

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1876 of 2025

[Arising out of Order dated 14.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court -VI in CA (IBC)/240/PB/2020 alongwith IA/4424/ND/2024 & IA/5555/ND/2024 in C.P. IB No. 1237/PB/2018]

In the matter of:

**Mehar Bhoomi Bhawan Pvt Ltd.,
(Formerly Known as Mehar Footwear Pvt Ltd.)**

...Appellant

Vs.

**Shashi Bhushan Prasad,
RP of Angad Infrastructure Pvt Ltd. & Ors.**

...Respondents

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Giriraj Subramaniam, Mr. IPS Oberoi, Ms. Aadhyaa Khanna, Ms. Bijaharini G., Mr. Yash Tandon, Advocates.

For Respondent: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Abhishek Anand, Ms. Shruti Munjal, Ms. Heena Kochar, Ms. Palak Kalra, Ms. Trisha Dhara, Advocates for Resolution Professional.

Mr. Arun Kathpalia, Sr. Advocate. With Mr. Abhishek Parmar, Advocates for Indo Jatalia Holdings Limited. Mr. Arvind Nayar, Sr. Advocate with Mr. Aslam Ahmed, Ms. Kheyali Singh, Mr. Abhishek Dwivedi, Ms. Diksha Dadu, Advocates.

Mr. Arijit Prasad, Sr. Advocate with Mr. Kunal Godhwani, Ms. Kinjal Chadha, Advocates for Omkara ARC.

Mr. Karan Gandhi, Ms. Riya Jain, Advocate, Advocates for Bank of India.

J U D G M E N T
(22nd December, 2025)

Ashok Bhushan, J.

This Appeal by a Successful Resolution Applicant has been filed challenging the order dated 14.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi, Court-VI by which Adjudicating Authority disposed of CA (IBC)/240/PB/2020 filed by the Resolution Professional praying for approval of the Resolution Plan of the Appellant, by remanding the Resolution Plan to the Committee of Creditors (CoC) for reconsideration. By the same order IA/4424/ND/2024 & IA/5555/ND/2024 were also disposed of. Appellant aggrieved by the impugned order has come up in this Appeal.

2. Brief background of the facts giving rise to the Appeal are:-

2.1. Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor- 'Angad Infrastructure Private Limited' commenced vide order dated 25.10.2018 passed by the Adjudicating Authority on application filed by Edelweiss Asset Reconstruction Company Limited, the Financial Creditor. IRP made a public announcement on 27.10.2018 inviting the claims one SICOM Limited filed its claim on 12.11.2018 in Form C as a Financial Creditor which was rejected by Resolution Professional. Resolution Professional suggested the SICOM Limited to submit claim in Form F in category of other creditors. IFCI also submitted its claim to the Resolution Professional in Form C as Financial Creditor which was rejected by

Resolution Professional. IRP on 19.11.2018 submitted a report of constitution of the CoC consisting (i) Edelweiss Asset Reconstruction Company Limited- 78.63% and (ii) Bank of India-21.37%. In pursuance of the issuance of Form-G, Expression of Interest was submitted by Mehar Footwear Private Limited, a registered company vide its letter dated 22.04.2019. There was one more Expression of Interest received from One City Infrastructure Private Limited. Provisional list of eligible Resolution Applicants were published in which the name of Mehar Footwear Private Limited was included. The Resolution Plan of the Appellant was considered by the CoC and revised final Resolution Plan dated 09.10.2019 was submitted by the Appellant. The CoC in its 8th CoC meeting dated 23.10.2019 approved the Resolution Plan of the Appellant with 100% vote share. On 30.10.2019, Letter of Intent was issued to the Appellant. Appellant submitted bank guarantee of Rs. 1,54,00,000/ as well as deposit by way of unconditional financial bank guarantee with some delay which was condoned by the CoC in the year 2019 itself. After Appellant furnished the performance security and unconditional financial bank guarantee in December 2019, the Resolution Professional filed a plan approval application bearing CA/240/PB/2020 before the Adjudicating Authority on 03.01.2020 along with the prayer of extension of 49 days. The Adjudicating Authority has allowed the prayer for extension of CIRP on 14.03.2023. On 01.09.2023, IFCI Limited assigned its debt to Omkara Asset Reconstruction Private Limited. SICOM Limited assigned its debt to Indo Jatalia Holdings Limited by Assignment Deed dated 27.02.2024. On 24.04.2024, the Adjudicating Authority disposed of the application filed by the applicants-

IFCI bearing CA No. 702 of 2019 and SICOM bearing MA No. 702 of 2019 directing the Resolution Professional to re-verify the claim of the Applicant-Omkara Asset Reconstruction Private Limited as a Secured Creditor and Indo Jatalia Holdings Limited as a Financial Creditor. In pursuance of the order of the Adjudicating Authority dated 24.04.2024, Resolution Professional verified the claim and classified Omkara Asset Reconstruction Private Limited as “other secured creditor” and Indo Jatalia Holdings Limited as a “Financial Creditor”. Consequently, the CoC was re-constituted with (i) Edelweiss Asset Reconstruction Company Limited- 64.97%, (ii) Bank of India- 17.65% and (iii) Indo Jatalia Holdings Limited- 17.38%. Amended constitution of CoC was taken on record by Adjudicating Authority on 29.05.2024. SRA sent a letter dated 15.06.2024 to the Resolution Professional undertaking to rework the amounts payable to various claimants only out of the total proposed plan amount of Rs. 15,41,00,000/-. On 05.07.2024, CoC passed the Resolution to replace the Resolution Professional with Mr. Shashi Bhushan Prasad. Adjudicating Authority allowed IA No.3546 of 2024 permitting replacement of Resolution Professional with Mr. Sashi Bhushan by order dated 18.07.2024. CoC in its 15th meeting held on 16.08.2024 passed a resolution with 100% votes directing the Resolution Professional to file an application for withdrawal of the plan approval application and seeking permission to allow CoC to issue a fresh Form G. On 13.06.2025, Resolution Professional issued a letter terminating the letter of intent dated 30.10.2019. Appellant vide letter dated 25.06.2025 objected to the communication received from the Resolution Professional. Resolution Professional filed an IA No.4424 of 2024 seeking

withdrawal of the application bearing CA/240/PB/2020 filed by the erstwhile Resolution Professional for approval of the Resolution Plan. Indo Jatalia Holdings Limited also filed an IA No.5555 of 2024 seeking direction that Resolution Plan of the Appellant be remanded back to the CoC for its reconsideration. CoC held its 20th meeting dated 28.05.2025 where it decided to cancel the LoI dated 30.10.2019 to the Appellant and performance bank guarantee submitted by the Appellant was forfeited. Appellant filed an IA No. 3174 of 2025 seeking condonation of 43 days in furnishing performance bank guarantee of Rs.1,54,00,000/- and unconditional financial bank guarantee of Rs.1,50,000,000/-. Adjudicating Authority on 07.07.2025 observed that there is no provision under the IBC allowing the Adjudicating Authority to condone the delay and it cannot expand their jurisdiction where the CoC has to take a decision. Company Appeal (AT) (Insolvency) No.1312 of 2025 was filed by the Appellant which was disposed of on 26.09.2025 deleting paragraph 7 of the order of the Adjudicating Authority. Appeal was disposed of recording the submission of the Appellant that CoC already condoned the delay in the year 2019. Adjudicating Authority vide order dated 14.10.2025 decided application submitted by erstwhile Resolution Professional CA/240/PB/2020 praying for approval of the plan as well as IA No.4424 of 2024 filed by the new Resolution Professional for withdrawal of the plan approval application as well as IA No.5555 of 2025 filed by Indo Jatalia Holdings Limited. All the applications were disposed of. Adjudicating Authority after noticing the submission of the parties, in one paragraph gave its reasons for sending the

Resolution Plan for reconsideration. Paragraph 14 of the impugned order is as follows:-

“14. In view of the aforesaid observations and discussions, the following points emerge:

i) The proposed Resolution Plan does not provide for the payment to Secured Creditor in terms of Section 53 of the Code.

ii) There has been a change in the constitution of the CoC and Indo Jatalia Holdings Limited being the new member of the CoC did not have the opportunity to deliberate/assent/dissent to the proposed Resolution plan.

iii) Subsequent to the reconstitution of the CoC, an issue regarding the eligibility of the Successful Resolution Applicant was raised and certain procedural irregularities were pointed out in the CIR Process. It was pointed out that while submitting EoI, the Successful Resolution Applicant constituted a consortium of 2 members, whereas, in the list of PRA's only one member of the consortium was included. The same was discussed at length in the 18th and 19th CoC meetings held on 19.04.2025 and 16.05.2025, respectively. Accordingly, the CoC passed a resolution in its 19th meeting to cancel the Letter of Intent dated 30.10.2019 for breach of the conditions laid down under Detailed Invitation for Expression of Interest.

In view of the aforesaid, we are of the opinion that the proposed Resolution Plan needs reconsideration. We therefore deem it fit to remand the Resolution Plan to the CoC for its reconsideration. Since the CIRP of the

Corporate Debtor was commenced in 2018 and a long time has passed, therefore, the CoC is directed to take a decision in the best interest of the Corporate Debtor within a period of 90 days from the date of pronouncement of this Order.”

2.2. Three points were noted by the Adjudicating Authority which were basis for remanding the Resolution Plan to the CoC for reconsideration.

3. We have heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant, Shri Abhijeet Sinha, Learned Senior Counsel for the Resolution Professional, Shri Arun Kathpalia, Learned Senior Counsel for Indo Jatalia Holdings Limited, Shri Arijit Prasad, Learned Senior Counsel for Omkara ARC, Shri Arvind Nayar, Learned Senior Counsel for the Asset Care and Reconstruction, Member of the CoC and Shri Karan Gandhi, Learned Counsel for Bank of India.

4. Appellant has also filed various IAs along with Appeal. IA No. 7312 of 2025 has been filed seeking exemption from filing certified copy of the impugned order. Application for exemption from filing certified copy of the impugned order is allowed.

5. IA No.7313 of 2025 has been filed seeking exemption from filing translated typed copies of the dim/illegible annexures. We find sufficient cause to allow the application.

6. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Appellant challenging the impugned order submits that all the three reasons provided in paragraph 14 of the impugned order are incorrect and erroneous

and does not furnish any valid ground to remand the Resolution Plan for reconsideration and not to consider the application CA/240/PB/2020 for approval of the Resolution Plan. It is submitted that the CoC had approved the Resolution Plan of Appellant with 100% vote share. Adjudicating Authority could not sit in Appeal over the commercial wisdom of the CoC. All the three reasons given in the impugned order has no substance and could not be reason to remand the Resolution Plan. It is submitted that the Adjudicating Authority had not even adverted to the clauses of the Resolution Plan which provided pay-outs to all creditors.

6.1. Coming to reason (i) given in paragraph 14 of the impugned order, it is submitted that the SRA has proposed maximum infusion under the plan and liability of the Resolution Applicant to settle all the claims of all the creditors and stakeholders is Rs.15,41,00,000/-. The Resolution Plan has referred to the application filed by SICOM Limited and IFCI and provided for consideration and dealing of the said claim in the Resolution Plan which has not even been adverted to by the Adjudicating Authority. The claim of the secured creditor who is represented by Omkara Asset Reconstruction Private Limited was very much noticed in the plan. Resolution Applicant being well aware of the pending application before the Adjudicating Authority and has contemplated 'nil' payment to other creditors. Thus, the observations of the Adjudicating Authority that proposed Resolution Plan does not provide for the payment to secured creditors in terms of Section 53 of the Code. The said observations is misplaced. The present is a case where creditors have

been dealt in the Resolution Plan and was not a case of liquidation under Section 53.

6.2. Coming to the reason (ii) given by the Adjudicating Authority in paragraph 14, it is submitted that Indo Jatalia Holdings Limited, assignee of SICOM Limited, has been inducted in the CoC only after order passed by the Adjudicating Authority on 24.04.2024. There was no occasion for Indo Jatalia Holdings Limited who has subsequently been come in the reconstituted CoC to have opportunity to deliberate assent or dissent on the plan. The plan having already been approved as per Regulation 12(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the inclusion of a financial creditor to the CoC from the date of inclusion of the claim shall not affect the validity of any decision taken by the committee prior to such inclusion. The Adjudicating Authority has not even adverted to Regulation 12(3) and has expressed erroneous view that Indo Jatalia Holdings Limited who came in the committee only in the year 2024 was required to give an opportunity to deliberate assent or dissent to the plan.

6.3. Coming to the reason (iii) given by the Adjudicating Authority in paragraph 14, it is submitted that the Resolution Plan was submitted by the Appellant who is incorporated entity. The Resolution Plan of the Appellant was not by a consortium. LoI dated 22.04.2019 has been submitted by SRA through its Directors- Mr. Pradeep Kumar Lathar and Mr. Dharmendra Narula. The Resolution Plan and the CoC found the SRA fully eligible fulfilling all the necessary criteria and the plan was approved. Clause 5(iv) of

the RFRP which was taken into consideration by the CoC for taking a decision regarding ineligibility of the SRA has no application since the Resolution Plan was not submitted by a consortium. Furthermore, there is no change in the constitution as it was at the time of filing of the plan. Shareholding pattern of the Appellant reflected that Mr. Dharmendra Narula and Mr. Amit Narula each held 50% shareholding. Subsequently, the shares of Mr. Amit Narula who continues to be Director of the Appellant were transferred to Mr. Pradeep Kumar Lathar who is also an existing Director at the time of submission of the Resolution Plan. Three original directors continue in the office and fourth Director Mr. Aayush Lathar, son of Mr. Pradeep Kumar Lathar, was appointed as Director who holds no share. The constitution of the CoC still the same and there is no change in the control of the SRA. There was no basis or reason to observe that there was any breach of condition laid down in the EoI. It is submitted that sequence of the events in the present case indicate that the Resolution Plan which was approved with 100% vote share of the CoC on 23.10.2019 it was after about more than 4½ years that Resolution Professional was changed and the new Committee of Creditors with Indo Jatalia Holdings Limited has been inducted by 17.38% vote share decided to recall the Resolution Plan approval application and to cancel the letter of intent issued to the SRA which is impermissible in law. The Resolution Plan which was approved by the CoC is binding on the CoC and CoC has no authority or jurisdiction to withdraw from Resolution Plan on any reason. Edelweiss Asset Reconstruction Company Limited and Bank of India still holds 82.62% voting share and by a new member incumbent in the company who came

into existence only in the year 2024 can be said to have no authority to take a decision to recall the plan approval application or cancel LoI given to the SRA. The decision of the CoC to recall the plan approval application and to cancel the letter of intent is clearly without jurisdiction and malafide to harm the interest of the SRA.

7. Learned Senior Counsel appearing for Omkara Asset Reconstruction Private Limited submits that Omkara Asset Reconstruction Private Limited whose predecessor IFCI's claim was accepted by the Adjudicating Authority on 24.04.2024 as secured creditor contends that Omkara Asset Reconstruction Private Limited having held secured creditor and the Resolution Plan which does not provide for any pay-out to the secured creditor is contrary to the provision of Section 30(2) and the plan is not in compliance of Section 30(2). He has relied on judgment of the Hon'ble Supreme Court in **"Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr.- (2024) 6 SCC 767"**. It is submitted that the Hon'ble Supreme Court in the case of Greater Noida Industrial Development Authority (supra) who was also held to be secured creditor has remanded the Resolution Plan for reconsideration. On the same principle, Omkara Asset Reconstruction Private Limited was also entitled for pay-outs as secured creditor and Appellant having not provided any pay-out is not in conformity with law and the Adjudicating Authority has rightly remanded the plan.

8. Shri Arun Kathpalia, Learned Senior Counsel for Indo Jatalia Holdings Limited who has been admitted in the CoC with 17.38% by order

dated 24.04.2024 submits that the Resolution Plan is not in compliance with Section 30(2) since it does not provide for any payment to the secured creditor. Adjudicating Authority has rightly remanded the plan for reconsideration. The plan being not in conformity with Section 30(2). It is further submitted that the composition of SRA having been changed subsequent to the submission of the Resolution Plan without information or obtaining the consent of the lenders, the same is contrary to the RFRP and the SRA is no more eligible to continue as the SRA.

9. Counsel for the Resolution Professional supporting the impugned order contends that the plan has rightly been remanded back by the Adjudicating Authority for reconsideration. There being no payment provided for secured creditors in the plan, plan is not in conformity with Section 30(2). Counsel for the Resolution Professional referring to clause 5(iv) of RFRP, it is submitted that it was obligatory for the SRA not to change its composition during the Resolution Plan process. Composition of SRA having been changed, it is no more eligible which aspect was examined by the CoC and decision was rightly taken to cancel the letter of intent as well as to recall the application filed for approval of the Resolution Plan.

10. Counsel appearing for other members of the CoC Edelweiss Asset Reconstruction Company Limited and Bank of India also supported the impugned order.

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

12. The Resolution Plan submitted by Appellant was approved with 100% vote share of the CoC in its 8th CoC meeting held on 23.10.2019 with Edelweiss Asset Reconstruction Company Limited having 78.63% voting share and Bank of India having 21.37% voting share. In pursuance of the approval of the plan, Appellant also deposited performance bank guarantee and the performance security and further deposit of Rs.1,54,00,000/- and Rs.1,50,00,000/- in December 2019 and thereafter on 03.01.2020, the Resolution Professional filed an application CA (IBC)/240/PB/2020 for approval of the Resolution Plan which application remained pending and could be decided only by the impugned order dated 14.10.2025. The Adjudicating Authority vide order dated 24.04.2024 disposed of CA No. 702 of 2019 and MA No. 702 of 2019 where the claim of Omkara Asset Reconstruction Private Limited was to be verified as a secured creditor and Indo Jatalia Holdings Limited as a financial creditor. The Resolution Professional in pursuance of the order dated 24.04.2024 verified the claim of Omkara Asset Reconstruction Private Limited (assignee of IFCI) as 'other secured creditor' and Indo Jatalia Holdings Limited (assignee of SICOM Limited) as 'financial creditor'. The CoC was reconstituted and amended. The list of CoC was taken on record on 29.05.2024 with following constituents:

- (i) Edelweiss Asset Reconstruction Company Limited- 64.97%
- (ii) Bank of India – 17.65%
- (iii) Indo Jatalia Holdings Limited – 17.38%

13. The reconstituted CoC took a decision on 16.08.2024 in its 15th CoC meeting directing the Resolution Professional to file an application for withdrawal of the plan approval application and seeking permission to allow the CoC to issue fresh Form G. The Resolution Professional sent a letter dated 13.06.2025 terminating the LoI of the Appellant which was objected by the Appellant by detailed communication dated 25.06.2025. CoC in its 20th CoC meeting held on 28.05.2025 has taken a decision to cancel the LoI.

14. The first question which need to be noticed is as to whether after plan approval application which plan was approved with 100% vote share and plan approval application having filed on 03.01.2020, CoC could have held 15th CoC meeting on 16.08.2024 and 20th CoC meeting on 28.05.2025 affecting the plan approval application pending for approval. In this context, we may refer to Regulation 18(2) in which an *explanation* has been added by Notification dated 16.09.2022 w.e.f. 16.09.2022. Regulation 18(2) along with the *explanation* is as follows:-

“18. Meetings of the committee.- (2) A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights.

[Explanation: For the purposes of sub-regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which

do not affect the resolution plan submitted before the Adjudicating Authority.]”

15. Regulation clarified that the CoC meeting be convened till the resolution plan is approved under sub-section (1) of section 31 and the CoC can decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority. Both the decision came to be taken by the CoC in 15th CoC meeting on 16.08.2024 and 20th CoC meeting on 28.05.2025 are clearly affecting the Resolution Plan submitted before the Adjudicating Authority. Both the above decisions of the CoC were in excess of authority and in clear breach of Regulation 18(2) explanation. Learned Counsel for the Appellant is also right in his submission that after approval of the plan by the CoC, the said Resolution Plan is binding on CoC and CoC cannot be allowed to withdraw the Resolution Plan in any manner.

16. Counsel for the Appellant has referred to judgment of the Hon’ble Supreme Court in **“Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Limited and Anr.- (2022) 2 SCC 401”** where Hon’ble Supreme Court has categorically held that the Resolution Plan approved by the CoC is binding between the CoC and the Resolution Applicant. We may refer to paragraphs 115 and 116 of the judgment of the Hon’ble Supreme Court which is as follows:-

“115. While the above observations were made in the context of a scheme that has been sanctioned by the Court, the Resolution Plan even prior to the approval of the Adjudicating Authority is binding inter se the CoC and the successful Resolution Applicant. The

*Resolution Plan cannot be construed purely as a 'contract' governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the Adjudicating Authority. Even at that stage, its binding effects are produced by the IBC framework. The BLRC Report mentions that "[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors"*⁶⁸. The BLRC Report also mentions that, "the RP submits a binding agreement to the Adjudicator before the default maximum date". We have further discussed the statutory scheme of the IBC in Sections I and J of this judgement to establish that a Resolution Plan is binding inter se the CoC and the successful Resolution Applicant. Thus, the ability of the Resolution Plan to bind those who have not consented to it, by way a statutory procedure, indicates that it is not a typical contract.

116. The BLRC Report, which furnished the first draft of the IBC and elaborated on the aims behind the overhaul of the insolvency regime, refers to a CoC approved Resolution Plan as a 'binding contract' in one instance and refers to it as a 'binding agreement' in other instances. The report also refers to a CoC-approved Resolution Plan as a 'financial arrangement', 'revival plan' or a 'solution'. The interchangeability of the terms – 'agreement', 'contract', 'financial arrangement', 'revival plan' and 'solution' indicates that there is no clear intention of the BLRC in characterizing the nature of the Resolution Plan as a contract. The binding effect of the Resolution Plan has the consequence of

preventing the CoC or the Resolution Applicant to renege from its terms after the plan has been approved by the CoC through a voting mechanism. The fleeting mention of a 'binding contract' on one occasion in the BLRC Report (which was a prelegislative text that underwent subsequent modifications by the Legislature) to indicate the binding nature of the Resolution Plan and the finality of negotiations once it is approved by the CoC, does not establish the legal nature of the document, especially when it is not complemented by the text and design of the IBC”.

17. The same proposition has been reiterated by the Hon'ble Supreme court in **“State Bank of India and Ors. vs. Consortium of Murari Lal Jalan and Florian Fritsch and Another- (2025) 4 SCC 354”** where the same principle has been laid down in following paragraphs:-

“125. In light of the aforesaid, it is clear that the existing insolvency framework does not provide any scope for effecting further modifications or withdrawals of the Resolution Plan approved by the CoC, at the behest of the successful resolution applicant, once the plan has been submitted to the adjudicating authority. The submitted Resolution Plan is binding and irrevocable as between the CoC and the successful resolution applicant in terms of the provisions of the IBC, 2016 and the 2016 Regulations as well. In other words, once a CoC-approved resolution plan is submitted to the Adjudicating Authority i.e., NCLT, it immediately becomes binding on the CoC and the SRA, even if the Adjudicating Authority has not yet given its

stamp of approval on the same. While deciding so, this Court re-emphasized the object under Section 31(1) of the IBC, 2016 and observed that once the Adjudicating Authority has approved the plan under Section 31(1) of the IBC, 2016, the Resolution Plan is binding on all the stakeholders including those stakeholders who are not direct participants of the CIRP. Therefore, there is absolutely no scope for modification of the terms of a Resolution Plan which has received the imprimatur of the Adjudicating Authority, be it by the Adjudicating Authority itself, the CoC or the SRA.”

18. The Resolution Plan which has been approved by the CoC was clearly binding on the Committee of Creditors. The mere fact that Indo Jatalia Holdings Limited has been inducted in the CoC which was reconstituted in pursuance of the order passed on 24.04.2024 shall have no bearing on the Resolution passed by 100% CoC on 23.10.2019. Regulation 12(3) is a clear answer to the said issue. Regulation 12(3) provides as follows:-

“12. Submission of proof of claims.- (3) *Where the creditor in 50[sub-regulation (1)] is [a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim:*

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.”

19. From the sequence of the events, as noted above, it is clear that after Indo Jatalia Holdings Limited was got inducted in the CoC with 17.38% vote share, the CoC started taking a U-Turn from its earlier approval of the plan and the CoC passed two resolutions, as noted above, to withdraw the

Resolution Plan and further to cancel the LoI issued to the SRA which both were beyond the jurisdiction. The fact is that once the CoC has already approved the plan, it has no jurisdiction even if it is reconstituted subsequently to take a U-Turn. Furthermore, Edelweiss Asset Reconstruction Company Limited and the Bank of India still members of the CoC who constitute 82.66% vote share.

20. Now we come to the three reasons given by the Adjudicating Authority, as noted above, on which basis the Adjudicating Authority has remanded the plan to the CoC for reconsideration.

21. (i) *The proposed Resolution Plan does not provide for the payment to Secured Creditor in terms of Section 53 of the Code.* Learned Counsel for the Appellant has referred to various provisions of final Resolution Plan dated 09.10.2019 which Resolution Plan contains financial proposal for outstanding debt. Clause 4.1.1.1 contains the details of category of claims, verified amount and proposed payments. Paragraph 4.1.1.1 is as follows:-

“4.1. Acquisition of Management Control

4.1.1. Proposal for Outstanding Debt

4.1.1.1. This Resolution Plan outlines the payment to be made to creditors and stakeholders of the Corporate Debtor, as follows.

Sr. No.	Category of Claims	Verified Amount	Proposed Upfront Payment on Effective Date	Proposed Deferred Payment within Deferred Payment Period.
<i>A</i>	<i>Insolvency</i>	<i>Not Known</i>	<i>Actuals as</i>	

	<i>and Resolution Process Cost</i>		<i>approved by CoC</i>	
<i>B</i>	<i>Payment towards claims</i>			
<i>1</i>	<i>Financial Creditors</i>	<i>512,99,39,554.62</i>	<i>1,54,10,000</i>	<i>13,86,90,000</i>
<i>2</i>	<i>Operational Creditors</i>			
<i>2A</i>	<i>Workmen and Employees</i>	<i>Nil</i>	<i>Nil*</i>	<i>Nil</i>
<i>2B</i>	<i>Statutory Dues</i>	<i>Nil</i>	<i>Nil*</i>	<i>Nil</i>
<i>2C</i>	<i>Other Operational Creditors</i>	<i>2,500</i>	<i>Nil*</i>	<i>Nil</i>
<i>3</i>	<i>Other Creditors (as per Regulation 9A)</i>	<i>15,63,15,276</i>	<i>Nil*</i>	<i>Nil</i>
	Total	512,99,39,554.62	1,54,10,000	13,86,90,000

**The Liquidation value and the Fair Market Value of the Corporate Debtor is not known to the Resolution Applicant. However, in the event pursuant to knowledge of liquidation value if in compliance with the provisions of Section 53 of the IBC, 2016 any amount becomes payable to creditors mentioned in Serial No. 2 to 3, the Resolution Applicant shall provide for such allocation which complies with the statutory requirement.”*

22. Omkara Asset Reconstruction Private Limited who have been held to be secured creditor its claim has been admitted as in the category of other creditor. Regulation 9(A) of the CIRP Regulations, 2016 provides for claim by other creditors. Regulation 9(A) is as follows:-

“9A. Claims by other creditors.- (1) A person claiming to be a creditor, other than those covered under [regulation 7, 8, 8A or 9], shall submit [its claim with proof] to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the [Schedule-I].

(2) The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of –

(a) the records available in an information utility, if any, or

(b) other relevant documents sufficient to establish the claim, including any or all of the following:-

(i) documentary evidence demanding satisfaction of the claim;

(ii) bank statements of the creditor showing non-satisfaction of claim;

(iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.]”

23. In Paragraph 4.1.1.1, as noted above, other creditors are mentioned in Serial No.3 and the proposed payment shown in the pay-outs is ‘nil’. Further, paragraph 4.1.1.1 refers to maximum infusion of Rs.15,41,00,000/-. Further, in the end of 4.1.1.1, there is a (star) paragraph, which is as follows:-

*“*The Liquidation value and the Fair Market Value of the Corporate Debtor is not known to the Resolution Applicant. However, in the event pursuant to knowledge of liquidation value if in compliance with the provisions of Section 53 of the IBC, 2016 any amount becomes payable to creditors*

mentioned in Serial No. 2 to 3, the Resolution Applicant shall provide for such allocation which complies with the statutory requirement.”

24. The Resolution Applicant, thus, has undertaken to provide for compliance of statutory requirements under Section 53. The question to be considered is as to whether secured creditor is entitled for any statutory requirement. Applicant has undertaken that if any amount become payable to creditors as mentioned at Serial Nos.2 and 3, Resolution Applicant shall provide for such allocation which complied with statutory requirement. For finding out as to whether under the Resolution Plan who are the creditors who are entitled for statutory payment, we need to refer Section 30(2). Section 30(2) of the IBC provides 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 [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 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 purpose 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(18 of 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.”

25. Section 30(2)(b) was inserted by Act 26 of 2019 by which certain statutory payments are provided for operational creditors as well as financial creditors who do not vote in favour of the Resolution Plan. Both the above categories were mandated to pay amount which was payable to them in event the liquidation of the Corporate Debtor is made under Section 53. The other creditors do not fall in any of the category under Section 30(2)(b), hence, the other creditors are not mandatory required to pay any amount in the Resolution Plan. It may be true that in liquidation under Section 53, a secured creditor will be entitled to receive payment but we in the present

case are concerned with the Resolution Plan. Omkara Asset Reconstruction Private Limited who has been admitted in the category of other creditor does not fall in any of the category under Section 30(2)(b) who are mandated statutory payment. We need to notice further provisions of the Resolution Plan. Clause C (iv) & (v) which are as follows:-

“C. Financial Creditors

(iv) The Resolution Applicant understands that there are two matters pending before the DRT-1, Delhi filed by Sicom Limited for recovery of a certain sum of money from the Corporate Debtor. The Resolution Applicant further understands that Sicom Limited has filed claim before the Resolution Professional in respect of the same amount which Sicom Limited had claimed under the aforementioned pending matter before DRT-1, Delhi. 1. However, the Resolution Professional has rejected the said claim form and against the said rejection, Sicom Limited has filed an application before NCLT being Company Application No: 702(PB)/2019. The Resolution Applicant proposes that in the event the above application of Sicom Limited is allowed and is held to be financial creditors of the Corporate Debtor, then the Resolution Applicant proposes to pay Sicom Limited as a Financial Creditor in terms of this Plan and the total amount which shall be paid amongst all the Financial Creditor in terms of this Plan shall be Rs.15,41,00,000, on pro-rata basis. In the event, the NCLT rejects the above application, then the Resolution Applicant shall be entitled to seek appropriate directions from the NCL T against them in this regard.

(v) Similarly, the Resolution Applicant understands that there is one matter filed by IFCI Limited under SARFAESI

which is currently pending. The Resolution Applicant further understands that IFCI Limited has filed claim before the Resolution Professional in respect of the same amount which IFCI Limited had claimed under the aforementioned pending matter. However, the Resolution Professional has rejected the said claim form and against the said rejection. IFCI Limited has filed an application before NCLT being Company Application No. 929(PB)/2019. The Resolution Applicant proposes that in the event the above application of IFCI is allowed and is held to be financial creditors of the Corporate Debtor, then the Resolution Applicant proposes to pay IFCI Limited as a Financial Creditor in terms of this Plan and the total amount which shall be paid amongst all the Financial Creditors in terms of this Plan shall be Rs. 15,41,00,000, on pro-rata basis. In the event, the NCLT rejects the above application, then the Resolution Applicant shall be entitled to seek appropriate directions from the NCLT against them in this regard.”

26. Thus, the claim of IFCI which was pending consideration has been duly taken consideration by the Resolution Applicant in its Resolution Plan. It was clear contemplation that payment to all type of creditors shall be made out of Rs.15,41,00,000/- and as noted above, in the plan, other creditors have been proposed ‘nil’.

27. Counsel for Omkara Asset Reconstruction Private Limited has relied on the judgment of the Hon’ble Supreme Court in **“Greater Noida Industrial Development Authority”** (supra). In the above case, Greater Noida has to file its claim as operational creditor whereas Greater Noida has

submitted its claim as financial creditor having security interest. The Resolution Professional did not accept the claim and advice the claim to be filed as operational creditor. In the above case, the Resolution Plan was approved and Greater Noida Authority filed an application for recall of the Resolution Plan which was rejected against which the Appeal was filed. In the above case, the Hon'ble Supreme Court took the view that plan did not meet the requirement of Section 30(2), hence, it was required to be recalled. Recall application filed by Greater Noida was held not barred by time. In paragraphs 54, 54.1, 54.2, 54.3 and 55, following was held by the Hon'ble Supreme Court:-

“54. In our view the resolution plan did not meet the requirements of Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 for the following reasons:

***54.1.** The resolution plan disclosed that the appellant did not submit its claim, when the unrebutted case of the appellant had been that it had submitted its claim with proof on 30.01.2020 for a sum of Rs. 43,40,31,951/- No doubt, the record indicates that the appellant was advised to submit its claim in Form B (meant for operational creditor) in place of Form C (meant of financial creditor). But, assuming the appellant did not heed the advice, once the claim was submitted with proof, it could not have been overlooked merely because it was in a different Form. As already discussed above, in our view the Form in which a claim is to be submitted is directory. What is necessary is that the claim must have support from proof. Here, the resolution plan fails not only in*

acknowledging the claim made but also in mentioning the correct figure of the amount due and payable. According to the resolution plan, the amount outstanding was Rs. 13,47,40,819/- whereas, according to the appellant, the amount due and for which claim was made was Rs. 43,40,31,951/- This omission or error, as the case may be, in our view, materially affected the resolution plan as it was a vital information on which there ought to have been application of mind. Withholding the information adversely affected the interest of the appellant because, firstly, it affected its right of being served notice of the meeting of the COC, available under Section 24 (3) (c) of the IBC to an operational creditor with aggregate dues of not less than ten percent of the debt and, secondly, in the proposed plan, outlay for the appellant got reduced, being a percentage of the dues payable. In our view, for the reasons above, the resolution plan stood vitiated. However, neither NCLT nor NCLAT addressed itself on the aforesaid aspects which render their orders vulnerable and amenable to judicial review.

54.2. *The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD. As per Regulation 37 of the CIRP Regulations 2016, a resolution plan must provide for the measures, as may be necessary, for insolvency resolution of the CD for maximization of value of its assets, including, but not limited to, satisfaction or modification of any security interest. Further, as per Explanation 1, distribution under clause (b) of sub-section (2) of Section 30 must be fair and equitable to each class of creditors. Non-placement of the appellant in the class of secured*

creditors did affect its interest. However, neither NCLT nor NCLAT noticed this anomaly in the plan, which vitiates their order.

54.3. Under Regulation 38 (3) of the CIRP Regulations, 2016, a resolution plan must, inter alia, demonstrate that
 (a) it is feasible and viable; and
 (b) it has provisions for approvals required and the timeline for the same.

In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the COC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of approval does not envisage such approvals. But neither NCLT nor NCLAT dealt with those aspects.

Relief

55. As we have found that neither NCLT nor NCLAT while deciding the application/appeal of the appellant took note of the fact that,-

(a) the appellant had not been served notice of the meeting of the COC;

(b) the entire proceedings up to the stage of approval of the resolution plan were ex parte to the appellant;

(c) the appellant had submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected the appellant as one who did not submit its claim; and

(d) the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016.

We are of the considered view that the appeals of the appellant are entitled to be allowed and are accordingly allowed. The impugned order dated 24.11.2022 is set aside. The order dated 04.08.2020 passed by the NCLT approving the resolution plan is set aside. The resolution plan shall be sent back to the COC for re-submission after satisfying the parameters set out by the Code as expounded above. There shall be no order as to costs.”

28. The above was a case where Resolution Plan was set aside and application for approval of plan was permitted to be recalled and since the Greater Noida was not put in the category of secured creditor and plan does not treated the Appellant as secured creditor. The above was not a case of claim by other creditors and the NOIDA was advised to file claim as operational creditor and it was held that the Resolution Professional was under obligation to verify the claim and the form under which the claim was filed is not relevant. Thus, the above was case of an operational creditor who was held to be secured creditor. An operational creditor who is secured creditor is clearly protected by Section 30(2)(b) and was entitled for the

payment. Thus, there is a clear distinguishing fact from this case. In the present case, the claim of Omkara Asset Reconstruction Private Limited was other secured creditor which is not entitled for statutory payment.

29. Learned Counsel for Omkara Asset Reconstruction Private Limited has placed reliance on the judgment of the Hon'ble Supreme Court in "**Vistara ITCL (India) Limited and Ors. vs. Dinkar Venkatasubramanian and Anr- (2023) 7 SCC 324**". The above was a case where Vistara ITCL (India) Limited was secured creditor of the Corporate Debtor to the extent of share pledged to it by the Corporate Debtor. Vistara ITCL (India) Limited did not file claim and the Resolution Plan was approved in which Vistara ITCL (India) Limited claim was not included. The order passed by the NCLT dated 24.08.2020 was affirmed by the NCLAT against which the Appeal was filed. The Hon'ble Supreme Court did not accept the submission of the Appellant to treat it as financial creditor which acceptance required reference of two earlier judgments of the Hon'ble Supreme Court to larger Bench. Hon'ble Supreme Court accepted second option and in paragraphs 41.1, 41.2 and 42 laid down following:-

"41.1. First is to treat the secured creditor as a financial creditor of the corporate debtor to the extent of the estimated value of the pledged share on the date of commencement of the CIRP. This would make it a member of the CoC and give it voting rights, equivalent to the estimated value of the pledged shares. However, this may require reconsideration of the dictum and ratio of Anuj Jain [Jaypee Infratech Ltd. (Interim Resolution Professional) v. Axis Bank, (2020) 8 SCC

401 : (2021) 2 SCC (Civ) 334] and Phoenix ARC [Phoenix ARC (P) Ltd. v. Ketulbhai Ramubhai Patel, (2021) 2 SCC 799 : (2021) 2 SCC (Civ) 540] , which would entail reference to a larger Bench. In the context of the present case, the said solution may not be viable as the resolution plan has already been approved by the CoC without Appellant 1-Vistra being a member of the CoC. Therefore, we would opt for the second option.

41.2. The second option is to treat Appellant 1-Vistra as a secured creditor in terms of Section 52 read with Section 53 of the Code. In other words, we give the option to the successful resolution applicant — DVI (Deccan Value Investors) to treat Appellant 1-Vistra as a secured creditor, who will be entitled to retain the security interest in the pledged shares, and in terms thereof, would be entitled to retain the security proceeds on the sale of the said pledged shares under Section 52 of the Code read with Rule 21-A of the Liquidation Process Regulations. The second recourse available, would be almost equivalent in monetary terms for Appellant 1-Vistra, who is treated as a secured creditor and is held entitled to all rights and obligations as applicable to a secured creditor under Sections 52 and 53 of the Code. This to our mind would be a fair and just solution to the legal conundrum and issue highlighted before us.

42. We wish to clarify that the directions given by us would not be a ground for the successful resolution applicant — DVI to withdraw the resolution plan which has already been approved by NCLAT and by us. The reason is simple. Any resolution plan must meet with

the requirements/provisions of the Code and any provisions of law for the time being in force. What we have directed and the option given by us ensures that the resolution plan meets the mandate of the Code and does not violate the rights given to the secured creditor, who cannot be treated as worse off/inferior in its claim and rights viz an operational creditor or a dissenting financial creditor.”

30. The Hon’ble Supreme Court gave option to the SRA to secure the rights of secured creditors. Hon’ble Supreme Court consequently modified the order passed by the NCLAT in terms of direction to treat the Appellant as secured creditor. In paragraph 44, following was held:-

“44. *In view of our aforesaid findings, the impugned judgment [Vistara ITCL (India) Ltd. v. Dinkar Venkatasubramanian, 2020 SCC OnLine NCLAT 654] of NCLAT affirming the view [Corpn. Bank v. Amtek Auto Ltd., 2018 SCC OnLine NCLT 24111] taken by the NCLT is partly modified in terms of our directions holding that Appellant 1-M/s Vistra ITCL (India) Ltd. would be treated as a secured creditor, who would be entitled to all rights and obligations as applicable to a secured creditor in terms of Sections 52 and 53 of the Code, and in accordance with the pledge agreement dated 5-7-2016.”*

31. Learned Counsel for Omkara Asset Reconstruction Private Limited contended that the submissions advanced by the Learned Counsel for the Appellant that Omkara Asset Reconstruction Private Limited is entitled to nil payment as per the Resolution Plan is incorrect. In the Resolution Plan,

IFCI, the predecessor in interest of Omkara Asset Reconstruction Private Limited was proposed to be paid the amount on pro-rata basis. Counsel for Omkara Asset Reconstruction Private Limited has referred to part of the Resolution Plan dealt in heading (C) Financial Creditor (v). According to the Counsel for Omkara Asset Reconstruction Private Limited, Resolution Applicant itself proposed that in the event, the application of IFCI is allowed then “the Resolution Applicant proposes to pay IFCI Limited as Financial Creditor in terms of this plan and total amount shall be paid amongst all the financial creditor in terms of this plan shall be Rs.15,41,00,000 on pro rata basis. We find substance in the submission of the Learned Counsel for Omkara Asset Reconstruction Private Limited that Resolution Plan does not propose ‘nil’ payment to the IFCI (now Omkara). When the Resolution Plan specifically provided for pending application by IFCI and proposed that the amount will be paid to the IFCI (now Omkara) on pro-rata basis, plan has to be treated to have proposed payment to Omkara Asset Reconstruction Private Limited on pro-rata basis.

32. Counsel for Omkara Asset Reconstruction Private Limited has also referred to letter dated 15.06.2024 which was written by the Resolution Applicant after order dated 24.04.2024 passed by the Adjudicating Authority directing for admission of the claim of SICOM as secured creditor where Resolution Applicant has written to the Resolution Professional asking Resolution Professional to inform as to amount now admitted in respect of SICOM and IFCI along with the category which is to be paid out of total pay-out of Rs.15,41,00,000. Copy of the letter dated 15.06.2024 which was

written by SRA, Appellant to Resolution Professional has been brought on record as Annexure A-18. It is useful to notice the entire letter dated 15.06.2024 which is as follows:-

**“MEHAR BHOOMI BHAWAN PRIVATE LIMITED
PROPERTY NO. 72/11/2, FIRST FLOOR,
MUNDKA, DELHI 110041
EMAIL ID: meharfootwear@gmail.com
CIN: U19119DL2009PTC193181**

15.06.2024

*Sh. Darshan Singh Anand
Resolution Professional in the matter of
Angad Infrastructure P. Ltd.
New Delhi*

Dear Sir,

(1). This is in respect of our resolution plan (revised) submitted on 09.10.2019 in the matter of Corporate Insolvency Resolution Process of M/s. Angad Infrastructure P. Ltd in CP(IB)No. 1237(PB)/2019.

(2). The said resolution plan had been approved by the "Committee of Creditors' in its 8th meeting held on 23.10.2019 by 100% voting.

(3). Your goodself had submitted our resolution plan to NCLT for approval under section 30(6) r/w section 31 of IBC for approval way back in January 2020 by application CA No. 240/2020. The same is pending for over 4 years due to various reasons, including the applications filed by SICOM Ltd and IFCI Ltd.

(4). We have been keeping abreast of the matter and note that the application of IFCI Ltd numbered as CA-929/2019 has been disposed of by order dated 24.04.2024 by NCLT-VI, New Delhi, even though number has been wrongly written as CA 702/2019 in the

order. The application of SICOM Ltd numbered as MA 702/2019 has also been disposed of by order dated 24.04.2024.

(6). In para C of our resolution plan under the heading "Financial Creditors', we had referred to the aforesaid 2 applications of SICOM Ltd and IFCI Ltd in sub-paras (iv) and (v) and had stated that in the event that the applications are allowed and they are held as 'Financial Creditor/s", then the RA will pay them in terms of the plan and that the total amount which shall be paid amongst all Financial Creditors in terms of the plan will be Rs. 15,41,00,000/-on pro-rata basis.

(7). It had been reiterated in sub-para (vi) of para C of the said resolution plan that "An amount of Rs. 15,41,00,000/- is the maximum payment to be made in this plan against the financial creditors and in no circumstances any additional exposure, in this regard, would be brought on the Corporate Debtor /resolution Applicant".

(8) In view of the aforesaid background, you are requested to advise us as to how to go forward in the matter. Please inform us of the amount/s now admitted in respect of SICOM Ltd and IFCI Ltd, along with their category/ies, so that we may rework the amounts payable to various claimants out of the total layout of Rs. 15,41,00,000/- proposed in the plan.

(9) On hearing from you, we will proceed further as above.

(10) We also request you to endeavour for expeditious approval of the resolution. plan by the Hon'ble NCLT, as the same has is pending for over 4 years.

Thanking you.

Yours faithfully

For Mehar Bhoomi Bhawan P. Ltd

(Formerly known as Mehar Footwear. Ltd)”

33. The letter dated 15.06.2024 written by SRA to Resolution Professional is in accord with the terms of terms and conditions of the Resolution Plan which contemplated that in event, the application filed by IFCI is allowed, payment shall be made.

34. Following the judgment of the Hon'ble Supreme Court in **“Vistara ITCL (India) Limited and Ors.”** (supra) which is relied by the Appellant, we are of the view that the Resolution Applicant having already proposed payment to IFCI (now Omkara), the payment to Omkara Asset Reconstruction Private Limited be made as secured creditor as per the Resolution Plan and letter dated 15.06.2024 of the SRA as noted above. We, thus, hold that the Omkara Asset Reconstruction Private Limited is entitled for payment as per the Resolution Plan and the Resolution Plan cannot be said to be non-compliance of Section 30(2) on the above ground.

35. Now we come to reason (ii) i.e. *“There has been a change in the constitution of the CoC and Indo Jatalia Holdings Limited being the new member of the CoC did not have the opportunity to deliberate/assent/dissent to the proposed Resolution plan”*. We have already noticed Regulation which provides that a change in the constitution of CoC shall not affect earlier decision taken by the CoC. There was no occasion for giving opportunity to Indo Jatalia Holdings Limited to deliberate assent or dissent the Resolution Plan which was approved on 23.10.2019 whereas Indo Jatalia Holdings Limited came into CoC only after order dated 24.04.2024. Regulation 12(3)

clearly provided that there was no requirement of providing any opportunity to Indo Jatalia Holdings Limited to deliberate assent or dissent to the proposed resolution plan. We have further noticed that after plan approval application was submitted before the Adjudicating Authority on 03.01.2020 as per Regulation 18(2) *explanation*, CoC could not have taken any decision which may affect the pending Resolution Plan. The second reason thus, also given by the Adjudicating Authority has no substance.

36. Learned Counsel for the Appellant has relied on judgment of this Tribunal in **“Jatinder Pal Builders Private Limited vs. Sandeep Goel, Resolution Professional for Brys Hotels Pvt. Ltd.- 2023 SCC OnLine NCLAT 1829”** where this Tribunal in paragraph 29 has laid down following:-

“29. We take note of the Regulation 12(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 prescribes that decisions taken by the CoC are not invalidated by a subsequent change in the composition of the COC. Therefore, even though the Appellant was not in the COC when the Final Plan was approved, the approval of the Final Plan by the COC is not vitiated by the subsequent inclusion of the Appellant. Regulation 12(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is reproduced as hereunder :-

"12. Submission of proof of claims.

(3) Where the creditor in sub-regulation (2) is (a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion."

37. The above judgment fully supports the submission of the Appellant that the mere fact that CoC has been reconstituted shall not have any effect on the decision already taken by the CoC i.e. earlier decision of the CoC approving the Resolution Plan.

38. Now we come to the third reason i.e. *“Subsequent to the reconstitution of the CoC, an issue regarding the eligibility of the Successful Resolution Applicant was raised and certain procedural irregularities were pointed out in the CIR Process. It was pointed out that while submitting EoI, the Successful Resolution Applicant constituted a consortium of 2 members, whereas, in the list of PRA’s only one member of the consortium was included. The same was discussed at length in the 18th and 19th CoC meetings held on 19.04.2025 and 16.05.2025, respectively. Accordingly, the CoC passed a resolution in its 19th meeting to cancel the Letter of Intent dated 30.10.2019 for breach of the conditions laid down under Detailed Invitation for Expression of Interest”* where the Adjudicating Authority has noted that it was pointed out that while submitted EoI, SRA constituted a committee of consortium of two members whereas in the list of PRA only one member of consortium was included. Adjudicating Authority has referred to the meeting dated

19.04.2025 where CoC passed a resolution in its 19th meeting to cancel the letter of intent dated 13.10.2019. The reason (iii) does not indicate any reason by the Adjudicating Authority for holding the SRA ineligible rather it notices the decision of the CoC taken on 19.04.2025 and 16.05.2025. The Resolution Plan is on the record which Resolution Plan referred to the Resolution Applicant. In paragraph 1, definition and interpretation clause of Resolution Plan, Resolution Applicant has been defined in following words:-

“Resolution Applicant” means Meher Footwear Private Limited, a company incorporated on 13/08/2009 with registered office at Property no. 72/11/2, First Floor, Mundka, West Delhi DL 110041 IN with corporate identification number U19119DL2009PTC193181”

39. When the Resolution Applicant is defined as a company incorporated on 13.08.2019, Resolution Applicant was clearly a corporate entity. The submission noted in the third reason by the Adjudicating Authority that Expression of Interest was given by a consortium is also not correct. Annexure A-6 to the Appeal is a letter dated 22.04.2019 by which Expression of Interest was submitted by Mehar Footwear Private Limited which was signed by Director Mr. Pradeep Kumar Lathar. Letter dated 22.04.2019 given Expression of Interest is as follows:-

“FORMAT OF EXPRESSION OF INTEREST

Date 22.04.2019

To,

Mr. Darshan Singh Anand

Resolution Professional of Angad Infrastructure Pvt. Ltd

(IP Registration No.: IBBI/IPA-002/IP-N00326/2017-2018/10931)

Address registered with IBBI: Eg-46, Inder Puri, New Delhi, National Capital Territory of Delhi, 110012.

Registered email ID with IBBI: dsanand57@gmail.com

Address for Correspondence: Sumedha Management Solutions Private Limited, B-1/12, 2nd Floor, Safdarjung Enclave, New Delhi-110029, India.

Email Id for correspondence: cirp.angadinfra@gmail.com

Subject: Expression of Interest ("EOI") for submitting Angad Infrastructure Pvt. Ltd ("Company") undergoing Corporate Insolvency Resolution Process ("CIRP").

Dear Sir,

In response to the invitation for submission of expression of interest dated [Insert] ("IEOI") inviting expression of interest ("EOI") for submission of resolution plans ("Resolution Plan") for the Company as per the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code"), we confirm that we have understood the eligibility and other criteria mentioned in the IEOI and meet the necessary threshold and criteria mentioned therein and are submitting our EOI for submission of a Resolution Plan for the Company.

We understand and confirm that:

(a) the EOI will be evaluated by the Resolution Professional of the Angad Infrastructure Private Limited along with the COC, based on the information provided by us in this EOI and attached documents to determine whether We qualify to submit the Resolution Plan for the Angad Infrastructure Private Limited;

(b) the RP/COC reserve the right to determine at their sole discretion, whether or not we qualify for the submission of the Resolution Plan for the Angad Infrastructure Private Limited and may reject the EOI submitted by us and not include us in the provisional or final list of eligible prospective resolution applicants;

(c) the RP/the COC reserve the right to conduct due-diligence on us and/or request for additional information or clarification from us for the purposes of the EOI and we shall promptly comply with such requirements. Failure to satisfy the queries of RP/COC may lead to rejection of our EOI;

(d) meeting the qualification criteria set out in IEOL alone does not automatically entitle us to participate in the next stage of the bid process;

(e) along with our EOI, we have also enclosed information/documents as required in the IEOI.

For further information/queries, please contact:

*Yours Sincerely,
For Mehar Footwears Pvt. Ltd*

*Director
**Name of Signatory: Pradeep Kumar Lathar
Designation: Director***

“Ref.....

22.04.2019

To,

**Mr. Darshan Singh Anand
Resolution Professional of Angad Infrastructure Pvt. Ltd
(IP Registration No.: IBBI/IPA-002/IP-N00326/2017-2018/10931)
Address registered with IBBI: Eg-46, Inder Puri, New Delhi,
National Capital Territory of Delhi, 110012.
Registered email ID with IBBI: dsanand570@gmail.com
Address for Correspondence: Sumedha Management Solutions
Private Limited,
B-1/12, 2nd Floor, Safdarjung Enclave, New Delhi-110029, India.
Email Id for correspondence: cirp.angadinfra@@gmail.com**

Subject: Expression of Interest ("EOI") for submitting Angad Infrastructure Pvt. Ltd ("Company") undergoing Corporate Insolvency Resolution Process ("CIRP").

Dear Sir,

We, Mehar Footwears Pvt. Ltd. through its directors Mr. Pradeep Kumar Lathar & Mr. Dharmender Narula both are submitting our EOI in respect of your advertising & invitation on adellandmarks.com.

As per EOI, we are interested in all the four companies' Le.

- 1) Angad Infrastructure Pvt. Ltd.*
- 2) Trifalagur Square Infrastructure Pvt. Ltd.*
- 3) Bhisham Infrastructure Pvt. Ltd.*
- 4) Pawan Doot Estates Pvt Ltd.*

Kindly consider our proposal & revert back. Looking for a positive reply.

*Yours Sincerely,
For Mehar Footwears Pvt. Ltd.*

Director

Name of Signatory: Pradeep Kumar Lathar

Designation: Director

Mob. No. 9811844044, Email: meharfootwears Pvt. Ltd.

ENCLOSED:

1) DD of Rs. 5 Lakh in Favour Anand Infrastructure Pvt. Ltd.

2) BS and ITR of Mehar Footwears Pvt. & Dharmender Narula

For two year

3) Board Resolution for Authorized Signatory”

40. The Expression of Interest, thus, was given by Company and not by consortium. Counsel for Respondent has relied on Clause 5(iv) of the RFRP which is as follows:-

“5. Submission of Resolution Plan by a Consortium

(iv) The consortium shall not be allowed to change its composition during the Resolution Plan Process. If such consortium is selected as a Successful Resolution Applicant, then the obligations of various members of the consortium shall be as set out in the Resolution Plan.”

41. When we look into Clause 5, Clause 5 contains a heading “Submission of Resolution Plan by a Consortium”. Thus, requirement of Clause 5(iv) was with respect to Resolution Applicant when Applicant is a consortium. Present is not a case where Resolution Plan was submitted by a consortium rather Expression of Interest as well as Resolution Plan both were submitted by a registered incorporated body i.e. a company. Hence, there is no applicability of Clause 5 and Shri Dutta is right in his submission that

Clause 5 has no applicability. Further, when the Resolution Professional as well as the CoC after thoroughly examining the eligibility has approved the Resolution Plan, it does not lie in the mouth of reconstituted CoC which has no authority to convene a meeting affecting a Resolution Plan already approved to say that Resolution Applicant was not eligible to submit the Resolution Plan.

42. From the sequence of events and facts noticed, it is clear that for the reasons well known to the members of the CoC specially the member who has been inducted on 24.04.2024, the endeavour is to somehow get the approved plan rejected that is why the Resolution was passed to withdraw the plan approval application which is not in the authority of the CoC and both the meetings of the CoC where they have resolved to withdraw the Resolution Plan and further to cancel the LoI were unauthorised and contrary to the provisions of Regulation 18(2) of the CIRP Regulations, 2016 and cannot be placed reliance for any purpose.

43. In view of the foregoing conclusion, we are of the view that none of the reasons given by the Adjudicating Authority in paragraph 14 has any substance which can be ground to not consider the application for approval of the Resolution Plan in accordance with law. There was no ground to remand the Resolution Plan to the CoC for reconsideration. We further of the view that there was no jurisdiction of the Resolution Professional to file an application to recall the Resolution Plan and IA No. 4424 of 2024 was also not maintainable nor Indo Jatalia Holdings Limited could have filed an IA No.5555 of 2024 praying for remand of the Resolution Plan for

reconsideration. The Adjudicating Authority committed error in passing order in the aforesaid three applications.

44. In view of the foregoing discussions and conclusions, we allow the Appeal, set aside the order passed by the Adjudicating Authority dated 14.10.2025. CA (IBC)/240/PB/2020 is revived before the Adjudicating Authority for passing fresh order in accordance with law. IA No.4424 of 2024 and IA No.5555 of 2024 are rejected. The Resolution Plan approval application had been pending before the Adjudicating Authority from 03.01.2020, we request the Adjudicating Authority to consider and decide CA (IBC)/240/PB/2020 expeditiously preferably within a period of three months from the date copy of this order is produced.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali