NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (CH) (Ins) No. 258 of 2025 (IA Nos. 731, 732 & 733/2025)

(Arising out of the Order dated 27.05.2025 passed by the National Company Law Tribunal, Hyderabad Bench, in I.A No. (IBC)/256 of 2025 in I.A. No. 1724 of 2024 IN CP (IB) NO. 306/10/HDB/2017)

IN THE MATTER OF:

Mandava Prabhakar Rao,
Suspended Director,
NSL Nagapatnam Power and Infratech Ltd.
Plot No. 543, House No. 8-2-293/82/A543,
Road No. 26, Jubilee Hills, Hyderabad-500033,
Email- nslmpr@gmail.com

…Appellant

Versus

1. **Mr. Navneet Kumar Gupta,**
Resolution Professional of NSL Nagapatnam Power and Infratech Limited, NSL Icon, 4th Floor, Door No. 8-2-684/2/A, Plot No. 1 to 4, Road No.12, Banjara Hills, Hyderabad-500 034, Telangana

…Respondent No. 1

2. **M/s. PTC India Financial Services Ltd.**
Having its registered office at, 7th Floor Telephone Exchange Building, 8 Bhikaji Cama Place, New Delhi 110066 India

…Respondent No. 2

3. **Indian Overseas Bank,**
Member of Committee of Creditor, Having its registered office at, 762/763, IOB, Anna Salai, Chennai, Tamil Nadu-600002

.... Respondent No. 3

With

Company Appeal (AT) (CH) (Ins) No. 259/2025
(IA Nos. 734, 735 & 736/2025)

(Arising out of the Order dated 27.05.2025 passed by the National Company Law Tribunal, Hyderabad Bench, in I.A. No. 1724 of 2024 IN CP (IB) NO. 306/10/HDB/2017

IN THE MATTER OF:

Mandava Prabhakar Rao,
Suspended Director,
NSL Nagapatnam Power and Infratech Ltd.
Plot No. 543, House No. 8-2-293/82/A543,
Road No. 26, Jubilee Hills, Hyderabad-500033,
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2. **M/s. PTC India Financial Services Ltd.**
Having its registered office at, 7th Floor Telephone Exchange Building, 8 Bhikaji Cama Place, New Delhi 110066 India **...Respondent No. 2**

3. **Indian Overseas Bank,**
Member of Committee of Creditor, Having its registered office at, 762/763, IOB, Anna Salai, Chennai, Tamil Nadu-600002 **.... Respondent No. 3**

Present:

For Appellant	:	**Mr. Ramji Srinivasan, Senior Advocate For Mr. VVSN Raju, Ms. GVL Meghana, Ms. Shefali Munde & Mr. Aryansh Tripathi, Advocates**
For Respondents	:	**Mr. Abhijeet Sinha, Senior Advocate For Mr. Amir Bavani, Mr. Dhananjaya Mishra, Ms. Rishika Kumar, Ms. Pragati Prajapati, Ms. Ayan Rai, Mr. Navneet Dogra & Mr. Bhargav Verma, Advocates for Caveator/SRA.**
		Mr. Arun Kathpalia, Senior Advocate For Mr. Pulkit Deora & Ms. Anjali Soni, Advocates for RP/R-1.
		Mr. Niranjan Reddy, Senior Advocate For Mr. Sidharth Sethi, Ms. Shreya Sircar & Ms. Riya Singh, Advocates for R-2

J U D G E M E N T

(18.09.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two appeals i.e. Company Appeal (AT) (Ins) No. 258 of 2025 and Company Appeal (AT) (Ins) No. 259 of 2025 filed by the Appellant, Mandava Prabhakar Rao.

2. The present reference arises from the Order dated 10.11.2025 passed by the Division Bench at Chennai in Company Appeal (AT)(CH)(Ins) Nos. 258 and 259 of 2025, recording a difference of opinion. Pursuant thereto, the points of difference have been referred to me for determination and, accordingly, the present findings are confined thereto.

3. Since both appeals i.e. Company Appeal (AT) (Ins) No. 258 of 2025 and Company Appeal (AT) (Ins) No. 259 of 2025 have been heard together and the counsels of both the appeals agreed that both the appeals can be disposed by a common order, hence both the appeals are being dealt conjointly in the following discussion and a common order will be passed subsequently.

4. The present appeals have been filed by the Appellant i.e**.** Mandava Prabhakar Rao, who is the erstwhile/suspended Director of NSL Nagapatnam Power and Infratech Ltd**.** (**"Corporate Debtor**"), under Section 61 of the Insolvency and Bankruptcy Code, 2016 **("Code"),** challenging the Order dated 27.05.2025 **("Impugned Order")** passed by the National Company Law Tribunal, Hyderabad Bench **("Adjudicating Authority")** in IA No. 256 of 2025 and in IA No. 1724 of 2024 in Company Petition (IB) No. 306/10/HDB/2017**.**

Mr. Navneet Kumar Gupta**,** being the Resolution Professional of the Corporate Debtor, is Respondent No. 1 herein; M/s PTC India Financial Services Ltd**.**, having the majority voting share in the Committee of Creditors ("**CoC**"), is Respondent No. 2 herein and Indian Overseas Bank, being a member of the CoC, is Respondent No. 3 herein.

5. The Appellant submitted that the Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor was initiated pursuant to an application filed under Section 10 of the Code, which came to be admitted vide order dated 18.01.2018. The CIRP had since progressed through multiple stages involving constitution and functioning of the CoC.

6. The Appellant submitted that Mr. Nelluri Bapuji was duly nominated to represent the Appellant as well as the suspended Board of Directors in CoC meetings. It is contended that such nomination was consistently recognized in practice, and the said representative was permitted to participate in multiple CoC meetings, including the 10th, 18th, and 19th CoC meetings, as duly recorded in the minutes thereof. The Appellant submitted that such continued participation amounts to unequivocal acceptance of his authorization by the Resolution Professional.

7. The Appellant further submitted that the Resolution Professional actively engaged with the said representative by seeking and accepting clarifications on matters pertaining to the suspended Board of Directors. Notably, during the 19th CoC meeting, the representative confirmed that the suspended directors had examined the transaction audit report circulated with the minutes of the 18th CoC meeting held on 24.06.2024 and had initiated appropriate proceedings before the Adjudicating Authority for access to books of accounts.

8. The Appellant contended that despite consistent past practice, during the 20th CoC meeting held on 16.07.2024, the said representative was abruptly and unjustifiably directed to exit the meeting within 15 minutes of its commencement on the alleged ground of lack of authorization. The Appellant submitted that such action was taken without prior notice, warning, or opportunity to cure the alleged defect and is therefore arbitrary, illegal, and violative of principles of natural justice. The Appellant explained that the said meeting involved crucial agenda items, including approval of the Resolution Plan and disqualification of other prospective resolution applicants, namely Vedanta Ltd. and OMIPL, in favour of

M/s. Rungta Mines Ltd., thereby directly impacting the Appellant and other directors of Suspended Board of Director of the Corporate Debtor.

9. The Appellant submitted that the exclusion of the representative was not only procedurally improper but also indicative of a deliberate attempt to side-line the suspended Board and restrict its participation in critical decision-making. It is further contended that the disqualification of competing resolution applicants and preferential consideration of a particular resolution plan demonstrates arbitrary and prejudicial conduct on the part of the Resolution Professional, thereby undermining the integrity of the CIRP.

10. It is submitted that even after submission of the confidentiality undertaking, the Resolution Professional failed to provide critical communications, including emails dated 18.07.2024 from PTC India Financial Services Ltd. and dated 19.07.2024 from Indian Overseas Bank, which were circulated subsequent to the 20th CoC meeting. The Appellant submitted that such selective disclosure amounts to denial of access to material information and violates transparency obligations under the Code.

11. The Appellant further submitted that the Resolution Professional engaged with the Odisha Industrial Infrastructure Development Corporation (IDCO) seeking change in the nature and usage of land and, in doing so, misrepresented that such actions were pursuant to oral directions of the Adjudicating Authority. It is contended that such conduct is beyond the authority of the Resolution

Professional and demonstrates lack of bona fides and possible bias in favour of the Successful Resolution Applicant.

12. The Appellant submitted that the Adjudicating Authority failed to appreciate the material irregularities and violations committed by the Resolution Professional, particularly in excluding the representative of the suspended Board from CoC deliberations. It is further submitted that the imposition of exemplary costs of ₹5,00,000/- is arbitrary, excessive, and operates as a deterrent against legitimate assertion of rights by the Appellant.

13. The Appellant contended that the 20th CoC meeting dated 16.07.2024 was conducted in violation of Regulation 21(3)(iii) of the CIRP Regulations, as essential documents including resolution plans, valuation reports, and compliance materials were not circulated to participants prior to the meeting. The Appellant submitted that the abrupt exclusion of the representative of the suspended Board during the meeting, under the pretext of lack of authorization and confidentiality undertaking, is wholly unjustified.

14. The Appellant further submitted that the Adjudicating Authority failed to appreciate that the representative had been consistently permitted to participate in earlier meetings without any requirement of specific authorization or confidentiality undertaking, and no such requirement was indicated in the agenda of the 20th CoC meeting.

15. The Appellant contended that Regulation 24(4) does not empower the Resolution Professional to expel participants and only contemplates voluntary absence. The insistence on such requirements, without precedent in earlier meetings, constitutes arbitrary deviation from established practice. The Appellant submitted that Section 24(4) of the Code merely safeguards validity of proceedings in cases of absence and does not sanction exclusion of participants. The Appellant contended that the Adjudicating Authority failed to consider the law laid down by the *Hon'ble Supreme Court in Vijay Kumar Jain v. Standard Chartered Bank (2019) 20 SCC 455,* which unequivocally recognizes the right of suspended directors to access resolution plans and relevant CIRP documents, subject to reasonable safeguards.

16. The Appellant submitted that immediately after the meeting, objections were raised vide emails dated 17.07.2024 against the illegal exclusion and regarding authorization. However, the Resolution Professional failed to provide the minutes of the 20th CoC meeting within the stipulated time. Instead, after a delay of one week, vide email dated 23.07.2024, the Resolution Professional sought to impose a confidentiality undertaking as a precondition for furnishing the minutes, thereby attempting to justify and conceal the irregularities committed during the meeting. The Appellant submitted that the denial of access to resolution plan documents and related materials deprives the suspended Board of its statutory right to make meaningful representations in the interest of the Corporate Debtor and stakeholders. The Appellant contended that the documents shared through electronic links on 29.07.2024 were either non-functional or inaccessible, in violation of Regulation 20(6), which mandates that such materials be accessible, downloadable, and retainable by recipients.

17. The Appellant further submitted that the Resolution Professional failed to circulate minutes of the 20th CoC meeting within the mandatory period of 48 hours as prescribed under Regulation 24(7). The minutes were circulated only on 29.07.2024, despite the meeting having concluded on 16.07.2024, thereby vitiating the decision-making process. It is submitted that inclusion of emails dated 18.07.2024 and 19.07.2024 within the minutes of the meeting held on 16.07.2024 is factually and chronologically untenable and creates a misleading record of deliberations.

18. The Appellant contended that the Resolution Professional acted in a biased manner by favouring the resolution plan of M/s. Rungta Mines Ltd. while disregarding other proposals, thereby breaching fiduciary duties under Section 208(2)(a) of the Code. The Appellant submitted that subsequent CoC meetings, namely the 21st and 22nd meetings, were conducted after expiry of the CIRP period without requisite extension, rendering such proceedings invalid. The Appellant further submitted that the Resolution Professional failed to adhere to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, particularly with respect to maintaining impartiality, ensuring adequate disclosures, and maintaining accurate and contemporaneous records.

19. The Appellant submitted that it preferred an Interlocutory Application bearing I.A. No. 1724 of 2024 before the Adjudicating Authority under Section

60(5) of the Code, seeking to set aside the 20th CoC meeting dated 16.07.2024. The Appellant further submitted that the said Interlocutory Application was dismissed by the Adjudicating Authority vide Impugned order dated 27.05.2025.

20. The Appellant submitted that it filed the application praying to declare the 21st and 22nd CoC meetings, conducted by the Resolution Professional on 23.09.2024 and 18.12.2024 respectively, as arbitrary and illegal. The Appellant contended that these meetings were convened solely to obtain a No Objection Certificate ("NOC") for changing the usage of land held by the Corporate Debtor. The Appellant argued that such alteration in land usage was neither necessary at that stage nor within the domain of the CoC or the Resolution Professional, particularly in view of the pending application before the Adjudicating Authority for approval of the Resolution Plan.

21. The Appellant further submitted that the Resolution Professional ought to have undertaken this exercise prior to issuing Form G, which would have attracted a greater number of resolution applicants and facilitated value maximization for the CD. The Appellant contended that, upon its objection to the 21st CoC meeting vide email dated 17.09.2024, the Resolution Professional responded vide email dated 20.09.2024, relying on various Insolvency Law Committee Reports to assert its authority, and falsely claimed that the action was based on oral observations of the Adjudicating Authority. The Appellant argued that this claim is demonstrably false, as evidenced by the Adjudicating

Authority's order dated 27.05.2025, which clarifies that no such oral direction was issued.

22. The Appellant submitted that, vide email dated 16.09.2024, it categorically informed the Resolution Professional that Mr. Nelluri Bapuji would continue to represent the appellant in all CoC meetings, as previously clarified vide email dated 25.07.2024. The Appellant contended that, despite this, it expressed genuine inconvenience in attending the 21st CoC meeting scheduled for 17.09.2024 and requested deferment. The appellant submitted that the Resolution Professional, instead of addressing procedural lapses and substantive objections, initially deferred the meeting vide email dated 17.09.2024 but proceeded in a manner that disregarded the appellant's concerns. The appellant further submitted that it highlighted issues regarding lack of proper notice and failure to circulate essential documents, including emails dated 18.07.2024 and 19.07.2024 from PTC India Finance Limited and Indian Overseas Bank, which were considered in the 20th CoC meeting held on 16.07.2024.

23. The Appellant contended that the Resolution Professional's failure to provide access to these material communications prior to the meetings constitutes a fundamental breach of transparency, fairness, and procedural propriety under the Code. The appellant argued that this non-disclosure, given the documents' relevance to the ineligibility of other resolution applicants and their impact on the approval of the current Resolution Plan, vitiates the convening and conduct of the 21st and 22nd CoC meetings. The appellant submitted that the Resolution

Professional's reliance on a non-binding discussion paper dated 27.06.2022 issued by the IBBI to justify its actions is misplaced, as such papers cannot override statutory mandates under the Code or validate procedural lapses, thereby casting doubt on the Resolution Professional's neutrality in the CIRP.

24. The appellant contended that the Resolution Professional's actions, including selective and delayed sharing of documents, exclusion of the suspended management from critical deliberations, and non-adherence to prescribed procedures for CoC meetings, are prejudicial to the appellant and detrimental to the interests of the Corporate Debtor and its creditors. The appellant argued that the Resolution Professional’s conduct appears motivated by bias in favour of the Successful Resolution Applicant ("SRA"), whose plan was approved under questionable circumstances, thereby undermining the sanctity of the CIRP and the objective of value maximization under the Code. The appellant submitted that the proceedings of the 21st CoC meeting are procedurally flawed and legally unsustainable, particularly in light of the pending challenge to the 20th CoC meeting vide I.A. Nos. 1724 and 1725 of 2024, the non-circulation of critical documents, and the prejudicial handling of objections.

25. The appellant further submitted that the conduct of the 22nd CoC meeting on 18.12.2024, which it could not attend due to technical issues, reveals significant procedural lapses, including absence of comprehensive disclosures and decisions made without adequate stakeholder consultation, deviating from the principles of transparency and fairness under the Code. The appellant contended that the Resolution Professional's assurance to the IDCO regarding settlement of dues by the SRA, despite the pending approval of the Resolution Plan, raises concerns about the Resolution Professional's neutrality and potential undermining of the CIRP's integrity.

26. The appellant argues that the Resolution Professional's initiative to obtain a NOC from IDCO for altering the land use of the Corporate Debtor's primary asset, prior to approval of the Resolution Plan by the Adjudicating Authority, contravenes Section 31(4) of the Code, which places the responsibility for securing statutory approvals on the SRA post-approval. The appellant submits that this proactive engagement, without explicit CoC authorization, constitutes an overreach of authority and indicates bias towards the SRA, compromising the impartiality required in the CIRP.

27. The appellant contended that the Respondent No. 2, holding majority voting shares in the CoC (85.35%), was negligent in safeguarding stakeholder interests by failing to verify inclusion of all Corporate Debtor assets in the Information Memorandum and their valuation in examining the Resolution Plan. The appellant argued that Respondent No. 2's conduct in selecting the SRA is questionable, undermining the integrity of the CIRP and compromising stakeholder interests.

28. The appellant submitted that Respondent No. 2 actively participated in and passed resolutions in the 20th CoC meeting, which was conducted illegally and arbitrarily. The appellant contended that the approval of the Resolution Plan submitted by Rungta Mines was not in accordance with the prescribed legal framework. The appellant argued that, while the commercial wisdom of the CoC is paramount, it cannot validate actions tainted by procedural irregularities and statutory violations. In this regard, the appellant relies on the judgment of this Appellate Tribunal in *Amit Sangal Proprietor of Nitin Plastic v. Kairav Anil Trivedi, Company Appeal (AT) (Ins) No. 916 of 2023, Company Appeal (AT) (Ins) No. 792 of 2023 with Company Appeal (AT) (Ins) No. 1034 of 2024* wherein it was held that approval of a Resolution Plan based on concealment or misrepresentation of facts affecting stakeholder interests cannot be sustained under Section 31 of the Code.

29. The appellant argued that the Adjudicating Authority rejected the challenge to the 21st CoC meeting solely based on dismissal of I.A. No. 1724 of 2024, without addressing issues in I.A. No. 256 of 2025 concerning subsequent events. The Appellant submitted that it sought to record subsequent material developments not foreseeable at the earlier filing. The appellant contended that the Adjudicating Authority did not independently assess allegations regarding the 21st and 22nd CoC meetings, including non-circulation of documents, arbitrary director exclusion, and post-facto minute insertions, contravening Regulations 24(7), 21(3), and 39(3) of the CIRP Regulations. The appellant submitted that the Adjudicating Authority did not appreciate the Resolution Professional's questionable actions in seeking an NOC from IDCO during the 22nd CoC meeting without prior exercise before issuing Form G.

30. The appellant contended that the Adjudicating Authority did not acknowledge the Resolution Professional's misrepresentation by asserting Tribunal direction to seek the NOC from IDCO, unsubstantiated by record. The appellant further submitted that the Adjudicating Authority was not justified in dismissing I.A. No. 256 of 2025 with exemplary costs of Rs. 5.00 lakhs as a delay tactic, when filed legitimately to record post-filing events and improprieties.

31. The appellant argued that the Adjudicating Authority wrongly treated allegations of the Appellant regarding the Resolution Professional’s bias and lapses as frivolous, despite documentary evidence like minutes, emails, and correspondence demonstrating arbitrariness and SRA collusion. The appellant submitted that the Adjudicating Authority failed to appreciate that the Resolution Professional's convening of the 22nd CoC meeting and IDCO engagement for NOC post-approval submission was ultra vires Sections 30 and 31 of the Code, lacking statutory authority and warranting interference. The appellant contended that the Adjudicating Authority overlooked the Resolution Professional's misleading statement about Adjudicating Authority direction to approach IDCO, refuted in the impugned order, evidencing impropriety, bias, and lack of transparency vitiating the CIRP.

32. Concluding arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Orders and allow the appeals.

33. On the other hand, the Resolution Professional /Respondent No. 1 denied the averments of the Appellant as misleading and baseless.

34. The Resolution Professional submitted that the CIRP was conducted in accordance with the provisions of the Code and the applicable regulations. In compliance with Regulation 36A of the CIRP Regulations, Form G was published on 21.11.2023, prescribing 06.12.2023 as the last date for submission of Expressions of Interest ("**EOIs**"). The Form G was duly published on the website of the Corporate Debtor as well as that of the IBBI. Five entities submitted EOIs, namely, Jindal India Limited, Orissa Metallurgical Industry Private Limited, HR Commercials Private Limited (Consortium), Rungta Mines Limited and Vedanta Limited. Pursuant to the decision taken in the 9th meeting of the CoC, the Resolution Professional issued the Request for Resolution Plan ("RFRP"), along with the evaluation matrix and Information Memorandum, on 04.01.2024.

35. The Resolution Professional further submitted that three modified Resolution Plans, dated 09.07.2024, were received from Orissa Metallurgical Industry Private Limited, Rungta Mines Limited and Vedanta Limited. The feasibility and viability of the said plans were duly considered and deliberated upon by the CoC in its 20th meeting held on 16.07.2024. Thereafter, the voting process was undertaken and, upon conclusion of voting on 01.08.2024, the Resolution Plan submitted by Rungta Mines Limited was approved by the CoC with an 85.35% voting share. Accordingly, the Resolution Professional filed I.A. No. 20 of 2024 on 04.08.2024 before the Adjudicating Authority seeking approval of the Resolution Plan.

36. The Resolution Professional submitted that there was no procedural irregularity in the convening or conduct of the 20th CoC meeting. The meeting was duly convened through video conferencing on 16.07.2024 pursuant to notice dated 12.07.2024 issued to all CoC members as well as the erstwhile management. The Resolution Professional emphasised that the notice specifically stipulated that any participation through an authorised representative was required to be intimated at least 24 hours in advance, in terms of Regulation 21(2) of the CIRP Regulations.

37. The Resolution Professional contended that the grievance regarding Mr. Nelluri Bapuji, being asked to leave the 20th CoC meeting, is wholly misconceived. During the meeting, the CoC members requested a confidential internal discussion and expressed reluctance to deliberate upon sensitive matters in the presence of Mr. Nelluri Bapuji, who had neither furnished valid authorisation to represent the Appellant nor submitted the requisite confidentiality undertaking. He was nevertheless given an opportunity to furnish the necessary authorisation and undertaking, but expressed his inability to do so immediately. He was therefore requested to excuse himself from the meeting, with an assurance that the relevant documents and minutes would be shared upon compliance with the confidentiality requirements.

38. The Resolution Professional submitted that the requirement of a confidentiality undertaking was not introduced for the first time at the 20th CoC meeting. The same had been repeatedly communicated to the erstwhile management, including during the 19th CoC meeting held on 05.07.2024 and by email of the same date. Despite having sufficient time between 05.07.2024 and 16.07.2024, the Appellant and the suspended directors failed to furnish the requisite undertaking. The Resolution Professional further submitted that he had, on earlier occasions, permitted Mr. Nelluri Bapuji to participate despite the absence of formal authorisation; however, considering the confidential nature of the agenda of the 20th CoC meeting, strict compliance with the statutory confidentiality requirements was necessary.

39. The Resolution Professional submitted that the erstwhile management had also failed to extend the requisite cooperation in furnishing documents and information sought by the Resolution Professional and the forensic auditor, despite repeated reminders. The confidentiality undertaking was ultimately furnished only on 25.07.2024, after conclusion of the 20th CoC meeting, whereupon the Resolution Professional promptly shared the minutes of the meeting with the Appellant on 29.07.2024. The allegation regarding non-supply or non-accessibility of documents is therefore misconceived. No grievance concerning inaccessible links was raised contemporaneously and the documents were shared once the mandatory confidentiality requirement was complied with.

40. It was further submitted that confidentiality of sensitive CIRP information is a statutory requirement and documents such as Resolution Plans and valuation reports cannot be disclosed indiscriminately without compliance with the applicable provisions, including Regulation 35(2) of the CIRP Regulations. The

Resolution Professional contended that disclosure of confidential CIRP information without the requisite undertaking would be contrary to the Code, the CIRP Regulations and the IBBI Circular dated 23.02.2018. The Appellant, having himself failed to comply with the prescribed requirements, cannot seek to attribute procedural impropriety to the Resolution Professional.

41. The Resolution Professional further submitted that the EOI submitted by Power Mech Projects Limited on 16.04.2024 was rightly rejected as being beyond the prescribed timeline. The last date for submission of EOIs was 06.12.2023 and the EOI submitted on 16.04.2024 was delayed by more than three months. Its rejection was therefore in accordance with Regulation 39(1B) of the CIRP Regulations. There was no stay, restraint or other judicial order preventing continuation of the CIRP, and accordingly the Resolution Professional was bound to proceed with the process in accordance with law.

42. The Resolution Professional categorically denied that any preferential treatment was extended to Rungta Mines Limited. The Resolution Plan submitted by Rungta Mines Limited was selected after consideration of the competing plans and on the basis of the prescribed evaluation parameters, financial offer and the relevant evaluation reports. The decision to approve the plan was that of the CoC, which exercised its commercial wisdom independently and by the requisite majority of 85.35%. The Resolution Professional submitted that the voting and approval of the Resolution Plan cannot be characterised as an act of the

Resolution Professional, as the decision ultimately rested with the CoC and its financial creditors.

43. The Resolution Professional submitted that the Appellant has sought to reopen stages of the CIRP which had already been duly completed, despite having had adequate opportunity to participate in the process. The allegations raised by the Appellant are belated and appear to be an attempt to obstruct the approval of the Resolution Plan. The CIRP had already remained pending for an exceptionally long period of more than seven years and any further interference at this stage would seriously prejudice the stakeholders, diminish the value of the assets of the Corporate Debtor and defeat the objective of time-bound resolution contemplated under the Code.

44. The Resolution Professional further submitted that the Appellant has adopted a course of repeated litigation and dilatory proceedings with the intent of frustrating the CIRP and delaying the adjudication of I.A. No. 20 of 2024 seeking approval of the Resolution Plan. The said application has remained pending for a considerable period, inter alia, on account of the series of proceedings initiated by the erstwhile management. Multiple applications seeking stay of the CIRP have already been preferred, none of which resulted in any order restraining continuation of the CIRP. The present proceedings are therefore another attempt to reopen and obstruct a process which has already culminated in approval of the Resolution Plan by the requisite majority of the CoC.

45. The Resolution Professional submitted that the allegation that he ceased to have authority to convene meetings of the CoC after expiry of the CIRP period is contrary to the express provisions of the Code and the CIRP Regulations. In connection with the proposed 21st CoC meeting, the Resolution Professional had issued notice dated 12.09.2024 for a meeting scheduled on 17.09.2024 to all CoC members, including the Appellant. At the Appellant's request, the draft confidentiality undertaking to be executed by Mr. Nelluri Bapuji was also duly shared. Upon the Appellant informing the Resolution Professional that neither he nor Mr. Nelluri Bapuji would be able to attend the meeting on account of Ganpati Visarjan and anticipated disruption of power and internet services, the Resolution Professional acceded to the request and deferred the meeting.

46. The Resolution Professional submitted that the Appellant thereafter raised an objection vide email dated 17.09.2024 contending that no further CoC meeting could be convened after expiry of the CIRP period on 01.09.2024 and relying upon the pendency of I.A. Nos. 1724 and 1725 of 2024 concerning the 20th CoC meeting. In view of the objections, the Resolution Professional temporarily deferred the meeting to examine the same. However, by detailed email dated 20.09.2024, the Resolution Professional clarified that he remained statutorily bound to continue managing the affairs of the Corporate Debtor and to conduct CoC meetings pending approval of the Resolution Plan.

47. The Resolution Professional submitted that Section 23(1) of the Code expressly provides that the Resolution Professional shall continue to manage the operations of the Corporate Debtor after expiry of the CIRP period until an order approving the Resolution Plan under Section 31(1) or appointing a liquidator under Section 34 is passed. Further, Regulation 18 of the CIRP Regulations, including the Explanation to sub-regulation (2), expressly contemplates convening of CoC meetings until approval of the Resolution Plan under Section 31(1) or passing of an order for liquidation under Section 33, subject to the limitation that decisions taken during such period should not affect the Resolution Plan pending before the Adjudicating Authority. The Resolution Professional therefore acted within the statutory framework in continuing the CoC process after expiry of the CIRP period.

48. The Resolution Professional further submitted that no interim order prohibited him from convening further meetings of the CoC. The Resolution Professional stated that the Appellant's objection regarding the minutes of the 20th CoC meeting was also misconceived, as the minutes had been circulated on 19.07.2024, prior to voting upon the Resolution Plan, and the deliberations had been duly recorded. Accordingly, after clarifying the legal position, the 21st CoC meeting was scheduled for 23.09.2024. Despite this, the Appellant again sought further time on 22.09.2024 to respond to the email dated 20.09.2024. Finding the objections of the Appellant to be without merit and noting the continuing statutory obligation to proceed with the CIRP, the Resolution Professional conducted the 21st CoC meeting on 23.09.2024 and circulated its minutes to all CoC members, including the Appellant, on 24.09.2024.

49. The Resolution Professional submitted that the same conduct continued in relation to the 22nd CoC meeting. Notice dated 16.12.2024 was duly issued to all CoC members, including the Appellant and IDCO. IDCO was entitled to participate in CoC meetings in terms of Section 24(4) of the Code, having more than 10% of the total debt due from the Corporate Debtor. When Mr. Nelluri Bapuji sought confirmation regarding his participation, the Resolution Professional duly confirmed the same vide email dated 17.12.2024. Despite being afforded such opportunity, neither the Appellant nor Mr. Nelluri Bapuji attended the 22nd CoC meeting held on 18.12.2024.

50. The Resolution Professional submitted that during the 22nd CoC meeting, after all agenda items had been duly considered, Mr. Ipsit Sahoo and Mr. Saroj Kumar Sethi, representing IDCO, raised a query concerning treatment of IDCO's claim. Since the issue was squarely within the jurisdiction of the CoC, the Resolution Professional neither interrupted nor prevented the discussion. The CoC duly addressed IDCO's query and explained the treatment of its claim under the Resolution Plan as approved by the CoC. The minutes were thereafter circulated to all CoC members, including the Appellant, on 19.12.2024.

51. The Resolution Professional submitted that the subsequent allegations raised by the Appellant vide email dated 25.12.2024 were duly answered by a detailed reply dated 02.01.2025. The Resolution Professional further clarified that, when I.A. No. 20 of 2024 was initially listed before the Adjudicating Authority, the Adjudicating Authority itself suggested that IDCO be approached regarding the treatment of its claim under the Resolution Plan. Pursuant thereto, the Resolution Professional requested IDCO to communicate its concerns, if any, and to issue a certificate of no objection. Thus, the steps taken by the Resolution Professional in relation to IDCO were undertaken transparently and in furtherance of the proceedings concerning approval of the Resolution Plan.

52. In the aforesaid circumstances, the Resolution Professional submitted that the Appellant has approached the Adjudicating Authority with unclean hands and has sought to create procedural grievances out of circumstances attributable to its own failure to comply with statutory requirements and its repeated attempts to delay the CIRP. The Appellant had adequate opportunity to participate in the CoC process, was permitted to participate through its representative subject to applicable requirements, was supplied documents upon furnishing the requisite confidentiality undertaking, and was repeatedly informed of the meetings and proceedings. The allegations of the Appellant of exclusion, procedural irregularity, preferential treatment and lack of authority are therefore devoid of merit.

53. The Resolution Professional accordingly submitted that the CIRP and the process culminating in approval of the Resolution Plan were conducted strictly in accordance with the Code, the CIRP Regulations and the applicable timelines. The Resolution Plan was approved by the CoC in exercise of its commercial wisdom and with the requisite majority, and no material irregularity or violation warranting interference has been demonstrated by the Appellant. The Resolution

Professional submitted that the request of the Appellant in the midst of proceedings concerning approval of the Resolution Plan, was liable to be dismissed as an attempt to obstruct the time-bound insolvency resolution process and prejudice the interests of the Corporate Debtor and its stakeholders.

54. Concluding the arguments, the Resolution Professional requested this Appellate Tribunal to dismiss the Appeals.

55. Per contra, the PTC India Financial Ltd., the Respondent No. 2 also denied all averments made by the Appellant as misleading and baseless.

56. The Respondent No. 2 submitted that it is a secured financial creditor of the Corporate Debtor and holds a voting share of 85.35% in the CoC. The management of the Corporate Debtor is under the control of the Resolution Professional.

57. The Respondent No. 2 contended that the Appellant essentially seek to challenge the conduct of the 20th meeting of the CoC held on 16 July 2024, the consideration and approval of the Resolution Plan, the alleged non-supply of documents and Resolution Plans to the Appellant or the suspended directors, and the continuation of the CIRP despite the pendency of I.A. No. 1394 of 2024 filed by Power Mech Projects Limited ("Power Mech"), stated to be a prospective resolution applicant. The Appellant has consequently sought, inter alia, setting aside of the 20th CoC meeting and the approval of the Resolution Plan, re-running of the process after furnishing documents including the Resolution Plans and

Valuation Report, reference of the Resolution Professional's conduct to the IBBI, and replacement of the Resolution Professional.

58. The Respondent No. 2 submitted that the aforesaid reliefs sought by the Appellant are wholly unwarranted and that the allegations have been raised with the effect and object of disrupting a CIRP which had already reached an advanced and critical stage. By the time the challenge was raised by the appellant, voting had already taken place, the Resolution Plan had been approved by the CoC, a Letter of Intent had been issued to the SRA, and the Resolution Professional had filed an application seeking approval of the Resolution Plan, being IA (Plan) / 20 of 2024. In these circumstances, the Appellant could not seek to unsettle the process on the basis of allegations which, according to Respondent No. 2, are factually incorrect and legally untenable.

59. The Respondent No. 2 submitted that the allegation concerning Mr. Nelluri Bapuji being asked to leave the 20th CoC meeting was misconceived. The notice of the meeting dated 12 July 2024, convening the meeting for 16 July 2024, expressly stipulated that a member of the CoC could participate either personally or through an authorised representative. Where a member proposed to attend through an authorised representative, the identity of such representative was required to be communicated to the Resolution Professional at least 24 hours prior to the meeting.

60. The Respondent No. 2 contended that the requirement of prior authorisation was neither introduced at the meeting nor applied arbitrarily to Mr.

Bapuji alone. It was a condition expressly communicated in advance through the notice dated 12 July 2024 to all. The Appellant, therefore, had sufficient time between 12 July 2024 and 16 July 2024 to arrange for the requisite authorisation and intimate the Resolution Professional. Nevertheless, Mr. Bapuji appeared at the meeting without the requisite authorisation in his favour.

61. The Respondent No. 2 further submitted that the requirement of authorisation assumed particular significance in the facts of the present case because the 20th CoC meeting involved consideration of highly sensitive and confidential matters, including commercial aspects of the Resolution Plan. The suspended Board of Directors including the appellant had also been invited by the Resolution Professional to furnish an undertaking of confidentiality but had failed to do so. In such circumstances, restricting participation to duly authorised persons were necessary for preservation of the confidentiality of the CIRP and the information being considered by the CoC.

62. The Respondent No. 2 submitted that it was not a case where Mr. Bapuji was arbitrarily or clandestinely “ousted” from the meeting. Rather, Respondent No. 2, along with the other member of the CoC, took a considered decision that a person who had not furnished the requisite authorisation could not remain present during deliberations involving confidential commercial information. The decision was thus founded upon the absence of the requisite authorisation and the need to preserve confidentiality, and not upon any intention to prevent the Appellant from placing his objections or views before the CoC.

63. The Respondent No. 2 contended that the Appellant's objections, suggestions and opinions were not shut out from consideration. As reflected in the minutes of the 20th CoC meeting and the subsequent correspondence involving the Appellant, Mr. Bapuji and the Resolution Professional, the concerns raised by the appellant and Mr. Bapuji were conveyed and noted.

64. The Respondent No. 2 submitted that the Appellant's reliance upon principles of fairness and transparency could not be divorced from the equally important requirement of maintaining confidentiality in a CIRP. The two requirements were required to be harmonised, particularly where sensitive commercial information and Resolution Plans were under consideration. In this context, Respondent No. 2 relied upon the decision of the Hon'ble Supreme Court in *Vijay Kumar Jain (Supra),* and submitted that the Appellant could not disregard the requirement of confidentiality as stipulated in the said judgement.

65. The Respondent No. 2 submitted that the allegation that the appellant was not furnished with the agenda for the 20th CoC meeting was incorrect. The notice dated 12 July 2024 expressly referred to the agenda for the business proposed to be transacted at the meeting scheduled for 16 July 2024. The appellant had placed the notice before the adjudicating authority but had, according to Respondent No. 2, omitted the enclosed agenda items.

66. The Respondent No. 2 further submitted that the allegation that only the minutes of the 20th CoC meeting were circulated was also incorrect. The documents relating to the meeting were made available through a link contained in the minutes, which was shared with the Appellant by email dated 29 July 2024. Even assuming, without admitting, that the link did not function, the appellant did not approach the Resolution Professional seeking verification, rectification or re-sharing of the documents. Instead, the Appellant directly approached the adjudicating authority.

67. The Respondent No. 2 contended that the appellant's conduct was particularly significant because the appellant had proceeded on the premise that the documents had been withheld, despite having an available avenue to seek the documents from the Resolution Professional in the event of any technical difficulty with the link. The appellant's failure to make such a request undermined the allegation that the Resolution Professional had deliberately withheld documents.

68. The Respondent No. 2 submitted that the appellant had also selectively relied upon the Resolution Professional's email dated 5 July 2024, by which a confidentiality undertaking was sought from Mr. Bapuji in the context of access to the books of accounts, while failing to refer to other instances in which such confidentiality undertaking had been sought. The requirement was not confined merely to access to the books of accounts. The Respondent no. 2 highlighted that given the confidential nature of Resolution Plans and other CIRP-related documents, such material could not appropriately be disclosed to persons who had not furnished the requisite confidentiality undertaking.

69. The Respondent No. 2 contended that the appellant's reliance upon *Vijay Kumar Jain (Supra*) could not be treated as permitting unrestricted disclosure of confidential CIRP material without compliance with the corresponding requirement of confidentiality as the judgment and the legal framework had to be considered as a whole. Further, Regulation 7(2)(h) and the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 recognise the obligation of an insolvency professional to maintain confidentiality. Thus, the appellant could not selectively rely upon the aspect of access to documents while disregarding the corresponding obligation to protect confidential information.

70. The Respondent No. 2 submitted that the appellant's contention regarding the pendency of I.A. No. 1394 of 2024 filed by Power Mech was also misplaced. The issue had, in fact, been raised before the members of the CoC during the 20th CoC meeting. Mr. Bapuji, before leaving the meeting, brought to the attention of the CoC that Power Mech had expressed an interest in submitting a Resolution Plan and had approached the adjudicating authority seeking appropriate directions after its proposal had not been accepted. The Respondent No. 2 contended that the minutes of the 20th CoC meeting recorded that the members considered the issue and noted that the same issue had already been raised and considered in the previous CoC meeting. The CoC members accordingly did not wish to reconsider the issue. Thus, the contention that the issue relating to Power Mech was ignored or suppressed was contrary to the record.

71. The Respondent No. 2 further submitted that the Resolution Professional had clarified that the email expressing interest from Power Mech was received only on 16 April 2024, by which time the final list of Prospective Resolution Applicants ("PRAs") had already been published. The proposal was consequently rejected in accordance with the applicable law and Regulations. Therefore, the appellant could not characterise the non-consideration of Power Mech's proposal as an arbitrary elimination of a prospective resolution applicant.

72. The Respondent No. 2 emphasised that there was no stay granted by the Adjudicating Authority in I.A. No. 1394 of 2024. The mere pendency of an interlocutory application, in the absence of any stay or restraint order, did not by itself prohibit continuation of the CIRP. Consequently, the pendency of the said application did not render the CoC's consideration of the Resolution Plan or the further progress of the CIRP illegal.

73. The Respondent No. 2 submitted that the Resolution Plans submitted by Vedanta Ltd. and Orissa Metallurgical Industry Private Limited were found to be non-compliant with the mandatory statutory requirements under the Code. Respondent No. 2, after considering the matter, consciously took the position before the CoC that such non-compliant plans ought not to be put to vote. The said position was communicated to the Resolution Professional by email dated 18 July 2024.

74. The Respondent No. 2 further submitted that the other financial creditor also adopted a similar position, which was recorded in the minutes of the 20th

CoC meeting. The decision was therefore not an arbitrary or unilateral attempt by Respondent No. 2 to eliminate competing applicants, but was based upon the statutory compliance of the plans. The Respondent no. 2 explained that a plan which failed to satisfy mandatory requirements under the Code could not, in any event, ultimately have been approved by the Adjudicating Authority merely because it had been put to vote.

75. The Respondent No. 2 submitted that there was no basis to characterise the 20th CoC meeting as clandestine, arbitrary, illegal or null and void. The meeting had been preceded by a written notice dated 12 July 2024, which clearly prescribed the procedure for participation through authorised representatives. The requirement was communicated four days before the meeting, thereby affording sufficient opportunity to comply.

76. The Respondent No. 2 contended that the appellant’s attempt to portray the meeting as having been conducted without an agenda or relevant documents was contradicted by the meeting notice itself and the subsequent circulation of the meeting material through the link forming part of the minutes. The appellant’s failure to seek re-sharing or clarification from the Resolution Professional before approaching the adjudicating authority could not be converted into an allegation of deliberate withholding.

77. The Respondent No. 2 submitted that the allegations of the appellant that the Resolution Professional acted according to his “whims and fancies” or to suit his convenience were wholly unsupported. The conduct complained of was founded upon identifiable procedural requirements, namely, prior authorisation of representatives and preservation of confidentiality. There was consequently no material demonstrating that the Resolution Professional had acted outside the framework of the Code or the applicable Regulations.

78. The Respondent No. 2 further submitted that the appellant had sought to treat the requirement of confidentiality as an impediment to transparency, whereas the two principles were required to operate together. The protection of confidential commercial information, particularly Resolution Plans and matters relating to the CIRP, was an integral part of the process. The appellant could not therefore seek unrestricted access to confidential information without complying with the conditions applicable to such disclosure.

79. The Respondent No. 2 submitted that the subsequent Application, being I.A. No. 256 of 2025, was filed on 24 January 2025, on the very day when the matter was listed before the adjudicating authority for hearing. It was not listed on that date when arguments were heard in I.A. No. 1724 of 2024 and the parties were directed to file their written submissions. Respondent No. 2 contended that the timing and nature of the subsequent Application demonstrated an attempt to further obstruct the progress of the CIRP.

80. The Respondent No. 2 submitted that the reliefs and allegations contained in I.A. No. 256 of 2025 by the appellant were, in substance, not directed against Respondent No. 2. Nevertheless, Respondent No. 2 specifically denied any allegation suggesting that it had acted contrary to law or had caused prejudice to the CIRP. Respondent No. 2 maintained that it had consistently acted in conformity with the Code and the applicable legal framework.

81. The Respondent No. 2 contended that the CIRP ought not to be permitted to remain indefinitely stalled by successive applications by the appellant which did not disclose any legal or factual basis for unsettling steps already validly undertaken. At the relevant stage, the voting process had concluded, the Resolution Plan had been approved, the Letter of Intent had been issued to the SRA and the Resolution Professional had already approached the Adjudicating Authority for approval of the Resolution Plan through IA (Plan) / 20 of 2024.

82. The Respondent No. 2 contended that the allegations of the appellant seeking to invalidate the 20th CoC meeting and the Resolution Plan approval were devoid of merit. The meeting was preceded by due notice; the requirement concerning authorised representatives was communicated in advance; the need for confidentiality was legitimate; the agenda had been circulated with the notice; the meeting documents were made available through the link contained in the minutes; the concerns relating to Power Mech were brought before and considered by the CoC; and the non-compliant plans of Vedanta Ltd. and Orissa Metallurgical Industry Private Limited were not proposed to be put to vote for reasons relating to statutory compliance.

83. The Respondent No. 2 submitted that the appellant's challenge, viewed cumulatively, sought to reopen a CIRP which had already stand concluded without establishing any circumstance warranting interference with the commercial and procedural decisions taken in the course of the CIRP. The allegations of the appellant of arbitrariness, illegality, lack of transparency and prejudice to stakeholders were therefore liable to be rejected.

84. Concluding its arguments, the Respondent No. 2 requested this Appellate Tribunal to dismiss the appeal.

Findings

85. At the outset, it needs to be appreciated that these findings arise out of the reference made pursuant to the Order dated 10.11.2025, whereby the Division Bench of this Appellate Tribunal at Chennai, comprising Hon'ble Justice Sharad Kumar Sharma, Member (Judicial), and Hon'ble Mr. Jatindranath Swain, Member (Technical), while hearing Company Appeal (AT)(CH)(Ins) Nos. 258 and 259 of 2025, were unable to arrive at a common conclusion and recorded a difference of opinion. The matter was, accordingly, directed to be placed before the Hon'ble Chairperson for appropriate orders. Pursuant thereto, the points of difference have been placed before me for consideration and determination. I shall, therefore, confine the present findings strictly to the points of difference so referred. The order dated 10.11.2025 is mentioned below:

<u>10.11.2025:</u>

Since there is a difference of opinion in these two company appeals, we have given our respective opinions today. The Registry is directed to place the records of the company appeals before the Hon'ble Chairperson, for passing a suitable direction.

86. It is noted that both the appeals arise out of the common Order dated 27.05.2025 passed by the Adjudicating Authority in CP(IB) No. 306/10/HDB/2017, whereby the resolution plan submitted by M/s. Rungta Mines Limited came to be approved and, simultaneously, IA No. 1724/2024 and IA No. 256/2025 preferred by the Appellant, the erstwhile/suspended Director of the Corporate Debtor, NSL Nagapatnam Power and Infratech Limited, were dismissed with costs quantified at Rs. 5,00,000/-.

87. It is further taken into consideration that Company Appeal (AT)(CH)(Ins) No. 259 of 2025 assails the propriety of the 20th meeting of the CoC held on 16.07.2024, wherein the resolution plan submitted by M/s. Rungta Mines Limited was considered and was thereafter approved by 85.35% of the CoC upon conclusion of the e-voting on 01.08.2024. On the other hand, the Company Appeal (AT)(CH)(Ins) No. 258 of 2025, the connected appeal, whereby the Appellant has called in question the proceedings of the 21st and 22nd meetings of the CoC held on 23.09.2024 and 18.12.2024, respectively. Having regard to the course adopted by the learned Members, Company Appeal No. 259 of 2025 shall be treated as the lead appeal.

88. It is worthwhile to keep in mind that at the 20th meeting of the CoC, Mr. Nelluri Bapuji, who had hitherto represented the Appellant in the meetings of the CoC, was directed to leave the meeting within approximately fifteen minutes of its commencement. The reason assigned by the Resolution Professional was that Mr. Bapuji was neither in possession of a written authorisation from the Appellant nor had he furnished a confidentiality undertaking, which, according to the Resolution Professional, was required before the confidential resolution plans could be discussed in his presence. The Appellant thereafter furnished the requisite confidentiality undertaking on 25.07.2024, whereupon the Resolution Professional, on 29.07.2024, furnished the minutes of the 20th CoC meeting along with the connected documents, leaving three clear days before the e-voting window closed on 01.08.2024. The Appellant, preferred IA No. 1724/2024 before the Adjudicating Authority on 12.08.2024. During the pendency of the said application, the 21st and 22nd meetings of the CoC were convened. It has also been brought out that the Appellant did not attend the 22nd meeting nor raise any objection thereto.

89. Upon consideration of the two appeals, the Chennai Division Bench arrived at divergent conclusions. The Hon'ble Member (Judicial) held that the exclusion of Mr. Bapuji from the 20th CoC meeting was justified, taking the view that Regulation 21(2) of the CIRP Regulations admitted of no relaxation in the facts and circumstances of the case. Both the appeals were consequently dismissed, though the costs imposed by the Adjudicating Authority were reduced from Rs. 5,00,000/- to Rs. 2,00,000/-.

90. On the other hand, the Hon'ble Member (Technical), principally relying upon the judgment in *Vijay Kumar Jain* (supra), held that the exclusion of Mr. Bapuji and the consequent withholding of the resolution plan from the Appellant were impermissible. The appeals were accordingly allowed, the minutes of the 20th CoC meeting were set aside, the CIRP was directed to recommence from that stage, and the costs imposed upon the Appellant were set aside in their entirety.

91. It is in view of this divergence of opinion that the present reference has arisen before me. It is well settled that a reference arising out of a difference of opinion between the Hon'ble Members of the Division Bench, is not an occasion for re-hearing the appeals in their entirety. The scope of consideration is confined to the point or points on which the Hon'ble Members have differed, akin to the manner in which a reference is made to a third Judge under the proviso to Section 98(2) of the Code of Civil Procedure, 1908. The opinion rendered on such reference is, therefore, required to be confined to the specific points of difference, leaving the appeals themselves to be disposed of in accordance with the majority opinion so constituted. I have, accordingly, confined the present findings strictly to the points on which the learned Members have expressed divergent views and have not examined those aspects on which there is, in substance, no difference of opinion.

92. As a preliminary matter, I find that principal difference of opinion concerns the exclusion of Mr. Nelluri Bapuji from the 20th CoC Meeting held on 16.07.2024. The Hon'ble Judicial Member proceeded on the basis that Regulation 21(2) of the CIRP Regulations employs the expression "shall" and, therefore, furnishing prior intimation regarding the identity of the authorised representative, a valid authorisation and a confidentiality undertaking constituted mandatory preconditions for participation. The notice dated 12.07.2024 had specifically brought these requirements to the attention of the Appellant, and admittedly the requisite documents had not been furnished on the date of the 20th meeting. On this reasoning, the earlier participation of Mr. Bapuji in the 10th, 18th and 19th CoC Meetings could not create any vested or continuing right to participate in the absence of compliance with the prescribed requirements; nor could a defect existing on the date of the meeting be retrospectively cured by furnishing documents thereafter.

The Hon'ble Technical Member, however, took a contrary view, placing emphasis upon the fact that Mr. Bapuji had previously participated in the CoC proceedings without objection and that his presence had been accepted by the Resolution Professional. In his view, the sudden insistence upon a written authorisation and confidentiality undertaking at the crucial 20th meeting, particularly when matters concerning the resolution plans were to be considered, amounted to arbitrary and selective treatment. He considered the alleged defect to be capable of rectification and was of the view that the Resolution Professional could either have accepted the undertaking subsequently or adjourned the meeting rather than exclude the representative after approximately 15 minutes.

Thus, while the Hon'ble Judicial Member treated compliance with the procedural requirements as a condition precedent for participation, the Hon'ble Technical Member treated the circumstances as disclosing an unjustified exclusion which could have been cured without nullifying the meeting.

93. The other substantial difference relates to the non-supply of the resolution plans, valuation reports and other relevant documents before the 20th CoC Meeting. The Hon'ble Judicial Member found no substantive violation of Regulation 21(3)(iii) or the judgment in *Vijay Kumar Jain (Supra)*, observing that the confidentiality undertaking had ultimately been furnished by Mr. Bapuji on 25.07.2024 and that the minutes and documents were thereafter supplied on 29.07.2024. On that reasoning, the subsequent supply of the documents was considered sufficient, particularly since the requirement of confidentiality was treated as preceding access to such material.

The Hon'ble Technical Member adopted a fundamentally different approach. According to him, the statutory right of the suspended directors to meaningfully participate in the CoC process necessarily required access to the resolution plans, valuation reports and relevant documents before the meeting, so that their participation was informed and effective. The subsequent furnishing of the documents on 29.07.2024 could not cure what, according to him, was a prior procedural breach committed on 16.07.2024. He further regarded the confidentiality undertaking as a mechanism to safeguard the confidentiality of the documents and not as a basis for depriving the suspended directors of their statutory right to receive them.

Accordingly, the Hon'ble Judicial Member treated the later furnishing of documents as curing or negating the alleged prejudice, whereas the Hon'ble Technical Member considered that the timing of disclosure was itself integral to the right of participation and that post-meeting disclosure could not retrospectively validate the process.

94. Yet another area of disagreement concerns the incorporation of emails exchanged after the conclusion of the 20th CoC Meeting into its minutes. The record shows that the meeting was held on 16.07.2024, followed by correspondence on 17.07.2024, 18.07.2024 and 19.07.2024, while the minutes were subsequently circulated and the Resolution Professional also incorporated the post-meeting correspondence. The Hon'ble Judicial Member viewed such incorporation as permissible, holding that inclusion of subsequent communications in the minutes could serve the purpose of completeness and, by itself, did not vitiate the proceedings.

The Hon'ble Technical Member, on the other hand, regarded the minutes as a record of what transpired during a meeting which stood concluded on 16.07.2024 and considered that correspondence exchanged thereafter could not be retrospectively incorporated so as to form part of the proceedings of a meeting already concluded. In his view, such "retro-fitting" compromised the sanctity and contemporaneous character of the minutes and consequently constituted another circumstance vitiating the 20th CoC Meeting. The difference, therefore, is essentially between treating the minutes as a comprehensive record capable of incorporating subsequent material relevant to the proceedings, as held by the Hon'ble Judicial Member, and treating them as a strict contemporaneous record which cannot be supplemented by later events, as held by the Hon'ble Technical Member.

95. The consequential difference pertains to the effect of the pendency of I.A. No. 1724 of 2024 upon the subsequent 21st and 22nd CoC Meetings and the resolution process. The Appellant had challenged the 20th CoC Meeting by filing I.A. No. 1724 of 2024 on 12.08.2024, but while the application remained pending, the Resolution Professional convened the 21st CoC Meeting on 23.09.2024 and the 22nd CoC Meeting on 18.12.2024, inter alia in relation to land-use issues and the obtaining of NOC from IDCO. The Hon'ble Judicial Member held that mere pendency of I.A. No. 1724 of 2024 did not operate as a stay or restraint against continuation of the CIRP, there being no order prohibiting the Resolution Professional from convening further meetings. He further found that the 22nd meeting, being subsequent to the filing of the resolution plan approval application, did not affect the validity of the plan which had already been approved by the requisite majority and placed before the Adjudicating Authority.

The Hon'ble Technical Member, however, approached the issue from the premise that once the 20th CoC Meeting itself stood vitiated, the subsequent proceedings founded upon that meeting could not independently survive. He therefore treated the infirmity in the 20th meeting as having a cascading effect upon the subsequent CIRP process, including the resolution plan approval. He also considered the discussions concerning the IDCO NOC after approval of the plan to raise serious issues of fairness. Thus, the divergence is not merely as to the validity of the subsequent meetings but as to the legal consequence of an invalid foundational CoC meeting—whether subsequent proceedings remain independently sustainable in the absence of a stay, or whether they are rendered vulnerable because they emanate from a fundamentally defective stage of the resolution process.

96. Another difference concerns the overall assessment of the Appellant's conduct, the validity of the resolution process, and the appropriate relief. The Hon'ble Judicial Member, having found the exclusion of Mr. Bapuji procedurally justified, the subsequent supply of documents sufficient, the incorporation of post-meeting correspondence permissible and the subsequent CoC meetings legally sustainable, concluded that the appeals were devoid of merit and that the Appellant's conduct amounted to an attempt to delay and obstruct the CIRP. He accordingly upheld the Adjudicating Authority's order, while reducing the exemplary costs from ₹5 lakh to ₹2 lakh as a matter of equity.

The Hon'ble Technical Member, conversely, found the cumulative procedural deficiencies surrounding the 20th CoC meeting to be sufficiently serious to vitiate the meeting itself. In his assessment, there was no adequate basis to characterise the Appellant's conduct as deliberate delay, and the Adjudicating Authority had consequently erred both in dismissing the applications and in imposing costs. He therefore proposed that the Adjudicating Authority order be set aside, the minutes of the 20th CoC Meeting be quashed, the CIRP be restored to the stage of the 20th CoC Meeting, complete resolution plans, valuation reports and related documents be furnished to the Appellant, and a fresh 20th CoC Meeting be convened permitting full participation.

97. The two opinions thus diverge fundamentally on the characterisation of the procedural defects. The Hon'ble Judicial Member regarded them as either non-existent, non-prejudicial or curable without affecting the resolution process, whereas the Hon'ble Technical Member regarded these as substantive violations affecting the fairness and validity of the resolution process itself, warranting restoration of the CIRP to the stage preceding the defective meeting.

98. Upon consideration of the divergent views expressed by the Hon'ble Member (Judicial) and the Hon'ble Member (Technical), as recorded hereinabove, the following issues arise for determination in the present reference:

ISSUE I - Whether the exclusion of the Appellant's representative, Mr. Nelluri Bapuji, from the residual proceedings of the 20th CoC meeting, for want of written authorisation and a confidentiality undertaking, was justified & legally sustainable.

ISSUE II- Whether the furnishing of the resolution plan and connected documents to the Appellant only upon, and after, receipt of the

confidentiality undertaking is consistent with the law declared by the Hon'ble Supreme Court in Vijay Kumar Jain (supra) or otherwise.

ISSUE III- Whether, taking a holistic view of the entire record, including the conduct of the Appellant, the 20th, 21st and 22nd CoC meetings, and the resolution plan approved pursuant to them, call for interference, and what order as to costs is warranted.

99. Since all these issues are inter-connected and inter-dependent, I will deal with these three issues in conjoint manner in the following discussion, along with other allied matter noted earlier including the contentions of the SRA to be impleaded in the present reference before me.

100. ISSUE I - Whether the exclusion of the Appellant's representative, Mr. Nelluri Bapuji, from the residual proceedings of the 20th CoC meeting, for want of written authorisation and a confidentiality undertaking, was justified & legally sustainable.

101. I would like to reproduce Section 24 of the code which reads as under:

> *"(3) The resolution professional shall give notice of each meeting of the committee of creditors to— (a) members of the committee of creditors...; (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be...*
>
> *(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but*

shall not have any right to vote in such meetings: Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting."

(Emphasis Supplied)

From above, it becomes evident that the Appellant, being the Suspended Director of the Corporate Debtor, was entitled to attend CoC meeting, albeit, without any voting right. This Section also amplifies that absence of Suspended Director of the Corporate Debtor will not invalidate proceedings of such meetings.

102. I will also take into consideration regulation 21 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which governs the contents of the notice for a CoC meeting. Sub-regulation (2) reads as under:

"The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorised representative: Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorised representative who will attend and vote at the meeting on its behalf."

103. Regulation 21 (3) (iii) & Regulation 2 (1) (l) reads as under:

"Regulation 21(3)(iii) of the CIRP Regulations: Regulation 21: Contents of the notice for meeting- (3) The notice of the meeting shall contain the following- (iii) copies of all

> *documents relevant to the matters to be discussed and the issues to be voted upon at the meeting"*
>
> *"Regulation 2 (1) (l) - (l) "participant" means a person entitled to attend a meeting of the committee under section 24 or any other person authorised by the committee to attend the meeting"*

From above, it is clear that Regulation 21 (2) stipulate that notice of the meeting has to be given to each participant, who may attend himself or through his authorised representative. It is significant to note that Regulation 21 (2) specifically provides that such participant needs to advise the Resolution Professional in writing and that too in advance, of the person who will attend the meeting on his behalf.

Sub-regulation (3)(iii) requires the notice to be accompanied by copies of documents relevant to the matters to be discussed and voted upon. Regulation 2(1)(l) defines "participant" to mean a person entitled to attend a meeting of the committee under Section 24, or any other person authorised by the committee to attend the meeting, a definition that, on its terms, draws no distinction between voting and non-voting attendees.

104. I also note Regulation 24 which reads as under:

> *"Regulation 24: Conduct of meeting - 24. (1) The resolution professional shall act as the chairperson of the meeting of the committee.*

(2) At the commencement of a meeting, the resolution professional shall take a roll call when every participant attending through video conferencing or other audio and visual means shall state, for the record, the following, –
(a) his name;
(b) whether he is attending in the capacity of a member of the committee or any other participant;
(c) whether he is representing a member or group of members;
(d) the location from where he is participating;
(e) that he has received the agenda and all the relevant material for the meeting; and
(f) that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.
(3) After the roll call, the resolution professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.
(4) The resolution professional shall ensure that the required quorum is present throughout the meeting.
(5) From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where meeting is held or to the video conferencing or other audio and visual facility, without the permission of the resolution professional.
(6) The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.
(7) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.

From above, it is noted that Regulation 24 prescribes the manner in which meetings of the CoC are to be conducted. Sub-regulation (2) contemplates a roll call, whereby each participant is required to confirm, for the record, that the agenda and all material relevant to the meeting have been received by him. Sub-regulation (7), in turn, mandates circulation of the minutes of the meeting to all participants by electronic means within forty-eight hours thereof.

105. The expression "authorised representative", though not specifically defined in the CIRP Regulations, finds recognition, by analogy, in the Rules governing proceedings before the Adjudicating Authority and this Appellate Tribunal:

> *Rule 2(6), NCLT Rules, 2016: "'authorised representative' means a person authorised in writing by a party to present his case before the Tribunal..."*
>
> *Rule 2(d), NCLAT Rules, 2016: "'authorised representative' means a person authorised in writing by a party..."*

Both definitions expressly contemplate authorisation "in writing" and, therefore, do not envisage or permit any oral, implied, or conduct-based substitute.

106. I, after giving due consideration to the rival submissions upon a holistic consideration of the material on record, and taking into consideration above quoted regulations and its impact in the present appeals, find myself in agreement with the view taken by the Hon'ble Member (Judicial) that the exclusion of Mr. Bapuji from the remaining proceedings of the 20th CoC meeting was justified for coming reasons.

107. It needs to be appreciated that Regulation 21(2) cannot be regarded as a mere procedural or administrative formality. It serves a substantive purpose at the stage when the CoC is called upon to deliberate upon resolution plans, which constitute some of the most commercially sensitive information generated during the CIRP. The requirement ensures that participation in such deliberations is confined to persons whose identity and authority to represent a participant are duly established.

108. In this background, it is noted that the notice convening the 20th CoC meeting dated 12.07.2024 expressly stipulated the said requirement. It needs to be recalled that the Resolution Professional issued notice for 20th CoC Meeting on 12.07.2024 for the meeting scheduled to be held on 16.07.2024. Thus, the Appellant and Mr. Nelluri Bapuji, the person seeking to represent him, had prior and actual notice of four clear days, before the meeting of the requirements to be complied with. In such circumstances, the failure to satisfy the stipulated requirements cannot be characterised as an inadvertent or inconsequential omission.

109. Taking into arguments of the Appellant that Mr. Nelluri Bapuji attended earlier meetings without any authorisation in writing and the fact that Mr. Nelluri Bapuji had earlier been permitted to participate in the 10th, 18th and 19th meetings of the CoC without formal authorisation does not, in my view, alter the position. It has been noted that those meetings were not concerned with consideration of Resolution Plans. In fact, it needs to be highlighted that the 20th meeting stood on a materially different footing, as three competing resolution plans, were to be considered therein for the first time.

110. Having regard to the fact that a particular requirement which might not have been insisted upon at earlier meetings of a different nature cannot, by itself, operate as a waiver of the requirement when the CoC is called upon to consider material of a significantly higher degree of confidentiality. I am of the view that an administrative practice adopted in circumstances carrying lesser sensitivity cannot be treated as overriding the express requirement contained in Regulation 21(2). The Resolution Professional was, therefore, not precluded from insisting upon compliance with the said requirement at the stage when the resolution plans were to be deliberated upon.

111. I also consider it necessary to state that there is also a distinct nexus between the requirement of written authorisation and the confidentiality safeguard as recognised by the Hon'ble Supreme Court in ***Vijay Kumar Jain (supra).*** The confidentiality undertaking contemplated therein is intended to secure the confidentiality of the resolution plan and other material disclosed to the erstwhile members of the Board of Directors. Where such entitlement is sought to be exercised through a representative, the requirement of written authorisation assumes significance in establishing the representative's authority to act on behalf of the concerned director. It also provides a clear basis for attributing the representative's acts and obligations to the person whom he purports to represent. In other words, an undertaking furnished by a person whose authority to represent the concerned director has not been established cannot, therefore, be regarded as standing on the same footing as an undertaking furnished by the director himself or by a duly authorised representative. The requirements of Regulation 21(2) and the confidentiality safeguard recognised in ***Vijay Kumar Jain (supra)*** thus operate in aid of the same underlying objective and cannot be viewed as wholly unrelated requirements.

112. I am also unable to accept the contention of the Appellant that Regulation 21(2) is confined principally to voting participants and has little or no application to a non-voting representative of a suspended director. I am of opinion that the language of the provision does not draw any such distinction. It refers to "a participant", while Regulation 2(1)(l) defines the expression by reference, inter alia, to a person entitled to attend a meeting under Section 24. Section 24(3)(b) and Section 24(4) specifically contemplate the participation of members of the suspended Board. The Appellant also cannot derive any assistance from the offer allegedly made by Mr. Nelluri Bapuji, after the deficiency had been noticed during the meeting, to furnish the requisite documents, if necessary at a later stage. In my view, such an offer does not establish that the prescribed requirements had been fulfilled, or could have been fulfilled, at the commencement of the meeting. Nor does it detract from the prior notice contained in the meeting notice dated 12.07.2024.

113. As noted earlier, Regulation 24(2), which requires the Resolution Professional to conduct a roll call and requires each participant to confirm, for the record, receipt of the agenda and the relevant material, necessarily proceeds on the premise that the identity and authority of the person participating in the meeting are ascertainable and capable of being duly recorded. In this backdrop, a person whose authority to represent a Suspended Director has not been established cannot, in my view, validly furnish such confirmation on behalf of the Appellant as Suspended Director of the Corporate Debtor. I firmly believe that to hold otherwise would dilute the very purpose served by the roll-call requirement. Regulation 21(2) and Regulation 24(2), though operating at different stages, therefore constitute complementary safeguards governing participation in the CoC meeting.

114. It is also material to bear in mind that it was Mr. Bapuji, and not the Appellant himself, who was required to leave the remaining proceedings of the 20th CoC meeting. The right recognised by the Hon'ble Supreme Court in Vijay Kumar Jain (supra) is a right vested in the members of the erstwhile Board of Directors. In the present case, it is undisputed fact that the Appellant himself did not attend the meeting and was therefore not prohibited from attending the meeting, from participating personally, or from exercising his right under Section 24(4). The issue, therefore, is not one of denial or extinguishment of the Appellant's substantive entitlement, but of the manner in which that entitlement was sought to be exercised through a person whose authority had not been duly established. The Appellant's right under Section 24(4) and ***Vijay Kumar Jain (supra)*** consequently remained intact and capable of being exercised either personally or through a duly authorised representative, after following due procedures laid down in the Regulations, noted earlier.

115. I have also considered, whether, instead of requiring Mr. Nelluri Bapuji to withdraw, the Resolution Professional was obliged to adopt a less restrictive course, such as adjourning the confidential portion of the meeting for a short period to enable the requisite documents to be furnished, as indicated by the Hon'ble Member (Technical), I am unable to accept that such a course was mandated in the facts of the present case. Regulation 24(4) casts upon the Resolution Professional, as the Chairperson of the meeting, the duty to ensure that the requisite quorum remains present throughout the meeting. At the relevant stage, three competing resolution plans, which had been received only a week earlier, were to be considered by the CoC, whose financial creditors and representatives were present and ready to proceed. In these circumstances, requiring the meeting to be kept in abeyance to facilitate subsequent regularisation of the authority of one non-voting representative, despite prior notice of the requirement, cannot be said to have been obligatory. It is evident from the record that the course adopted by the Resolution Professional, namely, proceeding with the meeting while subsequently furnishing the Appellant the minutes and connected material within the prescribed period, cannot, in the circumstances, be regarded as disproportionate.

116. On the issue of the validity of the 20th CoC meeting, I would like to reiterate that Section 24(4), as noticed hereinbefore, expressly provides that the absence of any director, partner or representative of operational creditors, as the case may be, shall not invalidate the proceedings of the meeting. The legislative intent is thus clear that the absence of a person falling within the category contemplated by the provision does not, by itself, render the proceedings of the CoC meeting invalid. Where the representative of the Appellant was required to withdraw on account of non-compliance with the prescribed requirements, his absence from the remaining proceedings cannot place the Appellant in a position more advantageous than that contemplated by the express statutory provision. I therefore hold the perspective that the absence of the Appellant's representative, therefore, could not, by itself, have the effect of invalidating the proceedings of the 20th CoC meeting.

117. I also consider it necessary to emphasize that in Vijay Kumar Jain (supra), the Hon'ble Supreme Court held that, although the members of the erstwhile Board of Directors, are neither members of the CoC nor entitled to vote, they nevertheless have a right to participate in meetings of the CoC and yet they need to be furnished copies of the resolution plans and other connected documents, enabling them to meaningfully consider and comment upon the same, having regard to their substantial interest in the resolution plans. The judgement stipulates that such members of the erstwhile Board of Directors, who are often guarantors, are vitally interested in a resolution plan as such resolution plan then binds them. Such plan may scale down the debt of the principal debtor, resulting in scaling down the debt of the guarantor as well. These persons are vitally interested in resolution plans as they affect them.

It is this entitlement, vested personally in the erstwhile directors, that falls for examination against the facts of the present case.

On the aspect of confidentiality, which is of direct relevance to the present reference, it is noted that the Hon'ble Supreme Court in Vijay Kumar Jain (supra) did not hold that resolution plans are required to be furnished unconditionally or without appropriate safeguards. On the contrary, the Hon'ble Supreme Court expressly recognised the authority of the Resolution Professional to require an undertaking of confidentiality from members of the erstwhile Board of Directors. It observed that the resolution professional can take an undertaking from members of the erstwhile Board of Directors to maintain confidentiality. This can be in the form of a non-disclosure agreement in which the resolution professional can be indemnified in case information is not kept strictly confidential.

Thus, it needs to be clearly understood and emphasized that the Hon'ble Supreme Court expressly recognised confidentiality undertaking as the mechanism for harmonising the entitlement of the erstwhile Board of Directors to access the resolution plan with the legitimate need to preserve the confidentiality of its contents. It thus becomes clear that such safeguard of confidentiality was contemplated as an integral means of reconciling the two competing considerations and not as a formality that could be dispensed with or circumvented.

118. At this stage and on the part being discussed, especially on the test of prejudice, I would like to refer to the ratio as enunciated by the Hon'ble Supreme Court in State Bank of Patiala & Ors. v. S.K. Sharma, (1996) 3 SCC 364, wherein the Hon'ble Supreme Court held:

> *"... (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. <u>The Court or the Tribunal should enquire whether</u> (a) the provision violated is of a substantive nature or (b) <u>whether it is procedural in character</u>.*
> *(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the <u>test of prejudice would not be applicable in such a case</u>.*
>
> *(Emphasis Supplied)*

From above rationale of the Hon'ble Supreme Court, it may be implied that a departure from a procedural requirement does not, by itself, vitiate the proceeding to which it relates unless it is demonstrated that such departure has occasioned in actual and demonstrable prejudice. The relevant enquiry is whether the party complaining of the procedural irregularity was, in substance, denied a fair and effective opportunity of presenting its case, and not merely whether a procedural requirement was imperfectly or irregularly complied with in form.

Therefore, I am of the view that there is no concept of Automatic annulment simply because of any alleged breach of procedure, if it did not cause any direct prejudice to the applicant. In this background, it is noted that Mr.

Nelluri Baapuji was asked to leave the meeting as he could not produce written authorisation and confidentiality undertaking. Hence, I am not in the position to accept the contentions of the Appellant on this ground.

119. For the foregoing reasons, I am of the considered view that the requirements contemplated under Regulation 21(2) had not been complied with by Mr. Nelluri Bapuji and further of view that the Resolution Professional was not required to overlook such non-compliance; and that his exclusion from the remaining proceedings of the 20th CoC meeting, in the circumstances of the case, did not vitiate or render invalid the proceedings of the said meeting. In view of above discussions, I tend to agree with the view of the Hon'ble Member (Judicial) in the split judgement and respectfully disagree with the view of Member (Technical), on this issue.

120. **<u>ISSUE II- Whether the furnishing of the resolution plan and connected documents to the Appellant only upon, and after, receipt of the confidentiality undertaking is consistent with the law declared by the Hon'ble Supreme Court in Vijay Kumar Jain (supra) or otherwise.</u>**

121. It is for consideration as to whether the Resolution Professional, by furnishing the resolution plan and connected documents only upon receipt of the confidentiality undertaking, rather than furnishing the same in advance of, or independently of, such undertaking, acted contrary to the law laid down by the Hon'ble Supreme Court in ***Vijay Kumar Jain (supra).***

122. Upon a reading of the judgment in ***Vijay Kumar Jain (supra),*** I am unable to find any such requirement therein. The Hon'ble Supreme Court did not hold that resolution plans are required to be furnished unconditionally or without appropriate safeguards for maintaining confidentiality. On the contrary, it expressly recognised that the Resolution Professional *"can take an undertaking...to maintain confidentiality"* as the means of balancing the entitlement of the erstwhile Board of Directors to access the resolution plan with the legitimate requirement of preserving the confidentiality of its contents. In the present case, the Resolution Professional declined to furnish the resolution plans to a person whose authority to represent the Appellant in the 20th CoC meeting had not been established and who had not furnished the requisite confidentiality undertaking, but furnished the plans and connected documents promptly upon the undertaking being furnished. Such conduct cannot, in my view, be said to depart from the principle laid down in ***Vijay Kumar Jain (supra)*** rather, it constitutes an application of the ratio thereof to the circumstances obtaining in the present case.

123. I have also considered whether the sequence adopted by the Resolution Professional, namely, obtaining the confidentiality undertaking before furnishing the resolution plan and connected material, is itself objectionable on the ground that the undertaking ought to have been obtained proactively before the meeting. There is merit in the observation that an earlier resolution of the issue in the earlier CoC meetings, might have avoided the controversy which has ultimately arisen.

However, the question before me is not whether the procedure could, with the benefit of hindsight, have been adopted differently, but whether the course actually followed was contrary to law. ***Vijay Kumar Jain (supra)*** does not prescribe any particular point of time by which the confidentiality undertaking must necessarily be obtained. What the judgment recognises is the requirement of obtaining such an undertaking as a safeguard against disclosure or misuse of confidential information especially during discussions of Resolution Plan of the PRAs. In the present case, the undertaking was furnished on 25.07.2024 and the resolution plan and connected documents were furnished by the Appellant on 29.07.2024. The intervening period of four days cannot, in the circumstances, be regarded as an unreasonable delay or as indicative of any intention to withhold the material indefinitely.

124. The effect of the timing assumes significance when considered from the standpoint of whether the Appellant was afforded a meaningful opportunity to consider the resolution plan and place his views before the CoC prior to the decision thereon. The e-voting in respect of the resolution plan submitted by M/s Rungta Mines Limited remained open until 01.08.2024. The Appellant thus had the minutes of the 20th CoC meeting, the resolution plan and the connected documents from 29.07.2024, i.e., for three clear days before conclusion of the voting process. The material on record does not disclose that the Appellant, after receiving the documents, made any substantive representation or objection which was either disregarded or prevented from being placed before the CoC. Nor is there anything to indicate that the Appellant was otherwise disabled from making such representation.

125. I accordingly hold that the course adopted by the Resolution Professional, namely, obtaining the requisite confidentiality undertaking and thereafter furnishing the resolution plan and connected material within a reasonable period and, in any event, before conclusion of the voting process, does not constitute a contravention of the law declared in ***Vijay Kumar Jain (supra)***. The Appellant was furnished the relevant material sufficiently in advance of the conclusion of the e-voting process so as to enable him, if so advised, to place his views before the CoC. To the extent the Hon'ble Member (Technical) has taken a contrary view, I am, with respect, unable to concur and tend to agree with Hon'ble Member (Judicial) on this issue.

126. ISSUE III- Whether, taking a holistic view of the entire record, including the conduct of the Appellant, the 20th, 21st and 22nd CoC meetings, and the resolution plan approved pursuant to them, call for interference, and what order as to costs is warranted.

127. Issue III requires consideration of the entire factual matrix, including the conduct of the Appellants to determine whether the proceedings of the CoC meetings under challenge, and the resolution plan approved pursuant thereto, and since then stand implemented, warrant interference, and, consequently, what order as to costs would be appropriate.

128. Upon a cumulative consideration of the record, and without examining the individual procedural aspects in isolation, the circumstances assume significance. The requirement of written authorisation and a confidentiality undertaking had been expressly communicated in advance through the notice dated 12.07.2024. Neither requirement had been complied with prior to commencement of the 20th CoC meeting. Even after the deficiency was pointed out, the Appellant's representative did not immediately furnish the requisite documents, but offered to do so only at a later stage. The confidentiality undertaking was ultimately furnished on 25.07.2024, i.e., nine days after issuance of the meeting notice. Thereafter, the resolution plan and connected documents were furnished to the Appellant on 29.07.2024, well before conclusion of the e-voting on 01.08.2024, thereby affording the Appellant yet at that stage, a meaningful opportunity to consider the proposal and place his views before the CoC through emails to CoC via the Resolution Professional. The record, however, does not disclose that such opportunity was availed by the Appellant or that any representation made by the Appellant or the fact that the Appellant was prevented from being considered. Significantly, IA No. 1724/2024 was filed only on 12.08.2024, after receipt of the documents on 29.07.2024 and after conclusion of the voting process on 01.08.2024. Thereafter, it is clear that notwithstanding the pendency of the said application, the Appellant neither attended nor raised any objection at the 22nd CoC meeting held on 18.12.2024.

129. It is also of relevance to note that the Adjudicating Authority, having considered the interlocutory applications in the context of the CIRP proceedings before it, recorded a finding that the objections raised constituted "a deliberate attempt to obstruct and delay the CIRP". Such a finding, being founded principally upon an assessment of the conduct of the parties and the chronology of events, ordinarily warrants due restrain at the Appellate Tribunal's stage, particularly in the absence of any perversity or demonstrable failure to consider relevant material. Nothing appearing from either of the opinions rendered by the Hon'ble Members indicates that the Adjudicating Authority had overlooked any material circumstance while arriving at such conclusion. On the contrary, the assessment is borne out by the chronology of events and the circumstances noticed in the respective opinions. The matter, therefore, does not warrant a fragmented re-examination of each procedural requirement or alleged violations like recording subsequent emails sent by the CoC in the earlier conducted 20th CoC meeting or consideration of IDCO's NOC issue or pendency of IAs before the Adjudicating Authority, in isolation, divorced from the conduct of the parties as a whole.

130. Considered cumulatively, the aforesaid circumstances lend support to the view taken by the Adjudicating Authority and affirmed by the Hon'ble Member (Judicial), namely, that the objections raised were not shown to have resulted in denial of any substantive opportunity to the Appellant to consider or make representations concerning the resolution plan. Such opportunity was, in fact, available to him before conclusion of the E-voting process on 01.08.2024. The chronology further shows that the CIRP had already remained pending for more than six years by the time of the 20th CoC meeting. These circumstances are relevant in assessing whether interference with the proceedings is warranted. This conclusion is confined to the objective sequence of events emerging from the record and does not amount to any finding of mala fides on the part of the Appellant.

131. In this background, I am of the considered opinion that a holistic consideration must also take into account the position of the other stakeholders in the CIRP. The resolution plan submitted by M/s. Rungta Mines Limited was approved by the Adjudicating Authority on 27.05.2025, pursuant to which the SRA, the CoC, the Corporate Debtor and its other stakeholders have proceeded on the basis of such approval. The plan has thus moved beyond the stage of mere approval, and the implementation thereof has also been completed. In these circumstances, setting aside the approved and implemented resolution plan on the basis of a procedural objection which, upon examination, does not establish any denial of a substantive opportunity to the Appellant, would have consequences extending well beyond the alleged procedural irregularity and would be inconsistent with the time-bound and value-preserving framework of the Code.

132. For the aforesaid reasons, and for the findings recorded hereinabove on Issues I and II, I am of the considered view that the proceedings of the 20th, 21st and 22nd meetings of the CoC, including manner of remedies, minutes and consideration of allied issues, as well as the resolution plan of M/s. Rungta Mines Limited approved pursuant thereto, do not warrant interference. Consequently, the common Order dated 27.05.2025 passed by the Adjudicating Authority dismissing IA No. 1724/2024 and IA No. 256/2025 does not call for any interference.

133. As regards costs, I agree with the view taken by the Hon'ble Member (Judicial) in modifying the costs imposed by the Adjudicating Authority. The costs of Rs. 5,00,000/- imposed by the Adjudicating Authority appear, in the circumstances, to be disproportionate, particularly where the challenge raised by the Appellant, though unsuccessful, concerned the manner in which the CoC meeting had been conducted. At the same time, having regard to the conduct and chronology of events noticed hereinabove, the imposition of some costs cannot be said to be unwarranted. I, therefore, find no reason to interfere with the sum of Rs. 2,00,000/- fixed by the Hon'ble Member (Judicial), which, in my view, would meet the ends of justice.

134. Company Appeal (AT)(CH)(Ins) No. 258 of 2025 concerns the proceedings of the 21st and 22nd meetings of the CoC. Once the challenge to the 20th CoC meeting fails, no independent basis remains for interfering with the subsequent proceedings. Both the learned Members were, in substance, ad idem that the outcome of the connected appeal would follow the determination in the lead appeal. I am in agreement with the said view. No separate ground has either been established or appears from the record which would warrant sustaining

Company Appeal No. 258 of 2025 independently of Company Appeal No. 259 of 2025.

135. After the aforesaid findings recorded, now I will proceed with the pleadings of M/s. Rungta Mines Limited, the SRA whose resolution plan is under challenge in Company Appeal No. 259 of 2025, who filed a Caveat and subsequently given Written Submissions dated 24.08.2026 in the present reference pursuant to the orders passed by me on 12.08.2026 and 18.06.2026. It has been submitted that the resolution plan, approved by the CoC on 01.08.2024 and sanctioned by the Adjudicating Authority on 27.05.2025, was thereafter fully funded and paid, including the plan amount, CIRP costs and the upfront amount, aggregating to Rs. 176.83 crores, within four days of sanction, i.e., by 31.05.2025. It has further been submitted that the closure report filed by the Resolution Professional was taken on record by the Adjudicating Authority by Order dated 10.02.2026, recording complete implementation of the resolution plan, and that the management and control of the Corporate Debtor has thereafter vested in, and been exercised by, the SRA for about one year since then. On this basis, it is contended that vested and inalienable rights have accrued in favour of the SRA and that no order affecting such rights ought to be passed without affording it an opportunity of hearing. Reliance has, inter alia, been placed upon *J.S. Yadav v. State of U.P., (2011) 6 SCC 570,* in support of the proposition that a necessary party is one in whose absence no effective order can be made.

In this regard, it is necessary to take into consideration the Order dated 12.08.2026 and 18.08.2026 passed by undersigned in the present proceedings, which is quoted below: -

> *"**12.08.2026**: Learned Senior Counsel Mr. Niranjan Reddy on behalf of the CoC, has concluded his submissions.*
>
> *Learned Senior Counsel Shri Abhijeet Sinha appears and submits that he be permitted to intervene on behalf of the SRA/ M/s Rungta Mines Limited (I.A (IBC)/1394/ 2024) as intervenor/ Successful Resolution Applicant.*
>
> *Though, I have heard Learned Counsel appearing for the intervenor for sometime, however, it is reflected that in the split judgement written by one of the dissenting member i.e., Hon'ble Justice Sharad Kumar Sharma, Member (Judicial), it has been stated in paragraph no. 11 that the hearing to the SRA was denied as well as its impleadment, on the ground that the Appeals are concerned pertaining to the propriety of the proceedings of the CoC meetings and at that stage the Resolution Plan itself was not approved and no legal rights were crystallised and matured in favour of the SRA.*
>
> *Since, I am hearing a reference, prima-facie the SRA is not appearing to be a party interested in these proceedings, however it is stipulated that any decision w.r.t. considering the submissions made by Learned Counsel for the SRA, as proposed Intervenor, would be taken at the time of preparation of the judgement.*
>
> *For rebuttal arguments on behalf of Learned Counsel for the Appellant, list these Appeals on **18.08.2026** at **3.30 pm.**"*
>
> *(Emphasis Supplied)*

Order dated 18.08.2026:

*"**<u>18.08.2026:</u>** Heard rebuttal submissions advanced by Shri Ramji Srinivasan, Learned Senior Counsel appearing for the Appellant.*

*2. Arguments concluded. **Judgment reserved**.*

3. Learned Senior Counsel for the Proposed Intervenor/ SRA has indicated that in the order dated 12.08.2026, an error has creeped w.r.t. the fact that the impleadment was also denied to the SRA and therefore, the same may kindly be corrected.

4. <u>I have perused the record in the background of the above submissions and find that in the split judgement written by one of the Hon'ble Member, namely, Justice Sharad Kumar Sharma, Member (Judicial) in paragraph no. 11 of the same has stated w.r.t. the request of the SRA to give him an opportunity of being heard that the present appeal is with regard to the question of proprietary of the proceedings of the CoC meetings i.e., 20th, 21st & 22nd CoC Meeting and by that stage, the Resolution Plan was not approved and no crystalised legal rights were created and matured in the favour of SRA and any decision which has been taken in these CoC Meetings would not at all affect any of the rights of the SRA.</u>

5. I also notice that in the above split judgement, it is also stated that since right of Successful Resolution Applicant has been crystalised <u>there was no occasion for the SRA to have been impleaded to be heard at the stage when the interlocutory proceedings of the CoC was being undertaken.</u>

6. On the above observation Learned Counsel for the SRA has requested the correction of my order dated 12.08.2026.

7. Having noticed the above split judgement, I am in agreement with the Counsel for the SRA that by observing the aforesaid observations, the hearing to the SRA was denied and the observation w.r.t. its impleadment was with regard to the level of the Learned Adjudicating Authority.

> *8. Thus, my order dated 12.08.2026 be read with the aforesaid clarification.*
>
> *9. Learned Counsel for the Parties may file their written submissions in support of their oral submissions, not containing more than four to five pages, within four days in Font- Times New Roman in 14 font size. Specific paras of the precedents, which may be relied should also be mentioned in the written submissions.*
>
> *10. <u>Since, vide order dated 12.08.2026, I took a view that the SRA is not appearing to be a party interested in these proceedings and it was stipulated that any decision with regard to considering the submission made by Learned Senior Counsel for the SRA would be taken at the time of preparation of the judgement, the Proposed Intervenor/ SRA is also permitted to file written submissions in the same manner as has been provided to the other parties.</u>*

(Emphasis Supplied)

136. It is significant to take into consideration that the Original Order dated 10.11.2025 of the division bench of this Appellate Tribunal at Chennai, whereby the difference of opinion between the Hon'ble Member (Judicial) and the Hon'ble Member (Technical) was recorded, came to be passed on the very first date of hearing before the Division Bench, before formal notice had been issued to the parties. As noticed hereinbefore, both the Hon'ble Members constituting the original Division Bench were ad idem that the SRA was not shown to be a necessary party to these appeals at the interlocutory stage at which they arose. Since no point of difference was referred to me on this aspect, I had respectfully concurred with the said view without entering into any further examination thereof. However, the said finding was expressly rendered in the context of the stage then obtaining, when the appeals had been instituted against an order of approval dated 27.05.2025 and the proceedings were at an interlocutory stage. The resolution plan has since been fully implemented, the closure report has been taken on record by the Adjudicating Authority on 10.02.2026, and the management and control of the Corporate Debtor have vested in the SRA.

137. The question whether the SRA ought to be formally impleaded, or whether any further hearing is required to be afforded to it, cannot be considered in isolation. The same must necessarily be examined with reference to the nature of the order which this reference ultimately warrants. The conclusions recorded by me on Issues I to III above, result in dismissal of both the appeals and, consequently, affirm rather than disturb the approval of the resolution plan by the CoC and the Order dated 27.05.2025 passed by the Adjudicating Authority. No direction is being issued to reopen the CIRP, set aside the resolution plan, or otherwise disturb its implementation, which has already been recorded by the Adjudicating Authority on 10.02.2026. The order proposed to be passed, therefore, does not adversely affect the rights asserted by the SRA; on the contrary, it leaves those rights entirely undisturbed.

138. In these circumstances, no prejudice can be said to be caused to the SRA by disposal of the present reference without its formal impleadment. The fact that the Order dated 10.11.2025 was passed before formal notice had been issued to the parties pertains to the stage of proceedings before the original Division Bench and does not, in the circumstances of the present reference, warrant any further examination, particularly when the ultimate conclusion leaves the resolution plan and its implementation wholly undisturbed. I, therefore, do not consider it necessary to formally implead M/s. Rungta Mines Limited as a party to the present reference. The Caveat filed by M/s. Rungta Mines Limited is, however, taken on record, and its Written Submissions dated 24.08.2026 are duly considered to the extent relevant to its interest in the present reference, as discussed above.

139. I would further state that this opinion recorded by me, hereinabove, shall be read in conjunction with the opinions dated 10.11.2025 rendered by the Hon'ble Member (Judicial) and the Hon'ble Member (Technical). As I concur in entirety with the opinion of the Hon'ble Member (Judicial), the appeals need to be disposed of in terms of the majority opinion.

140. The Registry shall place this opinion, along with the record, before the Hon'ble Officiating Chairperson and/or the Division Bench of this Appellate Tribunal at Chennai, which had initially heard the appeals, as may be appropriate, for passing the final order in accordance with law.

[Naresh Salecha]
Member (Technical)

Sim
Chinmayee Sinha