NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 887 of 2025

IN THE MATTER OF:

Saariga Construction Pvt. Ltd. **...Appellant**

Versus

Arvind Kumar, **...Respondents**
RP, Richa Industries Ltd. & Anr.

Present:

For Appellant : **Mr. Aalok Jagga, Mr. Karan Malhotra, Mr. Anant Shankar Tripathi, Mr. Nahush Jain, Mr. APS Madaan, Advocates.**

For Respondents : **Mr. Nitin Kant Setia, Advocate for R-1 (RP).**

Mr. V. K. Sachdeva, Mr. Paras Mithal, Mr. Parakhar Mithal, Mr. Gaurav Goel, Mr. Pulkit Sachdeva, Mr. Gaurav Raj, Advocates for R-2.

Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Mr. Akshit Awasthi, Mr. Rajat Gupta, Ms. Ridhima, Advocates with Ms. Vanshika Dhoot, for Liquidator.

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J U D G M E N T

Ashok Bhushan, J.

These two Appeals by the same Appellant has been filed challenging the two orders of the same date dated 11.06.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Court-1 Chandigarh. In Company Appeal (AT) (Insolvency) No. 887 of 2025, challenge is to the order dated 11.06.2025 passed in CA No.786 of 2019 by which order the Adjudicating Authority allowing the application directed for liquidation of the Corporate Debtor. Company Appeal (AT) (Insolvency) No. 888 of 2025 has been filed challenging the order dated 11.06.2025 by which order IA No.483(CH)2024 filed by the Appellant seeking a direction to treat the Resolution Plan submitted by Appellant as approved has been rejected by the impugned order dated 11.06.2025.

2. Brief facts of the case necessary to be noticed for deciding these Appeals are:-

2.1. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor- 'Richa Industries Ltd.' commenced vide order dated 21.12.2018.

Appellant claiming to be Financial Creditor having vote share of 8.94% had submitted a Resolution Plan which Resolution Plan came to be rejected by the Committee of Creditors (CoC) on 03.09.2019. Resolution Professional filed CA No.786 of 2019 seeking liquidation of the Corporate Debtor. Indian Overseas Bank and Corporation Bank being Financial Creditors had filed CA No.233 of 2019 challenging the constitution of the CoC insofar as inclusion of Appellant and five other entities in the CoC. Appellant challenged rejection of its Resolution Plan by filing CA No.1221 of 2019. On 01.02.2023, the Adjudicating Authority directed the Resolution Professional to re-publish Form G calling for Expression of Interest (EoI). Consequent to the order dated 01.02.2023 Appellant again submitted a Resolution Plan. Resolution Plan submitted by Appellant was taken for discussion in 37th meeting of the CoC held on 28.08.2023 and put to vote. E-voting commenced on 04.09.2023 and was opened till 22.09.2023. Indian Overseas Bank and Corporation Bank abstained from voting. In result of e-voting, Appellant's plan received 52.02% votes in favour of the plan, 0.08% against the plan and 47.90% abstained from voting. The Resolution Plan was rejected on the ground that it requires vote of 66% which has not been received. IA No.483 of 2024 was filed by the Appellant against rejection of the Resolution Plan alleging wrong calculation of the CoC voting. Appellant's case in the application was that the Resolution Professional could have calculated the voting on the basis of "present and voting". Resolution Professional filed reply to IA No.483 of 2024. Adjudicating Authority vide impugned order dated 11.06.2025 rejected IA No.483 of 2024 holding that the Resolution Plan of Appellant did not receive 66% vote and the case of the

Appellant that vote of CoC members who abstained from voting should be excluded by computing the majority is not acceptable. The Adjudicating Authority vide order dated 11.06.2025 allowed CA No.786 of 2019 and directed for liquidation of the Corporate Debtor appointed one Mohit Chawla as liquidator. Challenging the order dated 11.06.2025, aforesaid these two Appeals have been filed.

3. It shall be sufficient to refer to the pleadings in Company Appeal (AT) (Insolvency) No. 888 of 2025 for deciding both the Appeals.

4. We have heard Shri Aalok Jagga, Learned Counsel for the Appellant, Shri Abhishek Anand, Learned Counsel for the Resolution Professional and Shri V.K. Sachdeva, Learned Counsel for the two members of the CoC namely— Indian Overseas Bank and Union Bank of India.

5. Learned Counsel for the Appellant in support of the Appeal submits that the Resolution Plan submitted by the Appellant was approved by requisite majority of votes as required under Section 30(4) of the IBC. Both Resolution Professional and the Adjudicating Authority committed error in holding that the Resolution Plan submitted by Appellant was not approved by 66% vote. It is submitted that Section 30(4) after amendment by Act 8 of 2018 requirement of 66% of voting share of the Financial Creditors is predicated on considering its feasibility and viability. It is submitted that for considering feasibility and viability, the members of the CoC has to be present in the meeting and those members of the CoC who are not present in the meeting their votes cannot be included for computing majority of vote

share of Financial Creditors. It is submitted that votes given by only those members of the CoC who are present in the meeting where feasibility and viability of the plan needs to be counted either for or against the Resolution but those members who did not attend the meeting cannot be said to have considered the feasibility and viability of the plan and their votes cannot be included for computing the majority of 66%. It is submitted that amendment in CIRP Regulations 2016 i.e. deletion of Regulation 2(1)(f) w.e.f. 05.10.2018 has its own effect. From the definition of 'dissenting Financial Creditor', abstention has been removed which clearly means that dissenting vote and abstaining votes are two different concepts. Abstention is a neutral stance, a non-action and do not contribute to either for or against the Resolution Plan for determining the outcome. It is submitted that in the present case, both the Indian Overseas Bank and Union Bank of India were not present in the meeting of the CoC where Resolution Plan was considered and voted and they abstained from voting, hence, abstention of the votes should be excluded for computing the majority. He submits that in view of the fact that out of those present i.e. 52.02% have voted in favour of the plan and only 0.08% voted against the plan, hence, the plan of the Appellant was approved by more than 97% of those present and voting and the Adjudicating Authority has committed error in holding the plan not approved. It is submitted that the judgment of the Hon'ble Supreme Court in ***"K. Sashidhar Vs. Indian Overseas Bank & Ors.- (2019) 12 SCC 150"*** which has relied by the Adjudicating Authority in the impugned order is not relevant since the said judgment was considering the provision of Section 30(4) which was considering the provisions of the IBC as well as Regulations

which were un-amended and in the present case, the CIRP Regulations were subsequently amended including Section 30(4). The above judgment of the Hon'ble Supreme Court is clearly distinguishable. Counsel for the Appellant has relied on the judgment of this Tribunal in ***"Tata Steel Limited vs. Liberty House Group- Company Appeal (AT) (Insolvency) No.198 of 2018"*** decided on 04.01.2019 where this Tribunal has held that those Financial Creditors who abstained from voting, their voting percentage should not be counted for the purpose of counting the voting share. Counsel for the Appellant relying on the BLRC Report submits that the report also indicates that votes of those who abstained in the meeting are not to be taken note of.

6. Submissions made by Counsel for the Appellant have been refuted by Shri Abhishek Anand, Counsel for the Resolution Professional. It is submitted that Section 30(4) of the IBC clearly provides that the Resolution Plan is to be approved by vote of not less than 66% of the voting share of the Financial Creditors. Thus, the requirement of 66% has to be computed on the voting share of the Financial Creditors and Section 30(4) does not provide for taking into consideration only the votes those who are present and voting. It is submitted that the concept of present and voting has not been used in Section 30(4) whereas there are other provisions in IBC which provide for counting of votes who are present and voting. He has referred to Section 25A (3A). He submits that the judgment of the Hon'ble Supreme Court in ***"K. Sashidhar"*** (supra) is fully applicable. Hon'ble Supreme Court had interpreted the provisions of Section 30(4) i.e. 66% of voting share and

held that the said provision does not contemplate counting of votes only those present and voting. It is submitted that those creditors who have abstained from voting, their votes have also to be computed for finding out 66% of the voting share of the Financial Creditors. It is submitted that in the voting held on the plan as per the Appellant only 52.02% has voted in favour of the plan, hence, the vote of 66% could not be achieved. The Resolution Plan of Appellant was rightly rejected. It is submitted that the amendment in CIRP Regulations 2016 specially deletion of Regulation 2(1)(f) has no effect on requirement as provided under Section 30(4). It is submitted that the scheme of Regulation 25 itself indicate that votes of Financial Creditors who are not present in the meeting has also to be obtained by the Resolution Professional by the electronic voting system. Thus, the submission of the Appellant that voting of only those members would be taken who were present in the meeting has to be rejected. Referring to the judgment of this Tribunal relied by the Appellant in ***"Tata Steel Limited"*** (supra) was a judgment delivered by this Tribunal prior to the judgment of the Hon'ble Supreme Court in ***"K. Sashidhar"*** (supra) and cannot be said to be a good law.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. The only submission which has been raised in this Appeal is regarding mode and manner of computing 66% of vote which are required for approval of the Resolution Plan by the CoC. On interpretation of the above provision,

both the counsel for the Appellant and Respondent has made diametrically opposite submissions.

9. Before proceeding further, we need to notice the facts as are claimed by the Appellant. The Appellant has brought on the record the minutes of 38th meeting of the CoC held on 02.09.2023 along with the result of e-voting which commenced on 04.09.2023 and remained opened till 22.09.2023. The Resolution No.1 (b) was with regard to approval of the Resolution Plan of the Appellant. At Page 117 of the paper book final result of the CoC members after e-voting has been noticed which is as follows:-

*"**FINAL RESULTS OF VOTING OF COC MEMBERS AFTER E-VOTING:***

The E-voting commenced on 04.09.2023 at 12.30 p.m. and remained open till 22.09.2023 at 5.00 p.m. The voting results on resolution no. 1(b) of agenda item 1 are as under: -

S. No.	***Name of the Financial Creditor***	***% of Vote in favour of the resolution***	***% of Vote in against the resolution***	***% of Vote Abstained from voting/did not vote***
1.	*Saariga Construction Private Limited*	*8.94*	*-*	*-*
2.	*Sirsa Deposit and Advance Ltd*	*16.71*	*-*	*-*
3.	*A to Z Steel Corporation*	*18.61*	*-*	*-*
4.	*Kotak Mahindra Bank Ltd*	*-*	*0.02*	*-*
5.	*CNC Enterprises*	*1.24*	*-*	*-*
6.	*SK Enterprises*	*1.24*	*-*	*-*
7.	*Singal Enterprises*	*1.24*	*-*	*-*
8.	*Reliance Commercial Finance Limited*	*0.91*	*-*	*-*
9.	*Ashv Finance Limited*	*1.13*	*-*	*-*

10.	*Catalyst Trusteeship Limited*	*2.00*	-	-
11.	*Toyota Financial Services India Ltd*	-	*0.06*	-
12.	*Indian Overseas Bank*	-	-	*35.22*
13.	*Corporation Bank*	-	-	*12.15*
14.	*HDB Financial Services Ltd*	-	-	*0.53*
	Total	***52.02***	***0.08***	***47.90***

To pass, the resolution required 66% votes in favour, and hence resolution no. 1(b) failed."

10. The above indicate that in favour of the Resolution, there were 52.02% votes and against only 0.08% and 47.90% have abstained which included the Indian Overseas Bank and the Corporation Bank. The submission of the Appellant, as noted above, is that while computing 66% vote shares as required by Section 30(4) only votes of those who have voted in favour of the plan or against the plan need to be taken note of by computing the majority and according to the said, more than 97% of those who voted in favour and against the plan has voted for the plan and decision of the Resolution Professional that plan did not obtained 66% vote is incorrect whereas the submission of the Respondent is that for computing 66% vote share, entire vote shares of the Financial Creditors has to be taken into consideration and vote share of 47.90% who abstained from voting has also to be included while computing the majority about the denominator for finding out 66% required vote.

11. We need to first notice the provision of Section 30(4) which had fallen for consideration and interpretation in this Appeal.

12. Section 30(4) prior to its amendment by IBC (Amendment) Act 2018 was as follows:-

> *"**30. Submission of resolution plan.**- (4) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors."*

13. The word 75% was substituted by IBC (Second Amendment) Act, 2018 w.e.f. 06.06.2018. Section 30(4) as it exists after above amendment is as follows:-

> *"**30. Submission of resolution plan.**- [(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board"*

14. The crucial word in Section 30(4) is 66% of voting share of the Financial Creditors. Appellant's submission is that 66% of voting share of the Financial Creditors has to be determined only of those Financial Creditors who are present in the meeting where Resolution Plan is considered. Those who are not present and abstained from voting are not to be included for finding out 66% of vote share. The submission which has been pressed by Counsel for the Appellant is that after amendment made by IBC (Amendment) Act, 2018 w.e.f. 23.11.2017, the *expression* "after considering its feasibility and viability", the voting has to be made by

Financial Creditors. It is submitted that unless the Financial Creditor is not present in the meeting how he will consider the feasibility and viability of the Resolution Plan. Thus, by addition of this *expression*, requirement of the Financial Creditor to be present in the meeting is necessary.

15. What Appellant is contending is that vote percentage need to be computed only out of those Financial Creditors who are present in the voting. The Appellant virtually is asking the Court to read the word "present and voting" in Section 30(4). It is well settled rule of statutory construction that no additional word or expression can be read in a statutory provision. Addition of any word for purpose of interpretation is clearly prohibited. When the expression used is "voting share of the Financial Creditors", the 66% has to be computed from the voting share of the Financial Creditors. Section 30(4) cannot be read to mean that 66% has to be determined only from the vote share of those who are present and voting in the meeting. The submission of the Appellant that vote share has to be taken of only those Financial Creditors who are present in the meeting and voting is clearly also negated by CIRP Regulations 2016. Regulation 25 deals with "voting by the Committee". Sub-regulation (5) was substituted in Regulation 25. Regulation 25 is as follows:-

> ***"25. Voting by the committee.***
>
> *(1) The actions listed in section 28(1) shall be considered in meetings of the committee.*
>
> *(2) Any action other than those listed in section 28(1) requiring approval of the committee may be considered in meetings of the committee.*

(3) [The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.]

(4) At the conclusion of a vote at the meeting, the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting.

(5) The resolution professional shall-

(a) circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and

[(b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open, from the circulation of the minutes, for such time as decided by the committee which shall not be less than twenty-four hours and shall not exceed seven days:

Provided that on a request for extension made by a creditor, the voting window shall be extended in increments of twenty-four hours period:

Provided further that the resolution professional shall not extend the voting window where the matters listed for voting have already received the requisite majority vote and one extension has been given after the receipt of requisite majority vote.]

(6) The authorised representative shall circulate the minutes of the meeting received under sub-regulation

(5) to creditors in a class and announce the voting window at least twenty four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.]"

16. Regulation 26 provides for "voting through electronic means". When the Regulation itself obliged the Resolution Professional to seek a vote of the members who did not vote at the meeting on the matter listed for voting by electronic voting system, the said Regulation clearly negate the submission of the Appellant that votes have to be necessarily obtained in the meeting by those who are present in the meeting. Those who have not voted in the meeting can thus, are entitled to vote by electronic voting system as is required by Regulations 25 and 26 of the CIRP Regulations. Counsel for the Respondent has also rightly referred to Section 25A (3A) where the concept of Financial Creditors who have cast their votes is found which is concept of present and voting. Section 25A (3A) is as follows:-

*"**25A. Rights and duties of authorised representatives of financial creditors:** (3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote:*

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3)"

17. The legislature thus, in above provision clearly provided that voting is to be taken into consideration of those who cast their votes. Section 30(4) is a provision requiring special majority for passing a special resolution. When the statute provides for passing any resolution by special majority that has its purpose and object, requirement of special majority for passing a Resolution Plan and that too 66% of voting share of the Financial Creditors, has to be given its meaning and purpose.

18. Counsel for the Appellant in support of his submission has relied on BLRC Report. Certain paragraphs of BLRC Report 2015 need to be noted. Counsel for the Appellant has relied on paragraph 5.3.1 of the BLRC Report which deals with "steps at the start of the IRP" in which at Item No.4 is creation of the Committee and discussion in Item No.4 on the following part reliance has been placed by the Appellant:-

> *"The voting right of each creditor will be the weight of their liability in the total liability of the entity from financial creditors. The calculation for these weights will need to take into account all the contractual agreements between the creditor and debtor, so that the weight is the net of all these positions. The rules to calculate the weights of the creditors will be specified by the Regulator. If a creditor chooses not to participate in the negotiations, despite having been so informed, the vote of creditors committee will be calculated without the vote of this creditor."*

19. When we look into subsequent paragraphs of the same report, paragraph 5.3.3 deals with "obtaining the Resolution to insolvency in the

IRP", thus, resolution means approval of the Resolution Plan and in the said paragraph, it is clearly mentioned that what constitutes majority vote is provided in the Code. Following is observed at Page 221 of the rejoinder.

> *"The remaining mechanics of the process to acquire solutions and communicating these to the creditors committee is left to the management by the RP as described in Box 5.9. The Code states how the RP can call the creditors committee, and what constitutes majority vote. Once the majority is obtained as stated in the Code, the RP will have to obtain a signed agreement to the solution by the creditors committee, and submit it to the Adjudicator before the end of the maximum period for the IRP. This solution will be the outcome of the IRP."*

20. Thus, how the majority vote of the CoC is to be computed, the report clearly refers to the Code, hence, reliance of Appellant on Paragraph 5.3.1 at Item No.4 which refers to participate in the negotiation is not relevant for computing the majority of the Financial Creditor in the voting of the Resolution Plan. Thus, the submission of the Appellant that BLRC Report supports the submission of the plan cannot be accepted.

21. Now we come to the judgment of this Tribunal by Appellant in ***"Tata Steel Ltd."*** (supra). The Adjudicating Authority in the impugned order has noticed the judgment of this Tribunal in ***"Tata Steel Ltd."*** (supra) decided on 04.02.2019. This Tribunal in paragraphs 45 and 46, following has been observed:-

"45. A member of the 'Committee of Creditors' who is not present in the meeting either directly or through Video Conferencing and thereby not considered its feasibility and viability and such other requirements as may be specified by the Board, their voting shares, therefore, cannot be counted for the purpose of counting the voting shares of the members of the 'Committee of Creditors'. Therefore, we hold that only the members of the "Committee of Creditors' who attend the meeting directly or through Video Conferencing, can exercise its voting powers after considering the other requirements as may be specified by the Board. Those members of the 'Committee of Creditors' who are absent, their voting shares cannot be counted.

46. We find that the 'Resolution Plan' submitted by 'JSW Steel' has been approved by the 'Committee of Creditors' with 97.12% voting shares and voters having 2.88% voting shares remained absent. If some members of the 'Committee of Creditors' having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their shares should not have been counted for the purpose of counting the voting shares of the 'Committee of Creditors'. In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of 'JSW Steel', we hold that the 'Resolution Plan' submitted by JSW Steel' has been approved with 100% voting shares."

22. In the above case, although it was held that those members of the CoC who remained absent cannot be held that they had considered the feasibility and viability and other requirements, therefore, their shares should not have counted for the purpose of counting the voting share of the CoC, but in the above case, CoC with 97.12% have voted in favour of the plan and only 2.88% voting share has abstained and this Tribunal has held that excluding their shares shall have no effect on the approval of the plan.

23. Another order relied by the Appellant was order dated 10.06.2019 in ***"IDBI Bank Ltd. v. Mr. Anuj Jain, RP, JP Infratech Ltd. and Another (Company Appeal (AT) (Insolvency) No. 536 of 2019)"*** which relied on judgment of ***"Tata Steel Ltd."*** (supra). The above judgment of this Tribunal was delivered on 04.02.2019 as noted above. The Hon'ble Supreme Court in ***"K. Sashidhar"*** (supra) which judgment was delivered subsequently on 05.02.2019 had interpreted Section 30(4) and categorically laid down the law on the subject. This Tribunal while delivering its judgment dated 04.02.2019 did not have benefit of judgment of the Hon'ble Supreme Court.

24. Now we proceed to notice the judgment of the Hon'ble Supreme Court in ***"K. Sashidhar"*** (supra) which is relied by Counsel for the Respondent and sought to be distinguished by the Appellant. It is useful to notice the facts of the said case which have been noticed in paragraph 6 of the judgment. In the above case, the CoC held its meeting on 27.10.2017 where proposal submitted by Corporate Debtor was approved by members of Committee of Creditors only 55.73% voting share in which three Banks

namely— Oriental Bank of Commerce, Central Bank of India and Bank of Maharashtra having 29.12% voting share informed that they remained open and awaiting approval from the sanctioning authority. Oriental Bank of Commerce and Bank of Maharashtra have conveyed their approval whereas Central Bank of India conveyed its disapproval to the revised plan. Hon'ble Supreme Court noticed that the voting share of consenting banks was only 66.67% and voting share of dissenting bank was 26.97%. In the said case, NCLT took the view that those Financial Creditors who chose not to participate in the voting, the votes and majority be counted without their votes. NCLT took the view that those who participated and approved were 78.63%, hence, the plan is approved which order in the appeal was set aside by the NCLAT against which order the matter travelled to the Hon'ble Supreme Court. It is useful to notice following part of paragraph 6 of the order:-

> *"**6.** .....After interacting with the bankers, a counter proposal was given by the corporate debtor which was eventually considered in the 9th CoC meeting held on 27-10-2017. The proposal submitted by the corporate debtor on 26-10-2017, was approved by the members of CoC having only 55.73% voting share, namely, Indian Bank, JM Financial Asset Reconstruction Co. Ltd., Allahabad Bank and Andhra Bank. Indian Overseas Bank having voting share of 15.15%, rejected the resolution proposal and cited reasons through its letter dated 27-10-2017. Three other banks, namely, Oriental Bank of Commerce, Central Bank of India and Bank of Maharashtra, having 29.12% voting share, expressed that they*

remained open, awaiting in-principle approval from their respective sanctioning authority. Eventually, on 30-10-2017, Oriental Bank of Commerce, having 10.94% voting share, sent an email conveying their "in-principle approval" to the proposed resolution plan qua revised OTS scheme and that their final approval would be subject to similar approvals from the co-lenders. On the same day, Bank of Maharashtra, having 6.36% voting share, conveyed that they were open to consider the revised resolution plan. Central Bank of India, having 11.82% voting share, conveyed its disapproval to the revised resolution plan. Resultantly, as on 30-10-2017, the voting share of consenting banks expressly approving the proposed resolution plan was only 66.67% and the voting share of dissenting lender banks was 26.97%. Maharashtra Bank, having 6.36% voting share, had not either approved, rejected or abstained from voting but had conveyed that they remained open to consider the resolution plan. The fact remains that the proposed resolution plan did not garner approval of not less than 75% of voting share of the financial creditors until the resolution professional (IRP) filed an affidavit before the adjudicating authority (NCLT Hyderabad) on 3-11-2017, submitting the outcome of the 9th CoC meeting. The Managing Director of the corporate debtor (KS&PIPL) appeared before the adjudicating authority (NCLT) on 6-11-2017, and also filed a memo on 17-11-2017, inter alia submitting that for the financial creditor who chose not to participate in the voting, the votes and the majority be counted without their vote. In that eventuality, the percentage of financial creditors who chose to participate and who

approved of the resolution plan would work out to 78.63% and therefore, it can be assumed that the resolution plan has been approved by CoC. NCLT Hyderabad vide judgment dated 27-11-2017 [K. Sashidhar v. Kamineni Steel & Power (India) (P) Ltd., 2017 SCC OnLine NCLT 12610] , eventually, allowed the petition filed by the corporate debtor and approved the resolution plan/revised OTS scheme, as submitted by the resolution professional vide affidavit dated 3-11-2017, and further declared that the moratorium imposed on 10-2-2017, ceased to have effect from the date of receipt of copy of the order. A further direction came to be issued that the corporate debtor shall reinstate all the employees who were on the rolls of company. Aggrieved by the said decision, three financial creditors who were part of CoC, namely, Indian Overseas Bank, Central Bank of India and Bank of Maharashtra filed appeals under Section 61 before NCLAT questioning the authority of NCLT Hyderabad, to approve of the resolution plan, despite the fact that the same did not receive approval of not less than 75% of voting share of financial creditors. The Managing Director of the corporate debtor also filed an independent appeal under Section 61 of the I&B Code with reference to the observations made by NCLT Hyderabad regarding the corporate guarantee to be proceeded with. As aforesaid, these appeals were heard together along with appeals concerning another corporate debtor, namely, IIL and came to be disposed of by the common impugned judgment dated 6-9-2018 [Kamineni Steel & Power (India) (P) Ltd. v. Indian Bank, 2018 SCC OnLine NCLAT 654] , wherein it has been held that approval to the

proposed resolution plan by a vote of not less than 75% of voting share of the financial creditors was mandatory and it was not open to the adjudicating authority to disregard the mandate of CoC by adopting a convoluted approach. Against this decision, the Managing Director of the corporate debtor, namely, (KS&PIPL) has filed a civil appeal under Section 62 of the I&B Code in this Court, being Civil Appeal No. 10673 of 2018."

25. Before the Hon'ble Supreme Court, submission was raised that those who did not participate, their votes be not counted for computing the majority. The Hon'ble Supreme Court in the above context has occasion to consider the provision of Section 30(4). In paragraphs 40 and 41 of the judgment, following was held:-

*"**40.** Notably, the resolution plan concerning both the corporate debtors, namely, KS&PIPL and IIL was considered by CoC concerned in October 2017, and was approved by less than 75% of voting share of the financial creditors. The inevitable consequences thereof are to treat the proposed resolution plan as disapproved or deemed to be rejected by the dissenting financial creditors. The expression "dissenting financial creditors", is defined in Regulation 2(1)(f) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to mean the financial creditors who voted against the resolution plan approved by the Committee. This definition came to be amended subsequently w.e.f. 1-1-2018 to mean*

the financial creditors who voted against the resolution plan or abstained from voting for the resolution plan, approved by the Committee.

41. *Admittedly, in the case of the corporate debtor KS&PIPL, the resolution plan, when it was put to vote in the meeting of CoC held on 27-10-2017, could garner approval of only 55.73% of voting share of the financial creditors and even if the subsequent approval accorded by email (by 10.94%) is taken into account, it did not fulfil the requisite vote of not less than 75% of voting share of the financial creditors. On the other hand, the resolution plan was expressly rejected by 15.15% in CoC meeting and later additionally by 11.82% by email. Thus, the resolution plan was expressly rejected by not less than 25% of voting share of the financial creditors. In such a case, the resolution professional was under no obligation to submit the resolution plan under Section 30(6) of the I&B Code to the adjudicating authority. Instead, it was a case to be proceeded by the adjudicating authority under Section 33(1) of the I&B Code. Similarly, in the case of corporate debtor IIL, the resolution plan received approval of only 66.57% of voting share of the financial creditors and 33.43% voted against the resolution plan. This being the indisputable position, NCLAT opined that the resolution plan was deemed to be rejected by CoC and the concomitant is to initiate liquidation process concerning the two corporate debtors."*

26. The Hon'ble Supreme Court in the above case has noted the amended definition of Regulation 2(1)(f) where the dissenting Financial Creditors who voted against the plan are abstained from voting for the Resolution Plan.

27. It is further relevant to notice that the Hon'ble Supreme Court referring to the Regulations 25 and 39 of the CIRP Regulations 2016 held that Regulation has to be read with Section 30(4). It was clearly held that the percentage of voting share of the Financial Creditors i.e. approving and disapproving is required to be reckoned and it is not on the basis of member present and voting. In paragraph 48, following was held:-

> *"**48.** Concededly, Regulations 25 and 39 must be read in light of Section 30(4) of the I&B Code, concerning the process of approval of a resolution plan. For that, the "per cent of voting share of the financial creditors" approving vis-à-vis dissenting—is required to be reckoned. It is not on the basis of members present and voting as such. At any rate, the approving votes must fulfil the threshold per cent of voting share of the financial creditors. Keeping this clear distinction in mind, it must follow that the resolution plan concerning the respective corporate debtors, namely, KS&PIPL and IIL, is deemed to have been rejected as it had failed to muster the approval of requisite threshold votes, of not less than 75% of voting share of the financial creditors. It is not possible to countenance any other construction or interpretation, which may run contrary to what has been noted hereinbefore."*

28. The Hon'ble Supreme Court, thus, while computing 75% of the vote share which are required to be approval of the plan included those Financial Creditors who abstained from voting and their votes computed for determining 75% majority. Paragraph 48 of the judgment of the Hon'ble Supreme Court categorically interpreted the provision of Section 30(4) and held that the said provision does not indicate the concept of present and voting and those who are present and abstained, their votes shall also be taken into consideration while determining 75% of the majority.

29. We have already noticed the facts as noted in paragraph 6 of the judgment. Facts in paragraph 6 clearly provided that all those who have voted initially and subsequently totalling of **them** was less than 75%. The Hon'ble Supreme Court noticed above that voting share of consenting banks has expressly approving the proposal was only 66.67% and voting share of dissenting bank was 26.97% which also included those who abstained from voting. Counsel for the Appellant sought to distinguish the above judgment on the ground that the said judgment was considering un-amended CIRP Regulations which were amended subsequently and the said judgment is distinguishable. Section 30(4), as noted above, prior to this amendment w.e.f. 23.11.2017 provided the CoC may approve the Resolution Plan by vote of not less than 75% of the voting share of the Financial Creditors. After the amendment also Section 30(4) provided the percentage of voting share of the Financial Creditors and 75% was reduced to 66% w.e.f. 06.06.2018 but the substantive provision which required percentage of voting share of the Financial Creditors remains the same prior to amendment and subsequent

to amendment. The judgment of the Hon'ble Supreme Court in ***"K. Sashidhar"*** (supra) interpreted Section 30(4) in the above context and the amendment of Regulation subsequently on which reliance has been placed by the Appellant that Regulation 2(1)(f) which defines the dissenting Financial Creditor was omitted w.e.f. 05.10.2018 is inconsequential and can have no effect on the interpretation of Section 30(4). As noted above, the Hon'ble Supreme Court has held that Regulation 25 of the CIRP Regulations has to be read in accordance with Section 30(4). Thus, what is contained in substantive provision of Section 30(4) has to be given effect to and Regulations have to be read accordingly. As noted above, Regulation 25 also in no manner supports the submission of the Appellant advanced herein. The requirement of passing a Resolution by 66% of vote shares of Financial Creditors is requirement which has to be fulfilled in all circumstances. 66% cannot be allowed to vary on the ground of presence or absence of a particular Financial Creditor in the meeting of the CoC. As noted above, the expression used in Section 30(4) is "percentage of voting share of the financial creditors". In the above expression, no words can be read as suggested by the Appellant in the percentage of the voting share of the Financial Creditors.

30. In view of the foregoing discussions, we conclude that the requirement as under Section 30(4) passing of Resolution by 66% of vote of Financial Creditors who approved the plan and by computing 66% vote share of all Financial Creditors whether voting for and against and those who abstained from voting have to be counted. Voting shares of the Financial Creditors

clearly includes voting share of all Financial Creditors who have voted in favour of the plan or against the plan as well as those who abstained from voting. We, thus, are of the view that the Adjudicating Authority has rightly rejected the IA No. 483 of 2024 filed by the Appellant. We do not find any error in the order passed by the Adjudicating Authority directing for liquidation which liquidation application was filed in the year 2019 and has been pending before the Adjudicating Authority for such a long period.

31. In result, there is no merit in either of the Appeals. Both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

11th August, 2025

Anjali