprrott Road,
Ballard Estate, Fort, Mumbai - 400038

...Appellant

Versus

1. SS Natural Resources Private Limited

[CIN:U10300WB2015PTC204962], Having its
Registered office at SS Chambers, 5 CR
Avenue, 2nd Floor, Kolkata – 7000072.

**2. Monitoring Agency to Ramsarup
Industries Limited,**

Represented by its Chairman, Mr. Kshitiz
Chhawcharia [IBBI/IPA-001/IP-
P00358/2017-18/10616]

...Respondents

Appellant:

Mr. Mukul Rohtgi, Mr. Arun Kathpalia, Sr. Advocates
with Mr. Manu Nair, Mr. Siddhartha Datta, Ms. Misha,
Ms. Suhani Dwivedi, Moulshree Shukla, Mr. Deepanjan
Datta Roy, Ms. Trisha Mukherjee, Ms. Surabhi Binani
and Mr. Daksh Kadian, Advocates

Respondent:

Dr. Abhishek Manu Singhvi, Sr. Advocate with Mr. Ramji
Srinivasan, Sr. Advocate with Mr. NG Khaitan, Mr.
Abhijeet Sinha, Mr. Prateek Kumar, Mr. Shounak Mitra,
Ms. Raveena Rai, Mr. Saptarshi Mandal, Mr. Keshav
Tibarewalla, Rajshree Chaudhary, Mr. Aditya Shukla and
Sumant Batra, Advocates for R-1.

J U D G E M E N T

Ashok Bhushan, J:

1. This Appeal has been filed by an Assignee of some of the Lenders of the Corporate Debtor challenging the Order dated 06th April, 2022 passed by the Adjudicating Authority on I.A. No. 538 of 2021 filed by the Appellant for Liquidation, I.A. No. 628 of 2021 filed by the Appellant claiming compensation/interest from the Successful Resolution Applicant (hereinafter referred to as 'SRA') due to delay in implementation of the Resolution Plan and I.A. No. 635 of 2021 filed by the SRA seeking direction for implementation of the Resolution Plan. Both the I.As filed by the Appellant have been rejected and I.A. filed by the SRA was allowed by giving 5 (five) days time to transfer sum of Rs. 322 Crores in the Account of the Corporate Debtor. The Appellant being aggrieved by the Impugned Order has come up in this Appeal.

2. We need to notice the facts and sequence of the events for deciding the issues which have been raised in this Appeal. 'Ramsarup Industries Limited'-the Corporate Debtor was admitted into 'Corporate Insolvency Resolution Process' (hereinafter referred to as 'CIRP') vide Order dated 08th January, 2018, a Resolution Plan submitted by the 'SS Natural Resources Private Limited'-Respondent No. 1 was approved by the 'Committee of Creditors' (hereinafter referred to as 'CoC') with 74.41 % voting share which got approved by the Adjudicating Authority vide Order dated 04.09.2019. The Monitoring Agency constituted to implement the Resolution Plan consist of six Members; One Resolution Professional, Two members of the SRA and three representatives of the 'CoC' i.e., the Appellant, Punjab National Bank

and Axis Bank Limited. Challenging the Order dated 04.09.2019 of the Adjudicating Authority approving the Resolution Plan, 8 Appeals were filed before National Company Law Appellate Tribunal, New Delhi (hereinafter referred to as 'NCLAT'). The SRA had also filed an Appeal challenging the Order of the Adjudicating Authority only to the extent of not allowing terms contemplated in Clause 15.5 of the Resolution Plan. One of the Appeals was filed by 'Vanguard Credit & Holding Pvt. Ltd.' who was claiming to be owner of the land on which factory of the Corporate Debtor is situated. The claim of the 'Vanguard Credit and Holding Pvt. Ltd.' was that Resolution Plan in respect of the Corporate Debtor contemplate transfer of land belonging to the Appellant and not of the Corporate Debtor measuring about 52.49 acres situated at Durgapur in the Bardhaman District, West Bengal. The promoter also challenged the approval of the Resolution Plan. All the Appeals filed against the Order dated 04.09.2019 were dismissed by the NCLAT vide its common Order dated 04th March, 2021. On 23rd April, 2021, the Appellant purchased the debt from some of the Creditors. The NCLAT while dismissing all the Appeals including the Appeal of SRA directed the Monitoring Committee to start taking steps to implement the Plan. Challenging the Order dated 04th March, 2021, SRA filed a Civil Appeal before the Hon'ble Supreme Court which too was dismissed on 04th May, 2021. After the dismissal of the Appeals by NCLAT, Monitoring Committee held 7th and 8th Meeting of the Monitoring Committee on 20th May, 2021 and 27th May, 2021 respectively. The Appellant on 08th June, 2021 filed an I.A. No. 538 of 2021 under Section 33(3) and 33(4) *inter alia* seeking the Liquidation of the Corporate Debtor and further direction to Monitoring Committee to forfeit

the performance security amount deposited by SRA. The Appeal (CA 1688 OF 2021) filed by the Vanguard Credit and Holding Pvt. Ltd. also came to be dismissed by the Hon'ble Supreme Court on 02nd July, 2021. 9th meeting of the Monitoring Committee was held on 07th July, 2021 where SRA expressed its intention to implement the Resolution Plan. In the 9th Meeting, the Appellant raised demand for compensation/interest as a pre-condition to implement the Resolution Plan. The SRA declined to make payment of compensation/interest on which the Appellant took stand before the Committee that till the Lenders are compensated for the delay, the Appellant would not be willing to implement the Resolution Plan. After the meeting dated 07th July, 2021, the SRA filed an Application before the Adjudicating Authority being I.A. No. 635 of 2021 against the Erstwhile Resolution Professional and the Appellant seeking direction to the Respondents to cooperate in the implementation of the approved Resolution Plan. I.A. No. 628 of 2021 was filed by the Appellant seeking payment of interest by SRA from the date of the approval of the Resolution Plan i.e. 04.09.2019 till the implementation of the Resolution Plan by the SRA. Replies to the Applications were filed before the Adjudicating Authority and the Adjudicating Authority after elaborately hearing the parties passed the impugned Order dated 06th April, 2022 disposing of all the three Application by following orders in Paragraph 10:

“10. Orders

10.1. The SRA has pointed out, during the course of hearing on 09th February, 2022 that a sum of approximately 322 crore, which represents the entire resolution amount, has been parked in a separate

account and can be transferred to the Corporate Debtor's account without any further delay. Therefore we hereby direct as follows:

(a) The full resolution plan amount now parked in a separate account, be transferred to the account of the corporate debtor without further ado, and in any case, no later than five days from the date of this order.

(b) The said amount be distributed in accordance with the approved Resolution Plan immediately upon receipt. The entire process be completed within a period of one month from today.

(c) The management of the Corporate Debtor be transferred to the Successful Resolution Applicant shortly thereafter.

10.2. With these directions, we hope that the CIRP of the Corporate Debtor, which began with an order of admission dated 08th January, 2018, will now filed closure after four years and a quarter. We are convinced that the above directions will lead to a rapid and efficient resolution of the Corporate Debtor.

10.3. All three applications, viz., IA(IB) No. 538/KB/2021, IA(IB) No. 628/KB/2021 and IA(IB)No. 635/KB/2021 in CP(IB)No. 349/KB/2017 shall stand disposed of with the above directions.

10.4. The Registry is directed to communicate a copy of this Order to the counsel on record for each of the parties.

10.5. Urgent certified copies of this Order, if applied for, be made available subject to the usual formalities.”

3. We have heard Mr. Mukul Rohtgi, Sr. Advocate as well as Mr. Arun Kathpalia, Sr. Advocate for the Appellant and Dr. Abhishek Manu Singhvi,

Sr. Advocate with Mr. Ramji Srinivasan, Sr. Advocate for the Respondent No. 1.

4. Learned Sr. Counsel for the Appellant-Mr. Mukul Rohtgi submits that Adjudicating Authority vide Impugned Order rejecting the Application of the Appellant for liquidation has taken decision which is contrary to the Judgment of the NCLAT dated 04th March, 2021 by which Judgment, NCLAT directed for filing an Application for liquidation in event the SRA does not implement the Resolution Plan. It is submitted that after the dismissal of the Appeals by NCLAT on 04.03.2021, no steps were taken for implementation of the Resolution Plan by the SRA and SRA has put conditions for implementation of the Resolution Plan. The Appellant had immediately filed the Application for Liquidation on 08th June, 2021 as per directions issued in Paragraph 201 of the NCLAT Orders dated 04.03.2021. It is submitted that Order of the NCLAT dated 04.03.2021 was also confirmed by the Hon'ble Supreme Court vide its Order dated 04.05.2021. The Adjudicating Authority disregarding both the aforesaid Orders has rejected the Application for Liquidation filed by the Appellant. It is further submitted that for implementation of the Resolution Plan no condition could be put by the SRA and the conditions that unless the 'Vanguard's Appeal' is decided, the amount need not be paid to the Financial Creditors, is contrary to the Resolution Plan. Mr. Rohtgi submits that the plan offer of the SRA was much less than the Liquidation Value of the Assets and only on Liquidation of the Corporate Debtor maximisation of the Value shall be achieved which is the object of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code'). Mr. Rohtgi submits that Appellant has firm offer of Rs. 525

Crores on the 100% cash basis, if the Liquidation is initiated and if there is sale of the Corporate Debtor's Assets. It is submitted that SRA initially expressed its intention to withdraw from the Resolution Plan and even after the dismissal of its Appeal by NCLAT did not take steps to deposit the amount by implementing the Resolution Plan. It is submitted that for 21 months the plan has not been implemented and the SRA has lost its right to implement the plan and the Adjudicating Authority ought to have directed for liquidation. The Adjudicating Authority has wrongly characterized the action of the Appellant as having obstructed the defaulting Resolution Applicant whereas the Appellant was only complying with the directions of this Hon'ble Appellate Tribunal by filing the application for liquidation. It is further submitted that parking of amount of Rs. 320 Crores in the Bank Account which is not the Bank Account of the Corporate Debtor is not an implementation of the plan and after the Order of the NCLAT dated 04.03.2021 there was no reason for not implementing the Resolution Plan by SRA and by not taking any steps for implementation of the Resolution Plan, SRA has contravened the Resolution Plan. Learned Sr. Counsel submits that the Appellant is holder of the 88 % of the total security interest of the Corporate Debtor who has taken over security interest by way of assignment from 'Asset Reconstruction Company (India) Limited' (ARCIL). The Liquidation Value of Corporate Debtor was 610.29 Crores where in the Resolution Plan provides an amount of Rs. 364 Crore as upfront payment to the Financial Creditors. It is submitted that Adjudicating Authority committed error in rejecting the Application for Liquidation filed by the Appellant. The Impugned Order passed by the Adjudicating Authority is in

violation of the Judgment of the Hon'ble Supreme Court in 'Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp Solutions Limited & Anr.' wherein it is held that prescribed timelines under IBC is of utmost significance.

5. Dr. Abhishek Manu Singhvi, Learned Sr. Counsel refuting the submissions of the Learned Sr. Counsel for the Appellant submits that Order of the Adjudicating Authority does not call for any interference in this Appeal. It is submitted that the Appellant is an assignee who is born only after order was passed by the NCLAT on 04.03.2021 by virtue of assignment taken by it on 23rd April, 2021 for an amount of Rs. 255 Crore. The firm offers of Rs. 525 Crore as contended by Learned Sr. Counsel for the Appellant is the offer at instance of Orrisa Metaliks Pvt. Ltd. who was H-2 in the CIRP whose plan could not be approved. It is submitted that the Appellant pressed for liquidation of the Corporate Debtor to serve its own interest as well as the interest of the Unsuccessful Resolution Applicant. It is submitted that total bid amount offered by the SRA was more than liquidation value and in event it is now held by the Hon'ble Supreme Court that Resolution Plan can be approved even if it is of less amount than the liquidation value. It is submitted that the stand taken by the SRA before the 07th and 08th Meeting of the Monitoring Committee that amount be not disbursed till the Appeal of the Vanguard is not decided by the Hon'ble Supreme Court was justified and reasonable. Vanguard Credit and Holdings Pvt. Ltd. claimed in its Appeal before the Hon'ble Supreme Court the land on which the Factory of the Corporate Debtor is situated. In event the Vanguard succeeds in taking away the land beneath the factory of the Corporate

Debtor, there would have been nothing to implement the plan hence SRA requested the Financial Creditors, amount be not disbursed till the Vanguard Appeal is decided. Moreover in 08th Meeting of the Monitoring Committee held on 27th May, 2021 SRA offered to deposit the entire amount in the escrow account. It is submitted that the SRA always after the Judgment of the NCLAT dated 04.03.2021 took steps to implement the plan and deposited the entire CIRP costs of Rs. 12.49 Crores on 18th June, 2021, paid the workmen dues up to 07 Crores on 18th June, 2021 and has also paid day to day expenses of the Corporate Debtor for the month of May, 2021. In the Monitoring Committee Meeting dated 07th July, 2021, it is the Appellant who obstructed the implementation of the Plan by taking stand before the Monitoring Committee Meeting that Plan be not implemented till the compensation/interest is paid by the SRA to the Appellant. It is thus Appellant who has obstructed the implementation of the plan which is apparent from the minutes of the Meeting dated 07th July, 2021. It is submitted that Appellant filed an Application on 12th July, 2021 seeking compensation/interest from the SRA and Appellant's case was that it is the NCLT which shall take decision on the claim of interest/compensation and during the period of pendency of the Application that plan could not be implemented due to the stand taken by the Appellant. It is submitted that at the time of hearing of the Application on 22nd February, 2022 the total amount of Rs. 322 Crores which represent the entire Resolution Plan has been parked in the separate Account for implementation of the Resolution Plan. It is submitted that Adjudicating Authority by the Impugned Order directed the transfer of the amount in the Corporate Debtor's account within

five days which has been done, as on date the plan stands implemented. It is submitted that there is no merit in the Appeal filed by the Appellant and the Appeal deserves to be dismissed with costs.

6. We have considered the submissions of Learned Sr. Counsel for the parties and perused the record.

7. The Resolution Plan of the SRA stood approved by the Adjudicating Authority on 04.09.2019. Eight Appeals were filed challenging the Order dated 04.09.2019 before the NCLAT which came to be dismissed by Order dated 04.03.2021 while dismissing all the Appeals, NCLAT directed the Monitoring Committee to start taking steps for implementation of the Resolution Plan in paragraph 201:

“201. We further direct the Monitoring Agency to start taking steps for implementation of the Resolution Plan immediately, and in case the Successful Resolution Applicants fails to implement the approved Resolution Plan; appropriate action should be taken immediately, and without waiting further, the application should be moved before the Adjudicating Authority for liquidation of the Corporate Debtor. Registrar NCLAT is directed to send the order’s copy immediately to all the concern parties through email as well as by post for compliance.”

8. The Adjudicating Authority in the Judgment/Order has also observed that in the Appeal there was no stay for implementation of the Resolution Plan however under the Order passed by the NCLAT a further direction was issued to the Monitoring Agency to implement the Resolution Plan immediately. Thus the actions of SRA of not implementing the plan after its approval till the NCLAT dismissed the Appeals on 04.03.2021 stood

condoned and by the Order dated 04.03.2021 of NCLAT directions were issued to the Monitoring Agency to start taking steps for implementation of the Resolution Plan. The crux of the matter is to find out as to whether after the Judgment of the NCLAT dated 04.03.2021 steps have been taken by the SRA for implementation of the Resolution Plan and whether the actions and conduct of the SRA is such that Corporate Debtor ought to be sent to the Liquidation, accepting the prayers made by the Appellant for liquidation.

9. After the Judgment of the NCLAT dated 04.03.2021, Appeals were filed before the Hon'ble Supreme Court challenging the Order dated 04.03.2021 also by the SRA which Appeal came to be dismissed on 04th May, 2021. After the dismissal of the Appeal by the Hon'ble Supreme Court, Monitoring Committee held 07th & 8th Meeting on 20th and 27th May, 2021 respectively and the SRA offered to deposit the entire amount in the Escrow Account subject to condition that amount not to be disbursed to the Financial Creditors till the Vanguard Appeal is pending before the Hon'ble Supreme Court. SRA also offered to deposit the CIRP cost and also stated that performance security interest ought not to be disbursed since any order by Hon'ble Supreme Court in favour of Vanguard may necessitate to refund the money to the SRA. On 08th June, 2021, the Appellant filed an Application I.A. 538 of 2021 for liquidation. After dismissal of Vanguard Appeal by the Hon'ble Supreme Court on 02nd July, 2021, the 9th Monitoring Committee Meeting was held, the minutes of 09th Meeting has been brought on record by the Appellant in the Paper Book of the Appeal. This meeting was attended by the Appellant, Representatives of the Punjab National Bank and Axis Bank and Representatives of the Resolution Applicants. Before the Meeting,

update, developments and steps for implementation of the Resolution Plan was also noticed after noticing the steps to be taken for implementation of the Resolution Plan Item No. 7 mentioned as “Lenders to provide their consent for initiation of the implementation steps”. In the minutes, the claim of the Appellant for compensation/interest has been noticed in following words:

“Mr. Agnihotri from CFM ARC, at the very outset, explained that the Resolution Applicant has filed appeals and delayed the implementation of the plan for almost 2 years. In light of the delay caused, the value of the money that was to be received by the financial creditors has diminished. Accordingly, he sought an explanation from the resolution applicant on how they plan to compensate the financial creditors. He stated that, it is of utmost importance that the lenders and the RA mutually decide on the compensation amount and in the absence of such compensation being fixed, any discussion on implementation cannot be done. He further clarified that the compensation on account of delay in implementation is a pre-condition for CFM to agree for implementation of resolution plan. He made it know that CFM ARC would not like to proceed with any discussions of implementation unless the issue of compensation was resolved first.”

10. On behalf of the Appellant, it was claimed that payment of interest/compensation is pre-condition which is to be noted in following words:

“Mr. Pankaj Bagla from SSN enquired from CFM, if the demand for compensation is a pre-condition to

implement the Resolution Plan. Mr. Pankaj Agnihotri from CFM stated that it would be a pre-condition at CFMARC's end for implementation of the Resolution Plan. He further stated that they would also want to understand from the RA about the rate at which they would be compensated."

11. On behalf of SRA, it was stated that Resolution Plan does not provide for any Compensation, following was stated by SRA:

"Mr. Pankaj Bagla, representative of the RA, reiterated that any such pre-condition for payment of compensation/interest is not acceptable to them. The resolution plan, as approved by NCLT also does not provide for any such compensation. He drew reference to Annexure 2 clause 4 step 5 (d) on page 49 of the Resolution Plan, which reads as follows:

"Notwithstanding anything contained in this Resolution Plan, no payments over and above the payments set out above shall be made by the Resolution Applicant towards any charges, imposts or amount called in whatever name save and except the fees payable to the security trustee."

Therefore, it is clear that the approved resolution plan clearly stipulates that there shall be no additional payment. It was also stated by the RA, that the maximum liability of the Resolution Applicant towards all financial creditors of the Corporate Debtor shall not exceed INR 351 crores and the Resolution Applicant shall not be required to make any payment beyond the aforesaid amount to the Financial Creditors.

In view of the strong opposition from the RA, and disagreement with the other lenders, Mr. Pankaj

Agnihotri (CFMARC) further indicated that Hon'ble NCLT should be the correct adjudicator to decide this issue."

12. The Representative of the Appellant stated that they will approach NCLT for adjudication of their claim for compensation/interest. Deadlock was noticed by the Chairman and in view of the stand of the Appellant as noted above the meeting concluded without any decision. It is relevant to quote the last concluding remark of the Chairman of the Meeting which is to the following effect:

"The Chairman apprised the members that the primary purpose of constituting the MA as per the approved plan is to oversee the implementation of the plan until it is handed over to the successful RA. There can be no other decision making or objective of the MA. CFM representative mentioned that they will approach NCLT on this compensation matter for adjudication.

Since there was a deadlock, the Chairman requested the members to clarify on the way forward in order to understand the next steps that are required to be undertaken. To this, Mr. Pankaj Agnihotri from CFM stated that till the lenders are compensated for the delay, CFM would not be willing to implement the Resolution Plan and would revert on the matter of deciding the professional fees of the Chairman and the Grant Thornton.

At this stage, Mr. Deep from Equilex informed the members that at the 3rd MA Meeting, the members had agreed that all decisions would be taken basis the views of majority of members. Mr. Pankaj

Agnihotri from CFM opposed the proposition of a voting mechanism and suggested that only the views of the lenders should be recorded and that NCLT should be the correct adjudicator to finally decide on this issue.

There being a disagreement amongst the lender's representatives on timing of implementation due to demand of compensation by CMF ARC, no decision was taken by the MA members with respect to next steps and way forward on implementation of the resolution plan. The RA representative reiterated that they are prepared for unconditional and immediate implementation of the resolution plan as per the steps provided therein. The members also did not vote on this issue in the present MA Meeting.

There being no other agenda, the meeting was concluded with vote of thanks."

13. The above minutes of the Meeting of the Monitoring Committee held on 07th July, 2021 clearly indicates that Monitoring Committee could not take decision for implementation of the Resolution Plan on account of pre-condition put by the Appellant himself that unless the Payment of Compensation/Interest is made they shall not participate in discussion regarding the implementation of the Resolution Plan. The Appellant thus did not consent to the implementation of the Resolution Plan, which is apparent from the minutes of the Monitoring Committee minutes as noticed above. From the minutes of Monitoring Committee, it is clear that SRA only objected the claim of the Appellant for payment of Compensation/interest and it clearly mentioned its readiness and willingness to implement the plan. It is also relevant to notice that even before the meeting dated 07th

July, 2021 of the monitoring committee following payments were made by the SRA:

- i. Workmen dues paid on 18th June, 2021 – Rs. 07 Crores.
- ii. CIRP cost paid on 18th June, 2021 – Rs. 12.49 Crores.
- iii. For the purposes of meeting day to day expenses of Corporate Debtor for the month of May, 2021 paid – Rs. 18 Lakhs.
- iv. For the purposes of meeting day to day expenses of Corporate Debtor for the month of June, 2021 paid – Rs. 18 Lakhs.

Note: - The above payments of Rs. 18 Lakhs each were offered over and above the Resolution Plan. In addition to above, Earnest Money Deposit was Rs. 5 Crores and Rs. 35 Crores was deposited as Performance Bank Guarantee which was encashed by the ARCIL and placed with ARCIL in an interest-bearing account.

14. Thus, the SRA towards the plan had already incurred Rs. 59,85,00,000/-. We may also at this stage notice the submissions of Learned Sr. Counsel-Mr. Rohtgi that upfront payment offered by the SRA in the Resolution Plan is much below the liquidation value. The Order approving the Resolution Plan dated 04.09.2019 in details notices the propose offer on the part of the Resolution Plan as well as Liquidation Value in paragraph 34 and 35 of the Order dated 04.09.2019 which is to the following effect:

“34. The following table summarizes the proposed offer as a part of the Resolution Plan to the financial creditors of the Corporate Debtor (“Financial Creditors”) as well as other creditors specified under the Code:

Particulars	Amount (in Rs. Crores)
<i>CIRP Process Cost*</i>	[*]
<i>Sustainable Debt to be paid upfront to the Financial Creditors</i>	351.0
<i>Payment to Operational Creditors</i>	3.50
<i>Payment to Workmen</i>	7.00
<i>Payment towards Statutory Liabilities</i>	3.00
<i>Capex/ Working Capital</i>	306.00

***To be paid at actual**

35. The above being the offers based on the admitted claim of the creditors, the distribution of the resolution bid amount is found not in contravention of any of the provisions of the Code or Regulations. The total bid amount come to 670.50 Crores which is higher than the Liquidation Value of Rs. 610.29 Crores. The facts in the given case being not similar to the Padmanavan Venkatesh case above referred, the principle of distribution if any in the said case cannot be applied in the case in hand.”

15. Thus, Liquidation Value of the Corporate Debtor was 610.29 crores where total bid amount offered by the SRA was 670.50 Crores as having been noticed by the Adjudicating Authority while approving the Resolution Plan.

16. The Submissions of Mr. Rohtgi that there is a firm offer of Rs. 525 Crores on 100% cash basis if the Liquidation is initiated and Corporate Debtor's Assets are sold. Learned Sr. Counsel-Mr. Rohtgi during the submissions has referred to the above offer given by 'Orissa Metaliks Private Limited' who was H-2 in the CIRP. 'Orissa Metaliks Private Limited' has also filed a Resolution Plan where H-2 Bidder Orissa Metaliks Private Limited has given total Bid of Rs. 1014.99 Crores with an upfront payment of Rs. 281.90 Crores, CoC accepted the Resolution Plan for H-1 for a total bid of Rs. 670.50 Crores solely on the ground that upfront payment of Rs. 351 Crores which was higher than the upfront payment of 'Orissa Metaliks Private Limited'. 'Orissa Metaliks Pvt. Ltd.' filed Company Appeal (AT) Ins. No. 1159 of 2019 challenging the Order dated 04.09.2019 which Appeal got dismissed by the Order dated 04.03.2021 passed by this Appellate Tribunal.

17. We find substance in the submissions of Dr. Singhvi that with the aid of the Appellant, now 'Orissa Metaliks Pvt. Ltd.' wants to have second inning in the proceeding due to which the Appellant is pressing for the liquidation of the Corporate Debtor. We thus are of the view that firm offer as contended by Learned Sr. Counsel for the Appellant for sale of the Corporate Debtor has no relevance for consideration of this Appeal. Much emphasis has been laid by Mr. Rohtgi on the paragraph 201 of the Judgment. The NCLAT did not direct for liquidation of the Corporate Debtor rather it directed Monitoring Committee to start taking steps for implementation of the Resolution Plan immediately and in case SRA fails to implement the approved Resolution Plan appropriate action be taken immediately. When we take into consideration the steps taken by the Monitoring Committee after

the Judgment of NCLAT it is clear that steps were taken by the Monitoring Committee for implementation and deadlock was created in the meeting dated 07th July, 2021 when Appellant himself came with the stand that unless payment of compensation/interest is paid, he shall not participate in the implementation of the plan and thus he did not give his consent in the implementation of the plan whereas the SRA was ready to implement the plan on his part.

18. The Hon'ble Supreme Court in the matter of '**Swiss Ribbon (P) Ltd. Vs. Union of India**', (2019) 4 SCC 17 has categorically laid down that primary focus of the Legislation is to ensure revival and continuance of the Corporate Debtor. The Liquidation has been termed as Corporate Debtor's death. In paragraph 28, following has been observed:

"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors."

19. The Hon'ble Supreme Court in '**Babulal VrdharjiGurjar Vs. Veer GurjarAluminium Industries Pvt. Ltd. & Anr.**', (2020) 15 SCC1 again held that primary focus of the Code is to ensure its revival and continuance. In paragraph 21 following has been laid down:

"As regards corporate debtor, the primary focus of the Code is to ensure its revival and continuation by protecting it from its own management and, as far as

feasible, to save it from liquidation. As tersely put by this Court in Swiss Ribbon, the Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors”

20. When the Application filed by the Appellant for liquidation is to be considered the law laid down by the Hon’ble Supreme Court in the above cases, has to be kept in mind. The Adjudicating Authority while analyzing the conduct of the SRA, in the Order dated 06th April, 2022 gives detailed reasons in Paragraph 9. It is useful to extract paragraph 9.10, 9.11, 9.12, 9.16, 9.17 of the Order/Judgment of the Adjudicating Authority which is to the following effect:

“9.10. As judicially noticed by the Hon’ble Supreme Court in Swiss Ribbons (supra) and Babulal Gurjar (supra), the Preamble of the Code lays a lot of emphasis on insolvency resolution within the timelines prescribed. Liquidation should be the last resort, when everything else has been attempted and failed. In the present case, we have a successful resolution applicant who is ready and willing to implement the approved resolution plan as it is. Although there were some delays in the insolvency resolution process of the corporate debtor, attributable to the fact that many appeals came to be filed right upto the Supreme Court, we now have a situation where the SRA which has parked the entire resolution amount in an account separately earmarked for this purpose. This amount is now ready and available for utilisation by various stakeholders.

9.11. CFM-ARC is admittedly pursuing its application for liquidation because the liquidation value is more than the enterprise value. But that cannot be a ground for sustaining this application, nor is it in line with the objects of the Code. Sending the Corporate Debtor into liquidation just because the liquidation value is more than the enterprise value, would not be in keeping with the objectives of the Code. The Code is not about maximising value at all costs even if it means corporate death, which will inevitably ensue if the company is sent into liquidation. The challenge in IA (IB) No.538/KB/2021 to the implementation of the approved Resolution Plan must, therefore, fail on this touchstone.

9.12. The SRA was certainly at fault in not taking steps for implementation of the approved Resolution Plan after the 04 March 2021 order of the Hon'ble NCLAT, coming up with the condition that until the Vanguard Appeal is decided, it is not in a position to implement the Resolution Plan. However, this intransigence is offset by the equally obdurate attitude of CFM-ARC to seek interest from the SRA {in IA (IB) No.628/KB/2021}, as an alternative prayer to liquidation, even while the other members of the Monitoring Agency were ready and willing to give a chance to the SRA to implement the Plan. This prompted another application from the SRA in IA No.635/KB/2021 for directions to implement the Plan. The end result was a further and unnecessary delay in implementation until

the three applications could be heard and decided by this Adjudicating Authority.

.....

9.16. It is now trite law that the whole idea of the Code is to put the Corporate Debtor back on its feet for the larger benefit of all the stakeholders, not just the creditors. We must not forget that the Corporate Debtor is a fully functional enterprise and is generating value for the economy, apart from providing employment to a sizeable number of people. The present applications will have to be seen in the larger context of the objectives sought to be achieved. A bird in hand is worth two in the bush.

9.17. If there is anything that the Code emphasizes, it is the oft-forgotten adage that time is money. On an overall conspectus, we would urge, hope and expect that time being wasted in this manner in unnecessary litigation should now stop. Therefore, rather than the mathematically projected liquidation value being more than the value offered by the SRA, it would be better to look at the value addition that a running enterprise would bring over the long term to the economy and various stakeholders. Time and again, we see that liquidation does not necessarily satisfy the projected liquidation value, and the liquidator has had to reduce the reserve bid in order to find buyers. Therefore, at least in the present compendium of facts it is a mirage that is best not pursued.”

21. In the above paragraphs, the Adjudicating Authority has given due consideration to the principles of law and the facts in the present case and

sequence of the events. The Adjudicating Authority in its Order had noted that amount of Rs. 322 Crore was already parked by the SRA in an Account which was pointed out in the course of hearing on 22nd February, 2022 which amount was directed to be transferred by the Adjudicating Authority not later than 5 days from the date of the Order i.e. five days from 07th April, 2022. Dr. Singhvi during the course of the submission has made statement that entire amount has already been transferred to the Corporate Debtor as directed by the Adjudicating Authority on 07th April, 2022.

22. When we analyze the facts and sequence of the events of the present case, we come to the conclusion that there is no lack of intention on the part of the SRA for implementation of the plan after the Judgment of the NCLAT dated 04.03.2021 including offer to deposit the entire amount in the Escrow Account, the pendency of the Appeal of the Vanguard before the Hon'ble Supreme Court and further making the payment of Rs. 12.49 Crores to the CIRP Cost on 18th June, 2021 and making Payment of Rs. 7 Crores for workmen which indicate the willingness of the SRA to implement the plan. The Adjudicating Authority has further noticed the submission of one of the creditors before it Punjab National Bank which clearly indicated that one opportunity be given to the SRA to implement the plan.

23. We are of the considered opinion that Order of the Adjudicating Authority giving five days time as a last opportunity to transfer the amount in the Corporate Debtor's Account can in no manner be said to be contrary to the orders passed by the NCLAT dated 04.03.2021.

24. The Appellant who is born only on 23rd April, 2021 i.e., after the Order of the Adjudicating Authority want to push the Corporate Debtor to the

Liquidation to realize its dues to the maximum, cannot be the reason for allowing the Application filed by the Appellant for liquidation and Adjudicating Authority after taking into consideration entire facts and circumstances did not commit any error in giving five days further time to the SRA to deposit the amount in the Account of the Corporate Debtor which Corporate Debtor did as stated before us. The implementation of the Resolution Plan although certain delay had occurred cannot be interfered with in exercise of our Appellate Jurisdiction. We are thus of the view that there is no merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Ms. Shreeshamerla]
Member (Technical)**

**NEW DELHI
19th April, 2022
Basant B.**