**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 1700 OF 2021**

**INDIA RESURGENCE ARC PRIVATE LIMITED … APPELLANT(S)**

**VERSUS**

**M/S. AMIT METALIKS LIMITED & ANR. …RESPONDENT(S)**

**J U D G E M E N T**

1. By way of this appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016[1], the appellant India Resurgence ARC Private Limited seeks to question the order dated 02.03.2021 passed by the National Company Law Appellate Tribunal, New Delhi[2] in CA(AT) (Insolvency) No. 1061 of 2020, whereby the Appellate Authority rejected its challenge to the order dated 20.10.2020 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata[3]in approval of the resolution plan in the corporate insolvency resolution process[4]concerning

1Hereinafter also referred to as 'the Code' or 'IBC'.
2Hereinafter also referred to as 'the Appellate Authority' or 'NCLAT'.
3Hereinafter also referred to as 'the Adjudicating Authority' or 'NCLT'.
4'CIRP' for short.

the corporate debtor VSP Udyog Private Limited (respondent No. 2 herein), as submitted by the resolution applicant Amit Metaliks Limited (respondent No. 1 herein).

2. The appellant company is said to be the assignee of the rights, title and interest carried by Religare Finvest Limited as secured financial creditor of the corporate debtor, having 3.94% of voting share in the Committee of Creditors[5].

3. When the resolution plan submitted by the respondent No. 1 was taken up for consideration by the CoC, the appellant expressed reservations on the share being proposed, particularly with reference to the value of the security interest held by it; and chose to remain a dissentient financial creditor. The dissention on the part of the appellant and response thereto by the resolution professional as also by other members of CoC was noted in the 14th meeting of CoC dated 31.07.2020 in the following words: -

> "Representative from Religare Finvest/India Resurgence ARC, Mr Shakti inquired about the lower share they are getting as per Resolution Plan whereas the security interest held by them is far more. He also raised question about the fair market value and liquidation value of the CD. On this the RP informed him that the valuation exercise has been done by registered valuers of IBBI who were appointed by the erstwhile IRP and he do not find any inconsistency in the same. Other members also agreed on the same. Mr Shakti then raised the point that in the present scenario it will be better for them if the company goes into Liquidation and they will realize their security interest by exercising option u/s 52(1)(b). The RP then replied that Liquidation option may be beneficial to one creditor but is definitely detrimental to other

5'CoC' for short.

> secured lenders who are having majority stake of around 96%. Further the RP also said that the objective of IBC is resolution and revival of a distressed company and is not a recovery procedure."

3.1. However, a substantial majority of other financial creditors voted in favour of the resolution plan and, therefore, the resolution plan got the approval of 95.35% of voting share of the financial creditors.

4. The said resolution plan, as approved by the vast majority of voting share in the CoC, was submitted for approval by the resolution professional to the Adjudicating Authority. The Adjudicating Authority examined, *inter alia*, the salient features of resolution plan, particularly those concerning financial proposals; and found the plan to be feasible and viable with judicious distribution of financial bids by CoC to the stakeholders according to their entitlements as also being compliant of all the mandatory requirements. The Adjudicating Authority stated its complete satisfaction and proceeded to approve the resolution plan while observing in its order dated 20.10.2020 (as amended on 21.10.2020) as under: -

> "13. Having heard the Ld. Senior Counsel and on perusal of the Plan, it is understood that the assets of the Corporate Debtor are going to rest in a safer hand. The RP, Mr. Raj Singhania, deserves special appreciation for finding out a Resolution Applicant, whose Plan has been approved by the Committee of Creditors by 95.35% voting share, even in these difficult times of pandemic, due to COVID-19. All the provisions of mandatory requirements are seen complied with by the Resolution Applicant, as per Form H, submitted by the RP. It makes provision for the payment of the Insolvency Resolution Process, payment of the debts of Operational Creditors, Management of the affairs of the Corporate Debtor, and also provision for implementation and supervision of the Resolution Plan. It also provides terms of the

> Plan and its implementation schedule. So it is a feasible and viable Plan. A judicious distribution of the financial bids by the COC to the stakeholders according to their entitlements can be inferred from the Plan under consideration. No waiver of extinguishments in contravention of the provisions of the Code or in violation of existing laws is seen not brought out and therefore, there is nothing in the Plan, so as to disapprove it. This CP was admitted on 7th August, 2019. However, upon expiry of 180 days, the period of CIRP was extended, excluding the days last during the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak, not to be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a Corporate Insolvency Resolution Process and thereby, approval of the Plan by the COC within the period of 270 days. The COC has very well deliberated with the Plans received by it and decided the viability, feasibility and financial matrix of each Plan and approved one with 95.35% vote shares of the members of the Committee of Creditors."

5. It does not appear if any objection to the resolution plan was placed before the Adjudicating Authority for consideration. Be that as it may, against the order so passed by the Adjudicating Authority, the appellant preferred an appeal under Section 61(1) read with Section 61(3) of the Code. It was contended on behalf of the appellant, in its capacity as a dissenting financial creditor, that the approved resolution plan failed the test of being 'feasible and viable' inasmuch as the value of the secured asset, on which security interest was created by the corporate debtor in its favour, was not taken into consideration. It was contended by the appellant that after the amendment to sub-section (4) of Section 30 of IBC, which came into effect from 16.08.2019, the CoC was to ensure that the manner of distribution takes into account the order of priority among the creditors as also the priority and value of the security interest of a secured

creditor; and the resolution applicant and the CoC having failed to consider the existing security interest in its favour, approval of the Adjudicating Authority was not in accordance with law.

6. The Appellate Authority took note of the submissions made on behalf of the appellant and referred to the decision of this Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.*: (2020) 8 SCC 531**[6]to stress upon the principles governing various classes of creditors in the insolvency resolution process. The Appellate Authority particularly referred to the passages in ***Essar Steel*** explaining the meaning and contours of the concept of equitable treatment of creditors, including the observations that equitable treatment of creditors meant equitable treatment only within the same class; and that protection of creditors in general was important but it was also imperative that the creditors be protected from each other; and further that the Code should not be read so as to imbue the creditors with greater rights in a bankruptcy proceeding than they would enjoy under the general law, unless it is to serve some bankruptcy purpose.

6.1. Having taken note of the principles expounded in ***Essar Steel*** (supra), the Appellate Authority proceeded to reject the contentions urged on behalf of the appellant with the following observations and findings: -

> "6. Section 30(4) of the I&B Code provides that the Committee of Creditors may approve a Resolution Plan by a vote which shall not

6 Hereinafter referred to as the case of '***Essar Steel***'.

be less than 66% of voting share of Financial Creditors. Such approval is to be done after considering the feasibility and viability of the Resolution Plan, the manner of distribution proposed therein having regard to the order of priority amongst the creditors in terms of the waterfall mechanism laid down in Section 53 of the I&B Code including the priority and value of security interest of Secured Creditor besides other requirements specified by IBBI. On a plain reading of this provision it is manifestly clear that the considerations regarding feasibility and viability of the Resolution Plan, distribution proposed with reference to the order of priority amongst creditors as per statutory distribution mechanism including priority and value of security interest of Secured Creditor are matters which fall within the exclusive domain of Committee of Creditors for consideration. These considerations must be present to the mind of the Committee of Creditors while taking a decision in regard to approval of a Resolution Plan with vote share of requisite majority. As regards amendment introduced in Section 30(4), be it seen that the amendment that it, introduced vide Section 6 (b) of Amending Act of 2019 vests discretion in the Committee of Creditors to take into account the value of security interest of a Secured Creditor in approving of a Resolution Plan. It's a guideline and not imperative in terms, which may be taken into account by the Committee of Creditors in arriving at a decision as regards approval or rejection of a Resolution Plan, such decision being essentially a business decision based on commercial wisdom of the Committee of Creditors. In this regard the observations of Hon'ble Apex Court in ***'Committee of Creditors of Essar Steel India LimitedVs. Satish Kumar Gupta and Others' (Supra)*** are significant. The Hon'ble Apex Court observed as under:-

> *"131. The challenge to sub-clause (b) of Section 6 of the Amending Act of 2019, again goes to the flexibility that the Code gives to the Committee of Creditors to approve or not to*
> *approve a resolution plan and which may take into account different classes of creditors as is mentioned in Section 53, and different priorities and values of security interests of a secured creditor. This flexibility is referred to in the BLRC Report, 2015(see para 56 of this judgment). Also, the discretion given to the Committee of Creditors by the word "may" again makes it clear that this is only a guideline which is set out by this sub-section which may be applied by the Committee of Creditors in arriving at a business decision as to acceptance or rejection of are solution plan. For all these reasons, therefore, it is difficult to hold that any of these provisions is constitutionally infirm."*

> 7. It abundantly clear that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors. Such considerations, being relevant only for purposes for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61(3) of I&B Code. While it is true that prior to amendment of Section 30(4) the Committee of Creditors was not required to consider the value of security interest obtaining in favour of a Secured Creditor while arriving at a decision in regard to feasibility and viability of a Resolution Plan, legislature brought in the amendment to amplify the scope of considerations which may be taken into consideration by the Committee of Creditors while exercising their commercial wisdom in taking the business decision to approve or reject the Resolution Plan. Such consideration is only aimed at arming the Committee of Creditors with more teeth so as to take an informed decision in regard to viability and feasibility of a Resolution Plan, fairness of distribution amongst similarly situated creditors being the bottomline. However, such business decision taken in exercise of commercial wisdom of Committee of creditors would not warrant judicial intervention unless creditors belonging to a class being similarly situated are not given a fair and equitable treatment.
>
> 8. We find no merit in this appeal, it is accordingly dismissed."

7. Seeking to question the decision of the Appellate Authority, the main plank of submissions of learned counsel for the appellant before us again revolves around Section 30(4) of Code. It is contended that the CoC could not have approved the resolution plan which failed to consider the priority and value of security interest of the creditors while deciding the manner of distribution to each creditor even though the legislature in its wisdom has amended Section 30(4) of the Code, requiring the CoC to take into account the order of priority amongst creditors as laid down in Section 53(1) of the Code, including the priority and value of the security interest of a secured creditor. Learned counsel would submit that the

primary reason for appellant's dissent to the resolution plan was that, as against total admitted claim of over INR 13.38 crores, the resolution applicant had offered the appellant a meagre amount of about INR 2.026 crores without even considering the valuation of the security held by the appellant, which admittedly had the valuation of more than INR 12 crores. Learned counsel has referred to the decision in ***Essar Steel*** (supra) as also the recent decision of this Court in the case of ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Ltd. and Ors.***, rendered on 24.03.2021[7]. Learned counsel would submit that the consideration of NCLAT that the amendment to Section 30(4) of the Code was merely a guideline fails to take into account the fact that CoC does not have an unfettered and arbitrary right to exercise its commercial wisdom and to approve the plan which does not stand in conformity with the provisions of the Code.

8. Having heard the learned counsel and having perused the material placed on record, we are clearly of the view that this appeal remains totally bereft of substance and does not merit admission.

9. The requirements of law, particularly in regard to the contentions sought to be urged on behalf of the appellant, are referable to the provisions contained in Section 30 of the Code dealing with the processes relating to submission of a resolution plan, its mandatory contents, its

7 Hereinafter referred to as the case of '***Jaypee Kensington'.***

consideration and approval by the Committee of Creditors, and its submission to the Adjudicating Authority for approval. Sub-sections (2) and (4) of Section 30 of the Code, being relevant for the present purpose, could be usefully reproduced, while omitting the other parts, as under:-

> "**Section30. Submission of resolution plan**.-(1) xxx xxx xxx
>
> (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 [8][payment] of other debts of the corporate debtor;
>
> [9][(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.

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8Substituted by Act 26 of 2018, sec. 23 (ii)(A), for "repayment" (w.r.e.f. 06.06.2018).

9Substituted by Act 26 of 2019, sec. 6(a), for clause (b) (w.e.f. 16.08.2019). Earlier clause (b) was amended by Act 26 of 2018, sec. 23(ii)(A) (w.r.e.f. 06.06.2018). Clause (b), before substitution, stood as under:

> "(b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;"

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

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

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

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

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

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

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

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

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

[10][*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.]

(3) xxx xxx xxx

[11][(4) The committee of creditors may approve a resolution plan by a vote of not less than [12][sixty-six]per cent. of voting share of the financial creditors, after considering its feasibility and viability, [13][the

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10Inserted by Act 26 of 2018, sec. 23(ii)(B) (w.r.e.f. 06.06.2018).

11Substituted by Act 8 of 2018, sec. 6, for sub-section (4) (w.r.e.f. 23.11.2017). Sub-section (4), before substitution, stood as under:

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

12Substituted by Act 26 of 2018, sec. 23(iii)(a) for "seventy-five" (w.r.e.f. 06.06.2018).

13Inserted by Act 26 of 2019, sec. 6(b) (w.e.f. 16.08.2019).

manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor]and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.]

[14][Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018).]

(5) xxx xxx xxx

(6) xxx xxx xxx"

10. As regards the process of consideration and approval of resolution plan, it is now beyond a shadow of doubt that the matter is essentially that of the commercial wisdom of Committee of Creditors and the scope of judicial review remains limited within the four-corners of Section 30(2) of the Code for the Adjudicating Authority; and Section 30(2) read with

14 Inserted by Act 26 of 2018, sec. 23(iii)(b) (w.r.e.f. 06.06.2018).

Section 61(3) for the Appellate Authority. In the case of ***Jaypee Kensington*** (supra), this Court, after taking note of the previous decisions in ***Essar Steel***(supra) as also in ***K. Sashidhar v. Indian Overseas Bank and Ors.*****: (2019) 12 SCC 150** and ***Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Ors.*****: (2020) 11 SCC 467,** summarised the principles as follows:-

> "77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.
> 77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.
> 77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board.

> 77.3. The material propositions laid down in ***Essar Steel*** (supra) on the extent of judicial review are that the Adjudicating Authority would see if CoC has taken into account the fact that 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 have been taken care of. And, if the Adjudicating Authority would find on a given set of facts that the requisite parameters have not been kept in view, it may send the resolution plan back to the Committee of Creditors for re-submission after satisfying the parameters. Then, as observed in ***Maharashtra Seamless Ltd.*** (supra), there is no scope for the Adjudicating Authority or the Appellate Authority to proceed on any equitable perception or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors."

11. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.[15]

12. The provisions of amended sub-section (4) of Section 30 of the Code, on which excessive reliance is placed on behalf of the appellant, in

15For the purpose of illustration, reference may be made to the decision in ***Jaypee Kensington***(supra) wherein, as regards the grounds sought to be urged by minority shareholders against the resolution plan, this Court held that their grievances could not be recognised as legal grievances (*vide*paragraph 154). Similarly, when this Court noticed that the homebuyers as a class assented to the plan, it was held that any individual homebuyer or association was not entitled to maintain achallenge to the resolution plan and could not be treated as carrying any legal grievance(*vide* paragraph 170).

our view, do not make out any case for interference with the resolution plan at the instance of the appellant. The purport and effect of the amendment to sub-section (4) of Section 30 of the Code, by way of sub-clause (*b*) of Section 6 of the Amending Act of 2019, was also explained by this Court in ***Essar Steel***(supra), as duly taken note of by the Appellate Authority (*vide* the extraction hereinbefore).The NCLAT was, therefore, right in observing that such amendment to sub-section (4) of Section 30 only amplified the considerations for the Committee of Creditors while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

12.1. In regard to the question of fair and equitable treatment, though the Adjudicating Authority as also the Appellate Authority have returned concurrent findings in favour of the resolution plan yet, to satisfy ourselves, we have gone through the financial proposal in the resolution plan. What we find is that the proposal for payment to all the secured financial creditors (all of them ought to be carrying security interest with them) is equitable and the proposal for payment to the appellant is at par with the percentage of payment proposed for other secured financial

creditors. No case of denial of fair and equitable treatment or disregard of priority is made out.

13. The repeated submissions on behalf of the appellant with reference to the value of its security interest neither carry any meaning nor any substance. What the dissenting financial creditor is entitled to is specified in the later part of sub-section (2)(*b*) of Section 30 of the Code and the same has been explained by this Court in ***Essar Steel*** as under:-

> "128. When it comes to the validity of the substitution of Section 30(2)(*b*) by Section 6 of the Amending Act of 2019, it is clear that the substituted Section 30(2)(*b*) gives operational creditors something more than was given earlier as it is the higher of the figures mentioned in sub-clauses (*i*) and (*ii*) of sub-clause (*b*) that is now to be paid as a minimum amount to operational creditors. The same goes for the latter part of sub-clause (*b*) which refers to dissentient financial creditors. Ms Madhavi Divan is correct in her argument that Section 30(2)(*b*) is in fact a beneficial provision in favour of operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (*i*) and (*ii*) of clause (*b*), and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. As a matter of fact, pre-amendment, secured financial creditors may cramdown unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid .the minimum amount mentioned in sub-section (2). Ms Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(*b*) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder."
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> (underlining supplied for emphasis)

13.1. Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.

14. In the case of ***Jaypee Kensington*** (supra), the proposal in the resolution plan was to the effect that if the dissenting financial creditors would be entitled to some amount in the nature of liquidation value in terms of Sections 30 and 53 of IBC read with Regulation 38 of the CIRP Regulations, they would be provided such liquidation value in the form of proportionate share in the equity of a special purpose vehicle proposed to be set up and with transfer of certain land parcels belonging to corporate debtor. Such method of meeting with the liability towards dissenting financial creditors in the resolution plan was disapproved by the Adjudicating Authority; and this part of the order of the Adjudicating Authority was upheld by this Court with the finding that the proposal in the resolution plan was not in accord with the requirement of 'payment' as envisaged by clause (*b*) of Section 30(2) of the Code[16]. In that context,

16In ***Jaypee Kensington***, after disapproving the proposition of the resolution plan regarding dissenting financial creditor, the Adjudicating Authority itself modified the offending terms of the plan and provided for monetary payment to the dissenting financial creditor. This latter part of the order of the Adjudicating Authority was not approved by this Court while holding that after disapproval of such term related with financial model proposed in the resolution plan, the Adjudicating Authority itself could not have modified the same and ought to have sent the matter back to CoC for reconsideration. However, that part of the decision in ***Jaypee Kensington***is not relevant for the present purpose.

this Court held that such action of 'payment' could only be by handing over the quantum of money or allowing the recovery of such money by enforcement of security interest, as per the entitlement of a dissenting financial creditor. This Court further made it clear that in case a valid security interest is held by a dissenting financial creditor, the entitlement of such dissenting financial creditor to receive the amount could be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him and in the order of priority available to him. This Court clarified that by enforcing such a security interest, a dissenting financial creditor would receive payment to the extent of his entitlement and that would satisfy the requirement of Section 30(2)(*b*) of the Code. This Court, *interalia*, observed and held as under: -

> "121.1. Therefore, when, for the purpose of discharge of obligation mentioned in the second part of clause (b) of Section 30(2) of the Code, the dissenting financial creditors are to be "paid" an "amount" quantified in terms of the "proceeds" of assets receivable under Section 53 of the Code; and the "amount payable" is to be "paid" in priority over their assenting counterparts, the statute is referring only to the sum of money and not anything else. In the frame and purport of the provision and also the scheme of the Code, the expression "payment" is clearly descriptive of the action of discharge of obligation and at the same time, is also prescriptive of the mode of undertaking such an action. And, that action could only be of handing over the quantum of money, or allowing the recovery of such money by enforcement of security interest, as per the entitlement of the dissenting financial creditor.
> 121.2. We would hasten to observe that in case a dissenting financial creditor is a secured creditor and a valid security interest is created in his favour and is existing, the entitlement of such a dissenting financial creditor to receive the "amount payable" could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him and in the order of

> priority available to him. Obviously, by enforcing such a security interest, a dissenting financial creditor would receive "payment" to the extent of his entitlement and that would satisfy the requirement of Section 30(2)(b) of the Code…."
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> (underlining supplied for emphasis)

14.1. In ***Jaypee Kensington***(supra), this Court repeatedly made it clear that a dissenting financial creditor would be receiving the payment of the amount as per his entitlement; and that entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him. It is but obvious that his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.

14.2. The extent of value receivable by the appellant is distinctly given out in the resolution plan i.e., a sum of INR 2.026 crores which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. Repeated reference on behalf of the appellant to the value of security at about INR 12 crores is wholly inapt and is rather ill-conceived.

15. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(*b*) of the Code and has been further exposited in the decisions aforesaid. It has not been the

intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.

16. It needs hardly any emphasis that if the propositions suggested on behalf of the appellant were to be accepted, the result would be that rather than insolvency resolution and maximisation of the value of assets of the corporate debtor, the processes would lead to more liquidations, with every secured financial creditor opting to stand on dissent. Such a result would be defeating the very purpose envisaged by the Code; and cannot be countenanced. We may profitably refer to the relevant observations in this regard by this Court in ***Essar Steel*** as follows:-

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

17. Viewed from any angle, the submissions made on behalf of the appellant do not merit acceptance and are required to be rejected.

18. For what has been discussed hereinabove, this appeal fails and stands dismissed.

**.....J.**
**(VINEET SARAN)**

**.....J.**
**(DINESH MAHESHWARI)**

New Delhi
13th May, 2021