

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (Insolvency) No. 201 of 2023
&
I.A. No. 660, 661, 779 & 1165 of 2023 & I.A. No. 1124 of 2023

IN THE MATTER OF:

M/s Earthin Projects Limited

...Appellant

Versus

Indu Projects Limited & Ors.

...Respondents

Present:

For Appellant: Mr. Dhruva Mukherjee, Sr. Advocate with Ms. Ekta Bharati & Mr. Kumar Anurag Singh, Advocate.

For Respondent: Mr. M.S. Prasad, Sr. Advocate for Mr. VVSN Raju Srikant Rathi for R-1 & R-2
Mr. M.S. Krishanan, Sr. Advocate, Mr. Srinath Sridevan for Mr. M. V Swaroop, for R-3.
Mr. Pranava Charan, Advocate
Dr. U.K. Choudhary, Sr. Advocate for proposed Respondent.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

The Bank of India, as financial creditor, filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules') against Indu Projects Limited (Corporate Debtor) before the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad, Court No. II) bearing CP (IB) No. 372/7/HDB/2018, which was admitted on 25.02.2019. Gopikrishna Byadigera was appointed as Interim Resolution Professional (in short 'IRP') but on the recommendation of the Committee of Creditors (in short 'CoC'), Anup

Kumar Singh was appointed as Resolution Professional (in short 'RP') by the Adjudicating Authority on 04.06.2019.

2. The RP (Respondent No. 2) filed an application bearing I.A. No. 861 of 2020 under Section 31(1) of the Code r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'Regulations') before the Adjudicating Authority for approval of the resolution plan of Earthin Projects Limited in consortium with K. Ramachandra Rao Transmission & Projects Pvt. Ltd. (Appellant herein), on the ground that the resolution plan submitted by the Appellant has been approved by the CoC through e-voting held on 04.09.2020 with 97.34 per cent votes. Vide order dated 01.10.2021, the Adjudicating Authority approved the resolution plan submitted by the Appellant and also observed that the moratorium imposed under Section 14 of the Code shall cease to have effect from this date.

3. The Appellant filed I.A. No. 77 of 2022 in I.A. No. 861 of 2020 in C.P. No. 372/7/HDB/2018 under Section 60(5) of the Code r/w Rule 11 of the NCLT Rules, 2016 with a prayer "(a) to allow the present application and grant an extension of 60 days from 23.01.2022 for implementation of the Applicant's Resolution Plan dated 7 August, 2020. (b) To pass an order directing the RP not to encash and/or forfeit the Applicant's Bank Guarantee No. 52760IGL0003421 for INR 56,00,00,000/- valid from 24.07.2021 until 23.01.2022 issued by Union Bank of India in favour of the RP, pending the present application". This application was dismissed on 01.02.2022 with the observation that "6. This Adjudicating Authority is not convinced in any

manner to grant any further time. Hence, this application is rejected. CoC is directed to take appropriate steps in the light of the dismissal of this application, within a week. 7. Further the prayer for restraining the RP from encashing the EMD cannot be acceded to, in view of the fact that the stipulated time has already elapsed long back. 8. Accordingly, the amount paid as the EMD by the Applicant shall have to be forfeited and proceedings under Section 74(3) of the Code have to be initiated as per law. 9. With the above, application bearing I.A. No. 77 of 2022 stands dismissed.” The Order dated 01.02.2022 passed in I.A. No. 77 of 2022 was challenged by the Appellant by way of CA (AT) (Ins) No. 86 of 2022. The said appeal was disposed of by this Tribunal vide its order dated 13.04.2022 which is reproduced as under:-

“Heard both the sides. It is represented by Mr. Y. Suryanarayana, Learned Counsel for the Appellant that the ‘Appellant’ had deposited a sum of Rs.50 Crores in the ‘Designated Account’, which fact is not disputed by the other side.

The ‘Successful Resolution Applicant’ although had addressed vide letter dated 12.04.2022 to the Resolution Professional, Monitoring Committee, Committee of Creditors in the matter of ‘Indu Projects Ltd.’ seeking ‘six months’ time to remit the ‘residual balance amount’ together with ‘overdue interest’ @ 8% per annum, this ‘Tribunal’ is granting ‘three months’ time from today, to pay the ‘residual balance amount’ in the ‘Designated Account’ along with ‘overdue interest’ @ 8% per annum from 23.01.2022.

It is abundantly made clear by this ‘Tribunal’ that the implementation of the ‘Resolution Plan’ can go on and the ‘Monitoring Committee’ is permitted to perform the act of ‘partial disbursement’ of ‘Plan Amount’.

Further, the ‘Resolution Applicant’ shall ensure the continuation of ‘All Projects’ by keeping the “Bank Guarantee Alive” and by making payment for the encashed ‘Bank Guarantee’.

In view of the above observations and directions, the impugned order in IA No.77 of 2022 in IA No.861 of 2020 in CP(IB)-372/7/HDB/2018 passed on 01.03.2022 at Paragraph No.8, wherein the amount paid as ‘Earnest Money Deposit’ by the ‘Applicant’ shall have to be forfeited and proceedings under Section 74 (3) of the I&B Code, 2016 have to be initiated as per Law shall not hold good.

In so far as the observations made by the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench) in the impugned order in IA No.77 of 2022 in IA No.861 of 2020 in CP(IB)-372/7/HDB/2018 are to the fact that "we are very upset with the manner in which the 'Monitoring Committee' has given a very very long rope to the Applicant in making the payment. We get a doubt on the fairness of the 'Monitoring Committee' with regard to implementation of the Resolution Plan" to that extent is expunged by this Tribunal in furtherance of 'substantial cause of justice'.

Accordingly, the instant Company Appeal (AT)(CH)(Ins) No.86/2022 stands disposed of. No costs. The pending connected I.A. Nos.183 & 184/2022 are closed."

4. One Financial Creditor M/s Vishal Nirmiti Pvt. Ltd. challenged the order dated 13.04.2022 before the Hon'ble Supreme Court by way of Civil Appeal No. 3660 of 2022 which was dismissed by the Hon'ble Supreme Court vide its order dated 29.08.2022 which is reproduced as under:-

"This appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 (IBC) filed by the Appellant, an Operational Creditor of the Corporate Debtor, is against a judgment and order dated 13.04.2022, passed by the National Company Law Appellate Tribunal at Chennai, the operative part whereof is set out hereinbelow for convenience :-

"The 'Successful Resolution Applicant' although had addressed vide letter dated 12.04.2022 to the Resolution Professional, Monitoring Committee, Committee of Creditors in the matter of 'Indu Projects Ltd.' seeking six months' time to remit the 'residual balance amount' together with 'overdue interest' @ 8% per annum, this 'Tribunal' is granting 'three months' time from today, to pay the 'residual balance amount' in the 'Designated Account' along with 'overdue interest' @8% per annum from 23.01.2022.

It is abundantly made clear by this 'Tribunal' that the implementation of the 'Resolution Plan' can go on and the 'Monitoring Committee' is permitted to perform the act of 'partial disbursement' of 'Plan Amount'.

Further, the 'Resolution Applicant' shall ensure the continuation of 'All Projects' by keeping the "Bank Guarantee Alive" and by making payment for the encashed 'Bank Guarantee'.

In view of the above observations and directions, the impugned order in IA No. 77 of 2022 in IA No. 861 of 2020 in CP(IB)-

372/7/HDB/2018 passed on 01.03.2022 at Paragraph No. 8, wherein the amount paid as 'Earnest Money Deposit' by the 'Applicant' shall have to be forfeited and proceedings under Section 74 (3) of the I&B Code, 2016 have to be initiated as per Law shall not hold good.

In so far as the observations made by the 'Adjudicating Authority', ("National Company Law Tribunal", Hyderabad Bench) in the impugned order in IA No. 77 of 2022 in IA No. 861 of 2020 in CP(IB)-372/7/HDB/2018 are to the fact that "we are very upset with the manner in which the 'Monitoring Committee' has given a very very long rope to the Applicant in making the payment. We get a doubt on the fairness of the 'Monitoring Committee' with regard to implementation of the Resolution Plan to that extent is expunged by this Tribunal in furtherance of 'substantial cause of justice'.

Accordingly, the instant Company Appeal (AT)(CH)(Ins) No. 86/2022 stands disposed of. No costs. The pending connected I.A. Nos. 183 & 184/2022 are closed.

Heard learned counsel for the parties.

Pursuant to an order dated 25.02.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad) Corporate Insolvency Resolution Process (CIRP) was commenced against the Corporate Debtor, Indu Projects Limited. The Respondent No. 1, hereinafter referred to as the Resolution Applicant, had submitted a Resolution Plan in respect of the Corporate Debtor, in terms whereof the Respondent No. 1 was required to deposit Rs. 501 Crores in a designated escrow account, on or before 23.01.2022.

On 21.01.2022, the Respondent No. 1 filed an application before the Adjudicating Authority seeking extension of time by 60 days to make the deposit.

By an order dated 02.02.2022, the Adjudicating Authority granted two weeks' time to the Respondent No. 1 to make the payment. Against the aforesaid order, the Respondent No. 1 appealed to the NCLAT under Section 61 of the IBC. The impugned order has been passed in the said appeal.

The Appellant, who as stated above, is an Operational Creditor contends that the impugned order is prejudicial to the right of the Appellant to receive the amounts payable to the Appellant under the approved Resolution Plan, within the timelines thereunder.

Three months' time granted to the Resolution Applicant (Respondent No. 1) to pay the residual balance amount in the

designated account along with overdue interest, has expired. No payment has been made. The appeal has, thus, become infructuous and is dismissed.

The NCLT may proceed further with the matter, in accordance with law.”

5. The RP (Respondent No. 2) filed I.A. No. 283 of 2022 before the Adjudicating Authority in CP (IB) No. 372/HDB/2018 in which one of the prayer was to made to pass an order allowing extension of CIRP for a period of 60 days from the date of such order and allowing RP/CoC to invite fresh bid in relation to the CD, and further obtain approval of resolution plan. This application was allowed vide order dated 05.09.2022 which is reproduced as under: -

“This IA is filed by the Resolution Professional seeking extension of 60 days time to conduct the CIRP afresh in the light of the failure of the successful bidder in honouring the commitments made in the Resolution Plan.

The IA is allowed and the Resolution Professional is directed to complete the CIRP afresh, within 60 days from today and no further extensions, whatsoever, will be granted in the matter. Accordingly, prayer in Item No. C in IA (IBC)/283/2022 is allowed. Prayers in item nos. a, b are not pursued by the RP.

In view of passing of the order in this I.A and taking into consideration the earlier orders of this Bench on 01.03.2022 rejecting granting of extension of time to be SRA and also the NCLAT orders dated 13.04.2022 passed in an appeal preferred against the order of rejection of extension of time by this Tribunal, by virtue of which a time of three more month to make payment, was given, IA (IBC)/654/2022 has become infructuous. The remedy, if any, as regards to extension of time, is before the NCLAT, as the time extended by NCLAT has already expired and the jurisdiction of this Adjudicating Authority gest ceased, once the issue is taken within the purview of the Appellate Authority. It can be noted that the reason for not extending the time as sought for by the SRA is due to his not fulfilling the commitment undertaken by him. Except seeking extension, no further grounds were put forth by the SRA in the earlier application. By virtue of

the expiry of the period extended by the NCLAT, the SRA loses his right of seeking for extension on any ground.

As regards, IA (IBC)/655/2022, within was filed by SRA seeking impleadment in the liquidation application, we notice that no such IA was filed by the RP for initiation of liquidation proceedings of the CD. As such, we do not find any reason to keep it pending. We, therefore, observe that filing of this IA is misplaced and is accordingly dismissed.”

6. The Appellant challenged the order passed in I.A. No. 283 of 2022 by way of CA (AT) (Ins) No. 340 of 2022 before this Tribunal. This appeal was dismissed by this Tribunal vide its order dated 25.11.2022 which is reproduced as under: -

“The present ‘Appeal’ is filed against the ‘Impugned Order’ dated 05.09.2022 passed in IA 283 of 2022 and IA 655 of 2022 in CP (IB) 372/7/HDB/2018, by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Hyderabad Bench-II), whereby, the ‘Adjudicating Authority’, dismissed the Petition filed under the Insolvency & Bankruptcy Code, 2016 (in short ‘I & B Code’, 2016).

Brief Facts:

2. M/s Earthin Projects Ltd. is the ‘Appellant’ in present ‘Appeal’, before this ‘Appellate Tribunal’ is the ‘Successful Resolution Applicant’.

Mr. Anup Kumar Singh is a ‘Resolution Professional’ of ‘Indu Projects Ltd.’, is the 1st Respondent herein.

‘Indu Projects Ltd.’, is the ‘Corporate Debtor’ under ‘Corporate Insolvency Resolution Process’, is the 2nd Respondent herein.

3. On an application filed by the Bank of India as Financial Creditor of the Corporate Debtor (Indu Projects Ltd.), the ‘Adjudicating Authority’ admitted ‘Corporate Insolvency Resolution Process’ on 25.02.2019 and Mr. Gopi Krishna Byadigera was appointed as ‘Interim Resolution Professional’ on 05.03.2019. However, on the recommendation of the ‘Committee of Creditors’, Mr. Anup Kumar Singh was appointed as ‘Resolution Professional’ by the ‘Adjudicating Authority’, on 04.06.2019.

4. The 1st Respondent invited ‘Expression of Interest’ in Form-G on 16.07.2019 inviting prospective ‘Resolution Applicants’ to submit ‘Expression of Interest’ and seven prospective ‘Resolution Applicant’ participated, however only two prospective ‘Resolution

Applicants' submitted the 'Resolution Plan'. The 'Committee of Creditors' rejected and recommended for liquidation of the 'Corporate Debtor'. During pendency of liquidation application, the 'Appellant' desired to submit his 'Resolution Plan'. After getting fresh approval of the 'Adjudicating Authority', the 1st Respondent again published fresh Form- G on 25.07.2020 and receipt two applications by prospective 'Resolution Applicants'. The 'Committee of Creditors' with 97.33% of voting shares approved 'Resolution Plan' of the 'Appellant' and accordingly 1st Respondent filed I.A 861 of 2020 as 'Plan Approval Application' which was approved by the 'Adjudicating Authority' vide order dated 01.10.2021. It has however been brought out by the 'Appellant' that order was uploaded only on 25.10.2021. As per approved 'Resolution Plan', Rs. 4531.44 crores were claimed by the 'Creditors' and out of which claim for Rs. 4138.5 crores were admitted and finally amount of Rs. 501 crores was proposed to be settled with the 'Creditors' as per approved 'Resolution Plan' and in addition Rs. 40 crores was to be infused as working capital thus, total amount of Rs. 541 crores was approved as amount of settlement. This 'Appellate Tribunal' also note from the 'Resolution Plan' approval dated 01.10.2021 that the fair value of the 'Corporate Debtor' was of Rs. 394.12 crores and the liquidation value was of Rs. 220.90 crores.

5. This 'Appellate Tribunal' further notes from the approved Resolution plan the definition of 'Effective Date – The date of approval of the Resolution Plan by the Adjudicating Authority'. Further, as per approved 'Resolution Plan' Clause 4 A "the total term of the 'Resolution Plan' for implementation shall be within 90 days from the effective date".

6. In terms of Clause 7 of the approved 'Resolution Plan', following additional term was specified whereby there was specific provision for interest payment on delayed payment and forfeiture of payment made in case default beyond 60 days.

"The RA confirms that in case the RA fails to pay the balance instalments as mentioned in the Resolution Plan, and there is default beyond 60 days from schedule date, all the payments made till that date shall be liable for forfeiture. The RA confirms that in case the RA fails to pay the balance instalments as mentioned in the Resolution Plan, and there is subsisting default beyond 7 days from schedule date, such default amount shall be liable for simple interest @ 8% per annum".

7. In terms of the approved 'Resolution Plan' a monitoring committee was formed on 28.10.2021 consisting of three representative one each from 'Resolution Professional', 'Financial Creditor' and 'Successful Resolution Applicant' (the 'Appellant' herein).

8. The 'Appellant' has brought out that he was under honest belief that effective date being 25.10.2021 i.e. date when approved

'Resolution Plan' was uploaded (in contrast to the provisions made in the 'Resolution Plan' which defines effective date as date of order of approved by the 'Adjudicating Authority' which was 01.10.2021). Be that as it may, the 'Appellant' failed to make payment of Rs. 501 crores within 90 days of the effective date. The 'Appellant' has brought out that this was due to post COVID-19 uncertainly, delayed disbursement of fund by global investors etc. The 'Appellant' approached the 'Adjudicating Authority' by way of I.A. 733 of 2021 in I.A. 861 of 2020 under Rule 11 r/w Rule 154 of NCLT Rules, 2016, wherein four reliefs were sought including rectifications of few errors and directing the effective date to be 25.10.2021 instead of 01.10.2021. However the 'Adjudicating Authority' allowed two rectifications and did not give any further relief including effective date to be 25.10.2021 instead of 01.10.2021.

9. Similarly, the 'Appellant' also filed I.A. No. 77 of 2022 in I.A. 861 of 2021, whereby, few reliefs were sought including extension of 60 days for implementation of 'Resolution Plan', however, the 'Adjudicating Authority' after detailed examination in their order dated 01.02.2022 did not give any relief, including any extension of the time.

10. Aggrieved by the 'impugned order' passed by the 'Adjudicating Authority' the 'Appellant' approached this 'Appellate Tribunal' by CA (AT) (CH) (Insolvency) No. 86 of 2022 in I.A No. 183 & 184 of 2022 and this 'Appellate Tribunal' vide order dated 13.04.2022 gave following orders:-

"Heard both the sides. It is represented by Mr. Y. Suryanarayana, Learned Counsel for the Appellant that the 'Appellant' had deposited a sum of Rs.50 Crores in the 'Designated Account', which fact is not disputed by the other side.

The 'Successful Resolution Applicant' although had addressed vide letter dated 12.04.2022 to the Resolution Professional, Monitoring Committee, Committee of Creditors in the matter of 'Indu Projects Ltd.' seeking 'six months' time to remit the 'residual balance amount' together with 'overdue interest' @ 8% per annum, this 'Tribunal' is granting 'three months' time from today, to pay the 'residual balance amount' in the 'Designated Account' along with 'overdue interest' @ 8% per annum from 23.01.2022.

It is abundantly made clear by this 'Tribunal' that the implementation of the 'Resolution Plan' can go on and the 'Monitoring Committee' is permitted to perform the act of 'partial disbursement' of 'Plan Amount'.

Further, the 'Resolution Applicant' shall ensure the continuation of 'All Projects' by keeping the "Bank Guarantee Alive" and by making payment for the encashed 'Bank Guarantee'.

In view of the above observations and directions, the impugned order in IA No.77 of 2022 in IA No.861 of 2020 in CP(IB)-372/7/HDB/2018 passed on 01.03.2022 at Paragraph No.8,

wherein the amount paid as 'Earnest Money Deposit' by the 'Applicant' shall have to be forfeited and proceedings under Section 74 (3) of the I&B Code, 2016 have to be initiated as per Law shall not hold good.

In so far as the observations made by the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench) in the impugned order in IA No.77 of 2022 in IA No.861 of 2020 in CP(IB)-372/7/HDB/2018 are to the fact that "we are very upset with the manner in which the 'Monitoring Committee' has given a very very long rope to the Applicant in making the payment. We get a doubt on the fairness of the 'Monitoring Committee' with regard to implementation of the Resolution Plan" to that extent is expunged by this Tribunal in furtherance of 'substantial cause of justice'.

Accordingly, the instant Company Appeal (AT)(CH)(Ins) No.86/2022 stands disposed of. No costs. The pending connected I.A. Nos.183 & 184/2022 are closed." [emphasis supplied]

11. This 'Appellate Tribunal' note that in the meantime one 'Operational Creditor' M/s Vishal Nirmitti Pvt. Ltd. approached Hon'ble Supreme Court of India vide Civil Appeal No. 3660 of 2022 under Section 62 of I & B Code, 2016 against this 'Appellate Tribunal' Judgment and order dated 13.04.2022. Following relevant portion of the Judgment of the Hon'ble Supreme Court of India is being reproduce for clarity and continuity:-

"Heard learned counsel for the parties.

Pursuant to an order dated 25.02.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad) Corporate Insolvency Resolution Process (CIRP) was commenced against the Corporate Debtor, Indu Projects Limited. The Respondent No. 1, hereinafter referred to as the Resolution Applicant, had submitted a Resolution Plan in respect of the Corporate Debtor, in terms whereof the Respondent No. 1 was required to deposit Rs. 501 Crores in a designated escrow account, on or before 23.01.2022.

On 21.01.2022, the Respondent No. 1 filed an application before the Adjudicating Authority seeking extension of time by 60 days to make the deposit.

By an order dated 02.02.2022, the Adjudicating Authority granted two weeks' time to the Respondent No. 1 to make the payment. Against the aforesaid order, the Respondent No. 1 appealed to the NCLAT under Section 61 of the IBC. The impugned order has been passed in the said appeal.

The Appellant, who as stated above, is an Operational Creditor contends that the impugned order is prejudicial to the right of the Appellant to receive the amounts payable to the Appellant under the approved Resolution Plan, within the timelines thereunder.

Three months' time granted to the Resolution Applicant (Respondent No. 1) to pay the residual balance amount in the

designated account along with overdue interest, has expired. No payment has been made. The appeal has, thus, become infructuous and is dismissed.

The NCLT may proceed further with the matter, in accordance with law.” [emphasis supplied]

12. The 1st Respondent approached the ‘Adjudicating Authority’ vide I.A. 283 of 2022 in CP (IB) No. 372/7/HDB/ 2018 wherein five prayers were made including dismissal of I.A. 77 of 2022 filed by the ‘Appellant’, allowing 1st Respondent to invoke EMD bank guarantee and extension of ‘Corporate Insolvency Resolution Process’ allowing fresh bids for the ‘Resolution Plan’ to be invited and debarring the ‘Appellant’ from participation further. The ‘Adjudicating Authority’ vide their order dated 05.09.2022 allowed this I.A. No. 283 of 2022 and directed the 1st Respondent to complete the ‘Corporate Insolvency Resolution Process’ a fresh within 60 days from the date of order dated 05.09.2022 and also made clear that no further extension would be given. The relevant portion of the judgment of the ‘Adjudicating Authority’ dated 05.09.2022 is also been quoted as under :-

“This IA is filed by the Resolution Professional seeking extension of 60 days time to conduct the CIRP afresh in the light of the failure of the successful bidder in honouring the commitments made in the Resolution Plan.

The IA is allowed and the Resolution Professional is directed to complete the Corporate Insolvency Resolution Process afresh, within 60 days from today and no further extensions, whatsoever, will be granted in the matter. Accordingly, prayer in Item No. C in IA(IBC)/283/2022 is allowed. Prayers in Item Nos. A, B are not pursued by the Resolution Professional.

In view of passing of the order in this IA and taking into consideration the earlier orders of this Bench on 01.03.2022 rejecting granting of extension of time to the Successful Resolution Applicant (SRA) and also the NCLAT orders dt.13.04.2022 passed in an appeal preferred against the order of rejection of extension of time by this tribunal, by virtue of which a time of three more months to make payment, was given, IA(IBC)/654/2022 has become infructuous. The remedy, if any, as regards to extension of time, is before the NCLAT, as the time extended by NCLAT has already expired and the jurisdiction of this Adjudicating Authority gets ceased, once the issue is taken within the purview of the Appellate Authority. It can be noted that the reason for not extending the time as sought for by the SRA is due to his not fulfilling the commitment undertaken by him. Except seeking extension, no further grounds were put forth by the SRA in the earlier application. By virtue of the expiry of the period extended by the NCLAT, the SRA loses his right of seeking for extension on any ground.

As regards IA(IBC)/655/2022, which was filed by Successful Resolution Applicant seeking impleadment in the liquidation application, we notice that no such IA was filed by the Resolution Professional for initiation of liquidation proceedings of the Corporate Debtor. As such, we don't find any reason to keep it pending. We, therefore, observe that filing of this IA is misplaced and is accordingly, dismissed.” [emphasis supplied]

13. Aggrieved by the ‘impugned order’ in I.A. 283 of 2022, the ‘Appellant’ has preferred the present ‘Appeal’, before this ‘Appellate Tribunal’.

Appellant’s Submission

14. The Learned Counsel for the ‘Appellant’ gave overall view of the appeal and the circumstances which led to the present appeal. On coming to know that the ‘Corporate Debtor’ has been recommended for liquidation the Appellant approached 1st Respondent expressing his intent to give his resolution plan on 04.05.2020. After getting approval from the ‘Adjudicating Authority’ on an application made by 1st Respondent in his fresh Form- G published on 25.07.2020. The ‘Appellant’ submitted his Resolution Plan of Rs. 501 crores along with additional working capital of Rs. 40 crores. The ‘Adjudicating Authority’ vide their order dated 01.10.2021 approved the ‘Resolution Plan’ however the order of the ‘Adjudicating Authority’ was uploaded only on 25.10.2021. The Learned Counsel for the Appellant further submitted that he was under belief that this will be the effective date for calculating 90 days within which payments have to be settled as indicated in the Resolution Plan.

15. The Learned Counsel for the Appellant emphasised that due to post COVID-19 circumstances including uncertain economic environment, procedural delays and delayed disbursement of fund by global investors the ‘Appellant’ could not meet the time line for settling claims as given in the ‘Resolution Plan’ and accordingly the ‘Appellant’ approached the ‘Adjudicating Authority’ by way of I.A. No. 77 of 2022 (Extension Application) for seeking extension of timelines, however the ‘Adjudicating Authority’ dismissed the extension application ignoring the prevailing circumstances and genuine ground for seeking extension.

16. The Learned Counsel for the Appellant pointed out that despite his best intension to resolve the matter and bring back the ‘Corporate Debtor’ from liquidation stage, the 1st Respondent approached the ‘Adjudicating Authority’ vide I.A 283 of 2022 with several prayer, inter-alia, invoking EMD bank guarantee of the ‘Appellant’ and initiating fresh ‘Corporate Insolvency Resolution Process’.

17. The Learned Counsel for the Appellant mentioned that aggrieved by this he approached this ‘Appellate Tribunal’ in CA (AT)(CH) (Ins.) No. 86 of 2022. The Learned Counsel for the

Appellant highlighted that this 'Appellate Tribunal' appreciating the genuine grievances of the 'Appellant' and valid circumstances allowed extension of time as well as embargo on encashment of EMD bank guarantee. The Appellate Tribunal granted three months period from the date of order i.e. from 13.04.2022 instead of six month period requested by the Appellant for making residual balance payment in the designated bank account along with over due interest @ 8% per annum from 23.01.2022.

18. The Learned Counsel for the Appellant pointed out that the 'Resolution Plan' clearly provides for provision for delayed payment and stipulate Appellant's liability to pay interest @ 8% per annum. The Learned Counsel for the Appellant assailed the 'impugned order' which ignored this vital point.

19. The Learned Counsel for the Appellant submitted that the expromoters of the 'Corporate debtor' committed frauds and gave wrong information to the 1st Respondent and the 'Committee of Creditors' and as a result of which incorrect "Information Memorandum" was prepared. The Learned Counsel for the Appellant stated that the 'Resolution Plan' was prepared, submitted and finally approved by the 'Adjudicating Authority' which was prepared by the 'Appellant' on the basis of incorrect "Information Memorandum". The Learned Counsel for the Appellant further stated that in order to set the things right and to take ex- promoter to logical task, the 'Appellant' filed I.A. No. 654 of 2022 in C.P (IB) 372 of 2018 (Direction Application) under Section 60(5) of the I & B Code, 2016 r/w Rule 11 of NCLT Rules, 2016, whereby he prayed for immediate interim relief including forensic audit and restraining expromoters from disposing off and transferring moveable and immovable assets during pendency of the applications.

20. The Learned Counsel for the Appellant stated that an impleadment application vide I.A. 655 of 2022 was also filed regarding granting of any relief in I.A. No. 283 of 2022 filed by the 'Respondent' without hearing the 'Appellant'. The Learned Counsel for the Appellant emphasised that these applications were necessary in order to implement the 'Resolution Plan'. The Learned Counsel for the Appellant, however assailed the 'impugned order' dated 05.09.2022 which was issued in complete violation of principal of natural justice and "Audi Alteram Partem". The Learned Counsel for the Appellant also assailed the 'Adjudicating Authority' failed to give proper speaking order.

21. The Learned Counsel for the Appellant stated that they had already made part payment of around Rs. 60 crores under the 'Resolution Plan' and if the 'impugned order' is not set aside, the investment made by the 'Appellant' will go down the drain. The Learned Counsel for the Appellant also stated that the very purpose of the I & B Code, 2016 is to bring back the 'Corporate Debtor' from the brink of the Insolvency and put it back as a

going concern. The Learned Counsel for the Appellant also mentioned that since then they have tied up the funds with foreign entities and are ready to settle the 'Resolution Plans'. The Learned Counsel for the Appellant further stated that the 'Resolution Plan' itself had foreseen the circumstances of delay and provided for delayed payment @ 8% which they are willing to pay.

22. The Learned Counsel for the Appellant stated that the 'Adjudicating Authority' failed to exercise inherent powers granted to it under Section 60(5) of the I & B Code, 2016 to meet ends of justice.

23. The Learned Counsel for the Appellant concluding his pleadings requested this 'Appellate Tribunal' to set aside the 'impugned order' dated 05.09.2022 passed by the 'Adjudicating Authority' in I.A 283 of 2022 and I.A 655 of 2022 along with restraining 1st Respondent to initiate the 'Corporate Insolvency Resolution Process' de-novo.

Respondent's Submission:

24. The Learned Counsel for the Respondent gave the background of the case and assailed the appeal. The Learned Counsel for the Respondent stated that the present appeal is only derail the entire process and in turn will result in eroding the economic value of the 'Corporate Debtor'.

25. The Learned Counsel for the Respondent stated that all support was given to the 'Appellant' in order to implement the 'Resolution Plan' successfully and smoothly. However, right from the beginning the attitude of the 'Appellant' was seems to be only buying time and postponing the settlement of the claims. The Learned Counsel for the Respondent further pointed out that the 'Adjudicating Authority' as well as this 'Appellate Tribunal' extended the time line beyond 90 days, however the 'Appellant' could not still make substantial payments. The Learned Counsel for the Respondent emphasised that out of Rs. 501 crores claim settlement amount along with additional working capital infusion, admittedly, the 'Appellant' has brought in only 10% of such money till date despite the 'Resolution Plan' was approved way back on 01.10.2021. The Learned Counsel for the Respondent further clarified that according to the approved 'Resolution Plan' the 'Appellant' was supposed to make all payments within 90 days and further maximum 60 days were provided in the 'Resolution Plan' @ 8% interest rate per annum for delayed payments and the terms of plan it was crystal clear that beyond 60 days of grace period, all payment made by the Appellant will be liable to be forfeited.

26. The Learned Counsel for the Respondent stated that the 'Appellant' has brought several I.A's before the 'Adjudicating Authority' just to delay the whole process and the 'impugned order' was given correctly by the Adjudicating Authority' after

taking all due facts, provisions of the I & B Code, 2016 and this 'Appellate Tribunal' order dated 13.04.2022 into consideration.

27. The Learned Counsel for the Respondent assailed the conduct of the 'Appellant' and the content of the appeal. The Learned Counsel for the Respondent brought to the notice of this 'Appellate Tribunal' that I.A. No. 654 of 2022 filed by the 'Appellant' for seeking urgent and immediate relief against ex-promoters/ directors of the 'Corporate Debtor' including request of forensic audit did not have any substance on merit and was initiated only to delay the whole proceedings and making the payments as per 'Resolution Plans'. The Learned Counsel for the Respondent also assailed the contention of the 'Appellant' that he was not given an opportunity of being heard and his rights of natural justice were breached were simply misconstrued as the 'Adjudicating Authority' considered all the relevant factors into consideration before disposing I.A. No. 654 & 655 of 2022. The Learned Counsel for the Respondent also mentioned that the 'Resolution Plan' was supposed to be prepared with due diligence and the 'Appellant' cannot be allowed to raise boggy issues to circumvent the settlement payments.

28. The Learned Counsel for the Respondent also denied averments made by the 'Appellant' that he was not given hearing in I.A. No. 655 of 2022 ('Impleadment Applications'). The Learned Counsel for the Respondent further stated that in I.A. No. 655 of 2022 became infructuous since 'Resolution Applicant' failed to fulfil his commitments within the time period granted by the 'Adjudicating Authority' as well as extended time period granted by this 'Appellate Tribunal'. The Learned Counsel for the Respondent also brought to the notice of this 'Appellate Tribunal' that the Hon'ble Supreme Court of India on a separate application filed by one 'Operational Creditor' challenging order of this 'Appellate Tribunal' in Company Appeal (AT) (CH) (Ins.) No. 86 of 2022 dated 13.04.2022 whereby the Hon'ble Supreme Court of India noted that three months' time was granted to the 'Resolution Applicant' to pay the residual amount along with interest had expired without making any payment and thus, the appeal became infructuous and dismissed. The Learned Counsel for the Respondent emphasised that the 'Appellant' has exhausted all his legal remedies and the present appeal is therefore is liable to be dismissed.

29. The Learned Counsel for the Respondent stated that the 'Appellant' approached the 'Adjudicating Authority' vide I.A. No. 77 of 2022 ('Extension Application') for seeking extension of timelines which was rightly dismissed by the 'Adjudicating Authority', since the 'Resolution Plan' was approved on 01.10.2021 and the 'Appellant' was supposed to make all payment within 90 days however that was a complete failure on

part of the 'Appellant' to arrange fund and sought only long rope to delay the process.

30. The Learned Counsel for the Respondent further emphasised that the 'Appellant' was given all the cooperation to implement the 'Resolution Plan' successfully, however the 'Appellant' was not in a position to implement the same and accordingly the 1st Respondent had to approach the 'Adjudicating Authority' vide I.A. No. 283 of 2022 with prayer to dismiss I.A. no. 77 of 2022 along with permission of the Adjudicating Authority to invoke EMD bank guarantee furnished by the Appellant and to initiate fresh 'Corporate Insolvency Resolution Process' and the 'Adjudicating Authority' vide their order dated 05.09.2022 allowed the I.A. No. 283 of 2022 allowing initiation of fresh CIRP within 60 days as per 'Prayer- C' and 'Prayer- A & B' was not considered as not being pursued by the 1st Respondent.

31. The Learned Counsel for the Respondent submitted that the Hon'ble Supreme Court of India in the matter of K. Shashidhar vs. Indian Overseas Bank and Others (2019) 12 SCC 150; Committee of Creditors, Essar Steel India Limited vs. Satish Kumar Gupta and Ors. (2020) 8 SCC 531; Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Others (2020) 11 SCC 467 gave very clear verdict that commercial wisdom of CoC is supreme and neither the 'Adjudicating Authority' nor the 'Appellate Authority' can trespass the commercial wisdom of the 'Committee of Creditors'.

32. The Learned Counsel for the Respondent mentioned that the pursuant to the 'Adjudicating Authority' order dated 05.09.2022, the 1st Respondent has already issued fresh 'Form G' inviting 'Expression of Interest' from perspective Resolution Applicants on 19.09.2022 in order to revive the 'Corporate Debtor' and any intervention at this stage will only frustrate the whole process and reduce the economic value of the 'Corporate Debtor'.

33. The Learned Counsel for the Respondent concluded his arguments with the strong plea to dismiss the Appeal.

Findings

34. Heard the Learned Counsel for the Appellant and the Respondents and also perused record made available to us. Several issues have been raised in the Appeal which are required to be deliberated upon before coming to final conclusion.

(I) Whether the 'Adjudicating Authority' has got the sufficient power to extend the time lines for making payments as per approved 'Resolution Plan' and if so, whether in the present case this power was exercised or otherwise by the 'Adjudicating Authority' correctly ?

(II) Whether the 'Adjudicating Authority' violated the principals of natural justice in the present case ?

(III) Whether the 'Adjudicating Authority' could have ordered for fresh 'Corporate Insolvency Resolution Process' when the

‘Successful Resolution Applicant’ has claimed to be in position to implement the ‘Resolution Plan’, albeit, beyond the schedule as stipulated in the ‘Resolution Plan’ ?

(IV) Whether, the ‘Appellant’ exhausted legal remedies in view of failure to comply extended time lines permitted vide order dated 13.04.2022 as well as after dismissal of appeal filed by one ‘Operational Creditor’ before the Hon’ble Supreme Court of India challenging this Appellate Tribunal’s order ?

35. Issue No. (I) Whether the ‘Adjudicating Authority’ has got the sufficient power to extend the time lines for making payments as per approved ‘Resolution Plan’ and if so, whether in the present case this power was exercised or otherwise by the ‘Adjudicating Authority’ correctly?

- Before dwelling into these aspects in details, it will be desirable to look into the specific provision of the I & B Code, 2016 which deals with the submission of the ‘Resolution Plan’ as well as approval of the ‘Resolution Plan’.

“30. Submission of resolution plan.—(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum. (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; (b) provides for the [payment] of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; (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. [Explanation.— For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law]; (3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in subsection (2). [(4) The committee of creditors may approve a resolution plan by a vote of not less than 5 [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board: Provided that the committee of creditors shall not approve a resolution

plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it: Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A: Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection.] [Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.] (5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor. (6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

“31. Approval of resolution plan.—(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan: [Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.] (2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan. (3) After the order of approval under sub-section (1),— (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database. [(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the

necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later: Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]”

- The objective of I & B Code, 2016 is for maximisation of value of assets of the Corporate Debtor and not maximisation of value of any one stake holder. Thus, the very first objective is the ‘Resolution’ followed by the objective of the ‘Maximisation of value of assets of the ‘Corporate Debtor’ and finally ‘promoting entrepreneurship, availability of credit and balancing of interest’.

- It is also universal accepted fact that there is a time value of money which is very significant in effective revival of the ‘Corporate Debtor’.

- In catena of the judgments passed by the Hon’ble Supreme Court of India including case cited by the ‘Respondent’ quoted in preceding paragraphs it has been decided that the commercial wisdom of the Committee of Creditors is supreme and judicial interventions by the Adjudicating Authority and/ or the Appellate Authority should be minimum.

- This ‘Appellate Tribunal’ further notes from the approved ‘Resolution Plan’ the definition of ‘Effective Date – The date of approval of the Resolution Plan by the Adjudicating Authority’.

Further, as per approved ‘Resolution Plan’ Clause 4 A ‘the total term of the ‘Resolution Plan’ for implementation shall be within 90 days from the effective date’. This Appellate Tribunal notes that order of the ‘Adjudicating Authority’ approving the resolution plan was dated 01.10.2022 and therefore, legally speaking 01.10.2022 should be constitute as effective date for calculating 90 days. The ‘Appellant’ has made a case that since the order of the ‘Adjudicating Authority’ was uploaded only on 25.10.2022 hence effective should be treated as 25.10.2022 and 90 days should be calculated from this date. The argument of the ‘Appellant’ cannot be accepted in view of the specific definition given of the effective date in the ‘Resolution Plan’ itself.

- In terms of Clause 7 of the approved ‘Resolution Plan’, following additional term was specified whereby there was specific provision for interest payment on delayed payment and forfeiture of payment made in case default beyond 60 days.

“The RA confirms that in case the RA fails to pay the balance instalments as mentioned in the Resolution Plan, and there is default beyond 60 days from schedule date, all the payments made till that date shall be liable for forfeiture. The RA confirms

that in case the RA fails to pay the balance instalments as mentioned in the Resolution Plan, and there is subsisting default beyond 7 days from schedule date, such default amount shall be liable for simple interest @ 8% per annum”.

- Taking 01.10.2021 as effective dated 90 days period and additional 60 days with interest of 8 % per annum would be over quite sometime back.

- Admittedly, the ‘Appellant’ till date, even after substantial period is over has paid around Rs. 60 crores as against required to be Rs. 501 crores as per ‘Resolution Plan’ in addition to Rs. 40 crores as working capital (total Rs. 541 crores). Thus, broadly 90% of Resolution Plan settlement amount is yet to be brought in by the ‘Appellant’.

- It is noted that this ‘Appellate Tribunal’ has granted additional three months period vide its earlier order dated 13.04.2022 which has also been noted by the Hon’ble Supreme Court of India while disposing the appeal against this ‘Appellate Tribunal’s order as discussed earlier in preceding paragraphs.

- The ‘Adjudicating Authority’ while disposing I.A. No. 283 of 2022 filed by 1st Respondent as taken note of this ‘Appellate Tribunal’ and recorded that despite this extended time line, the ‘Appellant’ could not make the payment.

- This ‘Appellate Tribunal’ consciously notes that powers of the ‘Adjudicating Authority’ has been clearly defined in Section 31 of the I & B Code, 2016 (discussed earlier) and there is no specific provision authorising the ‘Adjudicating Authority’ to consider such extensions of time lines. This ‘Appellate Tribunal’ again observes that the objective of I & B Code, 2016 is ‘Resolution’ as well as ‘Maximisation the value of the assets of the Corporate Debtor’ and take care of interest of all stake holders and not limited to one stake holder or one set of stake holders.

- In view of the provisions as stipulated in the I & B Code, 2016

- Specific provisions of time lines of 90 days from the effective dates and subsequent additional 60 days as the outer limit provided in Resolution Plan.

- Specific proviso in Resolution Plan that after 90 + 60 days if settlement payment is not made money already been paid is liable to be forfeited.

- Failure to comply even extended time lines of three months given by this Appellate Tribunal.

This ‘Appellate Tribunal’ do not find any error in the ‘impugned order’ on this aspect. While observing this, this ‘Appellate Tribunal’ has also factored into the ratio provided by the Hon’ble Supreme Court of India that commercial wisdom of ‘Committee of Creditor’ is supreme and there is limited scope for judicial intervention by the ‘Adjudicating Authority’ or the ‘Appellate Tribunal’. Hence, this ‘Appellate Tribunal’ upholds the decision of the ‘Adjudicating Authority’ on this issue.

Issue No. (II) Whether the 'Adjudicating Authority' violated the principals of natural justice in the present case ?

- It has been alleged by the 'Appellant' that the 'Adjudicating Authority' has not considered his 'Impleadment Application' bearing I.A. No. 655 of 2022 as well as 'Direction Application' bearing I.A. No. 654 of 2022 in suitable manner and the 'Appellant' was not given chance to represent the case. The 'Appellant' also contended that the 'Adjudicating Authority' ought to have decided 'Impleadment Application' being necessary an important party in I.A No. 283 of 2022 and the 'Adjudicating Authority' erred in disposing I.A. No. 283 of 2022 without disposing First Appellant's Interlocutory Application. It is a case of the 'Appellant' that the 'Adjudicating Authority' erred in summarily dismissing the direction and 'Impleadment Application' without appreciating the merit for non-speaking 'impugned order'.
- This 'Appellate Tribunal' has already noted and brought in preceding paragraphs averments made by the 'Respondent' on above contentions of the 'Appellant'.
- It has been observed from the order of the 'Adjudicating Authority' while disposing I. A 283 of 2022 vide order dated 05.09.2022 that the 'Adjudicating Authority' has factored into I.A. No. 654 of 2022 and has recorded that this has become infructuous due to non – payment by the 'Appellant' and failure to comply with the orders dated 13.04.2022 passed by this 'Appellate Tribunal'. The 'Adjudicating Authority' has also taken a view that once the extended time lines of stipulated by this 'Appellate Tribunal' is over the 'Adjudicating Authority' do not have any further power to extend the time lines.
- As regard, I.A No. 655 of 2022 the 'Adjudicating Authority' has mentioned that no such I.A's was filed by the Resolution Professionals for initiation of liquidation proceedings of the Corporate Debtor as such 'Adjudicating Authority' did not find any reason to keep order pending and dismissed I.A. No. 655 of 2022 and pronounced the judgment in I.A No. 283 of 2022 on 05.09.2022.
- In I.A. No. 283 of 2022 the 1st Respondent had asked for dismissing I.A. No. 77 of 2022 of the 'Appellant' as well as allowing 1st Respondent to invoke EMD bank guarantee of the 'Appellant' and in addition to allow initiation of the 'Corporate Insolvency Resolution Process' to invite fresh bids.
- This Appellate Tribunal note that prayer made in I.A. No. 655 of 2022 by the Appellant in (a), (b) & (c) reads as under:
 - a) Allow the Applicant, being the Successful Resolution Applicant of the Corporate Debtor, to be impleaded as a party and to make submissions in the Liquidation Application.

b) Allow the Applicant to access a copy of the Liquidation Application and file a Reply to the Liquidation Application, or file a separate Application seeking directions if required;

c) Pass such other and further orders as may be deemed fit by this Hon'ble Court.

- Therefore, the 'Adjudicating Authority' seems to be right in observing that there was no application for initiation of liquidation and the application of Appellant in I.A. No. 655 of 2022 is incorrect and accordingly was dismissed by the 'Adjudicating Authority'.

- Taking into account the averments made by the both the parties and the reasons accorded by the 'Adjudicating Authority' while disposing relevant I.A. No. 654 & 655 of 2022, this Appellate Tribunal do not find any reason to intervene the 'impugned order' on this account.

Issue No. (III) Whether the 'Adjudicating Authority' could have ordered for fresh Corporate Insolvency Resolution Process when the 'Successful Resolution Applicant' has claimed to be in position to implement the 'Resolution Plan', albeit beyond the schedule as stipulated in the 'Resolution Plan'?

- This 'Appellate Tribunal' has already noted that in accordance with the approved 'Resolution Plan' the 'Appellant' was required to settle all payments within 90 days and further within 60 days. This 'Appellate Tribunal' has also factored into the fact that despite this 'Appellate Tribunal' extension of three months to make all payments, the 'Appellant' failed to satisfy the terms of the Resolution Plans. The 'Appellant' while submitting the 'Resolution Plan' was supposed to know all the circumstances including economic uncertainties, if any, and requirement for generation of funds. It can not be the case of the 'Appellant' to invoke such pleas subsequent to approval of 'Resolution Plan'. This 'Appellate Tribunal' also note that despite substantial period of the approval of the 'Resolution Plan', the 'Appellant' is yet to settle around 90% of its liabilities towards the 'Resolution Plan'.

- It is a fact that the timely resolution is very important in case the value of the 'Corporate Debtor' is required to be preserved and in order to ensure maximisation of value of assets of the 'Corporate Debtor'. This 'Appellate Tribunal' has also noted that pursuant to the 'Adjudicating Authority' order for fresh 'Corporate Insolvency Resolution Process', the 1st Respondent has already issued fresh 'Form-G' on 19.09.2022 inviting fresh "Expression of Interest" from prospective Resolution Applicants and any interference at this stage will hamper the entire process and perhaps may lead to liquidation which is practically death knell of the 'Corporate Debtor'. In view of all above, this 'Appellate Tribunal' do not find any error in the 'impugned order' on this account.

Issue No. (IV) Whether, the 'Appellant' exhausted legal remedies in view of failure to comply extended time lines permitted vide order dated 13.04.2022 as well as after dismissal of appeal filed by one 'Operational Creditor' before the Hon'ble Supreme Court of India challenging this Appellate Tribunal's order ?

- This 'Appellate Tribunal' has already discussed that in its earlier order dated 13.04.2022 three additional months period was given to the 'Appellant' to settle all the payments as per approved the 'Resolution Plan'. Subsequently, in different appeal filed by one 'Operational Creditor' before the Hon'ble Supreme Court of India challenging this 'Appellate Tribunal's' order vide Civil appeal No. 3660 of 2022, the Hon'ble Supreme Court of India dismissed the same vide order dated 29.08.2022. Accordingly, three month periods extended by this 'Appellate Tribunal' was also over and no payment was made. Hence, prima-facie, it looks that the 'Appellant' had taken all the legal remedies available to it including various Interlocutory Applications filed before the 'Adjudicating Authority', appeal made to this 'Appellate Tribunal' and upholding this 'Appellate Tribunal' order by the Hon'ble Supreme Court of India filed by one of the 'Operational Creditor' (and not the Appellant). As such, no further scope is available to this 'Appellate Tribunal' to invoke any of the provisions available under I & B Code, 2016, to give any further relief to the 'Appellant', at this juncture.

36. Therefore, this 'Appellate Tribunal', is of the considered opinion that there is no error, in the 'impugned order' dated 05.09.2022, passed by the 'Adjudicating Authority'. 'Appeal', 'devoid of any merit(s)', is dismissed. No costs. The connected pending 'Interlocutory Applications', if any, are Closed.

7. It is stated that the order dated 25.11.2022 has been challenged before the Hon'ble Supreme court by way of Civil Appeal No. 1133 Of 2023 which has been withdrawn by the Appellant in which the following order was passed on 04.12.2023:-

"Learned Counsel for the Appellant states that he has instruction to withdraw the present appeal. Secondly, all contentions should be left open.

In view of the first statement, the appeal is dismissed as withdrawn. However, we do not make any comments or observations concerning the second request."

8. In the meantime, it is pertinent to mention that the CoC (Respondent no. 4) approved the plan of Respondent No. 3 (Consortium of B Subba Reddy and C Venkateswara Reddy) on 03.02.2023 and Respondent No. 3 remitted a sum of Rs. 40 Crs. on 09.03.2023 as per plan.

9. The Respondent No. 2 filed I.A. No. 305 of 2023 before the Adjudicating Authority for approval of the resolution plan submitted by the Respondent No.

3. In this application, the Appellant filed I.P. No. 8 of 2023 seeking intervention, however, the said application was dismissed on 19.06.2023 with the following order:-

“1. This application is filed by the Applicant M/s. Earthin Projects Ltd, seeking to implead himself as Respondent in IA No.305 of 2023 in CP No.372/HDB/2018 and not to pass any order in IA No.305 of 2023 in CP No.372/HDB/2018, during the pendency of this Application.

2. The brief facts of the case as per the application, are as follows:

a. The Application is filed on behalf of the Applicant in consortium with K. Ramachandra Rao Transmission & Projects Private Limited. The Corporate Debtor (CD) was taken into CIRP by order dated 25.02.2019 by this Tribunal. Resolution Professional (RP) was appointed. After conclusion of the initial CIRP, the Resolution Plan submitted by the Applicant was approved by this Tribunal by order dated 01.10.2021.

b. In compliance with an extant provision of the Code, the Applicant has also provided Bank Guarantee for Rs.5 Crores which was subsequently amended in favour of the CD. The Applicant remitted a total amount of Rs.60 Crores as part compliance of the Resolution Plan.

c. As things stood thus, the Applicant could not make the complete payment as per the terms of the Resolution Plan due to the financial difficulties which were induced due to COVID 19. The Applicant is ready to make the full payment of the agreed Resolution amount as agreed in the Resolution Plan along with the interest, even today.

d. The Respondent, in the meantime, has filed an application seeking a fresh CIRP which was allowed by this Tribunal to

complete the CIRP within 60 days from the date of order, which is 05.09.2022. The RP did not make the Applicant as a party to the said IA. The Applicant has challenged the said order before the Hon'ble NCLAT. The Hon'ble NCLAT dismissed the application and a Civil Appeal No.1133/2023 is preferred before the Hon'ble Supreme Court and the same is pending. An order directing the RP to conduct a fresh CIRP is without any legal basis and this Tribunal could not have passed such an order.

e. The RP has filed several applications, seeking extension of time for submission of the Resolution Plan and the same was extended. Thus the last date for completion of CIRP is 11.02.2023.

f. The RP has filed the present application under Section 30 of the IBC, 2016, seeking approval of the Resolution Plan submitted by one of the bidders who has submitted an application for the resolution of the company, Indu Projects Limited, in pursuance of the fresh CIRP which has been initiated vide order dated 05.09.2022. The Applicant learnt that the CoC approved the Resolution Plan which was submitted for an amount of around Rs.400 Crores which is substantially lesser than the amount offered by the Applicant. Thus, the CoC is being forced to take a lesser amount in resolution even though, there is an availability of a better offer from the Applicant herein. RP has filed an IA No.305 of 2023, without impleading the Applicant herein, who is necessary and proper Party to the Application.

g. In the above facts and circumstances, it is prayed to permit the Applicant to be impleaded in the above Application to place all material facts on record and till then not to pass any orders in the IA. Hence, this application.

3. The Respondents filed Counter, denying the averments of the Petition. It is further contended that the Applicant has filed the instant application, seeking specific directions against the interest of the Respondents. At the very outset, the Applicant has no Locus Standi to file this Application. It is only filed in order to derail the time-bound process of CIRP of the CD. It is further submitted that the Resolution Plan submitted by the Applicant was approved by the CoC and also by the Tribunal. The Applicant was required to bring a total amount of Rs.541 Crores towards the Resolution Fund as per the approved Resolution Plan within 90 days from the effective date. But he could not implement the Resolution Plan within the stipulated timeline.

- a. The Applicant preferred an Interim Application No.77 of 2022 before this Tribunal, seeking an extension of 60 days from 23.01.2022 for implementation of Applicant's Resolution Plan which was rejected vide Order dated 01.03.2022 and directed the RP to forfeit the EMD amount. An Appeal was preferred before the Hon'ble NCLAT, Chennai and the Hon'ble NCLAT, Chennai vide order dated 13.04.2022 granted an extension of 3 months from 13.04.2022 for paying the amount as per the Resolution Plan along with an interest @8% from 23.01.2022. Even after so many extensions, the Applicant could not implement the Plan.
 - b. The RP filed IA No.283 of 2022 before this Tribunal, seeking fresh CIRP by granting 60 days time which was allowed by order dated 05.09.2022 recording that the time granted by the Hon'ble NCLAT, Chennai was over and the Applicant could not fulfil its commitments. The Applicant preferred an Appeal before the Hon'ble NCLAT, Chennai against the Order of this Tribunal in IA No.283 of 2022 which was dismissed on merits. Given the non-compliances of the Applicant, he lost his locus standi.
 - c. The law is well settled on the wisdom of the CoC. The Hon'ble Supreme Court of India in a catena of landmark judgments such as K. Shashidhar Vs. Indian Overseas Bank and Others (2019) 12 SCC 150; Committee of Creditors, Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. (2020) 8 SCC 531; Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh and Others (2020) 11 SCC 467 has held that the commercial wisdom of CoC is supreme and neither the 'Adjudicating Authority' nor the 'Appellate Authority' can trespass the commercial wisdom of the 'Committee of Creditors'.
 - d. IA 305 of 2023 is filed for the approval of the new Resolution Plan. This Application herein has no locus standi to be part of the present proceedings as its role ended when it was unable to implement its Resolution Plan. Hence, this application is liable to be dismissed.
4. We heard both the Counsel. The Counsel for the Applicant submits that an Appeal is preferred against the order of the Hon'ble NCLAT before the Hon'ble Supreme Court. Hence, he seeks this Tribunal to keep this application pending.
 5. It can be noted that the CIRP is time bound process. No interim order is granted by the Hon'ble Supreme Court, staying the proceedings in this IA. The prospects of success of the Resolution Applicant in the Hon'ble Supreme Court seems to be very bleak when looked at from the reasons mentioned in the order of the

Hon'ble NCLAT. Apart from that, it can be seen that inspite of the time being extended, the Applicant could not implement the Plan. Hence, the Resolution Plan of the Applicant got to be rejected and the Earnest Money Deposit was also forfeited. By order dated 05.09.2022, this Tribunal permitted the RP to conduct the CIRP afresh in the light of the failure of the Applicant in following the commitment made in the Resolution Plan. Against the said order, the Applicant moved the Hon'ble NCLAT, Chennai by way of an Appeal. The Hon'ble NCLAT, Chennai observed that; "This Appellate Tribunal has already discussed that in its earlier order dated 13.04.2022 three additional months period was given to the Appellant to settle all the payments as per the approved Resolution Plan. Subsequently, in different appeal filed by one Operational Creditor before the Hon'ble Supreme Court of India challenging this Appellate Tribunal's Order vide Civil Appeal No.3660 of 2022, the Hon'ble Supreme Court of India dismissed the same vide order dated 29.08.2022. Accordingly, "three months period extended by the Appellate Tribunal was also over and no payment was made. Hence, prima-facie, it looks that the Appellant had taken all the legal remedies available to it including various Interlocutory Applications filed before the Adjudicating Authority, appeal made to this Appellate Tribunal and upholding this Appellate Tribunal order by the Hon'ble Supreme Court of India filed by one of the Operational Creditor (and not the Appellant). As such, no further scope is available to this Appellate Tribunal to invoke any of the provisions available under I&B Code, 2016 to give any further relief to the Appellant at this juncture."

6. It is also an admitted fact that in the fresh CIRP, this Applicant did not submit any Resolution Plan.

7. The Counsel for the Respondent relied on the judgement of the Hon'ble NCLAT in the case of Vasan Health Care Pvt. Ltd. Wherein it was held:

"Appellant being an Unsuccessful Resolution Applicant, has no 'Locus', to 'assail' a 'Resolution Plan' or its 'implementation', coupled with a candid fact that he is not a 'Stakeholder', as per Section 31(1) of the I & B Code, 2016, in relation to the 'Corporate Debtor', this 'Tribunal', without any haziness, holds that the Appellant is not an aggrieved person coming within the ambit of Section 61(1) of the I & B Code, 2016, especially when he is not a privy to the Resolution Plan."

8. Hence, in view of the above background of law and facts in this case, we find no locus for the applicant and we dismiss this application.”

10. The Appellant also filed I.A. No. 1031 of 2023 in I.P No. 8 of 2023 in I.A. No. 305 of 2023 for recalling of the order dated 19.06.2023 which was also dismissed on 05.07.2023 which is reproduced as under:-

“1. This application is filed by the Applicant M/s. Earthin Projects Ltd, seeking to recall the Order dated 19.06.2023 in IP No.8 of 2023 in IA No.305 of 2023 in CP No.372/HDB/2018 and to defer the hearing of IA No.305 of 2023, pending disposal of the instant application.

2. At the outset, the 2nd prayer can be dismissed, since the hearing on the application is already concluded and it is reserved for Orders.

3. As regards the first prayer, the Counsel submits that, in the order sought to be recalled, at Para No.7, it was recorded that; the Counsel for the Respondent relied on the judgement of the Hon’ble NCLAT in the case of Vasan Health Care Pvt. Ltd. wherein it was held:

“Appellant being an Unsuccessful Resolution Applicant, has no ‘Locus’, to ‘assail’ a ‘Resolution Plan’ or its ‘implementation’, coupled with a candid fact that he is not a ‘Stakeholder’, as per Section 31(1) of the I & B Code, 2016, in relation to the ‘Corporate Debtor’, this ‘Tribunal’, without any haziness, holds that the Appellant is not an aggrieved person coming within the ambit of Section 61(1) of the I & B Code, 2016, especially when he is not a privy to the Resolution Plan.”

4. He submits that the Applicant herein is not an Unsuccessful Resolution Applicant and he is in fact a Successful Resolution Applicant and hence, dismissing the application on the premise that the Applicant is an Unsuccessful Resolution Applicant and hence does not have locus, is erroneous.

5. As regards the jurisdiction of this Tribunal to recall its own Order, the Counsel relies on the judgement of the Hon’ble Supreme Court in Civil Appeal No.955 of 1985 between Budhia Swain and Ors. Vs. Gopinath Deb and Ors, wherein, the Hon’ble Supreme Court observed as follows:

“What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank Vs. M/s Satyam Fibres India Pvt. Ltd. 1996 (5) SCC 550. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order (i) obtained by fraud practised upon the Court, (ii) when the Court is misled by a party, or (iii) when the Court itself commits a mistake which prejudices a party. In A.R.

Antulay Vs. R.S. Nayak & Anr. AIR 1988 SC 1531 (vide para 130), this Court has noticed motions to set aside judgments being permitted where (i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented, (ii) a judgment was obtained by fraud, (iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision *ex debito justitiae* on proof of the fact that there was no service.”

6. The Counsel on the grounds 2 & 3 mentioned in the above judgement seeks this Tribunal to recall the Order. He contends that the Court was misled as regards the status of the Applicant as Unsuccessful Resolution Applicant which he is not.

7. The judgement of the Hon’ble NCLAT in IA 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020 between Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & Ors, was also relied upon in support of the contention that, this Tribunal has the power to recall its Order.

8. It can be seen that the Hon’ble NCLAT in the above mentioned judgement has held that, the judgements of the Hon’ble Supreme Court mentioned therein clearly lay down that there is a distinction between review and recall. It is held that the power to review is not conferred upon this Tribunal, but power to recall its judgement is inherent in this Tribunal, since inherent power of the Tribunal are preserved powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. It was also observed that power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of the judgement. It was categorically held that the power to recall of a judgment can be exercised by this Tribunal, when any procedural error is committed in delivering the earlier judgement. Obviously, the error pointed is not a procedural error. But by relying on the 1st cited judgement rendered by the Hon’ble Supreme Court, he seeks for recall of the Order.

9. A look at the brief facts of the case as are necessary and relevant would be beneficial. At the outset it can be said that the term ”unsuccessful” suits the applicant better than many. The Applicant nevertheless was a Successful Resolution Applicant, but he became unsuccessful in getting the Resolution Plan accepted due to his failure in fulfilling the conditions under the Plan which is to pay the amount provided for under the Plan.

10. Due to his inability to pay the amount within the given time, the Applicant has sought for extension of time for payment which was granted by this Tribunal. Even after expiry of the said time period, he could not fulfil the condition. Hence, the Applicant

moved another Application, seeking for further extension of 60 days time which was rejected, against which, an Appeal was preferred before the Hon'ble NCLAT and the Hon'ble NCLAT granted extension of 3 months during which period also, the Applicant could not pay the amount. Then, the Resolution Professional filed an IA, seeking fresh IRP which was allowed by this Tribunal against which also, an Appeal was preferred by the Applicant herein before the Hon'ble NCLAT and the Hon'ble NCLAT confirmed the Order passed by this Tribunal. Thereafter, the Applicant moved the Hon'ble Supreme Court and as submitted by the counsel, the case is pending before the Supreme Court.

11. After all these unsuccessful attempts made by the Applicant, he claims to be falling under the category of Successful Resolution Applicants by merely going on the technical interpretation that he became a Successful Resolution Applicant in the first instance which is a past story.

12. The Counsel could not satisfy us as to under what category, the Applicant who was once the Successful Resolution Applicant and could not fulfil the conditions of the Resolution Plan, would fall. The supreme court, in the above cited judgment, in fact used the term "unsuccessful resolution applicant" in respect of the resolution applicant who submitted his plan in response to the invitation and was in the fray. The applicant herein does not even fall under the definition of "unsuccessful resolution applicant" much less resolution applicant, since he did not submit any plan when invitation was made afresh. His grievance expressed through the counsel, at the time of arguments, as to what would happen to his earnest money, cannot be redressed by this tribunal in this application since it is beyond the scope of this application.

13. Hence, seeing no merits in the application, we dismiss the application, but not without observing that it is a frivolous application. We refrain from imposing costs, which this application deserves, out of mere sympathy, that he already sustained loss with regard to his earnest money and by considering this application as a desperate move. This application IA 1031/2023 is accordingly dismissed and disposed of."

11. The Adjudicating Authority allowed I.A. No. 305/HDB/2023 on 05.07.2023 and approved the resolution plan submitted by Respondent No. 3 against which the present appeal has been filed.

12. In this appeal, stay was granted by this Tribunal on 14.07.2023 which is reproduced as under:-

“The Bank of India (Financial Creditor) filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, (for short ‘The Code’) against Indu Projects Ltd. (Corporate Debtor) before the NCLT Hyderabad to which C.P. (IB) No.372/HDB/2018 was assigned. The said Application was admitted on 25.02.2019, Corporate Insolvency Resolution Process (‘CIRP’) was initiated and Moratorium under Section 14 of the Code was also imposed.

2. The Appellant (‘M/s. Earthin Projects Ltd.’) submitted the Resolution Plan which was approved by the Committee of Creditors (‘CoC’) and the Adjudicating Authority vide its Order dated 01.10.2021. At that time, the Moratorium which was imposed with the initiation of the CIRP dated 25.02.2019 was categorically ordered to have been ceased to have effect. The Appellant failed to fulfil the necessary conditions of the Resolution Plan, two weeks time was given to them and thereafter they filed one I.A. No.77/2022 on 02.02.2022 for further extension of 60 days time.

3. Pending this Application, a Meeting of the Lenders forming part of the Creditors, was held on 19.02.2022, in which they took various decisions regarding invocation of the Bank Guarantee, blacklisting of the Appellant and seeking 60 days more time for inviting fresh Expression of Interest (‘EoI’).

4. Apropos, I.A. No.283/2022 was filed by the RP on 28.02.2022 for seeking 60 days extension for inviting EoI and also for dismissal of the Application bearing I.A. No.77/2022 without impleading the Appellant as alleged.

5. I.A. No.77/2022 was dismissed by the Adjudicating Authority on 01.03.2022. The Order dated 01.03.2022 was challenged by the Appellant by way Comp. App. (AT) (CH) (Ins.) No.86/2022 which allowed on 13.04.2022 and further 90 days time was granted for payment but no payment was made during this period also. It is submitted by the Appellant that though the Order dated 01.03.2022 was set aside by the Order dated 13.04.2022, yet the RP had forfeited EMD of the Appellant Bank amounting to Rs.65Crores/-.

6. I.A. No.283/2022 was ultimately allowed on 05.09.2022 and 60 days time was granted. In this Order, the Adjudicating Authority directed the RP to start the CIRP afresh. This Order was challenged by the Appellant by way of Comp. App. (AT) (CH) (Ins.) No. 340/2022 before this Tribunal which was dismissed on 25.11.2022. The Order dated 25.11.2022 is under challenge by way of an Appeal by the Appellant bearing Civil Appeal

No.1133/2023 before the Hon'ble Supreme Court which is stated to be pending.

7. The RP then filed IA No.305/2023 seeking approval of the second Plan submitted by a consortium of Mr. B. Subba Reddy and Mr. C. Venkateswara Reddy which has been allowed by the Impugned Order dated 05.07.2023. It is also pertinent to mention that the Appellant filed IA No.103/2023 for recalling of the Order dated 19.06.2023, by which they had sought intervention in IA No.283/2022. However, the said Application was also dismissed by the Order of the same date i.e., 05.07.2023.

8. The Appellant has thus challenged both the Orders of 05.07.2023 by the present Appeal.

9. Counsel for the Appellant has submitted that once the Application under Section 7 was admitted and CIRP was initiated on 25.02.2019, as a necessary corollary, Order under Section 14 was also passed and Moratorium was imposed prohibiting all of the issues prescribed in Section 14(1) (a) & (d). It is submitted that when Order dated 01.10.2021 was passed then the Moratorium was lifted. It is further argued that the Order dated 01.10.2021 has not been recalled or set aside by any Court of law so far, therefore, in the presence of dated 01.10.2021, the second Order dated 05.07.2023 could not have been passed as there cannot be two Orders existing on record of allowing two separate Resolution Plans.

10. He has further argued that once the Moratorium was imposed on 25.02.2019 and lifted vide Order dated 01.10.2021 then it is required to be again imposed if it is to be lifted by virtue of the Order dated 05.07.2023 but the Order of imposition of Moratorium is conspicuous by its absence in any of the Order passed subsequent to 01.10.2021 much less in the Order which has been passed in I.A. No.283/2022 when the RP sought extension of time for inviting fresh EoI on the alleged failure of the Appellant for not complying with the Resolution Plan submitted by them which got the approval not only on the CoC but also of the Adjudicating Authority vide its Order dated 01.10.2021. It is submitted that if by virtue of the Order passed on 05.09.2022 in I.A. No.283/2022 fresh CIRP has been ordered to be initiated afresh, it was incumbent upon the Adjudicating Authority to have imposed the Moratorium as well otherwise there would be no importance of the Moratorium.

11. He has further argued that with the passing of the Order dated 01.10.2021 in their favour, a legitimate expectation vested

with the Appellant for the purpose of getting the Plan as they had undertaken to make the delayed payment with 8% interest but because of the Order passed in I.A. No.283/2022 behind their back and even dismissing their Application for impleadment, the Appellant could not bring all this facts to the Notice of the Court.

12. Counsel for the RP has denied all these allegations but keeping in view the fact that some arguable points arise in this Appeal, therefore, we, intend to issue Notice to the Respondents for a detailed hearing.

13. Let Notice be issued to the Respondents. At this stage, Sh. VVN Raju accepts Notice on behalf of the Respondent No. 2 (Corporate Debtor). Sh. HS Hredai accepts Notice on behalf of Respondent No. 3.

14. Let Notice be also issued to Respondent No. 4, the Erstwhile Committee of Creditors. Necessary requisites etc., and the process fee shall also be filed for the date already fixed. Counsel for Respondent No. 4 be also served through email which shall be provided by Counsel for the RP to the Registry by Monday i.e., 17.07.2023.

15. Counsel for the Appellant is directed to provide a complete Paper Book of this Appeal with all annexures in legible condition to both the Counsel for the Respondents within a period of 3 days. Counsel for Respondents may file their Reply on or before 19.07.2023. Reply, if any, may be filed by 26.07.2023. The Rejoinder on or before 31.07.2023. List this matter on 31st July, 2023 and this matter should be shown in the list of Hearing After Notice.

Till the next date of hearing the further proceedings shall remain stayed.”

12. The Respondent No. 3 challenged the order dated 14.07.2023 before the Hon’ble Supreme Court vide Diary No. 39897 of 2023 which was disposed of vide its order dated 13.10.2023 which is reproduced as under:-

“1 Delay condoned.

2 Mr Chander Uday Singh, senior counsel states that the order of stay which has been granted by the National Company Law Appellate Tribunal results in an abuse of process having due regard to the fact that the only basis for obtaining such a stay is that an appeal is pending before this Court arising out of a previous order.

3 Since the proceedings are still pending before the NCLAT, we are not expressing any view on the merits. However, we grant permission to the appellant to apply before the NCLAT for modification of the order of stay or for vacating the stay.

4 NCLAT may take up the application with all reasonable dispatch preferably within a period of two weeks from the date when the application for modification of the order of stay or for vacating the stay is filed.

5 The appeal is, accordingly, disposed of.

6 Pending applications, if any, stand disposed of”

13. Pursuant thereto, the Respondent No. 3 filed an application for vacation of stay bearing I.A. No. 1124 of 2023 in which notice was issued and ultimately the appeal itself was heard and judgment was reserved.

14. The resume of the afore-narrated facts is that the resolution plan submitted by the Appellant was approved on 01.10.2021 in I.A. No. 861 of 2020 but it ought to have been implemented within 90 days. The Appellant filed I.A. No. 77 of 2022 for extension of 60 days to implement the resolution plan which was dismissed on 01.02.2022. The order dated 01.02.2022 was challenged by the Appellant by way of appeal i.e. CA (AT) (Ins) No. 86 of 2022 which was disposed of by this Appellate Tribunal on 13.04.2022 providing the Appellant a further period of three months’ time for implementation of the resolution plan. Since, the resolution plan was not implemented by the Appellant, therefore, the RP filed an application i.e. I.A. No. 283 of 2022 before the Adjudicating Authority for extension of CIRP period of 60 days which was allowed on 05.09.2022. This order was challenged by the Appellant by way of appeal i.e. CA (AT) (Ins) No. 340 of 2022 but the said appeal was dismissed on 25.11.2022 holding that the Adjudicating Authority was justified in directing afresh CIRP and further held that the Appellant has exhausted all its legal

remedies for not complying with the extended timelines. The order dated 25.11.2022 was challenged before the Hon'ble Supreme Court in Civil Appeal No. 1133 of 2023 by the Appellant which came to be dismissed as withdrawn on 04.12.2023 and the prayer made by the Appellant to keep all the contentions left open was not adverted to in the said order. The RP filed I.A. No. 305 of 2023 for approval of the resolution plan submitted by Respondent No. 3 in which the Appellant filed I.P. No. 8 of 2023 for intervention but it was dismissed on 19.06.2023 and further the Appellant filed I.A. No. 1031 of 2023 for recalling of the order dated 19.06.2023 passed in I.P. No. 8 of 2023 which was also dismissed on 05.07.2023 and I.A. No. 305 of 2023 was allowed and the resolution plan submitted by the Respondent No. 3 was approved.

15. The Appellant has now, by way of the present appeal, challenged the order dated 05.07.2023. Counsel for the Appellant has argued that the CIRP was initiated on 25.02.2019 and as a necessary corollary, order under Section 14 was passed which was lifted when the resolution plan of the Appellant was approved on 01.10.2021 and has not been imposed thereafter when the CIRP was again initiated in terms of the order passed in I.A. No. 283 of 2022. It is further submitted that the order dated 01.10.2021 passed in I.A. No. 861 of 2020 approving the resolution plan submitted by the Appellant has neither been recalled nor set aside by any Court of law, therefore, the order dated 01.10.2021 and 05.07.2023 could not have been passed as there cannot be two orders existing on record allowing two separate resolution plans. It is also submitted that while passing the order dated 01.10.2021, there was a legitimate expectation vested with the Appellant for implementation of the plan

as they had undertaken to make the delayed payment with 8% interest but because of the order passed in I.A No. 283 of 2022 dismissing the application for impleadment, the Appellant could not bring all the facts to the notice of the Court. It is further submitted that the appeal at the instance of the Appellant has been filed as the Appellant is an aggrieved person, which is a sine qua non, for the purpose of invoking Section 61 of the Code. It is argued that the Appellant being the successful resolution applicant, paid Rs. 65 Crores towards the resolution plan which was approved by the order dated 01.10.2021 and the said plan was binding and irrevocable between the CoC and SRA. In this regard, reliance has been placed upon a decision of this Court rendered in the case of Kalinga Allied Industries India Pvt. Ltd. Vs. CoC, 2022 SCC Online NCLAT 1618. It is also argued that afresh CIRP has been ordered in violation of provision of the Code. It is further argued that the object of the Code is to maximize the value of the assets of the Corporate Debtor. The Respondent No. 3 has offered Rs. 401 Cr. vide in its plan whereas the Appellant had offered Rs. 612 Cr. and is ready to honour all the financial commitments within the time prescribed by the Court. It is also argued that the resolution plan of the Appellant protects the interest of the stakeholders better than the resolution plan of the Respondent No. 3 because the Appellant is ready and willing to pay the accrued interest on delayed payment.

16. On the other hand, Counsel for the Respondent No. 1 and 2 has challenged the maintainability of the appeal on the ground of locus standi of the Appellant on the ground that unsuccessful resolution applicant has no locus to assail a resolution plan or its implementation because he is not a

stakeholder as per Section 31(1) of the Code. In this regard, reliance has been placed upon a decision of this Tribunal rendered in the case of M.K. Rajagopalan Balaji Villav Vs. S. Rajednran, RP Vasan Health Care Pvt. Ltd.& Ors., CA (AT) (Ins) No. 58 of 2023. It is also submitted that the present appeal is yet another attempt of the defaulted and failed resolution applicant who wanted to derail the resolution plan and payment to stakeholders. It is argued that the Appellant has failed to fulfill the resolution plan even after being granted multiple extensions for fulfillment of the resolution plan submitted by it which is evident from the orders passed in I.A. No. 77 of 2022 wherein time of two weeks was granted initially for making payments and on 21.02.2022 further one week time was granted for making payments but the Appellant has failed to make any payment and upon failure and repeated request for extension, the Adjudicating Authority vide its order dated 01.03.2022 rejected the said application and directed the RP to forfeit the EMD. It is further submitted that the order was challenged by way of appeal i.e. CA (AT) (Ins) No. 86 of 2022 in which three months' time was granted from 13.04.2023 to pay the amount as per the resolution plan alongwith interest @ 8 % from 23.01.2022. The said time expired on 12.07.2022 but the Appellant did not make any payment, therefore, despite sufficient opportunity, the Appellant consistently failed to adhere to the timelines granted by the Tribunal and by operation of law ceased to be resolution applicant and its plan stood terminated. It is further argued that even against the order passed in CA (AT) (Ins) No. 86 of 2022 on 13.03.2022 which was challenged by one of the operational creditor, namely, M/s Vishal Nirmiti Pvt. Ltd. before the Hon'ble

Supreme Court, which was dismissed and it was observed that three months granted to the Resolution Applicant (Appellant herein) to pay the residual balance amount in the designated account alongwith overdue interest has already expired. No payment has been made. The Hon'ble Supreme Court has further directed that the Adjudicating Authority may proceed further with the matter in accordance with law. It is submitted that the conduct of the Appellant and its failure to pay the promised funds was noticed in the said order. It is argued that after dismissal of the aforesaid appeal, the RP filed I.A. No. 283 of 2022 for extension of time for completion of the CIRP proceedings which were revived after the failure of the previous resolution plan on account of failure of the Appellant to make the payment as per the order dated 01.10.2021. The order passed in I.A. No. 283 of 2022 on 05.09.2022 was challenged in appeal i.e. CA (AT) (Ins) No. 340 of 2022 before this Tribunal which was dismissed by a detailed order on 25.11.2022 and the issues raised herein have been decided against the Appellant against which the Appellant filed Civil Appeal No. 1133 of 2023 before the Hon'ble Supreme Court which has been dismissed as withdrawn on 04.12.2023 without getting any permission to raise the contention anywhere else. It is also argued that the resolution plan submitted by the Respondent No. 3, approved by the Adjudicating Authority, did not contravene any provisions of the law nor there has been any material irregularity.

17. It is further submitted that the argument of the Appellant regarding afresh CIRP pursuant to order passed in I.A. No. 283 of 2022 dated 05.09.2023 based upon JLM dated 19.01.2022 is without any substance

because the appeal preferred by the Appellant against the order dated 05.09.2022 bearing CA (AT) (Ins) No. 340 of 2022 was dismissed and further an appeal against the same before the Hon'ble Supreme Court has been dismissed as withdrawn without getting permission to raise the contentions contained therein, therefore, this chapter has been finally closed. It is submitted that the Appellant is therefore estopped from raising all the issues herein again on the principle of constructive res judicata. It is further submitted that contention of the Appellant in relation to non-imposition of the fresh moratorium, pursuant to the order dated 01.10.2021, by which the resolution plan of the Appellant was approved in I.A. No. 861 of 2021 is in consequential. It is submitted that the interlocutory application for continuation of CIRP and issuance of fresh From G was in pursuance of the fulfillment of the original order of the Adjudicating Authority admitting the Corporate Debtor into CIRP and for extension/continuation of the CIRP proceedings in the main company petition CP (IB) 372/7/HDB/2018 vide order dated 25.02.2019 and therefore, the extension and continuation of moratorium, as ordered originally vide order dated 25.02.2019, will continue to be in force and there is no need for fresh order declaring moratorium. The contention having been raised by the Appellant is an afterthought to delay the conclusion of the CIRP. It is further submitted that the order of moratorium stood revived on the extension of the CIRP which was granted by the order passed in I.A. No. 283 of 2023 dated 05.09.2023, therefore, it was only an eclipse on the moratorium during the period from 01.10.2021 to 05.09.2023 on account of the plan approval in the first instance and upon the failure of

the said resolution plan and extension of CIRP period, the moratorium stood revived automatically.

18. As regards, the submission of the Appellant is that he is ready and willing to implement his failed resolution plan alongwith 8% interest, reference has been made to the order passed in CA (AT) (Ins) no. 340 of 2022 in which it has been held that there is no specific provision authorizing the Adjudicating Authority to consider extension of timelines for the purpose of extending the time for making payment. In the end, it is submitted that it has been held by the Hon'ble Supreme Court repeatedly that commercial wisdom of the CoC is supreme and neither the Adjudicating Authority nor the Appellate Authority can trespass into the commercial wisdom of the CoC. The case of the Appellant came to an end with the non-compliance on their part in the implementation of the submitted resolution plan and thus, the Appellant has no locus standi to challenge the impugned order.

19. Counsel for the Respondent No. 3 has also submitted that since the Appellant has failed to implement the resolution plan within the extended time period afforded by the Tribunal, therefore, the Appellant is not a stakeholder within the ambit of Section 31(1) of the Code and has no locus standi to challenge the impugned order. He has also relied upon the decision of this Court in the case of M.K. Rajagopalan Balaji Villa (Supra). It is further submitted that the Appellant has failed to establish that the Respondent No. 2 has committed any material irregularity during the CIRP. The allegations of the material irregularity in relation to the fresh CIRP has been negated in the order dated 25.11.2022 passed in CA (AT) (Ins) No. 340 of 2022 more

particularly in issue no. 1 and 2. It is further submitted that the appeal filed against the order dated 25.11.2022 before the Hon'ble Supreme Court has been withdrawn by the Appellant itself and has not been given permission by the Hon'ble Supreme Court to raise the contentions again. It is further submitted that the offer made by the Appellant of a higher amount is of no avail and in this regard, reliance has been placed upon a decision of the Supreme Court rendered in the case of E S Krishnaurthy & Ors. Vs. M/s Bharath Hi Tech Builders Pvt. Ltd., Civil Appeal No. 332 of 2020. It is further argued that the issues raised by the Appellant herein i.e. the order of the Adjudicating Authority directing the 2nd Respondent to conduct fresh CIRP, failed to declare a moratorium under Section 14 and rendering the fresh CIRP illegal, no judicial proceedings setting aside the order dated 01.10.2021 passed in I.A. No. 861 of 2020 and that the Joint Lenders Meeting held on 19.01.2022 was illegal and resolution passed is non-est, were available to the Appellant to raise at the time of filing the appeal bearing CA (AT) (Ins) No. 340 of 2022 challenging the order dated 05.09.2022 but since no challenge was made, therefore, as per Explanation IV of Section 11 of the CPC which provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit would apply and in this regard reliance has been placed upon the orders passed in S.P. Propbuild LLP Vs. Rabindra Kumar Mintri, CA (AT) (Ins) No. 1529 of 2022 in which it has been held that principle of res judicata applies to different stages in the same proceedings as well. Reliance has also been placed upon a decision of the Hon'ble Supreme

court in the case of Forward Construction Co. and Ors. Vs. Prabhat Mandal, Andheri & Ors. (1986) 1 SCC 100. It is further submitted that even the IBC does not contemplate any occasion for the Adjudicating Authority to pass a fresh order declaring moratorium especially during the CIRP and the order of afresh CIRP was to continue the CIRP on account of failure of resolution plan submitted by the Appellant. It is further submitted that regarding the absence of the order for setting aside the order dated 01.10.2021 passed in I.A. No. 861 of 2020 is concerned, the Tribunal in its order dated 25.11.2022 has held that the Appellant cannot be given any further time to make payment rendering the order dated 01.10.2021 unimplementable and inexecutable. It is also submitted that that in CA No. 3660 of 2022, the Hon'ble Supreme Court while dismissing the appeal filed by the Operational Creditor against the order dated 13.04.2022 has observed that the Appellant has exhausted all legal remedies in view of failure to comply with the extended timelines permitted vide order dated 13.04.2022.

20. In so far as the legality of the Joint Lenders Meeting which was conducted on 19.01.2022 is concerned, it is submitted that it preceded the filing of I.A. No. 283 of 2022 and the Appellant had also challenged the order passed in I.A. No. 283 of 2022 which has been dismissed vide order dated 25.11.2022 passed in CA (AT) (Ins) No. 340 of 2022, therefore, the Appellant cannot raise this plea again in the present proceedings.

21. Counsel for the Respondent No.4 has also submitted that the Appellant could not have filed single appeal against two orders passed in I.A. No. 305 of 2023 and I.A. No. 1031 of 2023 and that it has no locus standi to challenge

the order of approval of the resolution plan and reliance has been placed again on the same judgment M.K. Rajagopalan (Supra). It is further submitted that the Appellant has mis-interpreted the word afresh used in the order passed in I.A. No. 283 of 2022 which only means extension of the first CIRP. Counsel for the Respondent No. 4 has also submitted that all the issues which have been raised now have already been decided or could have been taken earlier, therefore, it is hit by principle of constructive res judicata. It is further submitted that wisdom of the CoC (4th Respondent) is supreme and cannot be challenged. The resolution plan of the Respondent No. 3 has been accepted by the Respondent No. 4 with 100 % voting share. The Respondents have thus prayed that the present appeal may be dismissed with costs.

22. In rebuttal, Counsel for the Appellant has submitted that the principle of constructive res judicata is not applicable because the Appellant has raised the question of law and it is further submitted that there is an irregularity in the proceedings because the moratorium once lifted was never imposed again.

23. We have heard Counsel for the parties and perused the record with their able assistance.

24. This case has a chequered history which has already been explained and narrated herein before. There is no doubt that resolution plan submitted by the Appellant was approved in I.A. No. 861 of 2020 on 01.10.2021 but there is no doubt as well that the said plan was ought to have been implemented by the Appellant within 90 days. It is also not in question that on account of its failure to implement the resolution plan, the Appellant filed I.A. No. 77 of 2022 and sought extension of 60 days but the said application was not allowed as it

was dismissed on 01.02.2022. The order passed on 01.02.2022 was further challenged by the Appellant in CA (AT) (Ins) No. 86 of 2022 in which the Appellant was granted three months' time for payment of residual balance amount with interest @ 8%, from the order dated 13.04.2022 till 12.07.2022 but it was still not complied with and this fact has been noticed by the Hon'ble Supreme Court in its order dated 29.08.2022 passed in Civil Appeal No. 3660 of 2022 in which the order dated 13.04.2022 was challenged by one operational creditor, M/s Vishal Nirmiti Pvt. Ltd.. In such circumstances, when the Appellant has miserably failed to implement the resolution plan, the RP filed I.A. No. 283 of 2022, praying therein for extension of period of CIRP of 60 days, which was allowed on 05.09.2022. In this order, the term used by the Adjudicating Authority was 'afresh CIRP' whereas CIRP had already been initiated vide order dated 25.02.2019 when CP (IB) No. 372/7/HDB/2018, filed by Bank of India under Section 7 of the Code was admitted. Thus, in our considered opinion, the word 'afresh CIRP' is the continuation of the CIRP. The Appellant had challenged the order dated 05.09.2022 by which afresh CIRP was ordered by way of CA (AT) (Ins) No. 340 of 2022 but the said appeal, by a detailed order was dismissed on 25.11.2022 and as a matter of fact, it has been observed that the Appellant has exhausted legal remedies on failure to comply with extended timelines. The matter does not rest here because the order dated 25.11.2022 was further challenged by way of Civil Appeal No. 1133 of 2023 before the Hon'ble Supreme Court which was ultimately dismissed as withdrawn on 04.12.2023 without getting any order that all the contentions raised in the appeal may be left open. It means that all the

contentions which were made in civil appeal were closed by the Hon'ble Supreme Court and in pursuance of the order passed in I.A. No. 283 of 2022, the proceedings were continued and the RP filed I.A. No. 305 of 2023 for approval of the resolution plan submitted by the Respondent No. 3 in which the Appellant sought intervention through I.P. No. 8 of 2023 which was dismissed on 19.06.2023 and then the Appellant filed I.A No. 1031 of 2023 for recalling of the order dated 19.06.2023 which too was dismissed on 05.07.2023 and ultimately on the same date i.e. on 05.07.2023 the application I.A. No. 305 of 2023 was allowed and the resolution plan submitted by the Respondent No. 3 was approved. The contention of the Appellant that the order dated 01.10.2021 passed in I.A No. 861 of 2020 has not been set aside or recalled is not correct because on account of the failure of the Appellant in complying with the payment schedule (timelines) and in the absence of any further extension of time it automatically came to an end and as a result thereof, the RP had to file the application bearing I.A. No. 283 of 2022 for the purpose of extension of time of 60 days for completion of CIRP and the permission was granted. The said order was challenged by the Appellant by way of appeal i.e. CA (AT) (Ins) No. 340 of 2022 but remained unsuccessful and the order passed in CA (AT) (Ins) No. 340 of 2022 has also been upheld by the Hon'ble Supreme Court when the Appellant's Civil Appeal No. 1133 of 2023 was withdrawn. As regards the reimposition of moratorium under Section 14 is concerned, the Appellant has raised a technical plea because moratorium is imposed once and with the failure of the Appellant in complying with the terms and conditions of the resolution plan and extension of time by

the Tribunal to the RP to complete the CIRP afresh, the moratorium imposed initially deemed to have been continued. We also do not find any error in so far as the meeting of the JLM is concerned, especially when all these issues either have been decided or available to the Appellant much before the filing of this appeal, in the earlier litigation, which has also been closed against the Appellant when the appeal filed by the Appellant bearing CA (AT) (Ins) No. 340 of 2022 was dismissed by this Tribunal with a detailed order and the said order has now been upheld by the Hon'ble Supreme Court in appeal bearing Civil Appeal No. 1133 of 2023 because the Appellant has withdrawn the appeal. We are also of the considered opinion that the Appellant is not a stakeholder within the ambit of Section 31(1) of the Code qua the Corporate Debtor after having been unsuccessful as a resolution applicant and has no locus standi to file the present appeal and in this regard, reliance has been placed upon the judgment rendered by this Tribunal in the case of 'Ravi Shankar Vedam vs. Tiffins Barytes Asbestos and Paints Limited and Others' where it has been held that the Promoter / Shareholder of the Corporate Debtor Company has no locus to challenge the Plan, after its approval. The relevant Paragraphs of the NCLAT Judgement in 'Ravi Shakar Vedam', pertinent to the issue of 'locus' of the Shareholder / Promoter in challenging the approval of the Plan are reproduced as hereunder:

"27. From the aforementioned observations, it is clear that once the affairs of the Corporate Debtor was handed over to the IRP, any action taken by Shareholder, even if a Majority shareholder, would not be maintainable. 28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role

and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has 'no locus standi' to challenge the Resolution Plan."

25. On an Appeal before the Hon'ble Supreme Court in CA No. 5516 / 2023, the Hon'ble Supreme Court vide Order dated 06.11.2023 dismissed the Appeal and hence, the issue whether a shareholder has locus to challenge the Resolution Plan has attained finality.

26. Thus, from the aforesaid discussion, we have reached to the conclusion that there is hardly any merit in the present appeal which calls for interference, therefore, the present appeal is hereby dismissed though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

12th January, 2024

Sheetal

Company Appeal (AT) (Insolvency) No. 201/2023