NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
MR. ARUN BAROKA, MEMBER (TECHNICAL)

21st April, 2026.

Company Appeal (AT) (Ins) No.1061, 1043 and 946 of 2025

Mr. Nimai Gautam Shah, Resolution Professional of M/s. Zep Infratech Limited **...Appellant**

Vs

1. **Raj Radhe Finance Ltd.** **...Respondent No.1**
2. **Rajendra M. Thakkar (Ravasia) and Sons Private Limited** **...Respondent No.2**
3. **Nandish Sunilbhai Vin** **...Respondent No.3**
4. **M/s. Deepvir Enterprise** **...Respondent No.4**
5. **M/s. Kanha Ventures** **...Respondent No.5**

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Harshit Khanduja, Ms. Sujal Gupta, Mr. Pulkit Khanduja and Mr. Harsh Gurbani, Advocates

For Respondent: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Raheel Patel, Mr. Himanshu Satija, Mr. Harsh Saxena, Mr. Shevaaz Khan, Ms. Ridhi Ranjan, Mr. Anshul Rao, Advocates
Kamil Lokhandwala, Advocate for Liquidator

WITH

Company Appeal (AT) (Ins) No.1043 of 2025

1. Raj Radhe Finance Ltd.	**...Appellant No.1**
2. Rajendra M. Thakkar (Ravasia) and Sons Private Limited	**...Appellant No.2**

Vs

1. Mr. Nimai Gautam Shah, Resolution Professional of M/s. Zep Infratech Limited	**...Respondent No.1**
2. M/s. Deepvir Enterprise	**...Respondent No.2**
3. M/s. Kanha Ventures	**...Respondent No.3**
4. Nandish Sunilbhai Vin	**...Respondent No.4**

For Appellant:	Mr. Neeraj Malhotra, Sr. Advocate with Mr. Abhinav Agarwal, Mr. Nimish Kumar Gupta, Mr. Piyush Bhardwaj, and Mr. Shivam Sen Gupta, Advocates
For Respondent:	Mr. Krishnendu Datta, Sr. Advocate with Mr. Harshit Khanduja, Advocate for RP Mr. Abhijeet Sinha, Sr. Advocate with Mr. Raheel Patel, Mr. Himanshu Satija, Mr. Harsh Saxena, Mr. Shevaaz Khan, Ms. Ridhi Ranjan, Mr. Anshul Rao, Advocates Kamil Lokhandwala, Advocate for Liquidator

WITH

Company Appeal (AT) (Ins) No.946 of 2025

1. M/s. Deepvir Enterprise	**...Appellant No.1**
2. M/s. Kanha Ventures	**...Appellant No.2**

Vs

1. **Mr. Nimai Gautam Shah, Resolution Professional of M/s. Zep Infratech Limited** **...Respondent No.1**

2. **Raj Radhe Finance Ltd.** **...Respondent No.2**

3. **Rajendra M. Thakkar (Ravasia) and Sons Private Limited** **...Respondent No.3**

4. **Nandish Sunilbhai Vin**

(Arising out of Order dated 23.06.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad in I.A. (Plan)/26(AHM) 2024 in C.P. (IB) No.69/7/NCLT/AHM/2023)

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Himanshu Satija, Mr. Harsh Saxena, Mr. Shevaaz Khan, Ms. Ridhi Ranjan, Mr. Anshul Rao, Advocates

For Respondent: Mr. Krishnendu Datta, Sr. Advocate with Mr. Harshit Khanduja, Advocate for RP.
Kamil Lokhandwala, Advocate for Liquidator

COMMON JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1.1 These appeals are preferred against the Order of the Adjudicating Authority (NCLT-I, Ahmedabad), dated 23.06.2025, in C.P.(IB) 69 of 2023, rejecting a resolution plan which the CoC had approved.

1.2 M/s Zep Infratech Ltd., the CD, underwent a CIRP process. It was partially successful in that the CoC had approved the resolution plan, but not the Adjudicating Authority. The CoC is aggrieved for whatever they along with the other creditors are entitled to receive is still at a distance. The Resolution Professional, someone who under the scheme of IBC is required to remain neutral and dispassionate, feels aggrieved since his conduct was adversely commented upon by the Adjudicating Authority. The SRA also feels aggrieved since the Adjudicating Authority had *inter alia* held that the plan was neither feasible nor viable since the SRA has not demonstrated its financial capacity. In short, the three principal players of a successful resolution process – the CoC, the RP and the SRA all were unhappy with the outcome and hence have preferred separate appeals challenging the Order of the Adjudicating Authority with the common objective of upholding the resolution plan which the CoC had approved. The details are as below:

Parties	**Appeal No**
The CoC	C.A.1043 of 2025
RP	C.A.1061 of 2025
SRA	C.A.946 of 2025

Broadly their stand is either to attempt at vindicating their respective integrity vis-à-vis the CIRP process or/and to establish that the Adjudicating Authority had acted in excess of its authority under Sec.31 IBC.

Facts:

2.1 As outlined above, neither the RP, nor the COC, nor the SRA are happy with the approach of the Adjudicating Authority while exercising its jurisdiction under Sec.31 IBC. The basic facts which are essential for the current purpose are as below:

a) The CD was a M.S.M.E. It gave a corporate guarantee to a loan advanced by certain Raj Radhe Finance Ltd., to M/s Shree Ram Cottex Industries Pvt. Ltd., the principal borrower. When the principal borrower defaulted in repaying its debt, the financial creditor laid petition under Sec.7 in C.P.69 of 2023 against the corporate debtor. This was admitted by the Adjudicating Authority vide its Order dated 31.07.2023 and CIRP commenced against the CD. An IRP was also promptly appointed.

b) The IRP constituted a two member CoC with two unsecured financial creditors, comprising of the petitioning-creditor with a voting share of 9.5% for a loan of ₹1,47,86,567/- and another Rajendra M. Thakkar (Ravasia) & Sons Pvt., Ltd., with 90.5% representing a loan of ₹14,13,25,000. Besides there were three unsecured operational

creditors with their combined claim of ₹ 251,78,96,210/-, of which the claim of Income tax Department alone is about ₹ 251.79 crores.

c) The assets of the CD included four items of immovable properties and they are shown in the Information Memorandum as Goa, Gujarat and Delhi properties. These were valued by two independent valuers, whose details are as below:

Land and Building:

Sl. No.	Particulars of Asset	Mr. Ronakkumar Rangani (Valuer - I)		Mr. Pratik Baldha (Valuer -II)	
		Fair Value (in Rs.)	Liquidation Value (in Rs.)	Market Value (in Rs.)	Liquidation Value (in Rs.)
1.	Block No.: D, Plot No.: 18, Basement and Ground Floor, Anand Niketan, Nr. Delhi University, Benito Juarez Marg, New Delhi – 110 021	5,57,66,147/-	3,90,36,303/-	5,53,30,000/-	3,87,31,000/-
2.	Survey No.: 23/1, Villa No.6, Infinity Bay, Jairam Nagar, Dabolim, Goa – 403 801.	3,01,43,000/-	2,41,14,000/-	3,06,35,000/-	2,14,45,000/-
3.	Office No.5-2, Navrang Complex, Swastik Char Rasta, Navrangpura, Ahmedabad	44,35,200/-	35,48,160/-	44,80,000/-	31,36,000/-
4.	R.S. No.: 147/2, 147/2 Paiki 1, 262, 299/3, Sintex	16,78,099/-	15,10,289/-	16,78,099/- (Book Value)	16,78,099/- (Assumed at book value)

	Industries Ltd., Village Lunsapur, District: Amreli				
	Total	9,20,22,446/-	6,82,09,152/-	9,21,23,099/-	6,49,90,099/-

Plant and Machinery:

Sl. No.	Particulars of Asset	Mr. Devang Shah (Valuer – I)		M/s. Maitri Valuation LLP (Valuer – II)	
		Fair Value (in Rs.)	Liquidation Value (in Rs.)	Fair Value (in Rs.)	Liquidation Value (in Rs.)
1.	**Bolero Car (G) 1 BA**	1,36,000/-	96,000/-	2,00,000/-	1,80,000/-

Securities and Financial Assets:

Sl. No.	Particulars of Asset	M/s. Maitri Valuation LLP (Valuer – I)		Mr. Manish Buchasia (Valuer – II)	
1.	Investments	1,68,57,758/-	NIL	100/-	100/-
2.	Non-Current Assets	NIL	NIL	14,000/-	NIL
3.	Trade Receivables	NIL	NIL	2,33,195/-	46,639/-
4.	Cash and Bank Balance	17,26,514/-	17,26,514/-	18,07,946/-	18,07,946/-
	TOTAL:	1,85,54,272/-	17,26,514/-	23,95,002/-	20,24,565/-

d) The RP would proceed to issue Form G and after the submission of EoI, four applicants, including the appellant in C.A.946 of 2025 were shortlisted as PRAs. SRA is a partnership firm and the combined net-worth of its partners is Rs.16,93,97,296. Indeed, since the CD is a MSME even the suspended Board of the CD wanted to submit its plan, but the CoC refused it as it was well beyond the time stipulated for it. And, it did not choose to challenge the same. This fact however, is not relevant in the context of these appeals.

e) After considerable discussions with the PRAs and they submitting revised plans vis-à-vis the financial proposal, the CoC unanimously approved the plan of the appellant in C.A.946 of 2025.

f) The RP (appellant in C.A.1061 of 2025) would now prefer I.A.26 of 2024 for obtaining the approval of the Adjudicating Authority to the plan so approved by the CoC. On 16.01.2024, the Adjudicating Authority required the RP to file the complete claim of the Government, and the RP had responded to it with his affidavit dated 29.01.2024. The Income Tax Department also joined the issue when it filed its additional report to which the RP had filed its further affidavit dated 09.03.2024.

g) On 09.03.2024, the Adjudicating Authority sought further clarifications, which the RP is stated to have provided vide his affidavit dated 24.04.2024.

h) Be that as it may, on 30.04.2024, the Adjudicating Authority passed its Order and declined to lend its approval to the plan and remanded the plan back to the CoC.

i) The points on which the Order of remand was made came to be discussed by the CoC, and as required by it, on 07.05.2024, the appellant in C.A.946 of 2025 submitted its modified plan. The value of the plan was Rs.7.75 crores. The two-member CoC would approve it unanimously once again. It may have to be stated that earlier the SRA had provided an EMD of Rs.25.0 lakhs and followed it a

payment of Rs.1,68,75,000/- vide two demand drafts towards performance guarantee.

2.2 The matter came before the Adjudicating Authority yet again for its approval. Throughout the process, no other stakeholder, creditor, governmental authority, or erstwhile management of the CD raised any objection or challenge to the Resolution Plan or the valuation. However, in its Order dated 23.06.2025 which is now impugned, the Adjudicating Authority rejected the Resolution Plan and directed liquidation of the Corporate Debtor. The Adjudicating Authority indeed has held that the CIRP has been used as a mask as the very initiation of CIRP is found to be suspect. The line of reasoning which prevailed on the Adjudicating authority for arriving at its decision was founded inter alia on the following facts:

a) The Balance Sheet of the Corporate Debtor as on 31.03.2022 reflects property, plant, and equipment valued at ₹15.06 crores which declined to ₹8.29 crores as on 31.03.2022. The reduction occurred across categories including land, buildings, plant and machinery, and vehicles which indicates that the CD apparently had disposed of some of the assets during the financial year 2021-2022.

b) Further, the Balance Sheet of the CD as on 31.03.2023 shows that the book value of non-current assets in the form of property, plant and equipment decreased from ₹8.29 crores as on 31.03.2022 to

₹3.76 crores as on 31.03.2023. This indicates that the Corporate Debtor has been consistently disposing of its assets over successive financial years.

c) That the RP has not required a forensic audit of the CD, nor contemplated initiating PUFE proceedings.

The other reasons are covered specifically in paragraphs 4,6 and 8 below.

3. Broadly, according to the appellants, the line of reasoning of the Adjudicating Authority rested on several *suo motu* findings, including alleged non-disclosure of a certain property in Ahmedabad, doubts regarding fair valuation of the assets of the CD, incompleteness of the Information Memorandum, violation of Regulation 6A, absence of a revival strategy, doubting the financial capacity of the SRA, absence of PUFE proceedings, and finally questioning the quality of the commercial wisdom of the CoC.

Aspects concerning the role of the RP (C.A.1061 of 2025)

4. The aspects on which the Adjudicating Authority expressed its adverse views on the functioning of the RP are as below:

a) The RP has not disclosed the commencement of CIRP to all the creditors in accordance with Regulation 6A of the CIRP Regulations.

b) Adjudicating Authority is not satisfied with the valuation of the CD by the RP. The valuation of the two valuers is very close and it cannot be an accident or a coincidence.

c) The discharge of the responsibility which the RP is required to perform is far from being adequate. Firstly, the RP has failed to subject the CD to forensic audit. Secondly, the CD has a property, an office building, in Ahmedabad, and the RP has neither disclosed this property in the Information Memorandum, nor has he valued this property. Thirdly, the RP has not placed the complete Information Memorandum and it is doubtful whether all the PRAs have been served with the audited financial statements and the details of the assets of the CD. And, fourthly, the RP has failed to initiate any PUFE proceedings.

5. The learned counsel for the RP would contend:

a) So far as the issue of valuation goes, none objected to it, including the suspended Directors of the CD (since they also evinced interest in participating in the bid). As many as 22 IBBI registered valuers were approached and quotations invited, and two valuers were appointed after ratification in the 2nd CoC meeting. Their reports were placed before and accepted by the CoC. No stakeholder objected to the valuation at any stage of the CIRP. At any rate, in the absence of objections from the stakeholders, the Adjudicating Authority cannot *suo motu* raise any issue of valuation. Reliance was placed on the

ratio in ***Vashishth Builders and Engineers Ltd., Vs Trishul Dream Homes Ltd.,*** [C.A.(AT)(Ins) 732 of 2025, dated 20.05.2025]

b) Form G did disclose the Office property in Ahmedabad. What the RP has done is that he has described the property as Goa property, Gujarat property and Delhi property, and it is reflected in page 9 and 10 of the Information Memorandum. Ahmedabad is very much in Gujarat, but the Adjudicating Authority has overlooked it. This apart, the RP has disclosed that this property is neither owned, nor has been taken on lease by the CD, nor has it any other right to hold it, but is owned by M/s Healwell International Ltd (formerly M/s Sintex International Ltd.,) and it shares the address of this property as its registered office.

c) The finding of the Adjudicating Authority that the RP has not followed Regulation 6A is concerned, it is contrary to both fact and law. Firstly, the RP has sent separate emails, courier mails as well as hand delivery of notices besides public notices. At any rate, it is a matter which ought to concern the creditors of the CD, but no creditor of CD has approached the Adjudicating Authority with any belated claim with a complaint that he or it has been kept in dark about the initiation of CIRP against the CD.

d) So far as initiating PUFE proceedings is concerned, the minutes of the CoC meeting dated 31.08.2023 records that upon review the RP has not found any preferential, undervalued or fraudulent transactions. No creditor required initiation of such proceedings. When the facts

warranting the initiation of PUFE proceedings is available, RP may not be blamed.

Aspects concerning the SRA (C.A.946 of 2025)

6. The Adjudicating Authority had taken certain exceptions to the SRA, and they are:

a) That the plan is neither feasible nor viable, for (i) the SRA lacks the financial capacity. The SRA is found to have made a bid in a CIRP proceedings involving a certain Opel Securities Ltd., and if it were to participate in that, it would hardly be left with any funds; and (ii) that there is non-compliance of Regulation 38(3).

b) The plan value (Rs.7.75 crores) is lower than the fair value of the CD and the apparent intent is to acquire the immovable properties of the CD at a value below its fair market value since no genuine creditor has come forward to take the CD into CIRP.

c) The plan does not have a provision to keep the CD as a going concern.

7. The response of the SRA is candid. Its counsel would argue:

a) So far as the financial capacity of the SRA goes, none, more particularly the CoC had ever doubted it. Indeed, the plan value is Rs.7.75 crores while the combined net worth of the partners of the SRA is RS.16.94 crores. Indeed, the SRA has demonstrated its capacity to implement the plan when it has deposited Rs.25.0 lakhs as EMD and Rs.1.68 crores as

performance guarantee within the time stipulated. So far as the view of the Adjudicating Authority that the participation of SRA in another bid unrelated to the present CIRP would leave it with inadequate funds to implement the plan in this case goes, beyond the statement that the SRA has participated in bid in another CIRP proceedings, there is hardly any material to suggest that SRA might not have funds to implement the present plan.

b) Even though Adjudicating Authority has held that the plan does not comply with Regulation 38(3) of the CIRP Regulations, it does not go to explain how and where the plan failed in complying with the said Regulation. Whilst clauses 3.4 and 4 of the plan provide the roadmap for the revival of the CD, the CoC has examined the feasibility and viability of the plan in its 4th, 5th and the 6th meetings.

c) In its Order dated 09.04.2024, the Adjudicating Authority had raised the same issue, and the RP has responded to it with his affidavit dated 24.04.2024 and followed it with another affidavit dated 05.05.2024. The SRA has also filed an affidavit dated 03.05.2024 explaining the source of its funds. The Adjudicating Authority however, has ignored them, and has not given any reason why it cannot act on the aforesaid affidavits of the RP and the SRA.

d) So far as the adequacy of the plan value and the concern of the Adjudicating Authority that the plan value of Rs.7.75 crores is less than the fair value of the CDs assets goes, while it may be true, it is still more

than the liquidation-value of the assets. The SRA after all, was never a privy to the valuation due to confidentiality under Regulation 35. And, at any rate, it is an area earmarked for the commercial wisdom of the CoC, which can approve a plan even if the plan value is less than the liquidation value. Reliance was placed on the ratio in ***Maharashtra Seamless Ltd. Vs Padmanabhan Venkatesh*** [(2020)11 SCC 467]

e) As regarding the reasoning of the Adjudicating Authority that the plan does not provide for keeping the CD as a going concern, what the Adjudicating Authority has overlooked is that the CD was not operational or functional at the time of the CIRP and it has no employees to run it, and hence it can only be revived with a renewed effort. Indeed, Clauses 3.1.7.5 and 3.4 of the resolution plan do indicate that the SRA's intent to revive the CD and also has provided the road map for its revival. At any rate, this aspect will also fall within the realm of the commercial wisdom of the CoC and it is not for the Adjudicating Authority to raise. Reliance was placed on the dictum in ***Karad Urban Co-operative Bank Ltd. Vs Swapnil Bhingardevay & others*** [2020 SCC OnLine (SC) 715] ***Kalpraj Dharamshi Vs Kotak Investment Advisers Ltd.,*** [2021 SCC OnLine (SC) 204]

f) The resolution plan was approved unanimously by the CoC not once but twice, initially and again after remand thereby demonstrating conscious and considered commercial evaluation. The sole financial creditor holding

100% voting share in the CoC approved the plan with full knowledge of the assets, liabilities, valuation reports and statutory claims.

Findings Against the CoC (CA 1043 of 2025)

8. The Adjudicating Authority's displeasure against the CoC, some of which overlap with those directed against the RP, may now be listed:

a) The CoC is blissfully unaware about the business of the CD including the nature of its activities and the prospects of revival as a going concern;

b) That the Committee of Creditors failed to subject the Corporate Debtor to a forensic audit or otherwise undertake a deeper scrutiny of past transactions, despite the Corporate Debtor being non-operational for a considerable period prior to CIRP;

c) That the Committee of Creditors approved the Resolution Plan without adequately appreciating the alleged absence of an effective revival strategy, thereby rendering the plan more in the nature of an acquisition of assets rather than a genuine resolution of insolvency;

d) The CoC ought to have taken care to scrutinize the valuation of the two valuers as the value they reported does not show great difference.

e) That the Committee of Creditors failed to meaningfully deliberate upon the magnitude of statutory claims, especially those of the Income Tax Department, and their impact on the resolution process; Another aspect which passed the scrutiny of the Adjudicating Authority when it tested the

plan for its sustainability in law is overlooking the claim of the Income tax Department with a substantial claim of Rs. 236 crores.

9. The counsel for the CoC would submit:

(a) Any issue regarding viability, feasibility and assessment of future business prospects of the CD fall within the exclusive domain of the CoC. Reliance was placed on the ratio in ***Sreeram E-Techno School Vs Trustees of SREI Infrastructure Finance Ltd.,*** [2019 SCC OnLine (NCLAT) 1148].

(b) The need for forensic audit is facts-based. The Adjudicating Authority has not indicated the facts that warranted it.

(c) The Resolution Plan was deliberated upon in the 4th, 5th and 6th meetings of the CoC held on 05.12.2023, 12.12.2023 and 23.12.2023 respectively. Clarifications were sought from the Resolution Applicant and revised financial proposals were submitted. The Plan was thereafter approved by 100% voting share. Upon remand by the Adjudicating Authority on 30.04.2024, the modified plan was again deliberated and unanimously approved. The approval process therefore cannot be characterized as mechanical.

(d) No stakeholder, including the suspended management or any statutory authority, nor the Income Tax Department, which earlier raised some objection to the approval of the resolution plan before the Adjudicating Authority in the first instance, did not choose to do it when the plan

was placed for the second time for the approval of the Adjudicating Authority.

Discussion & Decision:

10. A resolution plan has been rejected by the Adjudicating Authority with no stakeholder opposing it. The Adjudicating Authority has entered two significant findings:

a) that the underlying purpose of the plan is not to resolve the insolvency faced by the CD but to acquire the immovable property of the CD for a price below the fair market and to gain an unmerited advantage of the clean slate theory under Sec.32A of the Code and for obtaining other concessions, since no genuine creditor has come forward to take CD into CIRP.

b) The very admission of CIRP was faulty.

Eventually, the Adjudicating Authority ordered liquidation of the CD. The issues which this Order has produced is layered and it largely revolves around the extent of power the Adjudicating Authority has while exercising its jurisdiction under Sec.31 IBC.

11. The contention of the appellants in all the three cases with none to oppose them, is multi-focal and layered. If the reasoning of the Adjudicatory Authority is filtered through the arguments of their respective counsel for decocting their essence, it becomes evident that their common contention is that: the Adjudicating Authority has overstepped the line of its own

authority under Sec.31 IBC; the Adjudicating Authority may not have to subject the acts of CoC-RP to a forensic examination microscopically when its own domain of scrutiny is statutorily demarcated and judicially declared, and that at any rate, the facts do not warrant a conclusion that it has arrived.

12. But has the Adjudicating Authority overstepped its authority and has guided its approach while considering the resolution plan for its approval with suspicion? Broadly, when legislature has designed Sec.32A to shield the SRA against potential future claims of past liabilities of the CD, whether the mere fact a SRA will eventually have the benefit of Sec.32A can be a reason to suspect every resolution process? It may not, for that which the statute has enabled cannot be a source of suspicion. But the appellants contend differently. This ideally set the stage for discussing the role of an Adjudicating Authority.

Setting the Legal Plane

13.1 Understanding the extent of authority an Adjudicating Authority has under Sec.31 of the Code is no more *res integra*. The locus classicus on the point is ***Sashidhar Vs Indian Overseas Bank & others*** [(2019)12 SCC 150], ***Committee of Creditors of Essar Steel India Ltd., Vs Satish Kumar Gupta & Others*** [(2020)8 SCC 531], ***Jaypee Kensington Boulevard Apartments Welfare Association & Others Vs NBCC (India)***

Ltd, & others [(2022)1 SCC 401] among few, which have stated, reiterated, settled and explained the structure of the IBC, the role of the Resolution Professional, the CoC and the Adjudicating Authority. We therefore, do not propose to try selling a concept which can never be our own, and cry *eureka*, but only attempt to make a metaphorical statement on the quintessential principles that these authorities declare.

13.2 Under the scheme of the Code, even as the RP replaces the Board of the Corporate Debtor, he still does not share the same intent as the Board he replaces. While the commercial intent of the Board of every company is to augment its profit, the legislative intent in replacing the Board of a company drawn into CIRP with the resolution professional is not to make profit but to salvage the company which was navigated into turbulent waters (presumably) by not so efficient sailors. At least, that is the basic premise. The task which a resolution professional is assigned with is to keep the ship afloat under the circumstances, and to look for a confident sailor who may continue the sail. Try save the ship without rushing to decommission and sell it for its scrap value is legislative philosophy behind any insolvency resolution process. Here, the CoC's responsibility is to instruct the resolution professional to stabilize the ship in turbulence and to identify an able sailor with the assistance of the latter. For a ship that has lost its direction CoC provides the maritime compass, which as per the statutory scheme, a RP is duty bound not to ignore.

13.3 Where does an Adjudicating Authority figure in this scheme of salvaging a company which is on the verge of drowning under the pressure of debts? Very obviously an Adjudicating Authority is not on the high sea. It is not even there to take the stress of the sail when the strain on the CD's finance threatens a titanic sink. Still the Code has constituted an Adjudicating Authority and enjoined it with certain responsibilities under Sec.31 and Sec.60(5). How, then to understand the role of an Adjudicating Authority in an insolvency resolution process from the nature of responsibilities assigned to it, when it is not part of the salvage team?

13.4 An Adjudicating Authority, like an umpire in the cricket-field, once calls '*play*' with its order initiating a CIRP and appointing the IRP, is only required to watch the way the game is played by the CoC-RP combination, unless it is called upon to decide any issues in between but at the instance of any of the stakeholders to the insolvency resolution process - exactly what the umpire is required to do. In ***Torrent Power Ltd., Vs Ashish Arjunkumar Rathi & Others*** [(2026) ibclaw.in 109 (SC)], the Hon'ble Supreme Court has summed up the role the Adjudicating Authority as below:

> *"1.1 The IBC recognises that decisions on viability, valuation, and acceptable haircuts are inherently commercial, not judicial. Courts, therefore, do not substitute their assessment for that of the CoC. The adjudicating authority performs a supervisory role,*

ensuring statutory compliance and procedural fairness but refrains from second-guessing economic bodies, in this case, the CoC.

1.2 The doctrine of commercial wisdom thus embodies both institutional discipline and legislative intent: insolvency resolution must be efficient, market-responsive and guided by those best placed to evaluate commercial risk.

14. Before parting, we wish to add a few words of caution. The IBC represents a conscious legislative choice to privilege speed, certainty, and creditor-driven decision-making over exhaustive judicial scrutiny. Experience shows that unsuccessful bidders will always try to spin commercial decisions of the CoC as procedurally faulty in order to secure a second shot through litigation by filing applications or making representations. However, courts need to remain vigilant against any temptation to expand the scope of review beyond the narrow boundaries prescribed by the IBC.

14.1 From an ex post perspective, excessive judicial review in the CIRP carries significant economic costs that run counter to the objects of IBC. The IBC is premised on the recognition that delay and uncertainty are value-destructive in distressed situations. When commercial decisions taken by the CoC are subjected to expansive judicial scrutiny, resolution timelines lengthen, transaction costs rise, and the going-concern value of the Corporate Debtor erodes. The consequence therefore is not merely delay, but a tangible loss of economic value for all stakeholders.

14.2 From an ex ante perspective also, the expectation of expansive judicial review distorts incentives for future bidders. Future resolution applicants may price legal uncertainty into their bids, either by discounting their offers or by refraining from participation in the CIRP altogether. This will weaken competition in the resolution process and reduce recoveries for creditors.

14.7 Predictability and finality are thus essential to maintaining a robust insolvency regime. Judicial intervention beyond the narrow statutory confines undermines both predictability and finality. Recognising this, the IBC deliberately confines judicial review to strict statutory compliance under Sections 30(2) and 61(3). Respecting these limits will preserve the economic sense of the IBC and ensure that insolvency remains a predictable, time-bound, and market-driven process."

Accordingly, an Adjudicating Authority, like an umpire, howsoever knowledgeable and experienced it might be, cannot correct the bottom hand grip of a batsman or to advise him on how well a stroke could have been played, but to oversee whether the game is played in the spirit of the game, consistent with its rules, and to indicate whether a fair run is scored. In short, like an umpire, an Adjudicating Authority is part of the game, still it cannot play.

14. It may now be possible to deduce that when a resolution plan conforms to the statutory provisions and not proved to have been otherwise vested

with any material irregularity[1] or fraudulent motives as to impair the integrity and purity of the resolution process, there silently operates a presumption that an approval to a resolution plan by the CoC is fair and legal, which in turn will minimize the role of the Adjudicating Authority to interfere with a plan. Any idea to the contrary may expose an insolvency resolution process, which in terms of the law expounded by the Supreme Court is primarily driven by the commercial wisdom of the CoC, to the peril of micro-scanning of the acts of CoC-RP combination by the Adjudicating Authority. However, it is subjected to the rider that an insolvency resolution process is not conceived as a mask to camouflage any anti-IBC agenda, a case of match-fixing. IBC frowns it.

15.1 How then to judge whether an insolvency resolution process passes the test of fairness? How the Adjudicating Authority, like an umpire, will conclude a fair run indeed has been scored? When it may be stated that the game is played in the spirit of the game – that an insolvency resolution process has upheld the spirit behind the Code? A travel through the legislative process of an insolvency resolution process, stage by stage, instantly provides an optical impression about the fairness of an insolvency resolution process, but it still is capable of creating an optical illusion about it. Given the scheme of the IBC, it is not impossible to

[1] As to what may constitute material irregularity See the judgement in : ***Dorni Vinimoy Private Ltd., Vs Rachna Anchalia, Resolution Professional of M/s Imperial Tubes Pvt. Ltd., & Others***, C.A.(AT)(Ins.) 411 of 2025 batch, dated 13.10.2025).

provide procedural compliance as a distraction, a gloss over, to conceal compromises made with the integrity and fairness that define the spirit of a resolution process. Where then to find the spirit of IBC? It lies in the transparency of the process - in the complete disclosure of information, in ensuring that no preferential treatment is accorded, in demonstrating that the dying debtor is resurrected to life in the safe hands of a SRA. Where however, beneath the camouflage of IBC compliance, if there are demonstrable materials that points to lack of transparency of an insolvency resolution process, regulated by incomplete disclosure of information or where there is match-fixing of the resolution process, the Adjudicating Authority will necessarily have a job at hand, as they constitute plain fraud[2] on the statute. Indeed, Sec.65 of IBC conveys the legislative aversion to the misuse of IBC as it frowns upon fraudulent and malicious initiation of insolvency resolution process. Where for instance, a CD finds itself in a whirlpool of debts, especially unsecured operation

---

[2] Lord Macnaghten in ***Reddaway Vs Barnham*** [1896 AC 199] is apposite: "*.. fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court.*"

debts and the governmental dues, it is not impossible to outmaneuver the objectives of IBC and to hijack its soul. It is hence in ***K.Sashidar Case*** [(2019) 12 SCC 150], the Supreme court has held that "*this Tribunal cannot remain a mute spectator where the very anchor of the insolvency resolution process, the bona fide, and the commercial judgment of the CoC is corroded by patent arbitrariness and opacity."* The role of the Adjudicating Authority therefore becomes critical: an Adjudicating Authority is not a mere counter signatory to the CoC to lend its approval to a resolution plan, but a sentinel on the qui vive to uphold the spirit and objectives of the IBC.

15.2 Having stated thus, the bottom-line is that even though an Adjudicating Authority has the responsibility to ensure the purity and integrity of an insolvency resolution process, yet no Adjudicating Authority may scrutinize a resolution plan through a lens of inscrutable suspicion but only through demonstrable facts providing a logical basis for suspecting the same.

16. Therefore, on issues of misuse of the Code, despite the apparently limited jurisdiction under Sec.31 of the Code, an Adjudicating Authority is neither powerless nor is helpless to take cognizance of acts of fraud on statute and to respond to it appropriately. See: ***Omkara Asset Reconstruction Private Ltd., Vs Amit Vijay Karia*** [C.A.(AT)(Ins.) 914 of 2025 batch, dated 01.12.2025]. A classic example of deliberate misuse of IBC for masking the ulterior motives behind initiating it could be seen from the judgement

of the co-ordinate bench of this tribunal in ***Sonal Sumit Mehta Vs Vinod Tarachand Agarwal, RP of Rexsona Tiles Pvt., Ltd.,*** [C.A.164 of 2026 batch, dated, 23.02.2026 and reported in (2026)ibclaw.in 211 (NCLAT)]. That was a case where a coordinate bench of this tribunal was approached by the SRA, and the CoC (constituted of the one creditor who laid the petition for commencing CIRP) with a challenge to the Order of the Adjudicating Authority rejecting the plan chiefly on the ground that CIRP was misused as a mask. The relevant facts are crisply captured in paragraph 9 of this tribunal's judgement, and it reads:

> "*Adjudicating Authority has noticed that the corporate debtor in the year 2023-24 has sold entire stock inventory and only asset remaining with corporate debtor was a computer and motorcycle for value of Rs.0.35 lakh as on 31.03.2024. A cash of Rs.2427.75 lakh was received due to sale of assets. Corporate debtor as on 06.12.2024 has total liquid assets of Rs.43,39,737. Adjudicating Authority observed when corporate debtor has liquid assets of more than Rs.43 lakh no reasons is forthwith coming as to why the loan of Rs.8 lakh was obtained on 17.01.2024 and immediately thereafter on 04.03.2024 Section 9 application was filed by one operational creditor. Adjudicating authority has noticed the provisions of Sections 31 and 30(2) and Regulation 38(4) of the CIRP Regulations, 2016. Adjudicating Authority noticing the sequence of the events and the events of the case and observed that no justifiable reasons have shown to seek a loan of Rs.8 lakhs from Mahadev Construction company on 17.01.2024 which is a miniscule amount in comparison to cash receipt of Rs.2427.75 lakh due to sale of asset in the same order…*"

A case where *res ipsa loquitur* applies. The facts of the case show that in spite of an apparent statutory compliance but when the facts are arranged sequentially it amplifies how initiation of CIRP could not have been bonafide, but was used to hide and support certain ulterior objectives.

17. The foregoing makes possible to suggest a three-point approach:

a) Firstly, when an Adjudicating Authority examines a Resolution Plan for its approval, it may be appropriate for it to first ascertain if the CoC-RP have discharged their statutory responsibilities consistent with statutory provisions. Here, it should not be ignored that if the CoC is seen to have played their role within the statutory space that offers it the freedom of commercial choice, then the choice so made may not be interfered with as it falls within the realm of commercial wisdom of the CoC.

b) Secondly, if any irregularity is alleged or found, then to examine whether any violation or breach of statutory provisions, which necessarily include the Regulations, constitute material irregularity.

c) Then arises the last aspect. Beyond the visible statutory compliance, if there exist any tangible facts which on a logical analysis indicate that there may exist a case for statutory fraud or misuse of the Code which mars the integrity of the insolvency process, then an Adjudicating Authority has every right to probe the same.

Impugned Order Tested:

18. The merit of the line of reasoning of the Adjudicating Authority is now required to be examined on the plane of law stated in earlier paragraphs. The issue here is in which slot the approach of the Adjudicating Authority should be fitted in. And, every evidently it has pitched its reasoning in paragraph 17(c) above. Earlier in paragraph 10, the Adjudicating Authority's criticism against the very commencement of the CIRP against the CD has been outlined since in its opinion the object behind the whole exercise was not resolving an imminent insolvency of the CD but transfer of immovable property, and proceeded to hold that the very commencement of insolvency resolution process is faulty. This is considered in detail now.

19.1 A careful scanning of the Order of the Adjudicating Authority reveals that what appears to have bothered the conscience of the Adjudicating Authority inter alia is its perceived masking of certain facts which according to it has affected the integrity of the resolution process. Noting that the CD, which according to the affidavit of the RP dated 03.05.2025, has been in the business of marketing and distribution of pre-fabricated panels and has become non-operational (owing to its holding company being drawn into CIRP), for about year before the commencement of its own CIRP with no employees and with only a Bolero Car to boast for its

plant and machinery, the Adjudicating Authority spotlights certain material facts for justifying its conclusion:

a) The fair value as per the two valuation which the RP had undertaken informs that vis-à-vis the value of CD's investments, the fair value shows vast variance ranging between Rs 1,68,57,758 and Rs 100, and the liquidation value is NIL and Rs 100. And, the CD has cash and bank balance totaling Rs 17,26,514. This is not explained.

b) The CD has a residential house comprised of a basement and ground floor in Anand Niketan, Near Moti Bagh, New Delhi, one Villa with swimming pool at Dabolim in Goa, one office in Ahmedabad, and some land in the District Amreli. The fair value of all these properties is worked out at Rs 9,20,22,446 and Rs 9,21,23,099 by two valuers. The liquidation values are worked out at Rs 6,82,09,152 and Rs 6,49,90,099 by them. The value of land in Amreli, however, is taken at its book value, rather than fair or market value.

c) The Balance Sheet of CD as of 31.03.2022 shows that CD had property, plant, and equipment valued at Rs 15.06 crores as of 31.03.2021, but it stands reduced to nearly half its value in the next financial year as could be seen from the balance sheet as on 331.03.2022 as per which the value of these assets is Rs 8.29 crores. This sees a further reduction in value by more than by 50% in 2022-2023 as could be gathered from the balance sheet of the CD as on 31.03.2023. This meant that the company has been selling its assets

since 2021-2022 fiscal year. This apart, CD had intangible assets of Rs 8.77 lakhs as on 31.03.2021 and it was seen reduced to NIL. Besides, the CD had inventories worth Rs 2.92 crores as on 31.03.2021, and this too was decreased to Nil as on 31.03.2022. And, the CD's cash and bank balance of Rs 3.14 crores and 1.68 crores respectively as on 31.03.2021 also sees a reduction to Rs 14.21 lakhs and 0.77 lakhs as on 31.03.2022. Turning to the head of other current assets of the CD it has seen an increase of Rs 21.60 crores as on 31.03.2022 from Rs 69.0 lakhs from the previous financial year. This increase is seen attributed to a slump sale but there is hardly any information about it. And this value sees a marginal reduction in the financial year 2022-2023. Here, it could be seen that the Profit and Loss account of the CD for the financial year 2021-2022 however, shows a gain on slump sale of Rs 9.56 crores. Whereas the audited accounts of CD for the year 2021-2022 show that it had a revenue of Rs 12.68 crores and Rs 0.84 crores from the sale of shelters and towers and trading of yarn and other products, but this is apparently different from what the RP states.

d) Turning to the head of CD's liability, its balance sheet as on 31.03.2021 and 31.03.2022 show there were short term borrowings of Rs 443.35 crores and Rs 443.44 crores respectively. These were loans repayable on demand but nowhere in the resolution process any information on these loans is disclosed. This apart, the CD had

total outstanding dues to creditors (other than micro enterprises) at Rs 287.65 crores and Rs 286.21 crores as on 31.03.2021 and 31.03.2022, respectively. This is reduced to Rs 2.01 crores, but no information is provided on the change. The CD had other current financial liabilities of Rs 34.11 crores and Rs 34.02 crores as on 31.03.2021 and 31.03.2022, respectively. This is also seen reduced to Rs 10.71 lakhs, but yet again there is no information on the change is provided. The CD had other current liabilities of Rs 1.19 crores and Rs 0.31 crores as on 31.03.201 and 31.03.2022, respectively, and this is seen reduced to 10.71 lakhs and is not explained.

e) The Audited Accounts of the CD for 2021-2022 show that it had loan transactions with related parties, namely BVM Finance Private Limited and Healwell International Limited.

f) The Income Tax Department had filed a claim of Rs 251,78,66,270 before the RP. The demand pertains to Assessment Year 2021-2022.

g) The balance sheet of the CD as on 31.03.2023 shows that other equity has changed from (Rs 736.11 crores) as on 31.03.2022 to Rs 5.90 crores, but no information on the change is provided. Moving further, a certain Sixvents Power and Engineering Ltd was shown to have owned 99.997% shares of M/s Shirpur Power Private Limited, and sometime in 2018, Sixvents was amalgamated into CD and therefore, CD became the owner of Shirpur. M/s SBICAP Trustee Co. Ltd. held the shares as

security by way of pledge against a loan availed by M/s Shirpur Power Private Limited in the month of March 2016. Given these basic facts, all shares held by the CD in M/S Shirpur Power were cancelled in 2023, subsequent to the sale of M/S Shirpur Power under the liquidation process.

h) The CD had granted unsecured loans to various parties and was overdue for payment. These were Starline Leasing Limited Rs 8.40 crores, Kolon Investment Private Limited Rs 7.80 crores, Opel Securities Private Limited Rs 7.80 crores, and Gabriel Ventures India Private Limited Rs 2.30 crores. Not much is known about these loans.

i) The Resolution Plan is submitted by two entities, namely M/s Deepvir Enterprise and M/s Kanha Ventures. These entities, together, have five partners, and their combined net worth is Rs 16,93,97,296 (as per the Resolution Plan filed on 19.06.2024). The same is shown as increased to Rs 18,77,56,359 as per the Application filed by the RP on 06.05.2025. The fluctuation in net worth of the SRA was felt to be inexplicable.

19.2 Besides, the Adjudicating Authority has also directed certain aspects against the RP, CoC and the SRA and they are listed in paragraphs 4,6, and 8 above. Based on its assessment, the Adjudicating Authority has held that it cannot remain a mute spectator and held that the material on record, including the very terms of the CoC-approved Resolution Plan dated 07.05.2024 (for an aggregate plan value of about ₹7.75 crore against

admitted claims exceeding ₹267 crore, excluding very large contingent tax liabilities), display (i) incomplete and unreliable financial information pertaining to the Corporate Debtor, (ii) absence of proper examination of substantial diminution of assets and non-initiation of avoidance/PUFE proceedings despite significant balance-sheet erosion, and (iii) that the resolution plan which, instead of demonstrating a credible revival of a virtually non-operational entity, (iv) that the plan contemplates that CIRP costs be paid out of the Corporate Debtor's own available cash and fixed deposits (including the fixed deposits of about ₹70.0 lakh created in September 2023 and further FDs of plan inflows) with only a limited fresh infusion of funds by the SRA, (v) that it provides for the two dominant unsecured financial creditors, namely Rajendra M. Thakkar (Ravasia) and Sons Pvt. Ltd. and Raj Radhe Finance Ltd., to receive approximately 46.44% of their admitted financial debts, while allocating only a token/nominal amount of about ₹50 lakh (around 0.20% of its admitted claim of ₹2,51,78,66,270/-) to the major statutory operational creditor, i.e. the Income Tax Department. Therefore, the commercial decision of the CoC taken on the basis of inadequate and imperfect information and in apparent disregard of the mandate of Regulation 38(3) of the CIRP Regulations, is liable to be scrutinised and not mechanically endorsed. In fact, the judgement of the Adjudicating Authority further goes into the deeper layers to explain why the resolution process does not inspire confidence.

20. If the approach of the appellants in this batch of appeals is observed, it shows that they have come out with their responses/explanations to those aspects enumerated in paragraphs 4,6 and 8 above, but have not chosen to address the same in conjunction with the facts raised in paragraph 19 above. In our opinion not all the observations/findings of the Adjudicating Authority listed in paragraphs 4,6, and 8 cannot be isolated from those in paragraph 19, but must have to be understood in the backdrop of the latter. As isolated facts, the responses of the appellants detailed in paragraphs 5, 7, and 9 may appear convincing, but when read in association with some of the facts in paragraph 19, at least some of them, they fail to convince our conscience that the Adjudicating Authority might have erred on the core issue.

21. Our principal concern where we are in agreement with the Adjudicating Authority is the systematic reduction in value of the tangible assets of the CD for three consecutive financial years commencing from 2020-2021, disappearance of substantial liability of about ₹440 crores which the balance sheets of the CD show as short term borrowings plus other liabilities, failure of the RP to hold an audit (call it a forensic audit, if so considered appropriate), and to place these facts before the CoC. Given the fact the petition under Sec.7 was filed on 10.03.2023 (during the financial year 2022-2023) and that the CD was admitted to CIRP on 31.07.2023 (in the following financial year), and the loss of real property

and short term borrowings of ₹440 crores and its disappearance had taken place during the lookback period (which commences from 31.07.2021), a just question that naturally arises is that why CoC was not taken into confidence? In the first CoC meeting on 31.08.2023, it is minuted that the IRP had only gone through the raw tally statements and that he was yet to go through the final tally statements and the books of accounts of the CD, was it not necessary for him to bring the same to the notice of the CoC in the subsequent meetings? Going by the minutes of the CoC meetings, not a whisper is made on this aspect in any of the subsequent meetings of the CoC. And unless there is a proper audit of the CD for at least two years from the date of commencement of the lookback period, it may not even be able to ascertain if there were any preferential, undervalued or fraudulent transactions. While the CoC may retain its power to decide on PUFE proceeding, yet, when the assets and liabilities of the CD are not found to have been correctly stated, how to trust the Information Memorandum prepared without reference to these facts. As held in ***M.K. Rajagopalan case***, (2024) 1 SCC 42] it may be that any issue on the correctness of the valuation of the assets of the CD may not fall within the domain of the Adjudicating Authority, yet the Adjudicating Authority is not powerless to take note of unexplained depletion in the value of CD's assets as it impacts the quality of Information Memorandum and hence the acceptability of the resolution plan.

22. Now, these facts may have to be appreciated in the backdrop of the fact that the CD, which was only in the business of marketing and distribution of pre-fabricated panels with only a Bolero car to represent its plant and machinery and no employees but with an income tax liability of Rs.251 crores, the flight of assets of the CD that we notice during the look back period and disappearance of substantial liability of more than ₹440 crores during the same period with no audit and no PUFE proceedings, what is wrong in the Adjudicating Authority suspecting the quality of the Information Memorandum? We can go layer by layer deep into the analysis of the other reasoning of the Adjudicating Authority as well. But when what we have instantly noticed and convinced about tilts a needle of suspicion on the quality of the Information Memorandum, the submission of EoI and the offer made through the resolution plan necessarily fail to inspire confidence. Now, set in the context, if due to operation of clean slate doctrine, an income tax liability of around ₹251 crores is wiped out, does it not raise a genuine concern to suspect if there has been an attempt to misuse Sec.32A? It may be that the Income Tax Department though initially might have resisted the plan, eventually did not choose not to contest what was awarded to it, but the issue is not about the claim of the I.T Department, but about the purity and integrity of a resolution process which is seen marred by an Information memorandum of uninspiring quality.

23. Where there are facts which on a logical analysis shakes the foundation of the integrity of the resolution process, it no more depends on the concession of a creditor-claimant for lending approval to the plan. Like Sita's *agni-pravesh*, this resolution plan and the process by which it came into being ought to have vindicated its purity, but as stated earlier the appellants are busy in dealing with isolated issues randomly without reference to the core concern of the Adjudicating Authority. Set in the context, while testing the viability of the plan fall within the domain of the CoC as held in ***Sreeram E-Techno School case*** [2019 SCC OnLine (NCLAT) 1148] but the issue has to be understood in the larger context of the larger issue.

24. The Adjudicating Authority has expressed its concern regarding non-compliance of Regulation 6A of the CIRP Regulation by the RP. The RP denies any violation and tries to draw our attention to the material he has produced, but what makes it significant is that if the balance sheets show other sundry creditors, then could not the RP identify those creditors and put them on notice about the commencement of CIRP against the CD? One of the facts which the appellants urged was that the Adjudicating Authority suspected the integrity of the plan because the resolution professional had not shared the audited reports of the CD with the prospective resolution applicants, and contend that none of the resolution applicant has complained about it. But as stated earlier, these aspects have to be read in association with an Information Memorandum of

inadequate credibility. Similarly, while there may be merit in the submission of the RP that he has not omitted the Ahmedabad property of the CD which according to him was referred to as the Gujarat property in the Information Memorandum, it does not take the issue pertaining to the questionable fairness and integrity of the resolution process any further.

25. Now, merely because the resolution process has gone through all the stages – constitution of the CoC, issuing public notice, preparation of Information Memorandum, inviting EoI following by invitation to submit resolution plans and the CoC voting on them, will be adequate to save the plan. How significant the commercial wisdom of the CoC then would be? The answer is provided in ***M.K.Rajagopalan's case*** [(2024)1 SCC 42]:

> *"160. ....., commercial wisdom of CoC is given such a status of primacy that the same is considered rather a matter non-justiciable in any adjudicatory process, be it by the adjudicating authority or even by this Court. However,* ***the commercial wisdom of CoC means a considered decision taken by CoC with reference to the commercial interests and the interest of revival of the corporate debtor and maximisation of value of its assets. This wisdom is not a matter of rhetoric but is denoting a well-considered decision by the protagonist of CIRP i.e. CoC.*** *As observed by this Court in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , the financial creditors forming CoC "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." This*

Court also observed in K. Sashidhar [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] that "[t]here ***is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan.****"*

*161. These observations read with the observations in Essar Steel [Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] with reference to the reasons stated in the Report of Bankruptcy Law Reforms Committee of November 2015, make it clear that commercial wisdom of CoC is assigned primacy in CIRP for it represents collective business decision, which is arrived at after thorough examination of the proposed resolution plan and assessment made with involvement of experts by the body of persons who are most vitally interested in rapid and efficient decision making. *It follows as a necessary corollary that to be worth its name, the commercial wisdom of CoC would come into existence and operation only when all the relevant information is available before it and is duly deliberated upon by all its members, who have direct and substantial interest in the survival of corporate debtor and in the entire CIRP.*

162. In light of the aforesaid position of law and its operation in relation to the decision-making process of CoC, ***it needs hardly any emphasis that each and every aspect relating to the resolution plan, and more particularly its financial layout, has to be before the CoC before it could be said to have arrived at a considered decision in its commercial wisdom.****"*
(emphasis supplied)

The present case is a classic instance of an apparent statutory compliance but with inadequate respect for the fairness of the insolvency resolution

process – its spirit. The integrity and purity of the resolution process are seen stranded and are attempted to be bypassed. The provisions of the Code and the Regulations are not mere statutory expressions on the procedure for an insolvency resolution process, but are carriers of the values for which IBC stands for: value maximisation of the CD through transparency, full disclosure of information and impartiality. The Commercial wisdom of the CoC which the Supreme Court has kept beyond judicial scrutiny is that which is founded on intelligent decisions made on the intelligible criteria which manifests and reflects the IBC's values alongside the compliance of the procedure prescribed, but not otherwise. In the instant case, the commercial wisdom of the CoC, given the context in which it is employed to bail out the plan deserves to be taken note of for lack of it.

26. There is an ancillary issue. The CD here is the corporate guarantor. It could be known from the records of this case, a reference has been made to the CIRP initiated against the principal borrower. In a batch of cases in ***ICCI Bank Ltd. Vs Era Infrastructure (India) Ltd.,*** [2026 SCC OnLine SC 314], when faced with the argument that if a creditor is permitted to initiate CIRP against multiple debtors it may enable himself/it to unlawfully enrich itself, the Hon'ble Supreme Court has held that this is taken care of under Regulation 12A and 14 of the CIRP Regulations. Regulation 12A requires the creditor to update his/its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after

the insolvency commencement date. Set in the context, how the claim of the petitioning financial creditor, and a member of the CoC in the present CIRP has been dealt with in the CIRP of the principal borrower becomes relevant. Turning to Regulation 14 insists that the RP should independently verify and update the claims. However, in the context of need for transparency and complete disclosure, an implied duty is cast on that creditor who is privy to both the CIRPs initiated against the principal borrower and corporate guarantor to share information in the CIRP of the one about what transpires vis-à-vis its own claim (as it may have a telling effect on the voting share of such creditor) in the other CIRP. The need for updating the claims either under Regulation 12A or 14 must be distinguished from the duty to share such information which might affect the transparency and the resulting fairness of the resolution process. The principal duty or responsibility of every stakeholder associated with an insolvency resolution process is to act in aid of establishing its fairness, its integrity and purity. Silence may not be a virtue when there is a statutory necessity to uphold fairness in the working of a statute. It is however, added that where there is a failure to disclose such information, it per se may not be a ground to reject a resolution plan unless it is established how it has fatally affected the transparency of a CIRP. Turning to the present case, disclosure of any information vis-à-vis the claim of the petitioning financial creditor Raj Radhe Finance in the CIRP of the principal borrower is not seen to have been made.

27. Before winding up, we record with concern about the quality of the CIRP which instantly and unavoidably brings the conduct of the RP under the scanner. We are therefore, constrained to require the IBBI to investigate the conduct of the RP, unaffected by our findings and observations, with an eye on the systemic improvement of the IBC ecosystem.

Conclusion

28. It's writing on the wall for all the appellants. Turning to the sustainability of the order for liquidation, when the debt and default in repayment of debt are found to be true for initiating the CIRP, given the fact that the resolution plan borne of a faulty resolution process cannot be sustained, necessarily the order directing liquidation requires to be confirmed. All the three appeals are accordingly dismissed.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

rs/beena