

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/228/KOB/2023

IN

CP(IB)/33/KOB/2021

*(Under Section 60(5) of the IBC, 2016, read with
Rule 11 of the NCLT Rules, 2016)*

Date of Institution: 08.06.2023

Order delivered on: 21.11.2025

In the original matter of: -

M/s. Phoenix ARC Private Limited

... Financial Creditor

Vs

M/s. Kerala Chamber of Commerce and Industries

... Corporate Debtor

Memo of Parties: -

Mr. Sumit Khanna, Resolution Applicant of Kerala Chamber of Commerce and Industries, Block No. 9, Flat no. 2, Brady's Apartments, Sorab Bharucha Road, Colaba, Mumbai-400 005
sumitkhanna@hotmail.com.

... Applicant.

Vs.



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KOCHI BENCH

IA(IBC)/228/KOB/2023

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In re: Phoenix ARC Private Limited Vs. Kerala Chamber & Commerce & Industries

1. Mr. Jossy Stephen Kattur, Resolution Professional (RP), Kerala Chamber of Commerce and Industry Reg. No. IBBI/IPA-001/IP-P01773/2019-20/12702, XXXVII/801, Shanmugam Road, Kochi-682 031. Email:- kccicirp@gmail.com.
2. Committee of Creditors of Kerala Chamber of Commerce and Industry XXXVII/801, Shanmugam Road, Kochi-682 031. Email: - rajendranparipillil@yahoo.co.in, ajit.kewin@phoenixarc.co.in.
3. Kerala Trade Centre Owners' Association, Reg.No. EKM/TC/130/2022, Kerala Trade Centre Building, Marine Drive, Kochi-682 031 Represented by its Secretary, Smt. M.U. Vijayalakshmi, E-mail-jajubabu@gmail.com.

... Respondents.

Coram:

Hon'ble Member (Judicial) : Shri. Vinay Goel.
Hon'ble Member (Technical) : Smt. Madhu Sinha

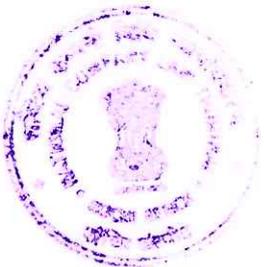
Appearances:

For the Applicant

: Mr. Dhruv Dewan, Advocate

For the Respondent No.1

: Mr. Akhil Suresh, Advocate.



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For the Respondent No. 2 : Set *Ex-parte* vide order dated
10.09.2024 .

For the Respondent No. 3 : Mr. Terry V James. Advocate.

ORDER

Per: Coram

1. The application has been filed by the Resolution Applicant of the Kerala Chamber of Commerce and Industries under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following reliefs: -

- a) To direct the Respondent No. 1 to appoint a third valuer for determining the fair value and liquidation value of the Corporate Debtor, and his valuation report be considered as final;
- b) In the alternative to (a), to direct the RP to appoint two new valuers for determining the average fair value and liquidation value of the Corporate Debtor;
- c) To injunct the Respondent No. 1 from issuing a fresh Form G for calling EOLs;
- d) Upon the revised liquidation value being available in terms of prayers (a) or (b) above, place the Resolution Plan of the Applicant before the CoC for voting in accordance with the Code and the CIRP Regulations;
- e) *Ex-parte* ad interim prayers in terms of the above.

2. The Applicant Financial Creditor filed Company Petition (IB) No. 33/KOB/2021 for initiation of the corporate insolvency resolution process ("CIR Process") under Section 7 of the Code against the Corporate Debtor,



which was admitted by this Adjudicating Authority vide order dated 21.02.2022. The Respondent No. 1 was appointed as the resolution professional ("RP") of the Corporate Debtor, replacing the Erstwhile RP on 17.03.2023. The Respondent No. 2 is the committee of creditors ("CoC") of the Corporate Debtor. The Respondent No. 3 is the registered association of all homebuyers in the Corporate Debtor who constitute the majority of CoC with a voting share of 69.06%.

3. SUBMISSIONS MADE BY THE APPLICANT

- a) The present Application has been filed by Mr. Sumit Khanna, the Resolution Applicant in respect of Kerala Chamber of Commerce and Industries ('Corporate Debtor'). He had submitted a Resolution Plan dated 11.12.2022, which was subsequently reslated and resubmitted on 26.02.2023 ('Resolution Plan') before the erstwhile Resolution Professional ('Erstwhile RP').
- b) The Erstwhile RP had appointed two registered valuers, Mr. Rama Kurup Sanjeevan and Mr. Kalayatholil Thankappan Gangadharan ("Valuers"), to carry out the valuation in accordance with the applicable valuation standards, following physical verification of the Corporate Debtor's inventory and fixed assets. The Valuers thereafter submitted their valuation reports to the Erstwhile RP. However, based on the liquidation value ("LV") indicated by the current RP in his observations on the compliance of the Resolution Plan with the Code and the Regulations, it prima facie appears that the methodology adopted by the Valuers for valuing the assets of the Corporate Debtor was flawed and materially erroneous.



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- c) The Corporate Debtor had entered into a Joint Venture Agreement dated 09.03.2011 (“JV”), which was subsequently modified/renewed on 08.12.2013 and 05.08.2020, with Cherupushpam Films (P) Ltd. (“CFL”) for the development of a project titled *Kerala Trade Centre* on land owned by CFL. Under the terms of the JV, the parties agreed that the net income—after deducting all expenses related to the construction of the building complex, including actual costs, charges, loan repayments, etc.—arising from the sale of the constructed area to prospective buyers would be shared between them in the ratio of 60:40. Accordingly, CFL would be entitled to 60% of the net proceeds, while the Corporate Debtor would be entitled to the remaining 40% from the construction and sale of the apartments and commercial spaces.
- d) The Corporate Debtor owns only one fixed asset—its office building, *Chamber Corner*—situated on 6.3 cents of land belonging to the Corporate Debtor. According to the Applicant, the market value of this property is approximately INR 5 crores. Apart from this, the Corporate Debtor does not possess any other major asset of significant value. Therefore, the Applicant was taken aback upon being informed, through the Mandatory Compliance Report issued by Respondent No. 1, that the Resolution Plan was considered non-compliant on the ground that it did not meet the minimum payout requirements based on a liquidation valuation of INR 66,67,62,000/- (Indian Rupees Sixty-Six Crores, Sixty-Seven Lakhs and Sixty-Two Thousand only).



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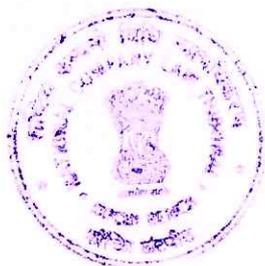
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- e) The Valuers appear to have provided an inflated valuation of the Corporate Debtor by adopting an incorrect methodology, which may ultimately result in the Corporate Debtor being driven into liquidation. Respondent No. 3 has already filed an application (IA No. 99 of 2023) seeking the appointment of a third valuer, contending that the valuation submitted by the existing Valuers is grossly inflated, erroneous, and based on a defective methodology. It is also pertinent to note that the Applicant has lodged complaints before the Insolvency and Bankruptcy Board of India against the Erstwhile RP and the Valuers for alleged contraventions of the provisions of the Code and the applicable Regulations.
- f) The Applicant, through his e-mail dated 10.01.2023, expressed concerns regarding the liquidation valuation of the Corporate Debtor and specifically pointed out inconsistencies in the methodology adopted. It is further submitted that the land on which the Kerala Trade Centre building stands is not owned by the Corporate Debtor. In the event of liquidation, the Corporate Debtor would lose its development rights over the project and, consequently, would not be entitled to receive its 40% share of the net proceeds after deduction of expenses. It is also submitted that certain portions of the land have already been monetised, and the proceeds have been received and apportioned between the Corporate Debtor and CFL. Therefore, according to the Applicant, the liquidation value attributable to the said building is effectively nil.



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- g) In the present case, the liquidation valuation of the Corporate Debtor must be undertaken by duly considering the absolute interest of the homebuyers in the units, as mandated under Section 11(4)(h) of the Real Estate (Regulation and Development) Act, 2016. The land on which the Kerala Trade Centre building has been constructed is not owned by the Corporate Debtor, and therefore, cannot form part of its assets for valuation purposes, failing which it would amount to double counting. Likewise, the apartments/units that have already been sold cannot be included in the value of the Corporate Debtor, since the homebuyers hold absolute ownership rights over such units. On a broad assessment, the current valuation appears to be manifold higher than the actual and realistic value of the Corporate Debtor, as it seemingly treats 100% of the land and building as assets of the Corporate Debtor, despite the fact that the Corporate Debtor has no ownership over them. Even assuming the Corporate Debtor to be a going concern, these components would not qualify to be included in its liquidation value in any event.
- h) The Erstwhile RP acted in direct contravention of Regulation 35(1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), as he failed to appoint a third valuer for the Corporate Debtor despite a specific request from the financial creditors in a class, namely the homebuyers. Under the said provision, the Erstwhile RP was obligated to appoint a third valuer where such a request is made by the Committee of Creditors ("CoC"),



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which is precisely the situation in the present CIR Process. A reading of the minutes of the 10th CoC meeting held on 03.03.2023 clearly reflects that the Erstwhile RP had deliberately misinterpreted the provision to deny the homebuyers rights conferred upon them under the Code.

- i) On 10.05.2023, the Applicant addressed an e-mail to the RP highlighting the erroneous valuation and the inconsistencies in the methodology adopted.
- j) On 21.05.2023, the RP informed the Applicant via e-mail that the Committee of Creditors had decided not to consider the Resolution Plan submitted by him. The CoC also rejected the Applicant's e-mail dated 10.05.2023 seeking additional time to submit a revised Resolution Plan. It was further communicated that the CoC had unanimously resolved to issue a fresh Expression of Interest ("EOI") inviting new proposals.
- k) Although the said e-mail does not specify the reasons for rejection, it appears that the Resolution Plan submitted by the Applicant was purportedly rejected on the ground that the RP found it to be non-compliant with the Code and the Regulations, particularly because it did not provide for payment of the allegedly inflated and incorrectly computed liquidation value payable to dissenting financial creditors. It is also unclear whether the CoC independently arrived at its decision after considering the RP's prima facie observations, as required under settled law, or whether it merely adopted the RP's views without separate evaluation. Without prejudice to the



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foregoing, this is not a case where the Resolution Plan has been rejected on the basis of the CoC's commercial wisdom; rather, the purported rejection stems solely from a defective computation of the liquidation value. The Resolution Plan, inter alia, provides for the completion of construction and delivery of the allotted units, thereby fully securing the interests of all allottees by ensuring repayment of their principal amounts.

- l) The RP has already issued two Expressions of Interest ("EOIs") dated 07.05.2022 and 06.08.2022, along with addendums dated 28.05.2022 and 30.08.2022 to each of the respective EOIs. In these circumstances, the Respondents cannot now issue a fresh EOI, as doing so would be in clear violation of Regulation 36(4A) of the CIRP Regulations.
- m) In view of the above circumstances, the Applicant is constrained to file the present Application, inter alia, seeking a direction to the present RP to appoint fresh valuers and an additional valuer for undertaking a proper valuation of the Corporate Debtor.

2. The reply affidavit dated 28.06.2023 furnished by the 1st Respondent states as follows: -

- a) Respondent No. 1 is the RP of the Corporate Debtor. The Applicant in the present Application is a resolution applicant who had originally submitted his Resolution Plan before the erstwhile RP on 11.12.2022 and subsequently resubmitted a modified version on 26.02.2023. The Resolution Plan has already been rejected by the CoC as non-



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compliant in both the 11th and 14th CoC meetings. Accordingly, the Applicant has no locus standi to maintain the present petition, as the CoC, in its commercial wisdom, has unequivocally rejected the Plan for non-compliance, and such rejection is not open to challenge before this Adjudicating Authority.

- b) The Committee of Creditors (CoC) exercises a pivotal authority under Sections 30 and 31 of the Insolvency and Bankruptcy Code, to evaluate and approve a resolution plan submitted for the revival of a distressed company.
- c) Since the CoC has already appointed fresh valuers in the 13th CoC meeting, the relief sought in this regard has become infructuous.
- d) The Applicant has sought a direction to restrain Respondent No. 1 from issuing a fresh Form G for inviting EOIs. In this regard, the Respondent No. 1 submits that the said relief has become infructuous, as a fresh Form G has already been issued. Moreover, although the Applicant has filed this Application seeking an injunction against the issuance of a fresh Form G and subsequently sought further directions to restrain any action pursuant to the newly issued Form G, he has deliberately suppressed the fact that he himself submitted an EOI in response to the re-issued Form G.
- e) The Respondent No. 1 submits that the Applicant must either participate in the resolution process by submitting a fresh EOI or challenge the issuance of Form G on the merits. However, the Applicant is attempting to do both—participating in the process while simultaneously challenging it. It is a settled principle of law that



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a person who voluntarily participates in a fresh invitation for EOIs cannot thereafter question or assail the same, having by his conduct forfeited the right to raise such a challenge.

- f) The Applicant has sought an injunction restraining Respondent No. 1 from issuing a fresh Form G for inviting EOIs. The Respondent No. 1 submits that this relief has become infructuous, as a fresh Form G has already been issued. Furthermore, although the Applicant has filed the present Application seeking to restrain the issuance of a fresh Form G and has also sought further directions to prevent any steps pursuant to the newly issued Form G, he has deliberately suppressed the fact that he himself submitted an EOI in response to the re-issued Form G.
- g) Both this Respondent/RP and the erstwhile RP had, on multiple occasions, communicated to the Applicant the preliminary compliances required under the I&B Code and had provided sufficient opportunities to carry out the mandatory modifications to the Resolution Plan as stipulated under Section 30 of the Code. The Resolution Plan submitted by Mr. Sumit Khanna was first placed before the CoC in the 11th meeting held on 16.03.2023, during which the homebuyer class holding 69.04% voting share was absent. Subsequently, in the 11th CoC meeting held on 16.06.2023, the CoC passed the following resolution in respect of the Applicant's Resolution Plan:
- i. *The COC have given the PRA four chances (enough opportunities) to modify and submit an unconditional Plan in compliance with IBC/IBBI/RFRP provisions; however, the PRA failed to rectify the*



- non-compliances, including Sec 29A and improve the Plan in order to meet the requirements u/s 30(2) of IBC 2016.*
- ii. *The Plan submitted by PRA is much below the liquidation Value.*
- iii. *Further, the Hon'ble NCLT has extended the timeline for a further 60 days after 330 days as a special circumstance, and the CIRP period is ending on 20th March 2023. Further continuing with a Non-Compliant plan would only result in increasing the CIRP cost and is not beneficial for all stakeholders.*
- iv. *Since only 4 days are left for the CIRP period to end, COC directed RP to approach Hon'ble NCLT for necessary direction /orders, since there is no more time for COC to convene a meeting and to take further decisions.*
- h) The reasons cited by the erstwhile RP for rejecting the Applicant's Resolution Plan are duly recorded and highlighted in the minutes of the 11th CoC meeting.
- i) The Respondent No. 1 had communicated to the Applicant his preliminary observations on the Resolution Plan and requested the Applicant to submit a modified plan at the earliest. The operative portion of these observations is reproduced below:-

Reasoning & Conclusion

Prima facie, the Resolution Plan submitted doesn't unconditionally, unequivocally provide for the payment of CIRP Costs, payment to operational creditors, including Govt dues and other dues, and also payment for dissenting financial creditors. Hence, it is not in compliance with Section 30(2) (a)&(b) of the I&B Code 2016.

The average liquidation value of the KCCI & KTC prepared by the valuers has been communicated to you by the former RP, and the same is Rs 66.67 Cr. Hence, assuming the liquidation value as NIL in the resolution plan submitted is against the objective /requirement of the I&B Code 2016.

Only upon modifying the Resolution Plan as per the above requirement of Section 30(2)(a) & (b) of I&B Code 2016, RP will



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be in a position to present the Plan before the CoC and take the views of the CoC for other commercial aspects which require further evaluation and modifications. Upon submission of a compliant resolution plan as per Section 30(2) (a) & (b), by considering the liquidation value as Rs 66.67 Crores, RP reserves the right for further evaluation of the plan with regard to any other compliances or aspects.

In view of the above, a specific undertaking is required to be given by RA with regard to the compliance of Sec 30(2) (a) and (b) of 1&B Code 2016. There exists a lot of ambiguity in the wording provided in the Plan with regard to the compliance of said section. As the resolution applicant is bound to comply with the above-mentioned Section 30(2) (a) and (b) of 1&B Code 2016, an unconditional undertaking by RA for compliance with the above section as part of the resolution plan will enable the RP to place the Plan before COC

As per the Plan provided, your assumption of liquidation value is NIL. but as per the valuation done during the CIRP process by the former RP, the liquidation value arrived is Rs. 66.67 Crores. Hence, you are bound to submit the plan considering the said value of Rs 66,67 Crores as the minimum base value in the Resolution Plan for settlement of the claims, and request to submit a modified plan in compliance.

The Plan submitted by you, which considers the liquidation value as NIL, cannot be accepted and be placed before COC. Hence, it will be in the best interest of all stakeholders if the RA makes the modifications and resubmits an unambiguous Resolution Plan along with the said undertaking to the RP on or before Monday, the 10th of May 2023. Since all the above-mentioned points have been a matter of communication for quite some time now, no further time can be entertained, and the time provided till 10th May 2023 shall be the last and final.

- j) The Respondent No. 1 further placed the Resolution Plan for discussion and voting in the 14th CoC meeting held on 15.05.2023, wherein the CoC, with 100% voting, resolved that the Resolution Plan submitted by Mr. Sumit Khanna was not in compliance with Section



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30(2) of the Code, despite having been afforded multiple opportunities to make the necessary modifications.

- k) Following the CoC's rejection of the Resolution Plan, the Respondent No. 1 requested the Applicant to provide his bank account details for the refund of the EMD. However, the Applicant declined to furnish the required details.
- l) Regulation 36(4A) merely restricts the modification of an existing invitation for expression of interest to not more than once. The Respondent No. 1 submits that neither the Code nor the Regulations curtail the CoC's right to issue a fresh Expression of Interest in Form G. The said amendment applies only to repeated modifications of an already issued Form G. Therefore, the Applicant's interpretation of Regulation 36(4A) is misconceived and has no application to the present facts. In this case, the Resolution Plan was unanimously rejected by the CoC, necessitating the issuance of a fresh Form G.

3. The reply affidavit dated 01.08.2023 furnished by the 3rd Respondent states as follows: -

- a) During the 8th meeting of the Committee of Creditors (CoC) held on 11.01.2023, the erstwhile RP informed the members that he had received the Resolution Plan; however, he also stated that, in his view, the Plan was not in compliance with the provisions of the Code.
- b) Consequently, the Applicant resubmitted a modified Resolution Plan on 26.02.2023. It is pertinent to note that the Plan submitted by the Applicant was found to be non-compliant and was rejected in both the 11th and 14th meetings of the CoC. Therefore, the Applicant has



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no locus standi to maintain the present petition, as the CoC, in its commercial wisdom, has rejected the Plan for non-compliance, leaving no valid grounds for challenge. The CoC is vested with the authority to evaluate and approve a resolution plan under Sections 30 and 31 of the Code, and its commercial decisions are not subject to interference by this Tribunal in the absence of any material irregularity or statutory violation. Since the Resolution Plan submitted by the Applicant has already been rejected by the CoC, the present Application is not maintainable and is liable to be dismissed with costs, as the Applicant's attempt appears to be directed towards forcing the Corporate Debtor into liquidation, which is contrary to the primary objective of the Code.

- c) The CoC had appointed new valuers in the 13th CoC Meeting held on 28.04.2023; therefore, prayers (a) and (b) have become infructuous. With respect to Prayer (c), a fresh Form G has already been issued by the Resolution Professional, rendering that prayer also infructuous. It is further submitted that, having participated in the fresh invitation for Expression of Interest, the Applicant is now estopped from challenging the same. Moreover, the former RP had, on multiple occasions, informed the Applicant regarding the necessary compliances under the IBC and had afforded sufficient opportunities to make the required modifications to the resolution plan.
- d) The reasons recorded by the erstwhile RP for rejecting the Applicant's resolution plan are clearly reflected in the minutes of the 11th CoC Meeting. The present RP also communicated his



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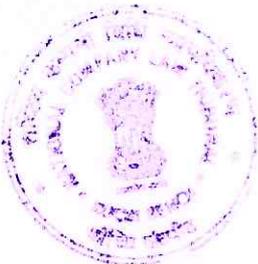
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preliminary observations on the resolution plan to the Applicant and requested that a revised and compliant resolution plan be submitted at the earliest.

- e) Prima facie, the Resolution Plan submitted by the Applicant does not unconditionally or unequivocally provide for the payment of CIRP costs, dues payable to operational creditors (including Government dues), or amounts payable to dissenting financial creditors. Consequently, the plan fails to comply with Section 30(2)(a) and (b) of the Code. Further, the average liquidation value of KCCI and KTC, as determined by the valuers and communicated to the Applicant by the former RP, is Rs. 66.67 crore. Therefore, the assumption of a NIL liquidation value in the submitted plan is illogical and contrary to the objectives of the Code.
- f) The Resolution Applicant is required to furnish an undertaking regarding compliance with Section 30(2)(a) and (b) of the Code. However, the Resolution Plan contains ambiguity concerning such compliance. Since the Applicant is obligated to adhere to these statutory requirements, an unconditional undertaking incorporating compliance with the aforesaid provisions is necessary to enable the RP to place the plan before the CoC. Further, the Applicant is required to submit the Resolution Plan by considering Rs. 66.67 crores as the minimum base value for settlement of the claims.
- g) The 1st Respondent placed the Resolution Plan before the CoC for discussion and voting in the 14th CoC meeting held on 15.05.2023. In that meeting, the CoC, with 100% voting share, resolved that the



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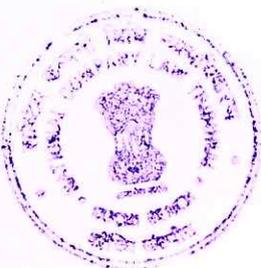
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Applicant's Resolution Plan was non-compliant with Section 30(2) of the Code, despite having afforded the Applicant several opportunities to rectify and modify the plan.

- h) The Applicant contends that, in terms of Regulation 36(4A), an Expression of Interest (EOI) cannot be modified more than once. However, the said regulation pertains only to modifications of an existing EOI and merely restricts such modification to a single instance. It does not, in any manner, limit or prohibit the CoC from issuing a fresh EOI. Therefore, the Applicant's interpretation of Regulation 36(4A) is misconceived and has no relevance to the present case.
- i) Furthermore, even if the Applicant's argument is assumed to be correct, the period of exclusion of time already granted to the Corporate Debtor would become meaningless, as the timelines for issuance of EOI, RFRP, and submission of the resolution plan had already expired.
- j) In terms of Regulation 39(1A), a resolution applicant may modify a resolution plan only once, and that too with the approval of the Resolution Professional. In the present case, the plan submitted by the Applicant is admittedly non-compliant on several grounds under Section 30(2) of the Code. Consequently, the Applicant is now estopped from making any further modifications to the resolution plan.

4. On 23.08.2023, the Applicant filed his rejoinder and stated as follows: -



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- a) The Resolution Professional (“RP”) and the Committee of Creditors (“CoC”) rejected the Resolution Plan submitted by the Applicant on alleged non-compliance with Section 30(2) of the Insolvency and Bankruptcy Code, 2016. Such rejection was arbitrary, mala fide, unsustainable, and based on wholly flimsy and baseless grounds. Thereafter, the RP proceeded to unlawfully issue a fresh Form G on 07.06.2023 inviting new Expressions of Interest (“EoIs”), in clear violation of Regulation 36A(4A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”). Alarming, pursuant to this illegal issuance of Form G, certain members of the CoC themselves submitted EoIs and were consequently included in the revised list of Prospective Resolution Applicants (“PRAs”), thereby rendering them eligible to submit a fresh resolution plan for the Corporate Debtor. The rejection of the Applicant’s Resolution Plan appears to have been orchestrated solely to allow specific CoC members—who were already privy to the financial and commercial details of the Applicant’s Plan—to re-enter the process as PRAs, defeating the basic principles of fairness, transparency, and integrity of the CIRP.
- b) Pursuant to the appointment of the Resolution Professional (“RP”) by this Adjudicating Authority vide order dated 17.03.2023, the RP, through an email dated 14.04.2023 at 7:27 PM, forwarded a preliminary review of the Resolution Plan submitted by the Applicant. In response, the Applicant, vide email dated 14.04.2023 at



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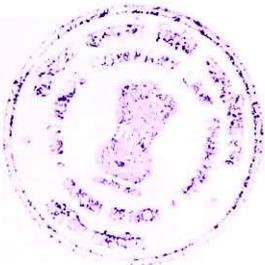
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9:18 PM, acknowledged the RP's comments and stated that the same would be reviewed and duly addressed.

- c) Subsequently, vide email dated 25.04.2023, the Applicant submitted its detailed response to the RP's preliminary review. However, no further communication was received from the RP. Thereafter, the Applicant, through an email dated 05.05.2023 at 11:12 AM, sought the RP's views on the response already furnished. The RP, vide email dated 05.05.2023 at 3:34 PM, replied stating that unless the mandatory compliance requirements under the Code were fully and unconditionally met, the Resolution Plan could not be placed before the Committee of Creditors ("CoC").
- d) Thereafter, the Applicant, through an email dated 10.05.2023 at 1:23 AM, furnished a comprehensive clarification addressing all alleged concerns raised by the RP in relation to the Applicant's Resolution Plan.
- e) The Applicant was taken aback upon receiving an email dated 10.05.2023 at 7:58 PM from the Resolution Professional ("RP"), wherein the RP stated that the Resolution Plan could not be placed before the Committee of Creditors ("CoC") for its consideration and approval, and that this decision would be communicated to the CoC for their information and further directions. In response, the Applicant, vide email dated 10.05.2023 at 10:48 PM, clarified that the time sought earlier was solely for the purpose of rectifying the erroneously computed liquidation value that had entered the CIR



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Process due to the joint misconduct of the erstwhile RP and the registered valuers.

- f) A perusal of the minutes of the 14th meeting of the Committee of Creditors (“CoC”) held on 15.05.2023 clearly demonstrates that the Resolution Professional (“RP”) has deliberately misconstrued and misinterpreted the Applicant’s email dated 10.05.2023 sent at 1:23 AM. The RP wrongfully projected the said email as an alleged admission by the Applicant that the Resolution Plan was non-compliant with the Insolvency and Bankruptcy Code, 2016 (“Code”) and that the Applicant was seeking four weeks’ time to amend the Plan.
- g) The RP has, ex facie, ignored the Applicant’s categorical reference to the time required for adjudication of the application filed by Respondent No. 3 before this Adjudicating Authority seeking, inter alia, the appointment of a new registered valuer—proceedings which were expected to culminate in a correct determination of the liquidation value. The RP has also conveniently disregarded the pending complaints filed by the Applicant before the IBBI against the erstwhile registered valuers.
- h) The Applicant had merely stated that upon redetermination of the liquidation value, if any modification to the Resolution Plan became necessary in light of the revised liquidation value, the Applicant would accordingly make such amendments. It was solely in this context that the Applicant had indicated a willingness to submit a revised Resolution Plan, if required. In any event, the Applicant’s



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email dated 10.05.2023 also contained detailed responses to each of the alleged non-compliance issues raised by the RP.

- i) In the minutes of the 11th meeting of the Committee of Creditors (“CoC”), the erstwhile Resolution Professional (“RP”) had raised several purported issues regarding the alleged non-compliance of the Applicant’s Resolution Plan. However, the present RP, through emails dated 14.04.2023 and 05.05.2023, confined the alleged non-compliance concerns to only three aspects, namely: (i) payment of CIRP costs, (ii) determination of liquidation value and corresponding payments to operational creditors and dissenting financial creditors, and (iii) the requirement of a specific undertaking from the Applicant in respect of Section 30(2)(a) and 30(2)(b) of the Insolvency and Bankruptcy Code, 2016 (“Code”). The Applicant duly addressed and responded to these issues vide emails dated 25.04.2023 and 10.05.2023.
- j) Accordingly, the Applicant denies the alleged non-compliance issues raised by the RP in the emails dated 14.04.2023 and 05.05.2023 and places reliance on the contents of the emails dated 25.04.2023 and 10.05.2023 as a complete response thereto. Without prejudice to the above, it is evident from a reading of the minutes of the 14th CoC meeting that the sole ground on which the CoC presumed the Applicant’s Resolution Plan to be non-compliant with the Code was the alleged failure to offer at least the minimum liquidation value.
- k) The RP and the CoC concluded—erroneously and without justification—that the total resolution proceeds offered under the



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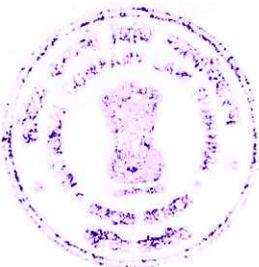
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Applicant's Resolution Plan were substantially below the liquidation value of the Corporate Debtor, and that such liquidation value was required to be treated as a minimum base value for the purposes of the Resolution Plan. However, the rejection of the Applicant's Resolution Plan on this ground is entirely incorrect, untenable, and devoid of merit for, inter alia, the following reasons:

- i. At the outset, it is significant to note that the Homebuyer Association ("Respondent No. 3"), holding 69.06% of the voting share in the Committee of Creditors ("CoC"), has itself filed an application (IA No. 99 of 2023) before this Adjudicating Authority challenging the liquidation value of the Corporate Debtor as determined by the registered valuers appointed by the Resolution Professional ("RP"). The said liquidation value has been assailed as being grossly inflated and astronomical, and the methodology adopted by the valuers has been specifically questioned as erroneous, fundamentally flawed, and unreliable. In such circumstances, the impugned liquidation value cannot form the basis for rejecting the Resolution Plan submitted by the Applicant.
- ii. The Applicant, through emails dated 10.01.2023 and 10.05.2023, had expressly raised concerns regarding the liquidation valuation of the Corporate Debtor, specifically questioning the valuation methodology adopted and highlighting the inconsistencies and discrepancies inherent therein.



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- iii. Furthermore, it is respectfully submitted that, as borne out from the Reply filed by the Resolution Professional (“RP”), the Committee of Creditors (“CoC”), in its 13th meeting held on 28.04.2023—proceedings to which the Applicant was not privy—deliberated upon and directed the appointment of a fresh registered valuer for a re-computation of the liquidation value of the Corporate Debtor. The very decision to appoint a new valuer unequivocally establishes that, even in the view of the CoC, the earlier liquidation value was erroneous, defective, and required fresh determination.
- l) The entire basis on which the Resolution Plan of the Applicant has been rejected by the Resolution Professional (“RP”) and the Committee of Creditors (“CoC”) is fundamentally flawed, impermissible, and devoid of bona fides. This is particularly evident in light of the fact that the homebuyers themselves have challenged the liquidation value before this Adjudicating Authority, and that a fresh registered valuer has also been appointed to re-determine the liquidation value. The rejection of the Applicant’s Resolution Plan on the strength of an admittedly erroneous and unreliable liquidation value is ex facie unsustainable and contrary to the provisions and objectives of the Insolvency and Bankruptcy Code, 2016 (“Code”).
- m) It is further submitted that the CoC has failed to independently evaluate or apply its mind to the merits and commercial feasibility of the Applicant’s Resolution Plan, and has instead proceeded on a mere presumption of non-compliance, solely relying upon the prima facie



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observations of the RP. This is substantiated by the minutes of the 14th CoC meeting, which record no deliberation whatsoever on the commercial terms or substantive aspects of the Applicant's Resolution Plan.

- n) In the present case, the RP and the CoC have acted in a mala fide and arbitrary manner by issuing a fresh Expression of Interest ("EoI") without furnishing any reasons to the Applicant for the rejection of the Resolution Plan. The Plan has been rejected on wholly erroneous and false grounds relating to the flawed computation of the liquidation value, rendering the decision unsustainable in law and on facts.
- o) The issuance of a fresh 'Form G' is expressly barred under Regulation 36A(4A) of the CIRP Regulations. It is evident that certain members of the Committee of Creditors ("CoC")—including the Kerala Trade Centre Owners' Association, Davidroots LLP, individual homebuyer Mr. Tiju Varghese Chacko, and the consortium comprising Mr. Tiju Varghese Chacko and Royal Heights Properties Pvt. Ltd.—have, for the first time since the commencement of the CIR Process on 21.02.2022, been included in the list of Prospective Resolution Applicants ("PRAs").
- p) The sequence of events leading to the rejection of the Applicant's Resolution Plan and the subsequent issuance of a fresh 'Form G' is not only illegal and contrary to the Insolvency and Bankruptcy Code, 2016 ("Code") and the CIRP Regulations, but also clearly indicative of a premeditated effort to enable certain CoC members to enter the CIR



Process at a belated stage. This has been done despite such members having already been privy to the confidential Resolution Plan of the Applicant and having had access to commercially sensitive information pertaining thereto.

- q) Furthermore, the fact that existing CoC members now appear in the new list of PRAs—issued pursuant to the impugned Form G—reveals the true intent and underlying purpose behind the rejection of the Applicant’s Resolution Plan, namely, to allow these CoC members to participate as PRAs after having gained knowledge of the commercial terms of the Applicant’s Plan. Such conduct on the part of the RP and the CoC is mala fide, contrary to the express prohibitions of the Code, and strikes at the very foundation of the CIRP framework.
- r) The newly inducted Prospective Resolution Applicants (“PRAs”), having already had access to and reviewed the Resolution Plan submitted by the Applicant, ought not to be permitted to participate in the bidding process to the prejudice of the Applicant, who has been diligently engaged in and committed to the Corporate Insolvency Resolution Process (“CIRP”) for over 18 months with bona fide intent to resolve the Corporate Debtor. It is a well-settled position in law that a resolution plan cannot be disclosed or made accessible to any third party, including competing resolution applicants. The circumstances of the present case, therefore, stand in direct contravention of the settled legal principles governing confidentiality and competitive fairness in the CIRP.

ANALYSIS AND FINDINGS: -



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5. The Counsel for the Applicant argued his case, and thereafter parties were directed to submit a written submission. Ultimately Applicant failed to file a written submission, and there was no appearance on behalf of the Applicant. So, this case was reserved on 07.11.2025 and decided on the basis of the submission already made and the material available on record.
6. Based on the pleadings, documents, and submissions, it is evident that the Resolution Plan submitted by the Applicant was considered in multiple CoC meetings and was consistently found to be non-compliant with the mandatory requirements under Section 30(2) of the Insolvency and Bankruptcy Code, 2016. Despite being granted repeated opportunities to rectify the deficiencies, the Applicant failed to submit a compliant plan within the permitted timelines. The CoC, in its 11th and 14th meetings, unanimously rejected the Resolution Plan, holding it to be non-compliant, and the commercial wisdom of the CoC, being paramount, cannot be interfered with by this Adjudicating Authority unless there is a finding of illegality, arbitrariness, procedural irregularity, or violation of statutory provisions—none of which have been established in the present case.
7. The applicant seeks to challenge the commercial wisdom of the CoC, which is impermissible in law. We have examined the judgment of the Hon'ble Supreme Court in ***K. Sashidhar v. Indian Overseas Bank & Ors.***, ((2019) 12 SCC 150), wherein the Court held as follows:
- "52..... Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed*



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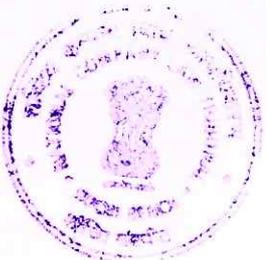
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*about Company Appeal (AT) (Insolvency) No. 1803 of 2024 the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their them of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. **The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.***

8. The Hon'ble Supreme Court has unequivocally held that the decision of the CoC in approving or rejecting a resolution plan lies beyond the scope of judicial review, save for limited grounds. The Tribunal cannot allow third parties with no locus to indirectly assail such commercial decisions.
9. Thereafter, we have gone through the decision of Hon'ble NCLAT in ***Dr C. Bharath Chandran Vs. M/s. Sabine Hospital and Research Centre Pvt. Ltd. (Company Appeal (AT) (CH) (Ins) No. 320 of 2022)***, wherein the Hon'ble Tribunal held that: -

"25. At this instance, it is also essential to understand that the NCLT & NCLAT has limited Judicial Review Jurisdiction', while dealing with the approval or rejection of the Resolution Plan' which has to be within four corners of section 30(2) of I & B Code, 2016, insofar as the 'Adjudicating Authority' is concerned and section 32 read with section 61(3) of the Code insofar as the Appellate Tribunal' is concerned and under no circumstances the 'Adjudicating



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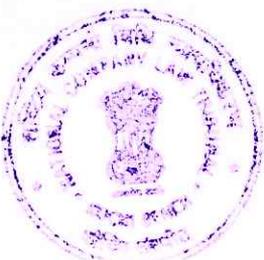
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Authority' or the Appellate Tribunal can trespass upon the commercial decision of the 'Committee of Creditors'. This concept was looked broadly in one of the judgments of Apex Court i.e. in the matter of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. wherein it was held that

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such 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 all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e) as the provisions of the Code a real so provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditor store-submit such plan after satisfying the aforesaid parameters. There as on given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass there solution plan, other things being equal"

26. This Appellate Tribunal' is very conscious of the fact that "Liquidation' should be the last resort as this virtually tantamount to death knell of the



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'Corporate Debtor', However, it is also to be considered that the Corporate Insolvency Resolution Process' proceedings are required to be completed within stipulated period as stipulated in Insolvency & Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, herein this case the 'Adjudicating Authority' has taken all the precaution and action to ensure that the 'Corporate Debtor' is kept as a going concern. However, coming to the end of the wall with no further option left, the 'Adjudicating Authority' had to issue Impugned Order' for the Liquidation' in the Order' dated 02.06.2022.

27. Hence, it is clear from the above discussion that the 'Adjudicating Authority' has no jurisdiction and/or authority to analyse or evaluate the decision of the Committee of Creditors' to enquire into the justness of the rejection of the 'Resolution Plan' by the dissenting Financial Creditors".

10. This Tribunal observes that the Committee of Creditors (CoC) has been conferred a pivotal and determinative role in the corporate insolvency resolution process. Endowed with substantial autonomy and guided by its commercial wisdom, the CoC is tasked with identifying and approving the most viable resolution measures for the corporate debtor while ensuring a balanced consideration of the interests of all financial stakeholders. The Hon'ble Supreme Court, as well as various appellate forums, have consistently affirmed the primacy of the CoC's commercial decisions, noting that such decisions are made by experts competent to evaluate intricate financial and restructuring considerations. Consequently, the settled legal position is that judicial interference with the CoC's commercial wisdom must remain circumscribed and may be invoked only where the impugned



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decision is demonstrated to be arbitrary, perverse, or in contravention of the provisions of the Code.

11. It is further observed that the CoC had already appointed fresh valuers in the 13th CoC Meeting held on 28.04.2023, rendering prayers (a) and (b) in the application infructuous. Insofar as prayer (c) is concerned, a fresh Form G was issued, and the Applicant himself participated in the new EOI process. Having voluntarily participated, the Applicant cannot now be permitted to challenge the same, as such conduct is hit by the doctrine of approbation and reprobation. The relief sought is, therefore, not only infructuous but also untenable.
12. The Applicant's reliance on Regulation 36(4A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is also misplaced. The said regulation restricts modification of an existing EOI to only once, but it does not curtail the power of the CoC to issue a fresh EOI. The interpretation sought to be advanced by the Applicant is therefore misconceived and not applicable to the present circumstances. It is also clear from the record that the Applicant failed to comply with Section 30(2)(a) and 30(2)(b) of the Code, as the plan did not unconditionally provide for mandatory payments such as CIRP costs, dues of operational creditors including Government dues, and amounts payable to dissenting financial creditors. The unilateral assumption of NIL liquidation value is contrary to law, to the valuations communicated by the RP, and to the objectives of the Code.
13. Further, in terms of Regulation 39(1A) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant is not entitled to



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make any additional modifications to the Resolution Plan, particularly when the plan has already been rejected by the CoC with 100% voting and a fresh Form G has been issued. In view of the above, it is clear that all substantive prayers in this application have either become infructuous or relate to matters falling squarely within the CoC's commercial discretion. Therefore, no grounds exist for interference under Section 60(5) of the Code.

14. Accordingly, the Application, **IA(IBC)/228/KOB/2023 is devoid of merit and stands dismissed.** No order as to costs.
15. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
16. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd /-

**MADHU SINHA
(MEMBER TECHNICAL)**

Sd /-

**VINAY GOEL
(MEMBER JUDICIAL)**

Signed on this the 21st day of November, 2025.

R*/LRA



Certified to be True Copy-
[Signature]
Deputy Registrar
National Company Law Tribunal
Kochi Bench