

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 831 of 2025

[Arising out of Order dated 01.04.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – I), in I.A. No. 11
of 2025 in CP(IB) No. 3528 (MB) of 2018]

IN THE MATTER OF:

Masyc Projects Pvt. Ltd.

...Appellant

Versus

**Pulkit Gupta,
RP of Vadraj Cement Ltd. & Ors.**

...Respondents

Present:

For Appellant : Mr. Kunal Tandon, Sr. Advocate with Mr. Yashvardhan, Mr. Kunal Godhwani, Ms. Kinjal Chadha, Ms. Kritika Nagpal and Ms. Natasha Singh, Advocates.

For Respondents : Mr. Rishabh Parikh, Mr. Gaurav Mathur and Ms. Niyati Kohli, Advocates for SRA.

Mr. Viraj Parikh, Mr. Vivek Shetty, Mr. Akhilesh Menzez, Mr. Nishant Upadhyay, Ms. Alankrita Sinha and Mr. Naveet R., Advocates for RP.

WITH

Company Appeal (AT) (Insolvency) No. 855 of 2025

[Arising out of Order dated 01.04.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – I), in I.A. No. 11
of 2025 in CP(IB) No. 3528 (MB) of 2018]

IN THE MATTER OF:

Chhotubhai Ramubhai Patel

...Appellant

Versus

**Vadraj Cement Ltd.
(Through its RP, Pulkit Gupta)**

...Respondents

Present:

For Appellant : Mr. Jitender Chaudhary, Ms. Shilpa Chohan and Ms. Ritika Harpalani, Advocates.

For Respondents : Ms. Aastha Mehta, Ms. Prerana Mohapatra, Ms. Prina Sharma and Mr. Gaurav Mathur, Advocates for SRA.

Mr. Viraj Parikh, Mr. Vivek Shetty, Mr. Akhilesh Menzez, Mr. Nishant Upadhyay, Ms. Alankrita Sinha and Mr. Naveet R., Advocates for RP.

WITH

Company Appeal (AT) (Insolvency) No. 856 of 2025

[Arising out of Order dated 01.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – I), in I.A. No. 11 of 2025 in CP(IB) No. 3528 (MB) of 2018]

IN THE MATTER OF:

**Tushar Engineering
Through, Chhotubhai Ramubhai Patel (HUF) (Karta) ...Appellant**

Versus

**Vadraj Cement Ltd.
(Through its RP, Pulkit Gupta) ...Respondents**

Present:

For Appellant : Mr. Jitender Chaudhary, Ms. Shilpa Chohan and Ms. Ritika Harpalani, Advocates.

For Respondents : Mr. Rishabh Parikh, Mr. Gaurav Mathur and Ms. Niyati Kohli, Advocates for SRA.

Mr. Viraj Parikh, Mr. Vivek Shetty, Mr. Akhilesh Menzez, Mr. Nishant Upadhyay, Ms. Alankrita Sinha and Mr. Naveet R., Advocates for RP.

J U D G M E N T

ASHOK BHUSHAN, J.

These three appeals have been filed against the same order dated 01.04.2025 passed by the National Company Law Tribunal (NCLT), Mumbai Bench, Court – I allowing I.A. Plan 11/2025 filed by Pulkit Gupta, Resolution *Comp. App. (AT) (Ins.) No. 831, 855 & 856 of 2025*

Professional (RP) of Vadaraj Cement Ltd. and approving the resolution plan submitted by Nuvoco Vistas Corporation Limited [Successful Resolution Applicant (SRA)]. The appellants who had filed claim in the Corporate Insolvency Resolution Process (CIRP), of the corporate debtor as operational creditor have been proposed NIL payment. Aggrieved by the order approving the resolution plan, these appeals have been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. On an application filed by Oriental Bank of Commerce (now known as Punjab National Bank) under Section 7, CIRP against the corporate debtor – Vadaraj Cement Limited, commenced vide order dated 02.02.2024.
- ii. A public announcement was issued by Interim Resolution Professional (IRP) on 03.02.2024, inviting claim from the creditors of the corporate debtor.
- iii. Masyc Projects Private Limited, appellant in Comp. App. (AT) (Ins.) No. 831/2025 filed its claim for an amount of ₹16,75,11,300/-. The claim of the appellant was admitted as operational creditor to the tune of ₹16,72,07,044/- and the name of the appellant was reflected in the list of the creditors in the category of operational creditors (other than workmen and employees and government dues). Masyc Projects Pvt. Ltd. filed its claim, relying on consent award dated 10.09.2013 which was award by Arbitral Tribunal appointed by Bombay High Court.

- iv. Chotubhai Ramubhai Patel, appellant in Comp. App. (AT) (Ins.) No.855/2025 filed its claim for an amount of ₹2,99,87,605/- as an operational creditor, who had supplied equipment on hire basis subsequent to service order issued by the corporate debtor.
- v. Tushar Engineering, appellant in Comp. App. (AT) (Ins.) No.856/2025 has filed its claim as operational creditor for an amount of ₹1,09,74,486/- which was operational dues on account of the appellant having supplied equipment on hire basis, subsequent to service orders from the corporate debtor.
- vi. The claim submitted by all the appellants was admitted by RP, and the amount admitted with respect to the appellants was reflected in the list of creditors published by the RP.
- vii. In the CIRP of the corporate debtor, 'Form – G' was issued and the R-3 Nuvoco Vistas Corporation Limited submitted its resolution plan which was approved by the CoC with 100 % voting shares on 01.04.2025.
- viii. The RP filed an application being I.A. No.11/2025 for approval of the resolution plan, which resolution plan has been approved by impugned order passed by the adjudicating authority dated 01.04.2025. In the approved resolution plan, payouts to the operational creditor (other than employees and government dues) is NIL.
- ix. In the CIRP of the corporate debtor, total amount admitted of operational creditor was ₹79,83,85,564/- against which, payment has been proposed.
- x. The above appellants aggrieved by the said order has come up in these appeals.

3. We have heard learned Sr. counsel, Mr. Kunal Tandon appearing in Comp. App. (AT) (Ins.) No.835/2025 and learned counsel, Mr. Jitender Chaudhary appearing in Comp. App. (AT) (Ins.) No.855 & 856/2025. We have also heard learned counsel Mr. Rishabh Parikh and Ms. Aastha Mehta appearing for the SRA as well as learned counsel, Mr. Viraj Parikh appearing for the RP.

4. Learned counsel for the appellant challenging the impugned order submits that adjudicating authority committed an error in approving the resolution plan, which resolution plan did not consider the claim of the operational creditor in accordance with the law. Resolution plan did not reflect that there was any due consideration of the claim of the operational creditors. It is submitted that Regulation 38(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (for short the CIRP Regulations, 2016) speaks of resolution plan, including a statement as to how it has dealt with the interest of all stakeholders, including operational creditors of the corporate debtor. It is submitted that there is no consideration in the resolution plan as to how the claim of the operational creditor has been dealt with. It is submitted that operational creditors are the creditors who provided goods and services to the corporate debtor and their claim was entitled to be considered with payment on priority. Learned counsel for the appellant has relied on the judgement of the Hon'ble Supreme Court in the matter of **'CoC of Essar Steel India Limited' Vs. 'Satish Kumar Gupta & Ors.'** reported in [(2020) 8 SCC 531]. Relying on the judgement of this Tribunal in **Comp. App. (AT) (Ins.) No. 606/2019** in the matter of **'Hammond Power Solutions Private Limited' Vs. 'Sanjit Kumar** Comp. App. (AT) (Ins.) No. 831, 855 & 856 of 2025

Nayak & Ors.’, it is contended that in a similar case where no consideration was shown in the resolution plan of the dues of the operational creditor, this Tribunal set asides approval of the resolution plan and remitted the resolution plan back for fresh consideration. It is submitted that in view of the judgement of this Tribunal in **‘Hammond Power Solutions Private Limited’ (supra)**, the impugned order deserves to be set aside with direction to the CoC to re-examine the resolution plan by considering the claims of appellant, whose claims as operational creditor have been admitted in the CIRP of the corporate debtor.

5. Learned counsel for the SRA refuting the submissions of the counsel for the appellant submits that the adjudicating authority has adverted to the consideration of claim of operational creditors and after due consideration of treatment given to the operational creditor in the resolution plan, resolution plan has been approved. It is submitted that the liquidation value of the operational creditor being NIL after payment to the financial creditors, the operational creditors were not entitled for any payment under Section 30(2)(b) of the IBC, thus, the payment proposed i.e., ‘NIL’ to the operational creditor is in accordance with the Section 30(2)(b) of the IBC. There is no breach of any statutory provisions in proposing payment to the operational creditor, i.e., appellant herein. It is submitted that CoC has approved the resolution plan with 100% vote shares as the commercial wisdom of the CoC in approving the resolution plan cannot be interfered with by the adjudicating authority in view of the law laid down by the Hon’ble Supreme Court in **‘K. Sashidhar’ Vs. ‘Indian Overseas Bank & Ors.’** reported in **[(2019) 12 SCC 150]**. Learned counsel for the SRA has also relied on the judgement of the Hon’ble Supreme *Comp. App. (AT) (Ins.) No. 831, 855 & 856 of 2025*

Court in '**CoC of Essar Steel India Limited**' (*supra*) as well as the judgement of this Tribunal in '**Rajat Metaal Polychem Private Limited**' Vs. '**Neeraj Bhatia & Anr.**' in **Comp. App. (AT) (Ins.) No.1063/2022** decided on 04.09.2024.

6. Learned counsel for the RP also adopted the submissions advanced by the counsel for the SRA.

7. We have considered the submissions of the counsel for the parties and perused the records.

8. Section 30(2) provides that RP shall examine each resolution plan to confirm that each resolution plan provides for requirement as enumerated therein. Section 30(2) is as follows:

"30. Submission of resolution plan--

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ²[payment] of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be

specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.--For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-- For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor--

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

Explanation.-- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law;"

9. Section 30(2)(b) was amended with effect from 16.08.2019, which provided that payment of debts of operational creditor shall not be less than (i) the amount to be paid to such creditor in the event of liquidation of corporate debtor under Section 53 or; (ii) the amount that would have been paid to such creditor if the amount to be distributed under the resolution plan had been distributed in accordance with the priority in sub-Section (1) of Section 53. The facts brought on the record indicate that the claim filed by the appellant as operational creditor was admitted by the RP and appellants were shown as operational creditor to the extent of the amount of claim admitted in the CIRP. The resolution plan which was submitted by the SRA and approved by CoC did not propose any payment to any of the operational creditors except for workmen, employees and government dues. The adjudicating authority in paragraph 20 of the impugned order has dealt with the key features and summary of the final resolution plan submitted by the resolution applicant and approved by the CoC. Under the heading 'C', treatment of operational creditor, workmen dues have been dealt and under the heading 'D', treatment of operational creditor, workmen employees have been dealt with and under the heading 'E', treatment of operational creditor (government dues) have been dealt with and it is under the heading 'F', that treatment of operational creditor (other than government dues, employees and workmen) have been dealt with. Clause F of the paragraph 20 of the impugned order is as follows:

**“F) TREATMENT OF OPERATIONAL CREDITORS
(OTHER THAN GOVERNMENT DUES, EMPLOYEES,
WORKMEN)**

i) The Resolution Professional has admitted an amount of Rs. 77,65,00,755 (Rupees Seventy Seven Crore Sixty Five Lakh Seven Hundred and Fifty Five) towards Claims filed by the Operational Creditors (Other than Government Dues, Employees, Workmen).

ii) The Resolution Applicant assumes that since the Liquidation Value of the Corporate Debtor is not sufficient to discharge the Claims of the Secured Financial Creditors, the Other Operational Creditors shall be paid NIL amount towards full and final discharge of their Claims against the Corporate Debtor.”

10. The adjudicating authority noticed that total claim of the operational creditor admitted by RP is ₹77,65,00,755/- and since the resolution applicant has assumed that liquidation value of the corporate debtor is not sufficient to discharge the claim of secured financial creditor, other operational creditor, the payout to other operational creditor shall be NIL and on the above statement, no payment was proposed to the operational creditor, other than government dues, employees and workmen. The challenge to the treatment of the operational creditor i.e., the appellant has been mounted by the appellant, relying on the judgement of the Hon’ble Supreme Court in the matter of **‘CoC of Essar Steel India Limited’ (supra)** and the judgement of this Tribunal in **‘Hammond Power Solutions Private Limited’ (supra)**. Regulation 38 of the CIRP Regulations, 2016 provides that mandatory contemplation of the resolution plan. Regulation 38(1) & 38(1-A) of the CIRP Regulations, 2016 have been noticed by the Hon’ble Supreme Court in the above judgement in paragraph 53, which is as follows:

“53. Regulation 38, being important, is set out hereinbelow:

*“38. Mandatory contents of the resolution plan.—
(1) The amount due to the operational creditors under*

a resolution plan shall be given priority in payment over financial creditors.

(1-A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

(3) A resolution plan shall demonstrate that—

(a) it addresses the cause of default;

(b) it is feasible and viable;

(c) it has provisions for its effective implementation;

(d) it has provisions for approvals required and the timeline for the same; and

(e) the resolution applicant has the capability to implement the resolution plan.”

11. Hon’ble Supreme Court in ‘CoC of Essar Steel India Limited’ (supra)

has held that equality for approach cannot be adopted for different class of creditors as part of insolvency resolution process. In paragraph 85 of the judgement following has been laid down:

“85. *Indeed, if an “equality for all” approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow.”*

12. Distinction between operational creditors and financial creditors have been noticed in paragraph 87 of the judgement. Hon'ble Supreme Court referring to earlier judgement in **'Swiss Ribbons India Private Limited' Vs. 'Union of India'**, reported in [(2019) 4 SCC 17] has held that para 77 of the **'Swiss Ribbons India Pvt. Ltd.'** (*supra*) cannot be read to mean that financial creditor and operational creditor must be paid the same amount in any resolution plan before it can pass the muster, para 88 of the judgement is as follows:

“88. By reading para 77 (of Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17]) dehors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Para 76 clearly refers to the Uncitral Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in para 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, para 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in para 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which

is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.”

13. There cannot be any dispute to the proposition that as per requirement of Regulation 38 of CIRP Regulations, 2016 the plan has to contain a statement as to how it has dealt with the interest of all stakeholders, including the financial creditor with the operational creditor of the corporate debtor. The present is not a case where resolution plan does not deal with the treatment of financial creditor and operational creditor. We have noticed that in paragraph 20 of the judgement of the adjudicating authority treatment of financial creditors, operational creditors, workmen employees, government dues and operational creditor, other than government dues, employees and workmen has been provided for under the heading ‘F’, the claim of operational creditors have been dealt with. The present is the case where the claim of secured financial creditor which was admitted in the CIRP itself was ₹82,32,53,97,605/- against which total payout to secured creditor under the plan is ₹16,93,07,26,851/- figure and the average liquidation value of the corporate debtor was only ₹1,080 crores and average fair value was ₹16,068 crores. In event of liquidation of the corporate debtor, the value which could have been receivable by the operational creditor comes to Nil, hence the present is the case where it cannot be said that there is any breach of provision of Section 30(2)(b) in so far as payment to the operational creditor is concerned.

14. The judgement on which much reliance has been placed by the counsel for the appellant is **‘Hammond Power Solutions Private Limited’ (supra).**

In **‘Hammond Power Solutions Private Limited’ (supra)**, challenge was made by the operational creditor to the approval of the resolution plan. Contention before this Tribunal was that resolution plan is approved, not in compliance with the provisions of the IBC and provision for payment of NIL amount to the operational creditor is not as per the provisions of the IBC. In the above case, this Tribunal has noted the judgement of the Hon’ble Supreme Court in **‘CoC of Essar Steel India Limited’ (supra)** and noticing the minutes of the CoC has come to the conclusion in paragraphs 12, 13 & 14, following was held:

“12. If the above minutes are perused, it can be hardly said that there are any reasons given by the Committee to demonstrate that it has taken care of interest of all stakeholders. Para - 46 of the Judgement in the matter of "Essar Steel"

requires to see "the reasons given by the Committee of Creditors while approving a resolution plan" from point of view stated in the paragraph. The reasons for giving NIL to Operational Creditors is not reflected from record. We have already reproduced portion from Part B - Financial Proposal with regard to what the approved Resolution Plan states regarding dues to the Operational Creditors.

The proposal is based on the assessment that there is no liquidation value due to Operational Creditors. Although it is not stated but there is reason to doubt that the Resolution Applicants were aware of the liquidation value. There is no dispute that so many of the Operational Creditors have been left high and dry giving them nil amount which Hon'ble Supreme Court has observed that giving NIL to Operational Creditors "would certainly not balance the interest of all stakeholders or maximise the value of assets of the Corporate Debtor if it becomes impossible to continue running its business as a going concern."

13. For these reasons, we find that the Impugned Order accepting the Resolution Plan cannot be upheld.

The Resolution Plan does not appear to have taken care of interest of all stakeholders including Operational Creditors and the decision of the COC also does not reflect that it has taken into account the fact that the Corporate Debtor needs to be kept as a going concern and that there is Company Appeal (AT) (Ins) No.606 of 2019 need to maximise the value of the assets and that the interest of all the stakeholders including Operational Creditor has to be taken care of.

14. For the above reasons, we set aside the Impugned Order and remit the matter back to the Adjudicating Authority with a direction to send back the Resolution Plan to the Committee of Creditors to resubmit the Plan after satisfying the parameters as laid down by the Hon'ble Supreme Court in the Judgement in the matter of "Essar Steel", portions of which have been reproduced above, and IBC. The Adjudicating Authority may give specific time period to the Resolution Professional to place matter before Committee of Creditors for resubmitting the Resolution Plan after satisfying the parameters laid down by the Hon'ble Supreme Court and IBC. Further incidental Orders may also be passed. On resubmission of the Resolution Plan, the Adjudicating Authority will deal with the same in accordance with law.

The Appeal is disposed accordingly. No costs."

15. This Tribunal in **'Rajat Metaal Polychem Private Limited' (supra)** had occasion to consider the judgement of Hon'ble Supreme Court in **'CoC of Essar Steel India Limited' (supra)** as well as **'Hammond Power Solutions Private Limited' (supra)**. Judgement of **'CoC of Essar Steel India Limited' (supra)**. Paragraphs 65 and 66 of the judgment of Hon'ble Supreme Court was noticed in paragraph 9 of the judgement which is as follows:

"9. The Hon'ble Supreme Court while noticing the jurisdiction of the Adjudicating Authority and Appellate Tribunal has held that provisions investing jurisdiction in NCLT and NCLAT has not made the commercial wisdom exercise by CoC of not approving the Plan rejecting the same justiciable. Hon'ble Supreme Court held that Adjudicating Authority is circumscribed by

Section 30(2). In Paragraphs 65 and 66 of the Judgment following has been held:

“Jurisdiction of the Adjudicating Authority and the Appellate Tribunal

65. As has already been seen hereinabove, it is the Adjudicating Authority which first admits an application by a financial or operational creditor, or by the corporate debtor itself under Sections 7, 9 and 10 of the Code. Once this is done, within the parameters fixed by the Code, and as expounded upon by our judgments in *Innoventive Industries Ltd. v. ICICI Bank* [*Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] and *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.* [*Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, (2018) 2 SCC 674 : (2018) 2 SCC (Civ) 288] , the Adjudicating Authority then appoints an interim resolution professional who takes administrative decisions as to the day to day running of the corporate debtor; collation of claims and their admissions; and the calling for resolution plans in the manner stated above. After a resolution plan is approved by the requisite majority of the Committee of Creditors, the aforesaid plan must then pass muster of the Adjudicating Authority under Section 31(1) of the Code. The Adjudicating Authority's jurisdiction is circumscribed by Section 30(2) of the Code. In this context, the decision of this Court in *K. Sashidhar* [*K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] is of great relevance.

66. In *K. Sashidhar* [*K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] this Court was called upon to decide upon the scope of judicial review by the Adjudicating Authority. This Court set out the questions to be determined as follows: (SCC pp. 173-74 & 176, paras 32 & 37)

“32. Having heard the learned counsel for the parties, the moot question is about the sequel of the approval of the resolution plan by CoC of the respective corporate debtor, namely, KS&PIPL and IIL, by a vote of less than seventy-five per cent of voting share of

the financial creditors; and about the correctness of the view [Kamineni Steel & Power (India) (P) Ltd. v. Indian Bank, 2018 SCC OnLine NCLAT 654] taken by NCLAT that the percentage of voting share of the financial creditors specified in Section 30(4) of the I&B Code is mandatory. Further, is it open to the adjudicating authority/appellate authority to reckon any other factor [other than specified in Sections 30(2) or 61(3) of the I&B Code as the case may be] which, according to the resolution applicant and the stakeholders supporting the resolution plan, may be relevant?

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37. ... The Court, however, was not called upon to deal with the specific issue that is being considered in the present cases, namely, the scope of judicial review by the adjudicatory authority in relation to the opinion expressed by CoC on the proposal for approval of the resolution plan.”

16. The judgement of the **‘Hammond Power Solutions Private Limited’** (*supra*), has been noted in paragraph 12 of the judgement and in paragraph 13 and 14, following was held:

“13. In **‘Hammond Power’** (*Supra*), Order of the Adjudicating Authority was set aside and the matter was remitted for sending the Plan back to the CoC. Adjudicating Authority in the said Order has noted that there were two summaries filed in one Operational Creditor was proposed ₹2.668 Crore/-while in the revised Plan amount became zero. In paragraph 9 of the Judgment, this Tribunal noticed the two proposals relating to the Operational Creditor, whereas in one proposal amount of ₹2.668 Crore/- was proposed. Paragraph 9 of the Order is as follows:

“9. The above is law as laid down by the Hon’ble Supreme Court with regard to treatment to be given to the Operational Creditors in the Resolution Plans. It is apparent that the decision of the Committee “must reflect the fact that it has taken into account maximising the value of the assets of the Corporate Debtor and the fact that it has adequately balanced the

interests of stakeholders including Operational Creditors". Judicial review is available to see if the Committee of Creditors has taken into account the fact that the Corporate Debtor needs to be kept as a going concern; that there is necessity to maximise the value of the assets and that the interest of all stakeholders including Operational Creditors has been taken care of. Keeping this in view, if the record is seen, it is surprising to note from Annexure – A and B reproduced (supra) that the Respondents 4 and 5 who initially came up proposing to pay Rs.35.641 Crores after negotiations reduced the same to Rs.34.9500 Crores. In the process although earlier there was proposal to pay Operational Creditors 2.668 Crores, the figure converted to zero after negotiations with the COC. So much so for the trust law has put on the shoulders of the COC to protect interest of all stakeholders. It is clear from the Judgement of Hon'ble Supreme Court that the record should reflect that the Committee of Creditors has taken into account that Corporate Debtor needs to be kept a going concern; that maximising the value of assets is necessary and that the interest of all stakeholders including Operational Creditors has been taken care of. The Judgement says that the Adjudicating Authority should look into "reasons given by the Committee of Creditors while approving the Resolution Plan".

14. In the above circumstances in the '**Hammond Power**' (Supra), this Tribunal came to the view that the CoC has not applied its mind and has not taken care of all stakeholders and in the said circumstances, the Order was set aside. Judgment of this Tribunal in '**Hammond Power**' (Supra), was on the facts of the said case. In '**Hammond Power**' (Supra), also this Tribunal has noted and relied on '**Committee of Creditors of Essar Steel India Ltd., Through Authorized Signatory**' (Supra), thus, the law as laid down in '**Committee of Creditors of Essar Steel India Ltd., Through Authorized Signatory**' (Supra), which is law declared by Hon'ble Supreme Court binding on all concerns."

17. It is relevant to notice that in '**Rajat Metaal Polychem Private Limited**' (supra), in paragraph 15 this Tribunal had noticed that non-payment to the operational creditor is harsh and this Tribunal has referred to its earlier judgement in the matter of '**Damodar Valley Corporation**' Vs. Comp. App. (AT) (Ins.) No. 831, 855 & 856 of 2025

`Dimension Steel and Alloys Pvt. Ltd. & Ors.’ in Comp. App. (AT) (Ins.) No. 62/2022, where copy of the order was sent to the government and Board to find out as to whether there was any ground for considering change in the legislative scheme towards the payment to the operational creditor. In paragraph 15 of the judgement following was observed:

*“15. It is true that Operational Creditor’s claim was submitted for an amount of ₹1,54,64,926/- but as per the provisions of Section 30(2)(b), it cannot be said that in the facts of the present case there is any non-compliance of Section 30(2)(b) in proposing NIL amount to the Operational Creditor. It is true that non-payment of any payment of Operational Creditor is harsh but the law as stand today is to that effect. We may notice that this Tribunal in the matter of **`Damodar Valley Corporation’ Vs. `Dimension Steel and Alloys Pvt. Ltd. & Ors.’ in Comp. App. (AT) (Ins.) No. 62/2022**, has observed that time has come when it should be examined by the Government to find out as to whether there are any grounds for considering change in the Legislative Scheme towards the payment to the Operational Creditor which also consists of the Government dues. In Paragraph 31 of the Judgment following has been observed:*

“31.We are consistently receiving the Plans, where Operational Creditors either not paid any amount towards their claim or paid negligible amount, sometime even less than 1%. In the present case, the Operational Creditors have been given only miniscule of their admitted claim to the extent of only 0.19%. As the law stand today, no exception can be taken to such Plans, which provide payment to Operational Creditor in accordance with Section 30(2)(b) of the Code. However, the time has come when it should be examined by the Government and the Board to find out as to whether there are any grounds for considering change in the legislative scheme towards the payment to the Operational Creditors, which also consist of Government dues and other statutory dues. We make it clear that our observation is only to facilitate the Government and other competent Authority to consider this issue and take decision, so as to the

objective of equitable and fair distribution can be fulfilled with clear parameters to guide the all concerned to arrive at the fair and equitable distribution.””

18. The above indicates that this Tribunal is conscious to the legislative scheme as existing today, which does not mandate any payment to the operational creditor in event in the liquidation of the corporate debtor, the operational creditors were not getting any amount, the legislative scheme was said to be harsh and this Tribunal has opined that law in this regard need consideration whether if any change is required in the legislative scheme or not for which as early in May 2022, this Court has delivered judgement in **‘Damodar Valley Corporation’ (supra)** and forwarded the copy to the Central Government as well as the Board. The judgement of this Tribunal in **‘Hammond Power Solutions Private Limited’ (supra)**, was delivered on the background where this Tribunal came to the conclusion that there was no consideration to show that how claim of all stakeholders was dealt with. The relevant part of the summary of the resolution plan has been noticed in the impugned order, which indicate the manner in which claim of all stakeholders have been dealt with including operational creditors other than government dues, employees and workmen. Thus, judgement of this Tribunal in **‘Hammond Power Solutions Private Limited’ (supra)**, is clearly distinguishable and cannot be a reason for setting aside the impugned order approving the resolution plan. **‘CoC of Essar Steel India Limited’ (supra)** itself notice the earlier judgement of the Hon’ble Supreme Court in **‘K. Sashidhar’ (supra)**, which had laid down the limited role of the adjudicating authority and appellate authority in interfering with the commercial wisdom

of the CoC is when the plan is in breach of Section 30(2) of the IBC. In the present case, CoC with 100 percent vote shares has approved the resolution plan. Thus, the adjudicating Authority and this Tribunal could have interfered with the commercial wisdom of the CoC only when it is found that resolution plan breaches any of the statutory provisions, including Section 30(2). Before us neither it has been contended nor proved that the resolution plan breaches any of the provisions of Section 30(2) of the IBC or any provisions of the CIRP Regulations, 2016.

19. In view of the limited jurisdiction conferred to the adjudicating authority and to this Tribunal to interfere with the commercial wisdom of the CoC, we are not persuaded to accept the submission of the appellant to interfere with the impugned order, approving the resolution plan.

20. We, thus do not find any ground to interfere with the impugned order.

In result, all the appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

12th August, 2025

himanshu