

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1072 of 2023**

[Arising out of Order dated 11.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Court-I, Kolkata in IA No. 413/KB/2023, IA No. 557/KB/2023, IA No.428/KB/2023 and IA No.557/KB/2023 in C.P.(IB) No.294-295/KB/2021]

**In the matter of:**

**Authum Investment and Infrastructure Ltd.**

**....Appellant**

**Vs.**

**Rajneesh Sharma**

**...Respondents**

**Administrator of SREI Equipment Finance Ltd.  
and SREI Infrastructure Finance Ltd. & Ors.**

**For Appellant:**

Mr. Kapil Sibbal and Mr. Ramji Srinivasan, Sr. Advocates with Mr. Mahesh Agarwal, Ms. Geetika Sharma, Mr. Ankit Paleja, Mr. Nikhil Kaul, Mr. Pranjit Bhattacharya, Ms. Namrata Rastogi, Advocates.

**For Respondents:**

Mr. Krishnendu Datta, Sr. Advocate with Mr. Navneet R., Mr. V.P. Singh, Mr. Raghav Shankar, Mr. Rahul Gupta, Mr. Bharat Makkar, Ms. Praneeta, Ms. Neha Agarwal, Advocates for R-1.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Saurav Panda, Mr. Vaijyant Paliwal, Ms. Charu Bansal, Ms. Arushi Chandra, Mr. Mehek Nayak, Ms. Rashi Sharma, Ms. Diksha Gupta, Advocates for CoC.

Mr. Abhinav Vasisht, Sr. Advocate with Mr. Raunak Dhillon, Mr. Dhananjay Kumar, Mr. Anush Mathkar, Ms. Annie Jain, Mr. Nihaad Dewan, Advocates for R-2/NARCL.

Shri Gopal Jain, Senior Advocate for RBI.

**JUDGMENT  
(05<sup>th</sup> January, 2024)**

**Ashok Bhushan, J.**

This Appeal has been filed challenging the order dated 11.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal),

Kolkata Bench, Court-I, Kolkata in IA No. 413/KB/2023, IA No. 557/KB/2023, IA No.428/KB/2023 and IA No.557/KB/2023 in C.P.(IB) No.294-295/KB/2021. By the impugned order, the Adjudicating Authority has rejected IA No. 413/KB/2023 and IA No.557 /KB/2023 filed by the Appellant raising of objection to Resolution Process of the Corporate Debtors- 'SREI Infrastructure Finance Limited' (SIFL) and 'SREI Equipment Finance Limited' (SEFL). By the impugned order in IA No. 428/KB/2023 and IA No. 434/KB/2023, Adjudicating Authority has approved the Resolution Plan submitted by 'National Asset Reconstruction Company Limited' (NARCL).

2. Brief facts of the case to be noticed for deciding the Appeal are:-

2.1. The Reserve Bank of India (RBI) superseded the board of SIFL and SEFL by order dated 04.10.2021 and appointed Respondent No.1- Mr. Rajneesh Sharma as Administrator to manage its affairs. Adjudicating Authority vide order dated 08.10.2021 initiated Corporate Insolvency Resolution Process (CIRP) against SIFL and SEFL under Section 227 of the IBC and the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Services Providers and Application to Adjudicating Authority) Rules, 2019. The CIRP of both SIFL and SEFL was consolidated by order of the Adjudicating Authority dated 14.02.2022. The Administrator- Respondent No.1 who was authorised to act as Resolution Professional invited Expressions of Interest (EoI) on 25.02.2022. The Appellant as well as Respondent No.2 submitted their EoIs. Time limit for submission of the draft Resolution Plan was extended till 02.12.2022. On 27.12.2022, Challenge

Process Note was issued by Respondent No.1 to conduct a challenge mechanism in terms of Regulation 39(1A)(b) of the CIRP Regulations for determination of NPV of financial proposals. The Appellant and the Respondent No.2 submitted their Resolution Plans by 31.12.2022. On 03.01.2023, the Respondent No.2 issued an e-mail communicated two clarifications with regard to Resolution Plan. The e-mail dated 03.01.2023 was sent at 12.49 P.M. before the meeting of the Committee of Creditors (CoC) which was scheduled to take place on 2.00 P.M on 03.01.2023. In the meeting of the CoC held on 03.01.2023, Challenge Process was undertaken and five rounds of Challenge Process was held and in round five, NPV of the Respondent No.2 was determined as Rs. 5,555.58 Cr. and NPV of the Appellant was determined as Rs. 5,526 Cr. The minutes recorded that the Respondent No.2 has highest NPV. In the 30<sup>th</sup> CoC meeting the Respondent No.1 presented final Resolution Plans of all PRAs and representatives were invited for discussion. CoC extended time for PRAs to submit final Resolution Plan incorporating the comments/suggestions of CoC by 14.01.2023 which time period was further extended to 18.01.2023. On 18.01.2023, Appellant as well as Respondent No.2 submitted their final Resolution Plans. The Process Advisors of CoC provided a copy of the document titled "Discussion on Evaluation Matrix Parameters for consolidated CIRP of SEFL and SIFL evaluating all three final resolution plans received from Appellant as well as Respondent No.2. On 13.02.2023, an addenda to Minutes of CoC Meeting dated 03.01.2023 was issued on the basis of comments received from SBI Capital Markets (CoC Process Advisors). The voting on the plan was concluded on 15.02.2023 and the plan

submitted by Respondent No.2 was approved by the CoC by 84.86% votes. The Appellant filed an IA No.413 of 2023 on 17.02.2023 complaining about incorrect scores awarded for the Resolution Plan submitted by Applicant towards the 'equity allotment to financial creditors'. Another IA No.295/KB/2023 was filed by certain debenture holders of Corporate Debtors in which Appellant was also impleaded, the Resolution Plan of the Respondent No.2 was also annexed, the Appellant being made party to the said application, he had also received the copy of the Resolution Plan of the Respondent No.2. After receipt of Resolution Plan of the Respondent No.2, Appellant filed IA No. 577 of 2023 challenging the computation of net present value of the financial proposals submitted by the Respondent No.2. In the application, declaration was also sought that the plan submitted by the Respondent No.2 is non-compliant with Section 30(2) of the IBC. Adjudicating Authority, after hearing the parties by order dated 11.08.2023 rejected IA No. 413/KB/2023 and IA No. 557/KB/2023 filed by the Appellant and approved the Resolution Plan submitted by Respondent No.2, aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Kapil Sibbal and Shri Ramji Srinivasan, Learned Senior Counsel for the Appellant, Shri Krishnendu Datta, Learned Senior Counsel for the Respondent No.1, Shri Arun Kathpalia, Learned Senior Counsel for the CoC, Shri Abhinav Vasisht, Learned Senior Counsel for the Respondent No.2- NARCL and Shri Gopal Jain, Learned Senior Counsel for the RBI.

4. Shri Kapil Sibbal, Learned Senior Counsel appearing for the Appellant submits that the Adjudicating Authority committed error in rejecting IA No.413/KB/2023 and IA No. 557/KB/2023 filed by the Appellant. It is submitted that in IA No.413/KB/2023, Appellant has raised valid grievance of non-allocation of marks to the Appellant on equity allotment to Financial Creditors whereas the Resolution Plan as submitted on 18.01.2023 contemplated equity allotment in lieu of profit sharing at the option of the Financial Creditors. Appellant having offered equity allotment to Financial Creditors in its Resolution Plan dated 18.01.2023, Appellant was entitled to receive five marks and on receipt of five marks Appellant would have become H-1 Resolution Applicant. Declaring Respondent No.2 as H-1 bidder was not in accordance with evaluation matrix as issued by the CoC. The Resolution Plan has to be evaluated as per the evaluation matrix which is the statutory requirements under Regulation 36B (3). Under the evaluation matrix, Appellant was entitled for allocation of five marks he having offered equity allotment to the Financial Creditors. Denial of five marks to the Appellant resulted in violation of the whole process leading to approval of the Resolution Plan by the CoC. The CoC could not apply its commercial wisdom since marks to the Appellant were not computed as per the evaluation matrix. Counsel for the Appellant further submitted that in IA No. 557 of 2023, Appellant has raised objection to NPV calculation of the Respondent No.2 who in its Resolution Plan has prayed for relaxation and computation of NPV to the Respondent No.2 was done on the relax criteria. Exemption was granted to NARCL on 13.02.2023 which is apparent from Annexure to the CoC meeting dated 03.01.2023 issued on 13.02.2023 only. NARCL's

Resolution Plan includes part payment to the Financial Creditors by way of issuance of the security receipts. As per the evaluation matrix, 60% discounting rate was applicable on the security receipts whereas the NPV of the Appellant on the security receipts have not been computed with 60% discounting. Security receipts has been discounted under the heading “*first pari-passu secured with committed repayment schedule*” whereas ‘security receipt’ which is defined under SARFAESI Act, 2002 covered the security receipt submitted by Respondent No.2 and computation of NPV with regard to security receipts submitted by Respondent No.2 was not as per the evaluation matrix which is binding on all Resolution Applicants. Definition of ‘security receipt’ under the SARFAESI Act, 2002 defines security receipt in one manner and there can be no difference in definition of security receipt. Security receipts submitted by Respondent No.2 ought to be discounted at 60% and cannot fall under the category of “*first pari-passu secured with committed repayment schedule*” or “*any other instruments with committed repayment schedule*”. Resolution Plan of NARCL if correctly scored as per the evaluation matrix, the NPV of the NARCL shall fall from Rs.5555 Crores to Rs.3,396 Crores and the Appellant would have the highest NPV and it was the Appellant who is entitled to declare SRA. NPV calculation of NARCL being incorrect the whole process is vitiated. The CoC is also obliged to consider the Resolution Plan as per the evaluation matrix issued by the CoC. Resolution Plan submitted by NARCL is conditional and uncommitted. The commercial wisdom of the CoC cannot condone the material irregularity. Material irregularity was committed in computing the NPV of Respondent No.2 which calculation was not as per the evaluation

matrix. Decision of the CoC which is not in accordance with evaluation matrix can very well be interfered with by NCLAT and this Appellate Tribunal as per the law laid down by the Hon'ble Supreme Court in ***"M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder & Anr.- (2023) SCC OnLine SC 574"*** where it was held that when all relevant information have not been made available to the CoC, Commercial wisdom of the CoC shall not come into existence. Appendix to CoC meeting 03.01.2023 issued on 13.02.2023 is not in nature of verification but records relaxation granted to NARCL seeking exemption from applying 60% discounting to SRs. It is submitted that the Adjudicating Authority committed error in not advertent to relevant facts of the case and erroneously approved the Resolution Plan submitted by the Respondent No.2. It is submitted that it was the Appellant who had the highest NPV and was entitled to declare as H-1.

5. Learned Counsel appearing for Respondent No.2 refuting the submission of Counsel for the Appellant submits that the order passed by the Adjudicating Authority dated 11.08.2023 does not suffer from any error as the Resolution Plan submitted by NARCL was approved by the Consolidated CoC in accordance with the RFRP, Challenge Process Document and Evaluation Matrix. It is submitted that the commercial wisdom of the CoC in approving the Resolution Plan with overwhelming majority is not justiciable. Consolidated CoC is comprised of 44 Financial Creditors consisting of all major and public sector banks, foreign lenders and leading financial institutions which are led by seasoned bankers and lenders who deal and transact in all kinds of financial instruments and

weigh the commercial effects. Challenge Process was completed in five rounds on 03.01.2023 in which NPV of Respondent No.2 was declared as highest as Rs.5555 Crores as opposed to the Appellant's NPV which was Rs.5526. The CoC as per clause 3.3 of the Process Document had reserved its right to approve any Resolution Plan as it deemed fit in its commercial wisdom, notwithstanding whether or not the resolution plan has highest NPV. The voting on the Resolution Plans took place between 21.01.2023 and 14.02.2023 during which CoC members carried out their own internal deliberations on the feasibility and viability of each Resolution Plan before casting their votes. SBI Capital Markets were CoC Process Advisors who has correctly evaluated the NPV as per the evaluation matrix and placed the same before the CoC, not only the evaluation of the Resolution Plan but scoring marks by each Resolution Applicant falls within the commercial wisdom of the CoC. Scoring /marks awarded to each plan by the consolidated CoC on the basis of self certification by Resolution Applicants and comments of CoC Process Advisors falls within the commercial wisdom of the CoC. The Appellant in this Appeal as well as in the application filed before the Adjudicating Authority sought to challenge the commercial wisdom of the CoC in approving the Resolution Plan. The instruments which was offered by NARCL have been correctly evaluated and scored as 'committed instruments' by the Consolidated CoC in accordance with the evaluation matrix. The 'committed instruments' has been defined under Challenge Process Document. The submission of the Appellant that 'security receipts' offered by NARCL in its Resolution Plan fall within the category of uncommitted instruments cannot be accepted. Vanilla Security Receipts



which are generally considered to be uncommitted instruments but in the present case, the Respondent No.2 has submitted committed instruments which has fixed redemption date. It is submitted that the Respondent No.2 has issued a clarification by e-mail dated 03.01.2023 before meeting of the CoC held on 03.01.2023. Security Receipts submitted by Respondent No.2 in its Resolution Plan are secured, have a fixed repayment schedule from one to five years and provide a direct recourse to the assenting Financial Creditors unlike plain security receipts. CoC had not granted any relaxation or exemption to the Respondent No.2. The Appellant has unlawfully and illegally accessed NARCL's Resolution Plan through two debenture holders who has filed IA being IA No.464 of 2023 in which Appellant was deliberately impleaded as Respondents so as to make available plan to Respondent No.2. Resolution Plan of the Appellant was a confidential document and could not have been given to other Resolution Applicants, debenture holders with an ulterior motives and conspicuously made available Resolution Plan of the Respondent No.2 to the Appellant. Appellant's case that they are entitled for five marks for the purported equity offered by them is wholly unsubstantiated and incorrect. The CoC has not rightly awarded any points to the Appellant on equity. As per the Challenge Process Document, financial proposal during Challenge Process was to be unconditional and irrevocable and cannot be modified in any manner subsequent to the Challenge Process. Resolution Plan submitted by the Appellant on 31.12.2022 as well as on 05.01.2023 did not contain any provision for equity allotment to the Financial Creditors. Even the plan submitted by the Appellant on 14.01.2023 did not contain any provision for equity allotment

and it was only on 18.01.2023 plan of the Appellant by surreptitiously changed its financial proposal by including a choice between the profit sharing and equity allotment. The option of equity offered has rightly not been considered by the CoC and no marks have been awarded to the Appellant. It is further to notice that even as per the Resolution Plan submitted on 18.01.2023, option was given to the CoC to elect the fresh equity allotment or profit sharing. CoC has never elected to accept equity allotment there is no occasion to allot any marks to the Appellant. Further, the value of the equity offered by the Appellant i.e. Rs. 200 Crores does not meet the minimum Rs.250 Crores threshold as specified in the evaluation matrix for the award of points.

6. Shri Arun Kathpalia, Learned Senior Counsel appearing for Consolidated Committee of Creditors submits that in the Challenge Process Document, the factor to identify NPV was detailed. He has referred to Challenge Process Note dated 27.12.2022. The NARCL in their Resolution Plan submitted by 31.12.2022 has changed their proposal. They submitted security receipt by committed repayment schedule, hence, discounting @ 60% was not applicable. In the earlier Resolution Plan although there were requests for relaxation by the Respondent No.2 which relaxation was never considered and granted by the CoC. The Respondent No.2 by its e-mail dated 03.01.2023 has sent clarification which was prior to the start of bidding process. Clarification dated 03.01.2023 sent by the Respondent No.2 indicated that the document has committed repayment schedule. The NPV of the Appellant of the Respondent No.2 was calculated treating the

instruments as committed repayment schedule which is in accordance with the Process Document, the NPV calculation of a Resolution Applicant is in the domain of the CoC advisors which has calculated NPV as reflected in the CoC meeting dated 03.01.2023. NPV calculation as finalised by the CoC is not justiciable. The Appellant was not entitled for any marks on equity. No marks was rightly awarded to the Appellant on offer of equity. In the Resolution Plan, Appellant has proposed profit sharing. Profit sharing is not offer of equity. The Appellant has made amendments in its financial offer in its Resolution Plan dated 18.01.2023 by adding a clause giving option to the CoC to opt for profit sharing or equity. CoC never accepted any offer of equity by the Appellant. A mark on equity is to be given only when minimum threshold is Rs.250 Crore. Appellant was not eligible for any marks on the equity offer. He further submits that on 13.02.2023 appendix to 32<sup>th</sup> CoC meeting held on 03.01.2023 was issued which only recorded what transpired on 03.01.2023. No member of the CoC has at any point disputed the appendix issued on 13.02.2023. More so, appendix in no manner granted any relaxation to Respondent No.2 or changed the evaluation matrix as was already issued.

7. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Respondent No.1 supported the order passed by the Adjudicating Authority. It is submitted that the Appellant was not entitled for any marks on equity offer. It is submitted that the Respondent No.2 has already issued a clarification on 03.01.2023 by e-mail which was issued at 12.49 PM which was much prior to the commencement of CoC meeting at 2.00 P.M. CoC in

its Affidavit has already clarified that the e-mail dated 03.01.2023 was placed in the CoC meeting held on 03.01.2023 and was discussed. There were 44 members in the CoC, no one has controverted about e-mail dated 03.01.2023 sent by NARCL. Appendix on 13.01.2023 was issued by Respondent No.1 only recording what actually transpired on 03.01.2023. No member of the CoC has disputed the appendix or recording of appendix. No relaxation has been ever granted to Respondent No.2 and the marks have been allocated for calculation of NPV of the Respondent No.2 as per the evaluation matrix. Appendix is always issued after the meeting was over. It is relevant to notice that all the three PRAs issued clarification on 19.01.2023. In a meeting held on 29.01.2023, it was decided an addendum be issued regarding clarification. The Appellant filed addendum after 20.01.2023 on 23.01.2023. NARCL also submitted its addendum on 24.01.2023. Addendum however could not have altered financial proposal submitted by the PRAs in the Resolution Plan submitted by the Appellant. After Challenge Process was over on 05.01.2023 as well as 14.01.2023, there was no proposal for equity allotment and it was surreptitiously added in the plan 18.01.2023 which also cannot be read as any offer of equity since the option was left on the CoC even by the amended clause in the plan dated 18.01.2023.

8. We have considered the submissions of the Counsel for the parties and perused the record.

9. Before we proceed to consider rival submissions, it is relevant to notice certain clauses of Process Document and the evaluation matrix

proposed by the CoC. Evaluation matrix consists of ‘Quantitative Parameters’ and ‘Qualitative Parameters’, which is as follows:-

**“Quantitative Parameters**

<b>S. No.</b>	<b>Parameter</b>	<b>Scoring</b>		
		<b>Scale</b>	<b>Weightage</b>	<b>Max Score</b>
1	Upfront Cash Recovery to Creditors (within 90 days of the approval of Adjudicating Authority)	0-10	200%	20
2	NPV of cash recovery to creditors	0-10	550%	55
3	Equity allotment to financial creditors	0-10	50%	5
4	Fresh capital infusion- For improving operations and enhancing operation of the Corporate Debtors	0-10	50%	5
	Quantitative Sub Total		850%	85

**Qualitative Parameters**

<b>S. No.</b>	<b>Parameter</b>	<b>Scoring</b>		
		<b>Scale</b>	<b>Weightage</b>	<b>Max Score</b>
5	Track record/ Experience of the Resolution Applicant(s)	0-10	100%	10
6	Key Management Personnel	0-10	50%	5

	<i>Qualitative Sub-total</i>		<i>150%</i>	<i>15</i>
	<b>Grand Total</b>			<b>100</b>

10. Evaluation Matrix for 'NPV of cash recovery to creditors' is to the following effect:-

**“EVALUATION MATRIX- NPV OF CASH RECOVERY TO CREDITORS**

S. No.						
			Scale	Weightage		
2	NPV of cash recovery to creditors	Discount Rate	0-10	550%	55	
	Period of cash recovery					
	0-90 days	0%				
	91 days-1 year	8%				
	>1 year-3 years	10%				
	>3 years-5 years	12%				
	>5 years-7 years	15%				
	>7years-10 years	30%				
	>10 years	40%				
Based on the nature of instruments offered, discount rate shall be as follows:-						
Nature of the Instrument					Discount rate for NPV calculations	
First pari-passu secured with committed repayment schedule					As per table above	
Any other instrument with committed repayment schedule					+10% to the rate in the table above	
Compulsorily redeemable preference shares (CRPS) assumed to be realized at the end of 20 <sup>th</sup> year					60%	
PTCs/SRs/payable when able instruments assumed to be realized at the end of 8 <sup>th</sup> year					60%	

*The Resolution Applicant offering maximum NPV of cash recovery for creditors will get the maximum score of 55 under this criterion. The other Resolution Applicant(s) will be awarded score, pro-rated with respect to the highest Resolution Applicant.*

11. Evaluation Matrix for ‘equity allotment to financial creditors’ is to the following effect:-

**“EVALUATION MATRIX- EQUITY ALLOTMENT TO FINANCIAL CREDITORS**

S. No.	Parameter			Scoring		
3.	Equity allotment to financial creditors			Scale	Weightage	Max Score
				0-10	50%	5
	From	Up to	Score			
	0.00%	4.99%	0			
	5.00%	9.99%	5			
	10.00%	14.99%	7			
	15.00%	19.99%	8			
	20.00%	24.99%	10			
	25.00%	& above	0			
<p>➤ Financial Creditors may hold maximum of 49% stake in Corporate Debtor (subject to the terms of RFRP) and scoring will be basis fully diluted stake in the Corporate Debtors allocated to financial creditors only.</p> <p>➤ The equity stake offered by the Resolution Applicant(s) to the financial creditors over and above (a) and Upfront Cash Recovery considered under parameter and (b) the instrument offered and considered under parameter 2, shall be considered for scoring.</p>						

12. We now come to the Challenge Process Document which was issued on 27.12.2022. Challenge Process Document dated 27.12.2022 noticed resolve of the CoC to conduct Challenge Process in following words:-

*“Accordingly, the Consolidated CoC has, in terms of Regulation 39 (1A) of the CIRP Regulations read with Clause 4.4.5 (a) of the RFRP, resolved to conduct the following challenge process to maximise the value of*

*assets and interest of the stakeholders in the CIRP of SEFL and SIFL ("Challenge Process"). Pursuant to the approval of the Consolidated CoC in this regard, the Administrator has issued this "Note on Challenge Process", which shall be followed to identify the highest committed financial proposal in the manner set out below.*

*This Note on Challenge Process shall be construed as supplementary to the RFRP and shall form an integral part thereof. To the extent of any inconsistency between the Note on Challenge Process, the RFRP and the EM, the Note on Challenge Process shall prevail. The evaluation and the selection of the highest evaluated financial proposal shall be based on the process laid down herein and any deviation condonation or alteration in the Challenge Process may be authorised and approved at the sole discretion of the Consolidated CoC."*

13. Para 1.4 of the Challenge Process Document dealt with "Submission of Financial Proposals". Clause 2 dealt with 'Challenge Process'. Clause 2 of the Challenge Process (i), (ii) and (iii), are as follows:-

**"2. Challenge Process:-**

*The process for selection of the Successful Resolution Applicant is provided below:-*

<b>Process Explanation</b>	<i>(i) The resolution plans submitted on December 02, 2022 along with addendums, e-mail clarifications and the Compliance Submission (as defined in the Intimation for Compliance Submission) including the last submitted financial proposal for</i>
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	<p><i>the non-committed instruments (as received pursuant to the Intimation for Compliance Submission by the due date set out therein) shall constitute the "Plans for Evaluation" submitted by the Eligible RAs.</i></p> <p><i>(ii) The serial numbers 1, 2 and 3 of the NPV (as defined hereinbelow) scoring mechanism provided in Annexure A herewith; i.e.; Upfront Cash Recovery and Committed Instruments (any instrument (non convertible debentures / term loan/ any other instrument) whether secured (first pari passu) or any other instrument having a fixed committed repayment schedule), shall be referred to as "Identified Criteria" for the purpose of this Challenge Process. The Identified Criteria shall be used by the Consolidated CoC and its advisors to determine the net present value ("NPV") of the financial proposals for payment to the creditors of the Corporate Debtors, which shall be the basis for the Challenge Process. The determination of NPV of the financial proposals by the Consolidated CoC and its advisors shall be binding on the Eligible RAs which shall not be challenged/ objected to by the Eligible RAs. It is clarified that the Discount rate set out in the EM shall be used for the purpose of computation of NPV for the purpose of this Challenge Process and the details are set out in the Annexure A.</i></p> <p><i>(iii) The Eligible RAs shall provide the calculated NPV for each financial proposal on a self- certification basis. Notwithstanding the aforesaid, the calculation of the NPV by the Consolidated CoC and its advisors will be based solely on the financial proposal(s) submitted by each of the Eligible RAs in the Excel/ PDF format;</i></p>
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	<i>i.e., the details of the values filled up for the Identified Criteria. For avoidance of doubt, it is clarified that in the event of any inconsistency between the values provided for the Identified Criteria by the Eligible RAs in the financial proposal and the self-certified NPV provided by the Eligible RAs, the values provided for the Identified Criteria by the Eligible RAs shall be considered by the CoC and its advisors for the calculation of the NPV."</i>
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14. The above clauses of Challenge Process clearly indicate that any instrument having a fixed committed repayment schedule shall be referred to as 'Identified Criteria' for the purpose of the Challenge Process and the eligible RAs shall provide the calculated NPV for each financial proposal on a self-certification basis. The CoC and its advisors for the calculation of NPV were also to look into the self-certified NPV provided by the eligible RAs. After the issuance of Process Document, the e-mail was sent by Respondent No.2 NARCL which e-mail provided as follows:-

**"Sandeep Agarwal** [sandeep.agarwal@narcl.co.in](mailto:sandeep.agarwal@narcl.co.in)>

*Tue, Jan 3, 2023 at 12:49 PM*

To: Srei RP/ Srei <[sreirp@srei.com](mailto:sreirp@srei.com)>

Cc: Keyur Thar <[keyur.thar@idrcl.co.in](mailto:keyur.thar@idrcl.co.in)>,  
 "sanil.panicker@idrcl.co.in" <[sanil.panicker@idrcl.co.in](mailto:sanil.panicker@idrcl.co.in)>  
 Purshotam Agarwal <[purshotam.agarwal@narcl.co.in](mailto:purshotam.agarwal@narcl.co.in)>

*Dear Team*

*Please find below, clarifications as sought for:*

*1. Maturity Period for Security Receipts may be read as 60 months instead of 57 months:*

*2. At the end of the respective tenure of NCDs (ie. SEFL NCD-1 and SEFL NCD-2), the Trust shall transfer the outstanding NCDs to Security Receipt Holders without any further approval.*

*Regards*

*Sandeep"*

15. In the meeting of the CoC dated 03.01.2023, Challenge Process was held in five rounds. It is useful to extract the minutes recording the 'Round 5 of Challenge Mechanism (Final round)', which is to the following effect:-

***"Round 5 of Challenge Mechanism (Final round):***

*The Administrator informed the CoC that email has been sent to all the eligible PRAs Informing about commencement of Round 5 of Challenge Mechanism and minimum NPV threshold as per Challenge Process Document with the closure time of Round 5 at 11:15 pm. Later the time was extended to 11:59 pm with the consent of CoC members based on the request from PRAs.*

*The Administrator informed the CoC that all the password protected financial proposal from all the three PRAs was received before the closure time of round 5 i.e., 11:59 pm. The Administrator then requested all the eligible PRAs to share the password for Round 5's financial proposal.*

*The CoC members took note of the same*

*The Administrator then on receipt of password protected financial proposals from all the eligible PRAS, shared all the financial proposal with the CoC Advisors and also informed the PRAs to share password for opening of financial proposals submitted by them. On receipt of Password from PRAs, the same was shared with CoC Advisors for further action. CoC Advisors then presented the NPV values calculated by CoC Advisors as well as self-certified NPV value submitted by the PRAs to the CoC:*

<b>Round 5</b>				
<b>S.N.</b>	<b>NPV Values</b>	<b>Arena-Varde</b>	<b>NARCL</b>	<b>Authum</b>
1	Upfront Cash Recovery	Not qualified to proceed from Round 2 as per the Challenge Process Document	3,180.00	3,240.00
2	<b>Committed Instruments</b>		-	-
a	Secured		2,375.58	2,286.00
b	Unsecured		-	-
	<b>Total NPV computed</b>		<b>5,555.58</b>	<b>5,526.00</b>
	<b>Self-certified NPV by RA</b>		<b>5,555.50</b>	<b>5,526.00</b>

*On receipt of NPVs value from CoC Advisors, Administrator informed all the three PRAs about the highest NPV value along with the name of PRA i.e. NARCL, who has highest NPV after the round 5.....”*

16. The above minutes indicate that in the final round, NPV value of NARCL found as Rs.5,555.50 Crores and that of Authum- Appellant was Rs.5,526 Crores and after receipt of the NPVs value from CoC Advisors, Administrator informed all the three PRAs highest NPV value i.e. NARCL. NPV value as recorded in the minutes dated 03.01.2023 was not only on the basis of self-certification of NPV value i.e. Resolution Applicant – NARCL but after advise of CoC Advisors. After the conclusion of the Challenge Process, CoC extended the time for final submission of final Resolution Plan by Resolution Applicant till 14.01.2023. The Appellant filed its Resolution Plan on 14.01.2023 which has been filed by the Appellant in his Appeal as

Annexure 13. Only clause in Chapter VI – Transaction Structure is Clause 2 dealt with ‘Profit Sharing Amount (Equity Participation of FC)’, is as follows:-

**“2. Profit Sharing Amount (Equity Participation of FC)**

*Over and above the Financial Creditors' Payment, the Resolution Applicant shall also, either directly or indirectly through the Corporate Debtor, pay to the Assenting Financial Creditors, the Profit Sharing Amount, if any. The obligation for paying the Profit Sharing Amount shall automatically cease to exist upon completion of 7 years from the Implementation Date. The Profit Sharing Amount will be calculated on a yearly basis upon adoption of the auditor financial statements of the Corporate Debtor. Within a period of 60 days from the adoption of the audited financial statements of the Corporate Debtor, the calculation of Profit Sharing Amount shall be certified by a reputable chartered accountancy firm appointed by Resolution Applicant. (“Profit Sharing Certificate”). Thereafter, the Profit Sharing Amount, if due will be paid within 15 days therefrom, by deposit in the Profit Sharing Escrow Account. Upon deposit into the Profit Sharing Escrow Account, the Escrow Agent shall transfer the Profit Sharing Amount to the respective Assenting Financial Creditors. A copy of the Profit Sharing Certificate (along with supporting documents) will be provided to the Assenting Financial Creditors upon request. A representative illustration of the calculation of the Profit Sharing Amount is provided in Annexure B.”*

17. Appellant submitted its final Resolution Plan on 18.01.2023 in which plan Clause 2 dealt with 'Profit Sharing Amount (Equity Participation of FC)' another clause was added which dealt with equity investment to be made by the CoC. Clause 2 of the final plan dated 18.01.2023 of the Appellant is as follows:-

***“2. Profit Sharing Amount (Equity Participation of FC)***

*Over and above the Financial Creditors' Payment, the Resolution Applicant shall also, either directly or indirectly through the Corporate Debtor, pay to the Assenting Financial Creditors, the Profit Sharing Amount, if any. The obligation for paying the Profit Sharing Amount shall automatically cease to exist upon completion of 7 years from the Implementation Date. The Profit Sharing Amount will be calculated on a yearly basis upon adoption of the audited financial statements of the Corporate Debtor. Within a period of 60 days from the adoption of the audited financial statements of the Corporate Debtor, the calculation of the Profit Sharing Amount shall be certified by a reputable chartered accountancy firm appointed by the Resolution Applicant ("Profit Sharing Certificate"). Thereafter, the Profit Sharing Amount, if due, will be paid within 15 days therefrom, by deposit in the Profit Sharing Escrow Account. Upon deposit into the Profit Sharing Escrow Account, the Escrow Agent shall transfer the Profit Sharing. Amount to the respective Assenting Financial Creditors. A copy of the Profit Sharing Certificate (along with supporting documents)*

*will be provided to the Assenting Financial Creditors upon request. A representative illustration of the calculation of the Profit Sharing Amount, is provided in Annexure B.*

*The Profit Sharing Amount has been proposed under this Resolution Plan as a mechanism for equity participation of Assenting Financial Creditors. As an alternative and in lieu of the Profit Sharing Amount, if expressly elected by the CoC, subject to receiving necessary approvals and exemptions, the Resolution Applicant is willing to provide the Assenting Financial Creditors with equity shares of SIFL, on private placement basis, such that post implementation of this Resolution Plan, the Assenting Financial Creditors shall collectively be holding 24% of the total share capital of SIFL, as determined on a fully diluted basis ("Equity Election"). Equity Election is to be made by the CoC on or before the approval of this Resolution Plan by the CoC. If the Resolution Applicant does not receive a notification from the CoC that the CoC is opting for the Equity Election, prior to approval of this Resolution Plan by the CoC, it will be deemed that the CoC has not elected in favour of the Equity Election and proposes to continue with the Profit Sharing Amount instead. If the CoC notifies the Resolution Applicant that it has made the Equity Election, the procedural aspects for making available equity of SIFL to the Assenting Financial Creditors will be communicated by the Resolution Applicant, to the CoC within a period of 3 days from such notification. For abundant caution, it is clarified that in the event the CoC opts for the Equity Election, notwithstanding anything contained in this*

*Resolution Plan, the Assenting Financial Creditors shall not be entitled to the Profit Sharing Amount.”*

18. The first submission which has been advanced in this Appeal is regarding non-allocation of any marks on equity allotment to the Financial Creditors to the Appellant with regard to which IA No. 413 of 2023 was filed before the Adjudicating Authority. Admittedly, no marks were allocated to the Appellant on equity allotment. Evaluation matrix, as noted above, indicates that on equity allotment to Financial Creditors maximum score is provided as five. When we look into the Resolution Plan submitted by the Appellant, it is clear that the final Resolution Plan which was submitted by the Appellant initially on 14.01.2023 did not contain any clause of equity allotment and it was only on 18.01.2023 when time was extended for submitting the final Resolution Plan, a clause was added as extracted above providing for election by CoC on the equity allotment. The Resolution Plan submitted by the Appellant on 31.12.2022 did not contain any provision for equity allotment to the Financial Creditors. Challenge Process was conducted on 03.01.2023 on the financial proposal submitted by the Financial Creditors. As per Clause 1.4.6 of the Challenge Process Document, the financial proposal during the Challenge Process shall be unconditional and irrevocable and cannot be modified in any manner whatsoever subsequent to the Challenge Process. The Financial proposal submitted by the Appellant at the time of Challenge Process did not contain any provision for equity allotment, as noted above the clause for option to the CoC to elect for equity allotment was inserted in the revised Resolution Plan on



18.01.2023 changing the financial proposal. As per the Process Document and terms and conditions, Appellant was not entitled to change its financial proposal, hence, Clause 2 as extracted above included in the final Resolution Plan on 18.01.2023 could not help any allocation or marks to the Appellant. Further, in Clause 2 as added on 18.01.2023 provided for option to elect the fresh equity allotment by the CoC. CoC never opted to accept equity allotment as offered by the Appellant. When equity allotment was never accepted there was no question of giving any marks to the Appellant on equity allotment. Thus, allocation of no marks in the equity allotment was as per the Process Document and evaluation matrix and the Adjudicating Authority did not commit any error in rejecting IA No.413 of 2023. Further, value of the equity offered by the Appellant is Rs.200 Crores which does not meet the minimum INR 250 Crores threshold as prescribed in the evaluation matrix.

19. In view of the foregoing discussions and our conclusions, we are satisfied that no error was committed in not allocating any marks to the Appellant on equity allotment and the first submission raised by the Appellant has no merit.

20. Now, we come to the second submission advanced by the Appellant i.e. mis-calculation of the NPV of the Respondent No.2 which according to the Appellant is not accordance with the evaluation matrix. The Appellant's contention is that the nature of the instruments as enumerated in the evaluation matrix contained four categories in which security receipt submitted by the Respondent No.2 was in the last category i.e. 'PTCs/ SRs/

payable when able instruments assumed to be realized at the end of 8<sup>th</sup> year. We may first now look into the financial proposal submitted by the Respondent No.2. The Resolution Plan submitted by the Respondent No.2 Clause 2 of the financial proposal contains the details. Clause 2.4 deals with ‘proposal for outstanding financial debt’ which mentions security receipts. It is useful to quote paragraph 2.4.1 of the final Resolution Plan of the Respondent No.2, which is as follows:-

**“2.4 Proposal for Outstanding Financial Debt**

*2.4.1 Post the Effective Date, the Resolution Applicant and IDRCL will infuse funds into the Corporate Debtors and other funds towards Assignment Payments, and provide for Corporate Debtors to undertake repayment obligations in the manner set out in this Resolution Plan, aggregating to INR 14,867,50,00,000 (Indian Rupees Fourteen Thousand Eight Hundred and Sixty Seven Crores Fifty Lakhs Only) (the "Total Resolution Amount), which amount shall be utilized for funding payments proposed to be made to the stakeholders of the Corporate Debtors, subject to the terms of this Resolution Plan. In addition, the CIRP Costs (to the extent unpaid as on Effective Date) and Interim Period Costs will be paid in the manner set out in Section 3.1 (Payment of CIRP Costs and Interim Period Cost) of this Resolution Plan. The components of the Total Resolution Amount are as follows:*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (in INR Crore)</b>
1.	<i>AFCs Cash Portion (1A+1B)</i>	3180
A	<i>Estimated Cash and Cash Equivalents of Corporate Debtor</i>	2580
B	<i>Cash Portion of the Assignment Payments</i>	600#
2.	<b>Equity stake in SIFL to Financial Creditors (20%)*</b>	
3.	<b>Deferred Payment</b>	200
A	<i>Security receipts of upto INR</i>	3487.50

	1800 Crores (ie, 75% share) from ARC Trust** backed by committed NCDs redeemable from recoveries of underlying assets of SEFL	
<b>B</b>	Optionally Convertible Debentures (OCDs) from SEFL	8000
	<b>TOTAL</b>	14,867.50
Approving Financial Creditors shall also be entitled to receive payment under the SEFL CCPS from amounts, if any, recovered beyond the amount required to repay SEFL NCDs and SEFL OCDs.		

*\*Estimated fair value of equity post implementation*

*\*\*Security receipts of upto INR 1800 Crores backed by committed NCDs.*

# As per this Section 2.4.1 of the Resolution Plan, the Resolution Applicant has committed an upfront cash recovery of INR 3180 Crores from sources of funds as identified therein (defined as the **AFCs Cash Portion** in the Resolution Plan). In the event Cash and Cash Equivalents of the Corporate Debtor on Effective Date is less than the estimate provided in (1A) above, the Resolution Applicant shall accordingly procure for such funds to be arranged to meet the threshold of INR 3180 Crores. Further, in the event the Cash and Cash Equivalents of the Corporate Debtor on Effective Date is more than the estimate provided in (1A) above, the Resolution Applicant shall adjust the same in the manner as provided in Section 2.7.2 of the Resolution Plan. However, the Cash Portion of Assignment Payment shall remain unchanged.

*It is clarified that the liability of the Resolution Applicant is limited to the amounts to be infused in the ARC Trust, as provided in serial numbers 1(B) of the table above and equity infusion in SIFL by the Resolution Applicant and IDRCL.”*

21. When we look into the financial proposal, final plan submitted by the Respondent No.2 security receipts of INR 1800 Crores were backed by committed NCDs redeemable from recoveries of underlying assets of SEFL. When the security receipts were backed by committed NCDs, the submission which has been advanced by the Respondent is that the security

receipts submitted by the Appellant with committed repayment schedule will fall in the Item No.1 and 2 in the Evaluation Matrix and security receipts were not to be discounted with 60% discount rate as is contended by the Appellant. The NPV of the Respondent No.2 has been calculated both by the Respondent No.2 as well as the Process Advisors of the CoC treating the security receipts not to be discounted with 60%. We have already noticed the Challenge Process Document dated 27.12.2022 where clause 2 (ii) Challenge Process provides ***“The determination of NPV of the financial proposals by the Consolidated CoC and its advisors shall be binding on the eligible RAs which shall not be challenged/ objected to by the eligible RAs. It is clarified that the Discount Rate set out in the EM shall be used for the purpose of computation of NPV for the purpose of this Challenge Process and the details are set out in the Annexure A.”***

22. The determination of NPV of the Respondent No.2 as per final Resolution Plan as done by the Consolidated CoC and its advisors, thus, has to be treated as final and cannot be allowed to be challenged by any other Resolution Applicants. Present is a case where Appellant is challenging the determination of NPV by CoC and its Process Advisors contrary to the aforesaid Clause 2(ii) which is impermissible. The evaluation matrix and Process Document are documents which have been issued by the CoC and the CoC is the best judge to interpret its document and apply it for evaluation of NPV of the Resolution Applicants. The Hon’ble Supreme Court in ***“Silppi Constructions vs. Union of India- (2020) 16 SCC 489”*** held

that the author of a document is a best judge as to how the document has to be interpreted. In paragraph 20 of the judgment, following has been held:-

*“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”*

23. The CoC and its Process Advisors have calculated the NPV of the Respondent No.2 treating the instruments submitted by the Respondent No.2 as a security receipts with committed repayment schedule, hence, discounting 60% was not required and it cannot be said that the CoC on its Process Advisors committed any error in determining the NPV of the Respondent No.2. The security receipt which was submitted by the

Appellant as reflected in the final Resolution Plan as extracted above are security receipt with committed repayment schedule and not applying 60% discount rate is in accordance with the evaluation matrix and Process Document. As noted above, as per the Process Document dated 27.12.2022, eligible RAs were to provide calculation of NPV for each financial proposal or on self-certification basis, the Respondent No.2 on the self-certification basis providing NPV. The said NPV is in accordance with the Process Document and calculation made by the Respondent No.2 on the basis of self-certification is in accordance with the Process Document.

24. It is further relevant to note that in the Process Document dated 27.12.2022, sub-clause 3.3 of Clause 3 clearly reserves right of CoC to approve any Resolution Plan as it deems fit whether or not the Resolution Plan has the highest NPV and Resolution Plan has scored highest in the Evaluation Matrix. Sub-Clause 3.3 of Clause 3 is as follows:-

*“3.3 The Consolidated CoC, reserves its right to approve any resolution plan as it deems fit, in its commercial wisdom, whether or not the resolution plan has the highest NPV or the resolution plan has been scored the highest in the EM.”*

25. Thus, commercial decision of the CoC while approving the plan to take decision whether to approve the plan of Resolution Applicant has highest NPV or not. The above clause of the Process Document also clearly indicate that the commercial wisdom of the CoC has been given paramount

importance and whether the Applicant has highest NPV or not is not a deciding factor.

26. Learned Counsel for the Respondent has also submitted that the commercial wisdom of the CoC in approving the Resolution Plan is not to be challenged by a Resolution Applicant nor the Adjudicating Authority or this Appellate Tribunal can interfere with the commercial wisdom of the CoC in exercise of its jurisdiction. Counsel for the Respondent has referred to the judgment of the Hon'ble Supreme Court in **"K. Shashidhar vs. Indian Overseas Bank- (2019) 12 SCC 150"**. In paragraph 52, following has been held:-

*"The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial*

*wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."*

27. Next judgment relied by the Respondent is **“CoC of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 53”** wherein the Hon’ble Supreme Court in Paragraphs 64 and 65 of the judgment has held that the decision of the CoC on the feasibility or viability and it is the majority of the CoC who have been left with the decision of feasibility and viability of the plan. Paragraph 64 of the judgment is as follows:

*“64. Thus, what is left to the majority decision of the Committee of Creditors is the "feasibility and viability" of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity*



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

28. Another judgment relied by the Respondent is **“India Resurgence ARC Private Limited vs. Amit Metaliks Limited (2021) SCC OnLiNE sc 409”** where same proposition have been reiterated in paragraphs 12 and 13:-

*“12. As regards the process of consideration and approval of resolution plan, it is now beyond a shadow of doubt that the matter is essentially that of the commercial wisdom of Committee of Creditors and the scope of judicial review remains limited within the four-corners of Section 30(2) of the Code for the Adjudicating Authority; and Section 30(2) read with*

*Section 61(3) for the Appellate Authority. In the case of Jaypee Kensington (supra), this Court, after taking note of the previous decisions in Essar Steel (supra) as also in K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150 and Maharashtra Seamless Limited v. Padmanabhan Venkatesh: (2020) 11 SCC 467, summarised the principles as follows:-*

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

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

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

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

*77.3. The material propositions laid down in Essar Steel (supra) on the extent of judicial review are that the Adjudicating Authority would see if CoC has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors have been taken care of. And, if the Adjudicating Authority would find on a given set of facts that the requisite parameters have not been kept in view, it may send the resolution plan back to the Committee of Creditors*

*for re-submission after satisfying the parameters. Then, as observed in Maharashtra Seamless Ltd. (supra), there is no scope for the Adjudicating Authority or the Appellate Authority to proceed on any equitable perception or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors."*

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

29. Counsel for the Respondent has also placed reliance judgment of this Tribunal in **“PNC Infratech Limited vs. Deepak Maini- Company Appeal (AT) (Ins.) No. 143 of 2020”** decided on 22.08.2022 wherein paragraphs 38 and 39 it has been held that there is no mechanism under the Code which gives the right to the Unsuccessful Resolution Applicant to challenge the score granted as per the Evaluation Matrix prepared by the CoC. In paragraphs 38 and 39, following has been held:-

*“38. In view of the decisions of the Hon'ble Supreme Court, it is the settled proposition of law that the commercial wisdom of the Committee of Creditors in approving or rejecting a resolution plan is essentially based on a business decision which involves evaluation of resolution plan based on its feasibility besides the Committee of Creditors being fully informed about the viability of the Corporate Debtor. The Committee of Creditors invariably examine the Resolution Plan and an assessment is made through their team of experts in that regard.*

*39. Further, there is no such mechanism under the Code that gives the right to the Unsuccessful Resolution Applicant to challenge the score granted as per the evaluation matrix prepared by the CoC and the Resolution Professional as per the provisions of CIRP Regulations. Though, Section 61 of the Code provides Appeals against the orders of the Adjudicating Authority and Sub-section (3) thereof provides an Appeal against an order approving a Resolution Plan under Section 31 which may be filed on the following grounds namely:*

*(i) The approval resolution plan is in contravention of the provisions of any law for the time being enforce.*

*(ii) There has been material irregularity in exercise of the powers by the Resolution Professional during the Corporate Insolvency Resolution Period.*

*(iv).....*

*It is unequivocal, in preferring the Appeal by the aggrieved person under the above provision more particularly sub-section (3)(i) of Section 31 thereof which specifically provides that the approved Resolution Plan can be questioned/challenged on the ground that the plan is in contravention of the provisions. This Tribunal in clear terms observes and holds that there is no contravention in approving the Resolution Plan either by the CoC or by the Adjudicating Authority. The plan approved is in accordance with law and there is no material irregularity and cannot go into the technical issues with regard to evaluation and score matrix which is in the exclusive domain of the CoC.”*

30. The law laid down by the Hon’ble Supreme Court is well settled that the business decision of the CoC is not to be interfered with by the Adjudicating Authority or this Tribunal unless it is shown that there is violation of Section 30(2) of the Code. Present is not a case where there is any submission that the Resolution Plan does not comply with Section 30(2). What is challenged by the Appellant is the allocation of marks on the basis of evaluation matrix to the Resolution Applicant. We have while considering both the above submissions, noticed the relevant evaluation matrix and the provisions of the Process Document, after perusing the evaluation matrix and Process Document, we have come to the conclusion that non-allocation of marks on equity allotment to the Appellant was in accordance with the Process Document and Evaluation Matrix and further determination of the NPV of the Resolution Plan of the Respondent No.2 cannot be faulted and the same was in accordance with the evaluation

matrix and Process Document. We thus, do not find any ground to interfere with the decision of the Adjudicating Authority rejecting IA No. 413 of 2023 and IA No. 557 of 2023.

31. Submission of the Appellant that the payments under the Resolution Plan of the Respondent No.2 are contingent is not supported from terms and conditions of the Resolution Plan. Resolution Plan provides clear tenure rights, security interest. Counsel for the Appellant has also raised question on the Appendix issued on 13.02.2023 to the CoC dated 03.01.2023. It is useful to extract the Appendix to 32<sup>th</sup> CoC meeting as brought on record, which is to the following effect:-

***“SREI Infrastructure Finance Limited (SIFL) and SREI Equipment Finance Limited (SEFL)***

***Appendix to 32<sup>nd</sup> CoC (29<sup>th</sup> Consolidated CoC Meeting) held on 03-01-2023 02:00 PM onwards through Virtual Platform (Zoom)***

*The following Appendix to the Minutes of the 32<sup>nd</sup> CoC (29<sup>th</sup> Consolidated CoC) meeting is issued based on certain comments received from SBI Capital Markets (CoC Process Advisors) on 13*

*February 2023.*

**Appendix A**

<b>Comments by</b>	<b>Clarification Sought</b>	<b>Modification</b>
<i>SBI Capital Markets</i>	<i>Addition to Section. 2 on Page No. 2</i>	<p><b>Addition:</b></p> <p><i>The Administrator informed the CoC that a clarification has been received from NARCL before the Challenge Mechanism stating the following</i></p> <p><i>1. Maturity Period for Security Receipts may be read as 60 months</i></p>

		<p>months instead of 57 months</p> <p>2. At the end of the respective tenure of NCDs (ie., SEFL NCD-1 and SEFL NCD-2), the Trust shall transfer the outstanding NCDs to Security Receipt Holders without any further approval.</p> <p>SBICAP, the CoC Advisor highlighted to the lenders that as per the Compliance Submission, there is no change in the Plan structure proposed by NARCL. NARCL will continue to offer Security Receipts to the FCs and the redemption of the same (including the upside) will be based on the recovery from the SEFL NCDs which will be issued by SEFL to the ARC Trust. The above clarification was discussed in detail with the CoC members and the CoC Legal Counsel also gave their views on the same. Based on the discussion, considering that the outstanding NCDs are proposed to be transferred to the SR holders at the end of the respective tenure of NCDs, it was decided that the for NARCL, the secured committed NCDs is be considered for the purpose of computation of NPV under the Challenge Mechanism and accordingly, the applicable discounting rate as per the Evaluation Matrix may be taken.</p>
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32. Appendix issued on 13.02.2023 in no manner states anything contrary to the minutes of meeting dated 03.01.2023. The appendix only noticed certain discussions and the clarifications received from the NARCL. Clarification received by the NARCL on 03.01.2023 have already been noticed above which was received much before the CoC meeting held on 03.01.2023. Appendix captures what was advised by the CoC advisors that there is no change in the plan structure proposed by NARCL. What is noticed in the appendix regarding the security receipts with committed repayment plan which has already been captured in the Resolution Plan as noted above. The appendix in no manner can be read contrary to the financial proposals submitted by the Appellant nor it amends any of the proposals of the Respondent No.2 nor there is any relaxation to any of the conditions of the final Resolution Plan of the Respondent No.2. More so, as noted above, voting has commenced on the plan on 24.01.2023 and concluded on 14.02.2023 and the appendix has no substantial effect on the process which has already undertaken including the terms and conditions of the Resolution Plan of the Respondent No.2 and the determination of the NPV value by the Process Advisors of the CoC as captured in the minutes dated 03.01.2023. We have found that the CoC has considered the Resolution Plan in accordance with the evaluation matrix and there were no error in determination of the NPV of the Respondent No.2. Further, the Appellant was not entitled for any marks on equity allotment to the Financial Creditors which mark was rightly not given to the Appellant in the evaluation matrix.

33. We do not find any error in the order of the Adjudicating Authority rejecting IA No.413 of 2023 and IA No.557 of 2023. Approval of the Resolution Plan by the Adjudicating Authority is in commercial wisdom of the CoC. No grounds have been made out to interfere with the order of the Adjudicating Authority approving the Resolution Plan. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**New Delhi**  
Anjali