

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 01 of 2024

(Arising out of the Order dated 18.12.2023 passed by the National Company Law Tribunal, Division Bench, Court No.-II, Kolkata in I.A. (IB) No. 1733KB/2023 in C.P. (IB) No. 204/KB/2021)

IN THE MATTER OF:

1. Shankar Mukherjee,

A member of the Suspended Board of Directors of
Suasth Health Care Foundation,
Having his residence at B B-76, New Town,
Kolkata-700156,
Email: shankar.mukherjee777@gmail.com

...Appellant No. 1

2. Badri Kumar Tulsyan

A member of the Suspended Board of Directors of
Suasth Health Care Foundation,
Having his residence at 31C, Pratapaditya Road,
Kolkata-700026.
Email: tulsyanbk@rediffmail.com

...Appellant No. 2

Versus

1. Ravi Sethia,

[IBBI/IPA-001/IP-P01305/2018- 2019/12052]
Resolution Professional of Suasth Healthcare
Foundation (In CIRP),
Having its office at 8th Floor, Tower-C,
Building No. 10, DLF Cyber City,
Phase-II, Gurgaon, Haryana -122022
Email: cirp.suasthhealthcare@gmail.com

...Respondent No. 1

**2. J.C. Flowers Asset Reconstruction Private
Limited**

[CIN:U74999MH2015PTC264081],
Committee of Creditors of Suasth Health Care
Foundation, having its registered address at 12th
Floor, Crompton Greaves House, Dr. Annie

Besant Road, Worli, Mumbai City, Mumbai,
Maharashtra, India, 400030.

Email: teamjcfarc@jcfarc.com

...Respondent No. 2

3. Axis Bank Limited

[CIN:L65110GJ1993PLC020769],

Committee of Creditors of Suasth Health Care
Foundation, having its registered address AT
Trishul, 3rd Floor, Opposite Samartheshwar
Temple, Law Garden, Ellisbridge, Ahmedabad
Gujarat-380006, India.

Email: shareholders@axisbank.com

...Respondent No. 3

**4. Consortium of Nishkala Healthcare Private
Limited & Ujin Pharma Chem,**

Having its registered address at Flat No. 101,
Kesariya Dham, 187, A Vallabh Baugh Lane Nr.
UTI Bank, Ghatkoper (E), Mumbai- 400077

And

Ujin Pharma Chem is a partnership firm having
registered/ principal office at A-307,
Jolly Gymkhana, Kirol Road, Ghatkopar-West,
Mumbai, Maharashtra, India-400086.

...Respondent No. 4

Present

For Appellants: Mr. Rishav Banerjee and Mr. Bhavya Sethi,
Advocates.

For Respondents: Mr. Raunak Dhillon, Ms. Isha Malik, Ms. Niharika
Shukla & Ms. Udisha Mishra, for R-2.

J U D G E M E N T

(14.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal bearing Company App. (AT) (Ins.) No. 01 of 2024 has
been filed by the Appellants i.e. Shankar Mukherjee & Badri Kumar Tulsyan who

are the Suspended Board of Directors of Suasth Healthcare Foundation (hereafter referred to as "Corporate Debtor") under Section 61 of the Insolvency and Bankruptcy Code, 2016 (Code), challenging the Impugned Order dated 18.12.2023 passed by the National Company Law Tribunal, Kolkata Bench ("Adjudicating Authority") in I.A. (IB) No. 1733/KB/2023 ("said Application") in C.P. (IB) No. 204/ KB/ 2021.

2. Ravi Sethia, who is Resolution Professional of Suasth Healthcare Foundation, is the Respondent No.1 herein.

J.C. Flowers Asset Reconstruction Private Limited, who is a member of the Committee of Creditors ('CoC') of Suasth Health Care Foundation, is the Respondent No.2 herein.

Axis Bank Limited, who is also another member of the CoC of Suasth Health Care Foundation, is the Respondent No.3 herein.

Consortium of Nishkala Healthcare Private Limited & Ujin Pharma Chem, who is the Successful Resolution Applicant is the Respondent No.4 herein.

3. The Appellants submitted that the Corporate Debtor, was admitted into the Corporate Insolvency Resolution Process ("CIRP") on 31.08.2021. The Appellants submitted that they attended CoC meetings under Section 24 of the Code as members of the Suspended Board of Directors, qualifying as "participants" under Regulation 2(1)(l) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**). The Appellant further submitted that the Resolution Professional provided them with

an amended and restated resolution plan submitted by Respondent No. 4 on 03.09.2022, which was placed before the CoC in its 15th meeting on 21.09.2022 and approved on 06.10.2022 with 100% voting share. The Appellants asserted that the Resolution Professional disclosed the approved resolution plan to them as “participants” under the CIRP Regulations, entitling them to receive notices and documents relevant to CoC meetings under Regulations 19, 20, and 21.

4. The Appellants admitted they relied in good faith on the Resolution Professional’s certification that the resolution plan complied with applicable laws, given the Appellant’s lack of expertise in insolvency law and the Resolution Professional’s professional obligation to provide such certification. The Appellants submitted that on 04.11.2022, they learned that, an aggrieved Suasth employee challenged the resolution plan vide I.A.(IB) No. 1199/KB/2022, which was disposed of by the Adjudicating Authority vide the order dated 04.11.2022, which relied on a statement by the Respondent No. 1’s counsel that “all payments due during the pre-CIRP and CIRP period will be paid as soon as the plan is approved,” as recorded in the order dated 04.11.2022.

5. The Appellants submitted that the resolution plan, which proposes paying Rs. 73,00,000 against an admitted employee dues of Rs. 1,53,83,821, with distribution at the Resolution Applicant’s sole discretion. The Appellants further argued that the counsel’s statement is inconsistent with clause 2.2(c)(i) of Resolution Plan which offers less than the admitted claim of the employees and

allows the Respondent No. 4 to discriminate among employees/workmen when distributing Rs. 73,00,000/-.

6. The Appellants submitted that they sought legal advice to assess the plan's validity to assist the Adjudicating Authority in evaluating I.A.(IB) No. 1381/KB/2022, filed by the Respondent No. 1 for plan approval. The Appellants further submitted that legal advice revealed "glaring lacunae and illegalities" in the resolution plan, rendering it liable to be set aside by the Adjudicating Authority. The Appellants submitted that there were multiple violations of Section 30(2) of the Code, which prohibits the CoC from approving a plan that violates many laws and many provisions of the Code and Regulations.

7. The Appellants argued that the CoC's approval lacks valid commercial wisdom due to incomplete information, particularly the absence of a specified distribution mechanism for employees/workmen. The Appellants cited the judgement of the Hon'ble Supreme Court's in ***M.K. Rajagopalan v. Dr. Periasamy Palani Gounder*** [(2024) 1 SCC 42], to assert that commercial wisdom requires full information and deliberation. The Appellants submitted that clause 2.2(c)(i) of the Resolution Plan gives discretionary distribution facilitates discrimination among employees/workmen within the same sub-class, violating equitable treatment principles from ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.*** [CA No. 8766-67 of 2019].

8. The Appellants submitted that clause 2.2(c)(iii)(d) of the Resolution Plan violates Section 17B of the Employees' Provident Funds and Miscellaneous

Provisions Act, 1952 (EPF Act) by conditioning provident fund payments on EPFO's determination within a short timeframe, which is not permitted under the EPF Act.

9. The Appellants contended that clause 2.3(a)(iii) of the Resolution Plan proposes "nil" payment to the unsecured financial creditor i.e. Hari Vitthal Mission [the Appellant in CA (AT) (Ins) 04 & 05 of 2024] against an admitted claim of Rs. 60,37,46,150, without justification. The Appellants argued that this violates Sections 30(2)(e) and 30(2)(f) of the Code, as it fails to balance stakeholder interests. The Appellants submitted that the nil payment to the unsecured financial creditor, compared to payments to operational creditors, subverts the waterfall mechanism under Section 53 of the Code, violating Sections 30(2) and 30(4) of the Code.

10. The Appellants alleged that the Respondent No. 1 failed to preserve asset value of the Corporate Debtor and alleged that the Respondent No. 1 shut down Corporate Debtor's hospital operations in August 2022, violating Section 25(1) of the Code, and undervalued assets to favour Respondent No. 4. The Appellants further submitted that the Respondent No. 1's failure to preserve asset value resulted in Respondent No. 4 being the sole Resolution Applicant, offering only Rs. 180 crores against a liquidation value of Rs. 294 crore and fair value of Rs. 398 crores.

11. The Appellants submitted that the Adjudicating Authority vide the order dated 28.08.2023, sent the Resolution Plan submitted vide I.A.(IB) No.

1381/KB/2022, back to the CoC for reconsideration based on another application (I.A.(IB) No. 1563/KB/2022). It is the case of the Appellant that their application (I.A.(IB) No. 1567/KB/2022) was disposed of without adjudication. The Appellants further stated that in the 18th CoC meeting dated 07.09.2023, the CoC approved the unchanged resolution plan without rectifying clause 2.2(c)(i) of the Resolution Plan, resubmitting the same plan approved on 21.09.2022, despite the Respondent No. 1's admission of its flaws.

12. The Appellants contended that the Respondent No. 1's persistence in pushing Respondent No. 4's plan, despite known illegalities, indicates collusion and fraud, vitiating the CIRP. It is claimed by the Appellant that the Respondent No. 1 undervalued assets to favour Respondent No. 4.

13. The Appellants highlighted the Adjudicating Authority's finding that the NIL payment to the unsecured financial creditor violates Section 30(2) of the Code, yet it erroneously approved the plan, directing the CoC to allocate funds post-approval. The Appellants submitted that the Adjudicating Authority's approval subject to CoC allocation to the unsecured financial creditor tantamount to approval of non-compliant plans.

14. The Appellants submitted that the resolution plan fails to balance the interests of all stakeholders or maximize the value of Corporate Debtor's assets, which is admittedly not a going concern. The Appellants cited the Supreme Court's judgment in *Committee of Creditors of Essar Steel India Limited*

(*Supra*) to argue that a “NIL” payment to the unsecured financial creditor does not balance stakeholder interests or maximize asset value.

15. The Appellants highlighted that clause 2.2(ii) of the resolution plan proposes Rs. 27,00,000 for operational creditors (excluding employees/workmen) on a pro-rata basis, while offering NIL payment to the unsecured financial creditor against its admitted claim of Rs. 60,37,46,150, without providing any rationale. The Appellants contended that the preferential treatment to operational creditors over the unsecured financial creditor, who ranks higher under Section 53(1)(d) of the Code’s waterfall mechanism compared to operational creditors under Section 53(1)(f), is unjustified.

16. The Appellants submitted that the plan’s distribution mechanism subverts the Section 53 waterfall mechanism, ignoring the priority of payments and violating Sections 30(2)(e) and 30(4) of the Code. The Appellants clarified that they do not dispute the priority of operational creditors in terms of payment timing under Regulation 38(1) of the CIRP Regulations, but object to the quantum of distribution.

17. The Appellants noted that Respondent No. 4 assessed the liquidation value receivable by operational creditors as “NIL” under Section 30(2)(b)(i) and Section 53 of the Code, yet Resolution Plan proposed Rs. 27,00,000 for operational creditors while offering NIL to the unsecured financial creditor. The Appellants argued that proposing NIL payment to the unsecured financial creditor

while allocating funds to lower-ranking operational creditors is discriminatory, lacking any intelligible differentia.

18. Concluding their arguments, the Appellants requested this Appellate Tribunal to set aside the Impugned Order and allow their appeals.

19. Per contra, the Respondent No.1 denied all averments made by the Appellants as misleading and baseless.

20. The Respondent No. 1 submitted that the Appellants, as members of the suspended board of directors, were entitled to participate in CoC meetings and did participate, yet, no objections to the Resolution Plan or the CIRP process during its course. The Respondent No. 1 stated that only post-approval, did the Appellants raise frivolous issues, evidently to cause impediments in the Corporate Debtor's resolution. It is the case of the Respondent No. 1 that the Appellants are neither aggrieved nor adversely affected by the Approval Order, thus lacking locus to challenge the Resolution Plan, which was approved by the CoC's and by the Adjudicating Authority.

21. The Respondent No. 1 denied the Appellant's allegation that the Resolution Plan's provisions for employees and workmen violate the Code & submitted that the Resolution Plan fully complies with Section 30(2)(b) of the Code and Regulation 38(1)(a) of the CIRP Regulations, which mandate that operational creditors receive the higher of the amount payable in liquidation under Section 53 or as per the priority in Section 53(1) of the Code which is stated in Clause 2.2(a) of the Resolution Plan.

22. The Respondent No. 1 submitted that the Appellants' claim that the Resolution Plan fails to address provident fund dues is incorrect. The Employees Provident Fund Organisation (EPFO) has not filed any claim for pre-CIRP dues. The Respondent No. 1 submitted that Clause 2.2(iii)(d) of the Resolution Plan provides for payment of any pre-CIRP provident fund dues in priority to financial creditors, stating:

“In the event the Corporate Debtor has failed to deposit the requisite contributions payable towards employee provident fund...such contributions...shall be made...in priority to the Financial Creditors...”

The Respondent No 1 stated that Respondent No. 4 has committed to fund such payments if internal accruals are insufficient, subject to EPFO quantifying dues within stipulated timelines. The Respondent No. 1 clarified that this provision ensures compliance with the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and prevents uncertainty from unquantified claims, thereby safeguarding stakeholder interests.

23. The Respondent No. 1 strongly objected to the Appellants contention that Hari Vitthal Mission (“HVM”), an unsecured financial creditor, cannot receive NIL payment and submitted that HVM was unsecured financial creditor a Resolution Plan has given NIL allocation to all unsecured Financial Creditors, which it exercised by approving the Resolution Plan with 100% voting share.

24. It is the contention of Respondent No. 1 that the Approval Order directed the CoC to consider allocating a reasonable amount to HVM and submitted that the CoC, in compliance of Adjudicating Authority orders has agreed to allocate Rs. 10 Lakhs to HVM from resolution proceeds and also paid in July 2024, reflecting adherence to judicial directions.

25. The Respondent No. 1 submitted that the Appellants' allegations of collusion between the Respondent No. 1 and the SRA are baseless and unsupported by evidence.

26. The Respondent No. 1 submitted that he appointed two registered valuers to assess liquidation and fair market values, who presented the same to the CoC on 21.09.2022, and approved unanimously, however, the Appellants raised no objections despite attending meeting. The Respondent No. 1 further submitted that he provided all CoC meeting notices to the Appellants, but one of the Appellants, Shankar Mukherjee, never attended, undermining their current objections. It is the case of Respondent No. 1 that he preserved asset value through maintenance and repairs, securing a commercially viable Resolution Plan.

27. Concluding his pleadings, the Respondent No.1 requested this Appellate Tribunal to dismiss the appeals.

28. The Respondent No. 2, representing the CoC of Corporate Debtor, comprises J.C. Flowers Asset Reconstruction Pvt. Ltd. ("Respondent No. 2") along with Axis Bank Ltd. ("Respondent No. 3") are collectively called the "CoC", hereinafter.

29. The CoC submitted that the Appellants lack locus standi to challenge the Impugned Order dated 18.12.2023 approving the Resolution Plan, as they fail to qualify as "persons aggrieved" under Section 61 of the Code. The Resolution Plan does not affect the Appellants' rights or claims, and their role ceased upon commencement of the CIRP, leaving no basis for any legal grievance. The CoC further submitted that the Appeal is a mala fide attempt to derail the Corporate Debtor's resolution.

30. The CoC contended that this Appellate Tribunal in ***Ramesh Kesavan v. CA Jasin Jose*** [2024 SCC OnLine NCLAT 56] held that an erstwhile promoter/suspended director lacks locus to challenge the approval of a resolution plan. The CoC further submitted that the Hon'ble Supreme Court of India, vide order dated 05.04.2024 in Civil Appeal No. 4419/2024, dismissed the challenge to Ramesh Kesavan, rendering the judgment final. The CoC contended that, as held by the Hon'ble Supreme Court of India in ***Manesh Agarwal v. Pramod Kumar Sharma & Anr.***, (2022 SCC OnLine SC 298), erstwhile directors lack locus to challenge the commercial wisdom of the CoC. The CoC submitted that the question of whether an erstwhile promoter/suspended director has locus to challenge a resolution plan approval is no longer res integra.

31. The CoC submitted that the Resolution Plan does not address any rights or claims of the Appellants, rendering them devoid of any prejudice from the Impugned Judgment dated 18.12.2023. The Appellants' objections, namely (a) the allocation of 'Nil' value to an unsecured financial creditor, allegedly violating

Section 30(2) of the Code and (b) the distribution of payments to employees and workmen, do not pertain to their rights or claims. Thus, the Appellants are not "persons aggrieved" under Section 61 of the Code. The CoC further submitted that the unsecured financial creditor, HVM, has independently challenged the Impugned Judgment in CA(AT) No. 4-5 of 2024 ("HVM Appeal"), and the employees and workmen have not challenged the Resolution Plan. The Appellants' attempt to espouse grievances already addressed by HVM or unchallenged by the affected parties lacks merit.

32. The CoC contended that the CIRP was initiated by the erstwhile management, including the Appellants, under Section 10 of the Code. Having triggered the CIRP, the Appellants cannot now obstruct the successful resolution of the Corporate Debtor, concluded with the Resolution Plan implemented in July 2024. The CoC further submitted that the Appellants have failed to establish any basis for locus or demonstrate prejudice from the Resolution Plan. The grievances raised are a mala fide attempt to derail a successfully implemented Resolution Plan and merit no consideration.

33. The CoC submitted that the Resolution Plan, approved unanimously by the CoC in its commercial wisdom, complies with the Code, and extant law. The allocation of 'Nil' payment to HVM, an unsecured financial creditor, does not render the plan irregular or violative of the Code. The CoC further submitted that the Appellants have failed to identify any provision of the Code prohibiting 'Nil' payment to a creditor, including an unsecured financial creditor, provided the plan

meets Code requirements. The CoC submitted that under Section 30(2)(b) of the Code, a dissenting financial creditor is entitled to at least the amount payable under Section 53 of the Code in liquidation and as this amount is 'Nil' for HVM, the 'Nil' allocation complies with Section 30(2)(b) of the Code.

34. The CoC submitted that the Resolution Plan offers less than the liquidation value, insufficient to discharge even secured financial creditors' debts, who rank above unsecured creditors under Section 53 of the Code, consequently, HVM's entitlement under Section 53 of the Code is 'Nil', and the 'Nil' allocation complies with Sections 30(2)(b) and 53 of the Code.

35. The CoC contended that the Resolution Plan is not discriminatory for allocating different payments to different classes of creditors, as such decisions fall within the CoC's commercial wisdom and comply with the Code. The CoC placed reliance on *Committee of Creditors of Essar Steel India Ltd. (Supra)* and *India Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd., [(2021) 19 SCC 672]*, where the Hon'ble Supreme Court of India held that the quantum of payments to different creditor classes is non-justiciable. The CoC further submitted that: the 'Nil' payment to HVM is permissible and non-violative of the Code and differential payments to creditor classes, including 'Nil' to HVM, reflect the CoC's commercial wisdom and are not discriminatory.

36. The CoC submitted that in its commercial wisdom and to ensure timely implementation, the CoC, vide meeting dated 26.12.2023, allocated INR 10 Lakh

to HVM, disbursed in July 2024. Thus, any challenge regarding 'Nil' payment to HVM is infructuous.

37. The CoC contended that the treatment of Operational Creditors, being Employees and Workmen, under the Resolution Plan complies with the Code, and is free from material irregularity. As per Clause 2.2(i) of the Resolution Plan, these creditors are allocated INR 73 Lakhs against an admitted debt of approximately INR 1.53 Crore, representing 50% of their debt and meeting the minimum entitlement under Section 30(2)(b) of the Code. The CoC further submitted that the provision granting the Successful Resolution Applicant discretion over the manner of distribution is lawful, as neither the Code nor the CIRP Regulations mandate a specific distribution method among creditors.

38. The CoC submitted that no workman or employee has challenged their treatment under the Resolution Plan, rendering the Appellants' attempt to espouse their cause baseless, as these creditors have no grievance. The CoC further submitted that, contrary to the Appellants' contention, Clause 2.2(iii)(d) of the Resolution Plan ensures compliance with the Employees' Provident Fund Act by prioritizing payment of any unremitted provident fund dues over financial creditors, subject to a claim by the Employees Provident Fund Organization ("**EPFO**"). The CoC submitted that the Resolution Professional has certified such compliance and as no claims were filed by the EPFO, no issue of non-payment or violation does not arise, and the Appellants' objections are meritless.

39. The CoC contended that the Resolution Plan, unanimously approved by 100% of the CoC in its commercial wisdom, addresses all stakeholders' interests and complies with the Code. The CoC relies on *Piramal Capital and Housing Finance Limited v. 63 Moons Technologies Limited & Ors.*, [Civil Appeal No. 1632-1634 of 2022], where the Hon'ble Supreme Court of India held that Section 61 of the Code does not permit challenges to the justness of the CoC's commercial decisions, preserving their sanctity.

40. Concluding the arguments, the CoC urged this Appellate Tribunal to dismiss the appeal with cost.

41. The Respondent No.4 submitted that the Adjudicating Authority rightly dismissed the Appellant's intervention application (IA No. 1733/KB/2023) for lacking *locus standi* to challenge the approved resolution plan, as the Appellant failed to substantiate any legal basis for intervention or demonstrate material irregularities in the CoC-approved plan. The Appeal further merits dismissal because the Appellant has not contested the Adjudicating Authority's finding on *locus standi* or provided grounds to overturn it, violating the principle that unsubstantiated challenges cannot derail the Code's time-bound resolution process.

42. The Respondent No.4 submitted that the Appellants, being members of the suspended Board of Directors of the Corporate Debtor, do not qualify as 'persons aggrieved' under Section 61 of the Code, as they are neither financial creditors, operational creditors, nor workmen who would be directly affected by the

approval of the resolution plan. The two issues raised by the Appellants are non-payment to an unsecured financial creditor and the manner of distribution to employees/workmen do not confer locus standi, as the concerned unsecured financial creditor has already filed a separate appeal and no workmen or unions have challenged the resolution plan.

43. The Respondent No.4 submitted that it is crucial to note the present proceedings originate from a Section 10 application initiated by the Corporate Debtor itself. This context makes it evident that the Appellants, as members of the suspended Board, are seeking to avoid payment of the admitted dues owed by the Corporate Debtor, while simultaneously attempting to obstruct the resolution process.

44. The Respondent No.4 submitted that the Appellants' contention regarding a violation of Section 30(2) of the Code specifically, the allocation of Nil value to an unsecured financial creditor (Hari Vittal Mission/HVM) is misplaced, as the Adjudicating Authority, while approving the resolution plan, has already directed the CoC to allocate a reasonable amount to HVM. The Respondent No. 4 submitted that under Section 30(2) of the Code, unsecured financial creditors are entitled only to the minimum liquidation value, and Nil payment is permissible if it aligns with their liquidation entitlement.

45. The Respondent No. 4 submitted that, in the present case, it is undisputed that liquidation of the Corporate Debtor's assets would not satisfy the dues of the secured financial creditors, and thus, a dissenting unsecured financial creditor

would be entitled to Nil under Section 30(2)(b) of the Code. The Adjudicating Authority's finding that Nil value cannot be given to such a creditor is contrary to the express provisions of Section 30(2)(b) of the Code, which only requires payment of at least the liquidation value, even if that value is Nil. Nevertheless, in the interest of effective implementation of the resolution plan, Respondent No.4/SRA has not challenged the order and the CoC has already provided and paid Rs. 10 Lakhs to HVM.

46. Concluding his pleadings, the Respondent No. 1 requested this Appellate Tribunal dismiss the appeal.

Findings

47. We have already noted the facts of the case while recording the pleadings above and shall not repeat the same. Suffice to note that the application was filed under section 10 of the Code by the Corporate Debtor himself for initiating CIRP which was allowed by the Adjudicating Authority vide its order dated 31.08.2021.

48. The grievance of the Appellants is that the dues of employees and workers have not been provided for in the Resolution Plan adequately and stated that against employee claims of Rs. 1,53.83,821/-, the employees have been allocated only Rs. 73 Lakhs. The Appellants also submitted that the Resolution Plan is non-compliance to the Code in so much so that the specific amount and the manner of distribution has not been provided in the approved Resolution Plan. The

Appellants also argued that discretion has been given to the Respondent No. 4 to distribute the such funds to the employees which has again the spirit of the Code.

49. Another point taken up by the Appellants is that NIL allocation has been made to one Unsecured Financial Creditor - Hari Vitthal Mission which is violation of Section 30(2) of the Code.

50. The Appellants has also stated that the Resolution Professional has not been able to protect the assets of the Corporate Debtor and thereby the hospital run by the Corporate Debtor was shut down.

51. As regard, the allocation in favour of the employee and the workers is concerned, we note that in terms of Section 30(2) of the Code r/w Section 53 of the Code, they are entitled to receive the minimum amount based on the liquidation value of the Corporate Debtor and also get priority in terms of Section 53 of the Code. We have noted that the claim of such workers was Rs. 1,53,83,821/- whereas only Rs. 73 Lakhs has been allocated.

52. At this stage, we also take into consideration that the liquidation value of the Corporate Debtor has been stated to be Rs. 294 Crores, whereas the claims of the Secured Financial Creditor having first charge on the assets of the Corporate Debtor is Rs. 567.93 crores and other Secured Financial Creditor's having residual charge was the assets of the Corporate Debtor is Rs. 60.37 crores. Thus, after satisfying the claims of these Secured Financial Creditors, no amount remains in the kitty based on the liquidation value of the Corporate Debtor which could have been allocated to other Operational Creditors like workers/ employee

as well as Unsecured Financial Creditor. We observe that however, in order to make Resolution Plan implementable and in exercise of commercial wisdom of the CoC, in the approved Resolution Plan as approved by the CoC and by the Adjudicating Authority vide its Impugned Order dated 18.12.2023, Rs. 73 Lakhs has been allocated to workmen & employees. Thus, the contentions, of the Appellants does not seem to be valid on this account.

53. It is important to understand that the Resolution Plan cannot be approved by the Adjudicating Authority under Section 30 (2) (b) r/w Section 31 of the Code unless a minimum payment is made to the Operational Creditor, dissenting Financial Creditors, which cannot be less than as per Section 53 i.e., related to liquidation value. We need to understand that this, however, cannot be construed that the claims of the Financial Creditors and the Operational Creditor are to be satisfied in pro-rata or in the same manner as provided in the Resolution Plan under Section 31 of the Code. This Appellate Tribunal in earlier case of ***Central Bank of India Vs Resolution Professional Of the Sirpur Paper Mills Ltd. & Ors.*** in *Company Appeal (AT) (Insolvency) No. 526 of 2018* has clarified that as long as two or more Financial Creditor's or two or more financial and operational Creditors are not similarly situated then there is no discrimination between them under a Resolution Plan. This makes it clear that the amount provided in the Resolution Plan to Operational Creditor or dissenting Financial Creditors cannot be less than liquidation value of Corporate Debtor.

54. There is no scope for the Adjudicating Authority or this Appellate Authority to proceed on any equitable assumptions and presumptions to assess the resolution plan on the basis of quantitative analysis. We understand that the power of judicial review in Section 31 of the Code is not akin to the power of a supervision jurisdiction to deal with the merits of the decision of any lower judicial authority. The jurisdiction to decide as to what ought to be the terms of the resolution plan is vested on the CoC alone, who has to take such a decision in its commercial wisdom, while keeping in view the applicable provisions and the specified parameters.

55. It is significant to note that the other categories i.e., unsecured financial creditors, other creditors and shareholders have been provided NIL value in the approved Resolution Plan. Thus, we find that the Resolution Plan does not discriminate based on the type of creditors to give preference to secured creditors both having first charge or having residual charges.

56. As regard, the other point taken up by the Appellants regarding NIL allocation of funds to the Unsecured Financial Creditor i.e., Hari Vitthal Mission is concerned, it is suffice to note that it is not for the Appellant to take up the case to other Unsecured Financial Creditor who are competent to raise their own cause. Incidentally, Hari Vitthal Mission has already taken up their cause of NIL allocation in connected appeal bearing Comp. App. (AT) (Ins.) No. 04 & 05 of 2024 which have also been heard by us along with this case and for which the judgment is also being pronounced along with this case. It may be worth pointing

out that the HMV is Unsecured Financial Creditor and based on the judgment as contained in the ratio of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.* [CA No. 8766-67 of 2019] the different categories of the creditors can be provided different amount in the Resolution Plan based on the assessment made by the SRA which has to be duly approved by the CoC.

57. It needs to be noted that in the approved Resolution Plan, the Unsecured Financial Creditor as a class in itself has been allocated NIL, thus no discretion has been made against Hari Vitthal Mission. Incidentally, while approving the Impugned Order the Adjudicating Authority has asked the SRA and/or Interim Monitoring Committee to look into the issue on pragmatic basis to take care interest of all stakeholders. It has been brought out that since then the SRA and CoC have decided to allocate Rs. 10 Lakhs in the CoC Meeting 28.12.2023 and which has already been disbursed to Hari Vitthal Mission in July, 2024.

58. We need to appreciate that the Resolution Plan does not discriminate against the Unsecured Financial due to its classification as a related party, but rather allocates treatment based on its status as an unsecured financial creditor, with such distribution being determined by the CoC in its commercial wisdom and in compliance with the Code. In this connection, it has been brought to our notice that all unsecured financial creditors have been given Nil allocation in the Resolution Plan. Thus, the allegations of the Appellant are legally not tenable. We also observe that as affirmed by the Hon'ble Supreme Court in India in several cases including *MK Rajagopal v. Dr. Periyasamy Palani Gounder & Anr.*

[(2024) 1 SCC 42], that the Code permits differential treatment between related and unrelated parties. Thus, again based on such judicial pronouncements also, the Appellants contentions cannot be accepted.

59. As regard, another point submitted by the Appellant regarding lack of transparency since the exact amount and the manner of distribution of such funds among the employee/ workers has not been provided in the approved Resolution Plan and discretion has been granted to the SRA. We observe that the claims are being settled in pro-rata basis. Thus, the contentions of the Appellants on this ground is also not legally tenable.

60. The other point raised by the Appellant that the Resolution Professional could not protect the assets of the Corporate Debtor during CIRP is without any basis. Only point that since, hospital was shut down during CIRP does not tantamount to violation of the Code/ Regulation by the Resolution Professional.

61. We note that the Adjudicating Authority, in dismissing the Application of the Appellant, explicitly held that the Appellants lacked locus standi, noting:

“31. His allegation of material irregularity fraud etc., is not substantiated by any evidence whatsoever. Therefore, merely on surmise and apprehensions plan cannot be challenged.

32. ...One who feels disappointed with the order is not the person aggrieved. He must be disappointed by a benefit that he would have received if the order (plan in this case) had gone the other way...”

This finding, coupled with the NCLT’s reliance on Supreme Court precedents, confirms the Appellants’ lack of standing.

c. The Hon'ble NCLAT in Jaydip Ghosh & Ors v. Niraj Agarwal & Ors. [CA (AT) (Ins) No. 839 of 2022] has held that suspended board members have no locus to challenge a resolution plan approved by the CoC and NCLT, stating:

“41. ...law is settled on the point that the suspended Board of Directors have got no locus to file an appeal against the approval of the plan by CoC and finally approved by the Adjudicating Authority...”

Accordingly, the Appellants' appeal is liable to be dismissed on this ground alone.

d. The Appellants' attempt to challenge the Resolution Plan is contrary to the Code's objective of maximizing value and ensuring timely resolution, further underscoring the appeal's non-maintainability.”

62. Based on above detailed observations, we do not find any error in the Impugned Order. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

**[Mr. Indevvar Pandey]
Member (Technical)**

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