

# Fourth Dimension Solution Limited vs Ricoh India Limited & Ors on 26 July, 2021

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI  
Company Appeal (AT) (Insolvency) No. 1471 of 2019

In the matter of:

FOURTH DIMENSION SOLUTIONS LTD.

DSM - 340, DLF Trade Tower,

Shivaji Marg, New Delhi

110015

Email id: contactus@fdsindia.co.in

Through Resolution Professional

....Appellant

Vs.

1. RICOH INDIA LTD.

801, 8th Floor, Ackurti Star,

Midc, Central Road, Near

Marol Telephone Exchange,

Midc, Andheri East, Mumbai

400093

Email Id: Ril.Info@RicoH.Co.In

...Respondent No. 1

2. MR. KALPRAJ DHARAMSHI

Quest, 1073 Rajabhau Desai Marg,

Prabhadevi, Mumbai

400024

Email Id: Kalpraj@Dharamshi.Net

... Respondent No. 2

3. MS. REKHA JHUNJHUNWALA

16-17c Il Palazzo Chs,

Little Gibbs Road,

Malabar Hills, Mumbai

400006

... Respondent No. 3

Present

Company Appeal (AT) (Insolvency) No. 1471 of 2019

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For Appellant:

Mr. P.P Chaudhary, Sr. Advocate with Mr. David Rao,  
Mr. Sanjeet Purohit, Mr. Vishnu Shankar and Mr. Atul

Sharma, Advocates.

For Respondents: Mr. ArunKathpalia, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Avni Srivastava, Advocates for R-1.  
Mr. AbhinavVasisht, Sr. Advocate with Mr. Prateek Kumar, Ms. Raveena Rai, Mr. Rohit Ghosh, Advocates for R-2&3, SRA.  
Coram : Mr. Jarat Kumar Jain, (Judicial)  
Mr. Kanthi Narahari, (Technical)

#### JUDGMENT

Jarat Kumar Jain: J.

The Appellant "Fourth Dimension Solutions Ltd." (FDSL) filed the Appeal against the final order dated 28.11.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP No. 156/I&BC/MB/MAH/2017, whereby approved the Resolution Plan submitted by Kalpraj Dharamshi and Ms Rekha Jhunjhunwala (the Respondent No. 2 & 3).

2. Brief facts of this case are that since the year 2013 there is business relationship between the Appellant and the Corporate Debtor (Respondent No.

1). The Appellant entered into more than 90 different contracts for various projects with the Corporate Debtor (Respondent No. 1). The total value of all different contracts is more than 2400 Crores. The dispute arose between the Appellant and Corporate Debtor (Respondent No. 1) in respect of six different contracts for different projects. Therefore, the Appellant invoked the arbitration agreement and the arbitration proceedings were commenced Company Appeal (AT) (Insolvency) No. 1471 of 2019 before the Sole Arbitrators. On 29.01.2018 the Corporate Debtor filed an Application CP No. IBC/156/MB/MAH/2017 under Section 10 of the IBC before the Adjudicating Authority for initiation of Corporate Insolvency Resolution Process (CIRP). Ld. Adjudicating Authority vide order dated 14.05.2018 admitted the Application and directed the moratorium to commence as prescribed under Section 14 of the IBC and Mr. Krishana Chamadia was appointed as Interim Resolution Professional (IRP). Thereafter, in view of moratorium period the arbitration proceedings were adjourned sine- die. On 28.05.2018 the IRP issued Form No. A for submissions of claim. On 05.06.2018 the Appellant filed six claims of Rs. 511,58,39,247/- alongwith interest @ 18% per-annum in Form-A before the IRP. On 15.06.2018 Mr. Krishna Chamadia was confirmed as Resolution Professional by the CoC. On 24.08.2018 the RP issued list of creditors. The Name of the Appellant was mentioned in the list of Operational Creditors. On 29.11.2018 the RP published an updated list of the Creditors of the Corporate Debtor, wherein the admitted claims of the Appellant was indicated as 'Nil', with an appended note 2, wherein it was stated that the claims of the Appellant were disputed and the pending Adjudication in Arbitration Proceedings the liability is subject to outcome of these proceedings. This was followed by an updated list of Creditors published by the RP on 10.12.2018 and 24.01.2019 wherein it was again recorded that the admitted claims of the Appellant as 'Nil' with the aforesaid appended note.

3. The RP vide notification dated 09.07.2018 invited Expression of Interest (EOI) to submit a Resolution Plan from the interested Resolution Applicants. The EOI was required to be submitted to the RP on or before 08.08.2018. On Company Appeal (AT) (Insolvency) No. 1471 of 2019 the said date i.e. 09.07.2018 analogous to be the first Form-G also came to be notified vide the said order. The last date for submission of Resolution Plan was on or before 21.09.2018. The 2nd Form-G came to be issued on 24.08.2018 which required the Resolution Plans to be submitted on or before 28.09.2018. 3rd Form-G came to be issued on 28.09.2018 which required the Resolution Plans to be submitted on or before 25.10.2018. 4th Form-G came to be issued on 09.11.2018 which required the Resolution Plans to be submitted on or before 13.12.2018. The 5th and the last Form-G came to be issued on 11.12.2018 which required the Resolution plans to be submitted on or before 08.01.2019.

4. The Kotak Investment Advisors Ltd. (KIAL) and one Karvy Data Management Systems Ltd. submitted their Resolution Plans on the last date as stipulated in the last and 5th Form-G i.e. on 08.01.2019. Mr. Kalpraj Dharamshi submitted its EOI and Resolution Plan to the RP on 27.01.2019. On 29.01.2019 KIAL sent an email to the RP raising its objection permitting Kalpraj Dharamshi to submit its Resolution Plan beyond the prescribed time limit. During the CoC meeting held on 30.01.2019 the Resolution Plan of Kalpraj Dharamshi was placed before the CoC and the CoC resolved to direct all the Applicants to submit the revised plan. Accordingly, all the Applicants submitted the revised Resolution Plan. In the CoC meeting held on 13/14.02.2019 the plan of Kalpraj Dharamshi came to be approved by a majority.

5. After CoC had approved the plan of Mr. Kalpraj Dharamshi, RP applied for approval of plan before the Adjudicating Authority on 18.02.2019 vide M.A. No. 691 of 2019 in CP No. 156/MB/2018. After coming to know about the RP Company Appeal (AT) (Insolvency) No. 1471 of 2019 applying for approval of plan of Kalpraj Dharamshi, KIAL filed an Application on 14.03.2019 being M.A. No. 1039 of 2019 objecting the plan of Kalpraj Dharamshi. The objection was on the ground that the RP was not justified in permitting Kalpraj Dharamshi to submit the Plan beyond the date prescribed in Form-G and the decision of CoC to approve the plan submitted by Kalpraj Dharamshi was not in accordance with the IBC. Vide impugned order dated 28.11.2019 the Ld. Adjudicating Authority allowed M.A No. 691 of 2019 and approved the Resolution Plan of Kalpraj Dharamshi and by a separate order passed on the same date rejected the M.A. No. 1039 of 2019, which was filed by KIAL objecting the decision of CoC to approve the plan submitted by Kalpraj Dharamshi.

6. Being aggrieved with the impugned order, the Appellant (FDSE) filed present Appeal, whereas KIAL has filed Appeal CA (AT) (Ins) No. 344-345 of 2020 against the rejection of the Application M.A. No. 1039 of 2019 before this Appellate Tribunal. This Appellate Tribunal vide order dated 05.08.2020 allowed the Appeal of KIAL and set aside the impugned order and the matter was remanded back to the CoC to decide on the Resolution Plan submitted by KIAL within 10 days and during the event no decision to be taken by the CoC. The Ld. Adjudicating Authority was directed to proceed with the liquidation of the Company.

7. The Aforesaid Judgment pronounced by this Appellate Tribunal dated 05.08.2020 came to be challenged before the Hon'ble Supreme Court by way of three Appeals filed by Kalpraj Dharamshi, Deutsche Bank and Krishna Chamadia.

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8. The Appellant "FDSL." also preferred an Appeal challenging the order passed by this Appellate Tribunal dated 05.08.2020 specifically to obtain the view from the Hon'ble Supreme Court. Hon'ble Supreme Court vide Judgment dated 10.03.2021 has decided the aforementioned bunch of Appeals wherein the Appeal filed by Kalpraj Dharamshi was allowed. However, the Hon'ble Supreme Court directed this Appellate Tribunal to decide the Appellant's present Appeal. Pursuant to the order of Hon'ble Supreme Court, we proceeded to decide the Appeal.

9. It is not out of context to mention that on 25.07.2019 Adjudicating Authority admitted the Application under Section 7 of the IBC of M/s American Express Banking Corporation and initiated CIRP against the Appellant (FDSL). Mr. Jashwant Singh was then appointed as IRP. Subsequently, Ld. Adjudicating Authority vide order dated 27.11.2019 had appointed Ms. Pooja Bahry as RP. She filed an Application (I.A No. 2159/ND/2020) under Section 30(6) of the IBC for approving the Resolution Plan. The Application was allowed vide order dated 25.09.2020 resultantly, the Resolution Plan of Link Star Infosys Pvt. Ltd. and Mr. Dhaval Jitendra Kumar Mistry (Resolution Applicants) was approved and Ms. Pooja Bahry was discharged. The present Appeal was filed by RP Pooja Bahry on 19.12.2019 and during the pendency of this Appeal she has been discharged.

10. The Adjudicating Authority vide order dated 28.11.2019 approved the Resolution Plan for Corporate Debtor which was submitted jointly by Kalpraj Dharamshi and Ms. Rekha Jhunhunwala (Successful Resolution Applicants) and in terms of the approved Resolution Plan a monitoring committee comprising three Members - one nominated by the Successful Resolution Company Appeal (AT) (Insolvency) No. 1471 of 2019 Applicants, one nominated by CoC and the erstwhile Resolution Professional has been appointed to supervise the implementation of the Resolution plan and to conduct the day to day functioning of the Corporate Debtor. Further as per the terms of the approved Resolution Plan Mr. Krishna Chamadia (erstwhile RP) has been appointed as the monitoring agent, acting on the sole instructions of the monitoring committee. Thus, after approval of the Resolution Plan, the Corporate Debtor (R-1) is represented by the monitoring committee.

11. Ld. Sr. Counsel for the Appellant submitted that as per Section 18 (1)

(b) and (g) r/w Section 25 (2) (e) of the IBC, the IRP/RP shall receive and collate all the claims submitted by the Creditors and shall maintain an updated list of claims. The RP clearly failed to discharge his mandatory duties by adjudicating the legitimate claim of the Appellant more so when the said claim was substantiated by all the supporting documents and proofs. The IRP/RP has no adjudicatory powers, however, he should have called for such evidence or documents as provided under Regulation 10 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016(Regulations) as held by the Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) 4 SCC 17. He submitted that in the present matter the act of RP in disregarding the claim of the Appellant is clearly in gross violation of the scheme under the IBC and the Regulations thereto. It is submitted that the RP deliberately avoided the entire claim of the Appellant on the basis of a pending Arbitration proceedings without even verifying the claim by corroborating with the available records/documents. Moreover, instead of putting the disputed

amount/claim in the contingency provision the RP has Company Appeal (AT) (Insolvency) No. 1471 of 2019 mechanically deferred the entire claim. Where the amount of the claim cannot be or has not been determined at the time the claim is to be submitted, many Insolvency laws allow a claim to be admitted provisionally, subject to giving it a notional value. It is submitted that admittedly the RP has neither admitted nor rejected the claims of the Appellant despite of knowing that the claims of the Appellant were to the tune of Rs. 511 Crores approximately.

12. Ld. Sr. Counsel for the Appellant submitted that the RP is to examine each Resolution Plan received by him in order to ascertain that each Resolution Plan is in conformity with the requirement as provided under Section 30(2) of the IBC. However, the RP failed to examine the Resolution Plan and deliberately placed such erroneous plan before the CoC for the approval. Even clause 4.3 of the addendum to the Resolution Plan neither provides any payment to the Appellant nor it provides any Clause for the claim of the Appellant.

13. Ld. Sr. Counsel for the Appellant submitted that the Resolution Plan proposes to fully satisfy the Operational Creditor, other than the Appellant, satisfying their 100% claim but not offering any single penny to the Appellant. Therefore, such plan is an eye wash and fraud played upon the stakeholders since the Resolution Plan proposes to pay nil to the Appellant despite being the highest Operational Creditor.

14. It is submitted that as per Section 24(3) (c) of the IBC the Appellant was entitled to participate in the CoC meeting, being the highest Operational Creditor having aggregate dues of not less than 10%. That non-inclusion of the Appellant in the CoC by the RP mala fide, rendered the constitution of CoC illegal and all the proceedings undertaken by such incomplete CoC are Company Appeal (AT) (Insolvency) No. 1471 of 2019 not tenable in the eye of law and have caused grave injustice to the highest Operational Creditor like the Appellant.

15. Ld. Sr. Counsel for the Appellant submitted that the RP had erred in not taking into consideration the claim of the Appellant on the basis of Arbitration proceedings being pending in respect of the dispute claim. The RP had again failed to validate his stand by not admitting the claims of the Appellant despite the fact with the moratorium being declared and the continuation of the Arbitration proceedings comes to stand still as per the expressed provision of Section 14(1) (a) of the IBC.

16. Ld. Sr. Counsel for the Appellant submitted that the RP has committed gross misconduct and fraud during the course of entire CIRP which is evident from the following instances and actions.

(i). The RP had committed gross violation by act of non-

determination/deferment of the legitimate claim of the Appellant. Instead of determining the Appellant's claim to the best estimate value in terms of Regulation 14 of the CIRP Regulations, the RP had kept it in abeyance.

(ii). The RP had not made any effort to take recourse of the documents/material supplied by the Appellant in Form-B and had also not sought additional relevant documents to substantiate the claim.

(iii). The RP has neglected the legitimate claim of the Appellant despite being the highest Operational Creditor.

(iv). The RP appears to have prepared incomplete/false information memorandum which does not depict the true picture of affairs/financial status of the Corporate Debtor thereby facilitating the Resolution Applicant to Company Appeal (AT) (Insolvency) No. 1471 of 2019 escape from the material liability of payment to the highest Operational Creditor.

(v). In grave dereliction of the duties provided under the IBC, the RP has deliberately not examined the Resolution Plan in terms of Section 30(2) of the IBC.

(vi). The RP has purposefully overlooked the grave infirmities and discrepancies of the Resolution Plan submitted by the Resolution Applicant and presented the same before the CoC.

(vii). The RP had intentionally presented such Resolution Plan before the CoC which was apparently in gross violation of the scheme enshrined under the IBC and had validated such Resolution Plan which was much below the liquidation value and negligible in comparison to fair market value.

(viii). In view of the averments made above the entire CIRP has been initiated due to bias malafide illegal and fraudulent conduct of the RP.

17. Ld. Sr. Counsel for the Appellant submitted that the CoC has exercised its power in contrary to the provisions under the IBC. The CoC and Ld. Adjudicating Authority denied the claims of the Appellant on the ground that the claims of the Appellant have been disputed and are in proceedings before the Arbitrators/Appellant Authorities and the liability is subjected to the outcome of these proceedings. It is submitted that the Operational Creditor cannot be paid 'Nil' in contravention of the provisions under Section 30(4) of the IBC. Ld. Adjudicating Authority failed to appreciate that the Arbitration proceedings between the Appellant and the Corporate Debtor are pending Adjudication before the Arbitrators. The RP in the updated list of the Creditors as on 24.01.2019 specifically mentioned that the claims of the Appellant have Company Appeal (AT) (Insolvency) No. 1471 of 2019 been disputed and are in the proceedings before the Arbitrators and the liability is subjected to outcome of these proceedings. He submitted that Ld. Adjudicating Authority failed to appreciate as on date a sum of Rs. 511,58,39,247/- is due and payable by the Corporate Debtor to the Appellant towards hardware and services delivered and provided by the Appellant to the Corporate Debtor (Respondent No. 1).

18. It is submitted that Ld. Adjudicating Authority erred in approving the Resolution Plan of the Respondent No. 2 & 3 for waiver of claims against the Respondent No. 1 on the date of approval of the Resolution Plan. Ld. Adjudicating Authority erred to hold that the Resolution Applicant will not be held responsible for any outstanding claims for the period before the commencement of CIRP.

He submitted that Ld. Adjudicating Authority failed to appreciate that the CoC being a custodian of public interest is under statutory duty to exercise its power under Section 30(4) of the IBC reasonably and fairly. The CoC cannot be allowed to approve the Resolution Plan arbitrarily without considering the claims of the Appellant. The CoC be directed to reconsider the Resolution Plan submitted by the Respondent No. 2 & 3 keeping in view the claims of the Appellant.

19. Ld. Sr. Counsel for the Appellant submitted that the CoC had erroneously approved the Resolution Plan as presented by the RP despite the same being not in conformity with the mandatory requirements of the IBC as provided under Section 30(2), 53 of the IBC and in Regulation 38 (1A) of the CIRP Regulations. Therefore, the entire CIRP being carried out and the decision taken by the CoC were illegal.

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20. Ld. Sr. Counsel for the Appellant submitted that the CoC is vested with the jurisdiction to approve the Resolution Plan by exercising their commercial wisdom. However, exercise of such commercial wisdom by the CoC cannot be arbitrary and discriminatory. The Hon'ble Supreme Court in Land Mark Case of CoC of Essar Steel India Ltd. Vs. Satish Kumar Gupta 2019 SCC Online SC 1478 has laid down the parameters to be taken into account by the CoC while exercising its commercial wisdom in the process of approving the Resolution Plan. The Hon'ble Supreme Court has clearly observed that the CoC while approving the Resolution Plan shall necessarily take into account the interest of all the stakeholders including the Operational Creditor. In the present case, the CoC instead of applying this commercial wisdom in fair and transparent manner has proceeded on its whims and fancies and in order to give undue advantage to the Resolution Applicant has disregarded genuine claims of the Operational Creditors including the Appellant.

21. It is submitted that the Ld. Adjudicating Authority failed to appreciate that the impugned order extinguishing the claims along with abetment of any related legal proceedings pending against the Respondent No. 1 will deprive the Appellant from their rights in respect of their claims against Respondent No. 1. It is submitted that Ld. Adjudicating Authority failed to appreciate that this Appellate Tribunal in the case of M/s Prasad Gempex Vs. Star Agro Marine Exports Pvt. Ltd. & Ors. (CA (AT) (Ins) No. 291 of 2018) allowed the Appellant to file its claim against the Corporate Debtor, if the Resolution Plan is approved and if it does not take care of the Appellant's claims. He submitted that Ld. Adjudicating Authority failed to appreciate that where the claim of Operational Creditor involves a disputed question of fact as it cannot be Company Appeal (AT) (Insolvency) No. 1471 of 2019 decided by the RP or Ld. Adjudicating Authority, such Operational Creditor can raise such issue and claim at an appropriate stage i.e. after moratorium is over. For this proposition, placed reliance on the Judgment of this Appellate Tribunal in the case of M/s Roma Enterprises Vs. Martin S. K. Golla RP (CA (AT) (Ins) No. 232 of 2018).

22. It is submitted that the Resolution Plan was erroneously approved by the Adjudicating Authority without application of mind and without being satisfied regarding the compliance of the requirements referred in Section 30 (2) of the IBC. Section 31 (1) of the IBC requires the Adjudicating Authority to record its satisfaction regarding compliances of the Section 30(2) of the

IBC. As per the intent of the IBC such satisfaction should not be mere subjective satisfaction of the Adjudicating Authority rather objective satisfaction regarding fulfilment of the requirements under Section 30(2) of the IBC. Ld. Adjudicating Authority failed to appreciate that due to collusive conduct of the RP, CoC and the Successful Resolution Applicant have illegally prioritised the interest of few Operational Creditors and has led to a situation where the Successful Resolution Applicant has held the entire CIRP to ransom at the cost of the Operational Creditors including the Appellant and have caused grave miscarriage of justice. The Resolution Plan being gross, illegal, arbitrary and discriminatory, ought to have been rejected by the Adjudicating Authority.

23. Ld. Sr. Counsel for the Appellant submitted that the Resolution Plan is also in contravention with Section 14 of the IBC which provides only a temporary calm period for the purpose of initiation of any suit or continuation of the pending suits and proceedings against the Corporate Debtor. Whereas in the present case on one hand the claim of the Appellant was pending Company Appeal (AT) (Insolvency) No. 1471 of 2019 adjudication before the Arbitrator and was stayed due to subsistence of moratorium period, however, on the other hand under the guise of approval of Resolution Plan the Appellant's claim was permanently extinguished.

24. Ld. Sr. Counsel for the Appellant submitted that the Resolution Plan is an eye wash and detrimental to the interest of stakeholders including the Appellant. The Successful Resolution Applicant proposes to pay a meagre amount of Rs. 73.73 Crores in toto against the total outstanding debt of Rs. 2519.61 Crores. It is surprising that against the fair market value of the Corporate Debtor i.e. to be tune of Rs. 843 Crores the RP actually proposed only 20.24 Crores to non-related Creditors. The Appellant despite being the highest Operational Creditor is paid nothing, however, to the contrary in terms of the Resolution Plan, it is wrongly demonstrated that all the Operational Creditors are fully satisfied by way of others Resolution Plans. The Resolution Plan is arbitrary and discriminatory in nature as it proposes to discriminate the Creditors placed within the same Clause.

25. Thus, by virtue of such approved Resolution Plan, the pending Arbitration proceedings after lifting of the moratorium would be futile under Section 14 r/w 60(6) of the IBC. In such circumstances, it is submitted that the impugned order may be set aside and protect the claims of the Appellants in view of order dated 16.11.2020 passed by Hon'ble Supreme Court in the case of NTPC Limited (Simhadri Project) Vs. Rajiv Chakraborty (Civil Appeal No. 2798 of 2020)

26. Per Contra Ld. Sr. Counsel for monitoring committee representing Respondent No. 1 submitted that in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Company Appeal (AT) (Insolvency) No. 1471 of 2019 Persons) Regulations 2016 (Regulations, 2016) a public announcement in Form-A was issued on 28.05.2018 in various newspapers. Pursuant to the public announcement claims of various Financial Creditors, Operational Creditors and other Creditors and the Corporate Debtor were received which were collated and verified by the IRP/RP. Further as per Regulation 13 of the Regulations 2016 a list of Creditors of the Corporate Debtor was prepared and filed with the Adjudicating Authority and the same list was also displayed on the website and was updated periodically. During the CIRP a total claim of INR 511,58,39,247 was received from the Appellant claiming to be an Operational Creditor of the Corporate Debtor. It is further submitted that the Appellant's claim was examined by the RP



and took to verification against the books and records of the Corporate Debtor, whereupon it claimed that the said claim was disputed by the Corporate Debtor in various Arbitrations/Appellate Authorities and the liability is subjected to the outcome of this proceedings. This fact was disclosed in the list of the Creditors by the RP. The non- admission of its claim by the RP was never challenged by the Appellant before the Adjudicating Authority. Thus, the RP has done his duty in terms of the Code and Regulations bonafidely.

27. Ld. Sr. Counsel for the Respondent No. 1 submitted that the Appellant having failed to challenge the non-admission of its claim before the Adjudicating Authority, the Appellant cannot challenge the non-admission of the claim now at this belated stage directly before this Appellate Tribunal under the garb of challenging the Resolution Plan which was approved by the Adjudicating Authority and subsequently by the Hon'ble Supreme Court. Now Company Appeal (AT) (Insolvency) No. 1471 of 2019 the Resolution Plan has already been implemented, therefore, this Appeal rendered infructuous and the Appellant is not entitled to any relief.

28. Ld. Sr. Counsel for the Respondent No. 1 submitted that upon examination of books and accounts of Ricoh (Corporate Debtor) during the CIRP period, the RP determined that the transactions entered into by the Ricoh (Corporate Debtor) with the Appellant prior to initiation of the CIRP required detailed investigation. Pursuant to this determination the RP exercised his powers under Section 25 (2) (d) r/w in conjunction with Sections 43, 45, 49, 50 and 66 of the IBC and appointed Alvarez and Marsal India Pvt. Ltd. (A&M) on 13.07.2018 to assist him in investigating and examining the potential fraudulent extortionate credit and undervalued transactions which took place between Ricoh and third parties including the Appellant.

29. Ld. Sr. Counsel for the Respondent No. 1 submitted that on 16.08.2018 with respect to the ongoing investigation into transactions between FDSL and Ricoh (Corporate Debtor), SEBI passed interim orders under Sections 11 (1), 11(4) and 11 B of the SEBI Act and Regulation 11 of the PFUTP Regulations holding inter alia that there are large scale irregularities in the business transactions between the erstwhile management of Ricoh and Appellant (FDSL), including manipulation in its books of accounts, which amounted to fraud. SEBI in the above referred order has held that on investigation, it has been uncovered that the erstwhile management and key managerial personnel of the Appellant prominently figured the fraudulent practices and manipulations in the books of accounts of Ricoh.

30. Ld. Sr. Counsel for the Respondent No. 1 submitted that on 24.08.2018 the RP published the updated list of the Creditors along with admitted claims Company Appeal (AT) (Insolvency) No. 1471 of 2019 and verification of the claims done till date. It is submitted that on 29.11.2018 the RP published an updated list of the Creditors for the Corporate Debtor wherein the admitted claims of the Appellant in annexure B was indicated as 'Nil' with an appended note 2 wherein it is stated that the claims of the Appellant were disputed and pending adjudication in the Arbitration Proceedings.

31. It is also submitted that the RP had filed before the Adjudicating Authority an Application (M.A 262 of 2019) under Section 50, 51 and 66 of the IBC for avoidance of certain extortionate, fraudulent and wrongful trading practices by the Corporate Debtor in connivance with various persons/entities

including the Appellant. The Appellant was also a party in the said Application. However, despite presence of its counsel on various dates before the Adjudicating Authority the Appellant did not raise any objection before the Adjudicating Authority. This being so the Appellant has no right or locus to challenge the approved Resolution Plan directly before this Appellate Tribunal at this belated stage. It is pertinent to note that in the rejoinder the Appellant has not denied this fact, however, it is stated that the said Application has no relevance to the determination of the issues involved in the present Appeal.

32. Ld. Sr. Counsel for the Respondent No. 1 submitted that a Successful Resolution Applicant cannot suddenly be faced with 'undecided' claims after the Resolution Plan submitted by him and the same has been accepted. As this would amount to a hydra head popping up which would throw into uncertainty amounts be payable by the Prospective Resolution Applicant. For this proposition, he placed reliance on the Judgment of the Hon'ble Supreme Court in the Case of CoC Essar Steel India Ltd. Vs. Satish Kumar Gupta & Company Appeal (AT) (Insolvency) No. 1471 of 2019 Ors. 2019 SCC Online SC 1478. For this preposition, he also placed reliance on the Judgment of this Appellate Tribunal in the case of JSW Steel Ltd. Vs. Ashok Kumar Gulla & Ors. 2019 SCC Online NCLAT 854

33. Ld. Sr. Counsel in support of the aforesaid arguments also placed reliance on the Judgment of Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. (2019) 4 SCC 17, K. Shashidhar 2019 SCC Online SC 257, Jaypee Kingston Boulevard Apartments 2021 SCC Online SC 253, Kalpraj Dharamshi vs. Kotak Investments 2021 SCC Online SC 204, Maharashtra Seamless Ltd. (2020) 11 SCC 467, Ghanshyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019), Chittoori Subbanna Vs. Kudappa Subanna & Ors. AIR 965 SC 1325 and Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari AIR 1951 SC

16.

34. Ld. Sr. Counsel for the Respondent No. 1 submitted that the Appellant without any basis in the argument has made allegations against the RP which are uncalled for. The Appellant has failed to point out any material irregularity in exercise of powers by the RP during the CIRP, therefore, there is no merit in this Appeal and is liable to be dismissed.

35. Ld. Sr. Counsel appearing for the Respondent Nos. 2 & 3 submitted that in view of the findings of the Hon'ble Supreme Court in the case of Kalpraj Dharamshi (Supra) wherein the validity of the impugned order has been upheld and with the Resolution Plan having been successfully and irreversibly implemented by Respondent No. 2 & 3. Accordingly, the present Appeal is rendered non-maintainable, infructuous, and non-est, and thereby ought to be dismissed.

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36. Ld. Sr. Counsel for the Respondent Nos. 2 & 3 submitted that the claims of the Appellant were not admitted and the same reflected in the list of Creditors published by the RP on three occasions i.e. 29.11.2018, 10.12.2018 and 24.01.2019. However, the Appellant failed to challenge the non-admission of its claim by the RP in the first instance before the Adjudicating Authority and

thereby acquiesced to this determination. The Appellant is estopped from challenging the non-admission of its claims at a belated stage in the present Appeal. In fact, it may be noted that on 31.01.2021, the Respondent Nos. 2 & 3 had successfully and irreversibly implemented the Resolution Plan, thereby completing the takeover of the control, operations, and management of the Corporate Debtor. These facts have been duly considered by the Hon'ble Supreme Court and upheld the impugned order.

37. Ld. Counsel for the Respondent Nos. 2 & 3 submitted that the Appellant has approached this Appellate Tribunal seeking reliefs under Section 61 of the IBC with the impugned order be set aside on various grounds including inter alia that the Appellant's claims have not been admitted by the RP, but this determination of the RP was never challenged by the Appellant at the first instance before the Adjudicating Authority in accordance with the provisions of the IBC. It is also submitted that the claims of the Appellant having been rejected and not being recognized as an Operational Creditor, no vested substantive right would accrue to the benefit of the Appellant in terms of the treatment and payment made by the Respondent Nos. 2 and 3 under the Resolution Plan.

38. Ld. Sr. Counsel for the Respondent No. 2 & 3 submitted that the impugned order has approved the Resolution Plan of the Respondent Nos. 2 Company Appeal (AT) (Insolvency) No. 1471 of 2019 & 3 which in turn has been upheld by the Hon'ble Supreme Court. In view of this no further challenge can be made to the Resolution Plan and the findings in this regard operate as res-judicata against the Appellant.

39. It is submitted that the determination of the claims of the Appellant was reached by RP upon due examination and verification of books of accounts. RP had also filed the avoidance application before the Adjudicating Authority arraying the Appellant as Respondent. Which was based upon the findings in the Alvarez& Marsal India Pvt. Ltd. (A & M) Report dated 15.01.2019 as well as the observations made by the SEBI in various interim orders against the Appellant and its ex-management in respect of fraudulent and extortionate credit transactions between the Corporate Debtor and the Appellant including various violations of the SEBI Act and its allied Rules and Regulations. Hon'ble Supreme Court in Anuj Jain IRP for Jaypee Infratech Ltd. Vs. Axis Bank Ltd. &Ors. 2020 SCC Online SC 237 at Para 16.2, 28.1, 28.2 and 28.3 has held that the RP is duty bound under Section 25(2) (j) of the IBC to identify potential avoidance transaction including preferential transaction under Section 43 of the IBC and to institute the appropriate Application before the Adjudicating Authority. Thus, based on the above material the RP has arrived at the determination that the ex-management of the Corporate Debtor and the Appellant had entered into fraudulent and extortionate credit transaction and accordingly, the claim of the Appellant was not admitted. This attained finality as the Appellant did not pursue the appropriate remedy at the first instance by challenging the determination of RP before the Adjudicating Authority. Admittedly, the claims of the Appellant has not been admitted by the RP and Company Appeal (AT) (Insolvency) No. 1471 of 2019 determined to be fraudulent and extortionate credit transactions and in view of this no payment was provided under the Resolution Plan to the Appellant.

40. It is submitted that there is no substance or merit to the allegations of the Appellant on the grounds of discrimination in the treatment provided under the Resolution Plan, alleged fraud

illegality or any contravention of law by or attributable to the Respondent Nos. 2 & 3 and such allegations in the Appeal ought to be summarily rejected by this Hon'ble Appellate Tribunal.

41. It is submitted that the Resolution Plan by the Prospective Resolution Applicants prepared on the basis of information memorandum and evaluation matrix. The Respondent Nos. 2 & 3 were duly provided with a copy of information memorandum and evaluation matrix and the Appellant's claim was not admitted therein and that fact was duly taken into consideration by the Respondent Nos. 2 & 3 when the Resolution Plan was submitted before the CoC on 12.02.2019 and subsequently, approved on 14.02.2019 by a thumping majority by the CoC in exercise of its commercial wisdom. The CoC has comprehensively considered the provisions of the Resolution Plan and duly considered the feasibility and viability of the Resolution Plan. It is well settled that the matter of distribution of amounts under a Resolution Plan is within the exclusive domain of the Commercial wisdom of the CoC, which is not amenable to judicial review, in the decisions of the Hon'ble Supreme Court in K. Sashaidhar Vs. Indian Overseas Bank & Ors. (2019) 12 SCC 150 at Para 32, 34, 35, 37, 52, 53, 55 to 64 and in CoC of Essar Steel (India) Ltd. Vs. Satish Kr. Gupta (2020) 8 SCC 531 at Para 54,56,60 to 73.

42. It is submitted that as per Section 31 (1) of the IBC, a Resolution Plan once approved by the Adjudicating Authority shall be binding on all the Company Appeal (AT) (Insolvency) No. 1471 of 2019 stakeholders and creditors of the Corporate Debtor. In this regard reference may be made to Article 4.1, 9.2(e) & (f) of the Resolution Plan, which provides that it shall be binding on all the stakeholders of the Corporate Debtor upon approval by the Adjudicating Authority. In addition, the Adjudicating Authority in the impugned order has granted reliefs and concessions under the aforesaid Articles of the Resolution Plan providing for extinguishment of all pending proceedings against the Corporate Debtor prior to the approval date including all the respective liabilities/obligations accruing thereunder against the Corporate Debtor or the Respondents No. 2 & 3.

43. Ld. Sr. Counsel for the Respondent Nos. 2 & 3 submitted that the Appellant has relied upon the judgment of Hon'ble Supreme Court in NTPC Ltd. Vs. Rajiv Chakrabarty & Ors. (Supra) which has no relevance to the facts of present case and distinguishable on facts and law. In the facts of that case, the Hon'ble Supreme Court had held that the factum of Arbitration Proceedings pending between Corporate Debtor and the Operational Creditor will have to be recorded in the information memorandum by the Resolution Professional, with the statement that the claim will be subject to outcome of the Arbitration Proceedings, and this IM must be provided to Prospective Resolution Applicants, who will consider the same into account while submitting their respective Resolution Plans. Due notice whereof has to be taken by the CoC, and will be dealt with by the Resolution Applicant appropriately in the final Resolution Plan.

44. Ld. Sr. Counsel in support of aforesaid arguments placed reliance on the Judgment of Hon'ble Supreme Court in the case of Maharashtra Seamless Ltd. Vs. Padmanabhan Venketesh & Ors. (2020) 11 SCC 467 and Jaypee Company Appeal (AT) (Insolvency) No. 1471 of 2019 Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. Civil Appeal No. 3395 of 2020 decided on 24.03.2021 and B.L. Sreedhar and Ors. Vs. K.M. Munireddy (2003) 2 SCC

355, and also place reliance on the Judgement of this Appellate Tribunal in the case of Santosh Wasantrao Walokar Vs. Vijay Kr. V. Iyer & Anr. 2020SCC Online NCLAT 128.

45. Ld. Sr. Counsel for the Respondent Nos. 2 & 3 submitted that the Appellant has failed to establish any of the grounds for interference with the impugned order passed by Adjudicating Authority. Thus, the Appeal must be dismissed.

46. After hearing Ld. Sr. Counsels for the parties we have gone through voluminous record.

47. Admittedly, the Appeal has been filed against the impugned order approving a Resolution Plan under Section 31 of the IBC. Against an order approving a Resolution Plan under Section 61 (3) Appeal may be filed on the grounds specified in (i) to (v). From the grounds projected in memo of Appeal it seems that the Appeal is filed on the following grounds:

(i) Whether there has been material irregularity in exercise of powers by the Resolution Professional during the Corporate Insolvency Resolution Period?

(ii) Whether the debts owed to the Operational Creditor (Appellant) of the Corporate Debtor have not been provided for in the Resolution Plan in the manner specified by the Board?

(iii) Whether this Appellate Tribunal can grant the relief as prayed in the Appeal?

Issue No. (i) Company Appeal (AT) (Insolvency) No. 1471 of 2019 Whether there has been material irregularity in exercise of powers by the Resolution Professional during the Corporate Insolvency Resolution Period?

48. On 14.05.2018 Mr. Krishna Chamadia was appointed IRP, on 28.05.2018 in terms of Regulation 6 of the Regulations a public announcement in Form-A was issued in various newspapers, inviting submission of claims with proof from the Creditors of the Corporate Debtor. Pursuant to the public announcement on 05.06.2018, the Appellant filed six claims of Rs. 511,58,39,247/- in Form - A before the IRP. On 15.06.2018 Mr. Krishna Chamadia was confirmed as Resolution Professional by the CoC. On 24.08.2018 the RP issued list of Creditors as per the Regulation 13 of CIRP Regulations. The Name of the Appellant was mentioned in the list of Operational Creditors. On 29.11.2018 the RP published updated list of Creditors of the Corporate Debtor, wherein the admitted claims of the Appellant was indicated as 'Nil' with an appended note: "2. The claims pertaining to FDSL have been disputed and are in proceedings before the Arbitrators/Appellate Authorities. The liability is subjected to outcome of these proceedings".

49. The list of Creditors of the Corporate Debtor was issued and also displayed on the website and was updated periodically i.e. on 10.12.2018 and 24.01.2019 wherein admitted claims of the Appellant was shown as 'Nil' with the aforesaid appended note. Admittedly, the Appellant has not raised any objection before the RP and CoC with regard to the fact that the Appellant's claims were not admitted and the claims were shown as disputed and pending adjudication in Arbitration

Proceedings.

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50. The RP published preliminary list of the Creditors on 15.06.2018 which was intimated to BSE as required under Schedule III of the SEBI (Listing obligation and disclosure requirements) Regulations, 2015 r/w Regulation 13(2) (c) of Regulations 2016. The RP upon examination of the books and accounts of Corporate Debtor during the CIRP, determined that the transactions entered into by the Corporate Debtor with the Appellant prior to initiation of CIRP required detailed investigation. Pursuant to this determination, the RP exercised his powers under Section 25(2) (d) read in conjunction with Sections 43, 45, 49, 50 and 66 of the IBC and appointed, Alvarez and Marsal India Ltd. 'A & M' on 13.07.2018 to assist him in investigating and examining potential fraudulent, extortionate credit and undervalued transactions which took place between Corporate Debtor and third parties, including the Appellant.

51. On 16.08.2018 in respect ongoing investigation into transactions between Appellant (FDSL) and the Corporate Debtor, SEBI passed an interim order under Sections 11(1), 11 (4) and 11B of the SEBI Act and Regulation 11 of the PFUTP Regulations holding inter alia that there is large-scale irregularity in the business transactions between the erstwhile management of Corporate Debtor and the Appellant (FDSL), including the manipulation in its books and accounts, which amounted to fraud. SEBI in the above referred order has held that on investigation, it has been uncovered that the erstwhile management in key managerial personnel of FDSL prominently figured in respect of fraudulent practices and manipulated books and accounts of the Corporate Debtor. The copy of the SEBI order dated 16.08.2018 is annexed Company Appeal (AT) (Insolvency) No. 1471 of 2019 as Annexure R-8 with the Reply filed on behalf of the Respondent Nos. 2 & 3 at pg. 87 to 131 we would like to refer certain paragraphs and findings of SEBI which are as under:

"(h) In most instances, the customers' Pos were received through an email by Smriti Pandey, Senior Executive -ITS Operations from Amalendu Mukherjee, MD of Fourth Dimension Solutions Limited (FDSL) or AS Jindal, Director, Jindal Infra Solutions Limited and not directly from the respective customers. Similarly, the corresponding invoices from Ricoh were sent by Smriti Pandey to Amalendu Mukherjee or AS Jindal and not to the customers. It was not clear as to why Smriti Pandey was the focal point of most of the communication with respect to the suspect transactions since she was not in a role which required interaction with customers and vendors.

.....

(j) Review of tax returns filed by FDSL and Redhex indicated that Redhex's total purchases during the half-year ended September 30, 2015 was Rs. 197 Crores out of which Rs. 196.59 Crores (99.7%) was purchased from Ricoh. It was observed that all sales made by Ricoh to Redhex were back to back trades as the purchases with respect to these sales were made from FDSL for an aggregate of Rs. 169 Crores. FDSL in turn purchased goods amounting to Rs. 79 Crores from Redhex during the half

year ended September 30, 2015. It indicated that substantial portion of sales by Redhex had originated from FDSL, part of which appeared to have been sold back to FDSL thereby indicating that these transactions were likely to be circuitous in nature.

..... (30) I note that Shri Amalendu Mukherjee and FDSL have inter alia sought interim relief from the directions contained in the interim order on the ground that the directions are against Shri Amalendu Mukherjee and not against FDSL. However, I note that FDSL's name prominently figures in respect of the alleged fraud pertaining to the suspect transactions and manipulated books and accounts of Ricoh. Thus, in the larger interest of investors in the securities market, I do not deem fit to grant any interim relief, as requested by Shri Amalendu Mukherjee and FDSL."

52. As per the mandate dated 13.07.2018 of the RP stated above A & M completed forensic auditor investigation into transactions of the Corporate Company Appeal (AT) (Insolvency) No. 1471 of 2019 Debtor of three preceding years to the commencement of the CIRP and submitted the final report dated 15.01.2019 containing the findings of fraudulent and collusive transactions between the ex-management of FDSL and the Corporate Debtor, which was intended to defraud the Corporate Debtor. It is the matter of record that receivable of huge amounts accruing to the Corporate Debtor under these transactions were written off illegally by the Appellant and its ex-management. The RP on verification of the Appellant's claims came to the reasoned determination that all the transactions between the Appellant and the Corporate Debtor were vitiated by fraud and illegality as confirmed by the findings of the 'A & M' report dated 15.01.2019 and the findings of the SEBI in its interim order dated 16.08.2018.

53. On 19.01.2019 the RP taking serious note of the findings of 'A&M' report dated 15.01.2019, filed an Application being M.A No. 262 of 2019 under Sections 50, 51, 56 r/w Section 60(5) of the IBC before the Adjudicating Authority seeking reliefs against the fraudulent and undervalued transactions entered by the Corporate Debtor and third party including the Appellant. The avoidance application is annexure R-8 of the Reply filed by the Respondent No. 2 & 3 at page 224 to 290. Reliefs sought in the Application is as under:

"Only the reliefs against the Appellant are mentioned here:

(a) .....

(b) Direct Manoj Kumar/R-1, Arvind Singhal/R2, Anil Seni/R3, (FDSL)/R4 and Redhex/R6 to contribute amount of INR 72.29 Crores to the Corporate Debtor.

(c) Direct Manoj Kumar/R-1, Arvind Singhal/R2, Anil Seni/R3, (FDSL)/R4 and Veda Vaag/R7 to contribute amount of INR 41.37 Crores to the Corporate Debtor.

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(d) Direct Manoj Kumar/R-1, Arvind Singhal/R2, Anil Seni/R3, (FDSL)/R4 and Jatalia/R8 to contribute amount of INR 12.41 Crores to the Corporate Debtor.

(e) Direct Manoj Kumar/R-1, Arvind Singhal/R2, Anil Seni/R3, (FDSL)/R4 and Rudra/ R9 are jointly severally liable to contribute amount of INR 8.32 Crores to the Corporate Debtor.

(f) Direct Manoj Kumar/R-1, Arvind Singhal/R2, Anil Seni/R3, (FDSL)/R4 and new code/R10 to contribute amount of INR 0.59 Crores to the Corporate Debtor.

(g) Direct Manoj Kumar/R-1, Arvind Singhal/R2, Anil Seni/R3, (FDSL)/R4 to contribute amount of INR 112 Crores to the Corporate Debtor.

(h) Direct Manoj Kumar/R-1, Arvind Singhal/R2, Anil Seni/R3, (FDSL)/R4 to contribute amount of INR 55.31 Crores to the Corporate Debtor."

54. The aforesaid application M.A No. 262 of 2019 along with M.A. No. 691 of 2019 (for approval of Resolution Plan) were listed on various dates before the Adjudicating Authority. Appellant's Counsel was present before the Adjudicating Authority, however, he has not contested these Applications. Therefore, the Adjudicating Authority vide impugned order approved the Resolution Plan.

55. The main grievance of the Ld. Sr. Counsel for the Appellant is that the RP deliberately avoided the entire claim of the Appellant on the basis of pending arbitral proceedings without even verify the claims. Moreover, instead of putting the dispute amount and claim in the contingency provisions the RP has mechanically deferred the entire claim of the Appellant. As per the Regulation 14 where the amount claimed by the Creditors is not précised due to any contingency or other reasons, the IRP or RP shall make the best estimate of amount of the claim based on the information available with him.

56. In the present case Mr. Krishna Chamadia on the basis of documents found that the claims of the appellant are disputed and are pending adjudication before the Arbitrators but when he received the report of forensic Company Appeal (AT) (Insolvency) No. 1471 of 2019 auditor, 'A&M' and also received the interim order of SEBI that the transactions are not only disputed but are fraudulent and extortionate. Therefore, as per the Regulation 14 it was not required to put estimate value of amount of the claim. On the other hand, Mr. Krishna Chamadia found that receivable of huge amounts accruing to the Corporate Debtor under these transactions were written off illegally by the Appellant, therefore, Krishan Chamadia has filed the Application M.A No. 262 of 2019. With the aforesaid, we are of the view that Mr. Krishna Chamadia has done his duty bonafidely as per the IBC and Regulations and Ld. Sr. Counsel for the Appellant unable to convince us that Mr. Krishna Chamadia has committed dereliction in the duties provided the IBC.

57. The Appellant in his argument made allegations against the RP that he has committed gross violation of the act of non-determination and neglected the legitimate claim of the Appellant. There are also allegations against the RP that due to collusive conduct of the RP, CoC and the Successful Resolution Applicants have illegally prioritised the interest of few Operational Creditors and has laid to a situation where the Successful Resolution Applicants has held entire CIRP to ransom at the



costs of Operational Creditors including the Appellant. We are of the view that there is no material to substantiate the aforesaid allegations against the RP.

58. On the other hand, the Appellant has not answered following questions:

(i). The RP has published the list of creditors on 24.08.2018, 29.11.2018, 10.12.2018 and finally on 24.01.2019 and in these lists the claims of the Appellant were shown as disputed claims. These lists were displayed on Company Appeal (AT) (Insolvency) No. 1471 of 2019 website, however, the Appellant has not raised any objection before the RP and CoC that the estimate of the amount of claims has not been shown in the lists.

(ii). When the Application M.A. No. 691 of 2019 was filed by the RP before the Adjudicating Authority for approval of plan and RP has also filed an Application M.A. No. 262 of 2019 under Section 50, 51, 60 r/w section 60(5) of the IBC for reliefs against certain fraudulent and wrongful trading by the Corporate Debtor and certain undervalued transactions. The Appellant was made Respondent No. 4 in the said Application which is in the form of Affidavit (See Annexure R-8 page 224-290 of Reply filed by the Respondent No. 2 & 3). In this Application in Paras 16, 17, 21 to 30 there are specific allegations that the Appellant's claims fall within the scope of fraudulent trading and wrongful trading transactions under Section 66 of the IBC. However, the Appellant has not contested these applications before the Adjudicating Authority.

(iii) The Appellant in rejoinder did not dispute the aforesaid facts, however, stated that the Application has no relevance to the determination of the issues involved in the present Appeal.

(iv) The Appellant has not challenged the findings of the A & M report dated 15.01.2019 and SEBI interim order dated 16.08.2018.

59. With the aforesaid we are of the view that the Appellant has failed to convince that the RP has committed any material irregularity in exercise of powers during the CIRP.

Issue No. (ii) Company Appeal (AT) (Insolvency) No. 1471 of 2019 Whether the debts owed to the Operational Creditor (Appellant) of the Corporate Debtor have not been provided for in the Resolution Plan in the manner specified by the Board?

60. We have to see that as per Regulation 38 (1A) the Resolution Plan has dealt with the interest of Operational Creditor. Regulation 38 (1A) reads as under: -

"38(1A) The Resolution Plan shall include a statement as to how it dealt with the interests of all stakeholders including Financial Creditors and the Operational Creditors, of the Corporate Debtor"

61. Such Amendment was inserted w.e.f. 05.10.2017. In the light of the Regulation 38 (1A), we have examined the Resolution Plan. The Resolution Plan Para 3.3 treatment of Operational Creditors

(Other than workman/employees) reads as under: -

"(3.3) As per the list of Creditors, the total amount of claims of Operational Creditors admitted by the RP is INR 790.17 Cr. (Indian Rupees Seven Hundred Ninety Crores and Seventeen Lakhs only). We have sub-categorized this amount and propose the payments as follows:

Definition	Particulars	Claim Amount Admitted (INR)
	Ricoh Company Ltd., Japan	2,60,95,176
	Ricoh Asia Pacific Operations Ltd., Hong Kong	7,66,00,83,908
"Related Party OC"	Ricoh Asia Pacific Ptd Ltd, Singapore	1,05,91,830
	Ricoh Australia Pty Ltd	7,19,732
	Ricoh Europe PLC	1,34,65,045
"Non- Related Party OC"	Other non-related party Operational Creditors of Ricoh India Limited	19,07,33,409
	Total	7,90,16,89,100

As a part of the Resolution Plan, the Resolution Applicant shall pay in full i.e. INR 19.07 Cr. (Indian Rupees Nineteen Crores Seven Lakhs Only) to the non-related party OC as a full and final Company Appeal (AT) (Insolvency) No. 1471 of 2019 settlement towards their claims. The payment shall be made from the money infused in the Corporate Debtor as per clause 5.2.4 and clause 5.2.5. The amount will be paid as per the timelines of the Resolution Plan given in clause 5.3. For settlement/payment of related party OC please refer clause 4.2. above.

The Resolution Applicants, at their sole discretion, intend to pay INR 150 Cr. (Indian Rupees one hundred and fifty crore only) to RCL at any time after the expiry of 9 years from the transfer date to obtain operational support necessary to run the business."

62. After submitting the Resolution Plan before the Adjudicating Authority the RP has submitted addendum to the Resolution Plan which reads as under:

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"The following shall be inserted in clause 4.3. Treatment of Operational Creditors (Other than workmen/employees): We understand that Connect Residuary Pvt. Ltd. has submitted a claim of INR 25.52 Cr. Which has been admitted by the RP. The Resolution Applicant proposes to pay NIL to Connect Residuary Pvt. Ltd. (and any other Operational Creditors whose claim does not form a part of the admitted claims in the list of Creditors) as a part of the Resolution Plan. This shall apply even if any such claims, include but limited to claim made by Connect Residuary Pvt. Ltd., are

admitted at a later date by RP before the Adjudicating Authority."

63. With the aforesaid provisions in the Resolution Plan we can say that there is a specific provision as per Regulation 38(1A) for the debts owed to the Operational Creditors of the Corporate Debtor. So far as the claims of the Appellant are concerned these are not only disputed claims but are the fraudulent and extortionate credit transactions as per the forensic auditor report 'A&M' and SEBI interim order dated 16.08.2018. Therefore, the Appellant's claims not included in the Resolution Plan.

64. Ld. Sr. Counsel for the Appellant heavily placed reliance on the Judgment of Hon'ble Supreme Court in the case of NTPC Ltd (Simhadri Company Appeal (AT) (Insolvency) No. 1471 of 2019 Project) (Supra). In this Appeal, the limited issue placed before Hon'ble Supreme Court is about the claims of the Appellant not been reflected under the heading 'claims of Operational Creditors' in the information memorandum. According to the Appellant, the claims of the Appellant was pending adjudication before the Arbitrator, therefore, according to the Appellant, the claim amount should have been reflected under the heading 'Claims of Operational Creditors'. The Hon'ble Supreme Court do not agree with this submission and held that the Appellant's claims has rightly been described in the memorandum as other creditors' claims (Claims under Adjudication). The Appellant has raised this objection before the approval of Resolution Plan. In the present Appeal, the facts are quite different the Appellant's claims are not only disputed claims but are the fraudulent extortionate credit transactions. Thus, this Judgment is not helpful to the Appellant.

65. We find no force in the argument advanced by the Ld. Sr. Counsel for the Appellant.

Issue No. (iii) Whether this Appellate Tribunal can grant the relief as prayed in the Appeal?

66. Now, we have considered whether we can grant relief which is sought in the Appeal. The Appellant has sought relief in the Appeal that the impugned order dated 28.11.2019 passed by the Adjudicating Authority whereby approved the Resolution Plan be set aside. The order dated 28.11.2019 upheld by the Hon'ble Supreme Court in the Civil Appeal No. 2943-2944 vide Judgement dated 10.03.2021. The Appellant is also aware of this fact that once the impugned order is upheld by the Higher Court then this Appellate Company Appeal (AT) (Insolvency) No. 1471 of 2019 Tribunal cannot set aside or quash the impugned order. For this purpose, it is useful to refer the grounds of the Appeal (CA No. 847-848 of 2021) filed by the Appellant, even during pendency of this Appeal, before Hon'ble Supreme Court. Copy of Memo of the said Appeal is filed by the Appellant before this Appellate Tribunal.

67. The background of the said Appeal is that the Resolution Plan of Kalpraj was approved by the Adjudicating Authority vide impugned order. Against the impugned order Kotak Investment Advisors Ltd. filed an Appeal (CA (AT) (Ins) No. 344 - 345 of 2020) before this Appellate Tribunal. This Appellate Tribunal vide Judgment dated 05.08.2020 allowed the Appeal. Thereafter, against this Judgment Kalpraj filed Appeal before the Hon'ble Supreme Court and the Appellant (FDSL) also filed the Civil Appeal No. 847-848 of 2021. In the memo of Appeal following questions of law are framed by the Appellant:

"(a).....

(b). Whether the impugned order now deprive the Appellant fair and reasonable opportunity to get his Appeal filed against the order of the Adjudicating Authority, adjudicated and hence, violative of Rule of Audi Alteram Partem as the NCLT, after deciding the Appeal filed by the Kotak Investment Advisors Ltd., will not be in a position to adjudicate against the same order in the Appeal of the Appellant"

(c) Whether the order impugned might operate as constructive res-judicata as against the Appeal preferred by the Appellant and thus, renders the pending Appeal of the Appellant technically infructuous?

68. Thus, Ld. Sr. Counsel for the Appellant is unable to convince us that when the impugned order has been upheld by the Hon'ble Supreme Court then how the impugned order can be set aside in this Appeal.

69. Hon'ble Supreme Court in the case of Ghansyam Mishra and Sons (Supra) examining the issue as to whether after approval of Resolution Plan Company Appeal (AT) (Insolvency) No. 1471 of 2019 by the Adjudicating Authority, a creditor including the Central Government, State Government or any local Authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not part of the Resolution Plan approved by the Adjudicating Authority. Hon'ble supreme court in Para 95 of the Judgment held as under: -

#### "CONCLUSION

95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its

approval under Section 31 could be continued."

.....  
.....

130. In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."

70. With the aforesaid preposition of law laid down by the Hon'ble Supreme court it is clear that when the Resolution Plan is approved by the Adjudicating Company Appeal (AT) (Insolvency) No. 1471 of 2019 Authority the claims of the Appellant which are not part of the Resolution Plan shall stand extinguished and the proceedings related thereto shall stand terminated. Therefore, the Appellant cannot pursue such claims at such belated stage before this Appellate Tribunal. The Appellant has not pursued such claims, when the Resolution Plan was pending for approval before the Adjudicating Authority.

71. Now, we have considered the another aspects of the matter, the plan has already been implemented by the Successful Resolution Applicants and RP has already been discharged. Therefore, the monitoring committee of Ricoh India Ltd. (Corporate Debtor) has filed the Reply on behalf of the Respondent No. 1. They submitted that now the Appellant cannot pursue its claim against the Corporate Debtor after implementation of the plan and the Appellant's claim deserves out right dismissal. In the light of the ruling of Hon'ble Supreme Court in the case of CoC of Essar Steel India Ltd. Vs. Satish Kr. Gupta 2019 SCC Online SC 1478, wherein Hon'ble Supreme court has inter alia held as under: -

67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into amount payable into amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.

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72. Hon'ble Supreme Court has held that the Successful Resolution Applicants cannot suddenly be faced with undecided claims after the Resolution Plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a Prospective Resolution Applicant who successfully take over the business of the Corporate Debtor. All claims are submitted and decided by the RP so that a Prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor. Thus, the Successful Resolution Applicant does on a fresh slate. In para 39 of the impugned order Ld. Adjudicating Authority rightly held that:

"The Resolution Applicant, who will step into the shoes of Corporate Debtor subsequent to approval of Resolution Plan by the Bench, shall not be held responsible for any outstanding statutory dues and other claims for the period before commencement of CIRP."

73. It is one of the significant fact which cannot be overlooked that the Appellant Company was also under CIRP vide order dated 25.07.2019 and the present Appeal filed by Ms. Pooja Bahry (RP) of FDSL on 19.12.2019. Thereafter, the Resolution Plan of Link Star Infrass Pvt. Ltd. and Mr. Dhaval Jitendra Kr. Mistry was approved and Ms. Pooja Bahry (RP) of FDSL who has filed the present Appeal has been discharged. The Successful Resolution Applicants of FDSL have not filed any Application for permission to continue this Appeal.

74. With the aforesaid, we are of the considered view that the Appellant has failed to make out a case for interference in the impugned order, which is Company Appeal (AT) (Insolvency) No. 1471 of 2019 already upheld by the Hon'ble Supreme Court. Thus, there is no merits in this Appeal. Hence, the Appeal is dismissed, however, no order as to costs.

[Justice Jarat Kumar Jain] Member (Judicial) The Appeal is heard by the Bench Comprising Justice Mr. Jarat Kumar Jain Member (Judicial) and Mr. Kanthi Narahari Member (Technical). Mr. K. Narahari is not readily available today, however, he requested to pronounce the Judgment on behalf of the Bench, therefore, as per Rule 92 of NCLAT Rules, 2016. The Judgment is pronounced for and on behalf of the Bench.

[Justice Jarat Kumar Jain] Member (Judicial) New Delhi 26th July, 2021 SC Company Appeal (AT) (Insolvency) No. 1471 of 2019