NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

3. IA/3977/2024C.P. (IB)/310(MB)2022

**IN THE MATTER OF**

IDBI Trusteeship Services Limited

Vs

Reliance Broadcast Network Limited

U/s 7 of the Insolvency and Bankruptcy Code, 2016

**Order Delivered on 06.10.2025**

CORAM:
SH. MOHAN PRASAD TIWARI
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

**Appearance through VC/Physical/Hybrid Mode:**
For the Petitioner:
For the Respondent: Adv. deep Roy a/w Adv. Shrishti Agnihotri and Adv. Anuj Lakhotiya (VC) (R-1 to R-5

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**ORDER**

**IA/3977/2024:** The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

Sd/-
MOHAN PRASAD TIWARI
Member (Judicial)

//*Zakir*//

**NATIONAL COMPANY LAW TRIBUNAL,**
**MUMBAI BENCH, COURT – V**

**IA (IBC) NO. 3977 OF 2024**

Section 60(5) of the Insolvency and Bankruptcy Code, 2016;

**IN**

**CP (IB) NO. 310 OF 2022**

**IN THE MATTER OF**

**Authum Investment and Infrastructure Limited**

707, Raheja Centre, Free Press Journal Marg, Nariman Point, Mumbai - 400021

**... Applicant/Financial Creditor**

Versus

**HSBC Asset Manangement (India) Pvt. Ltd.**
On behalf of HSBC Credit Risk Fund
9-11 Floors, NESCO IT Park, Building No.3, Western Express Highway, Goregaon (East), Mumbai - 400063

**... Respondent 1**

**HSBC Asset Manangement (India) Pvt. Ltd.**
On behalf of L&T FMP - Series XIV A
9-11 Floors, NESCO IT Park, Building No.3, Western Express Highway, Goregaon (East), Mumbai - 400063

**...Respondent 2**

**Induslnd Bank Ltd**.
401 Gen Thimmayya Road Cantonment, Pune

Maharashtra, 411001

**...Respondent 3**

**HSBC Asset Management (India) Pvt. Ltd**
On behalf of NSBC Low Duration Fund
9-11 Floors, NESCO IT Park, Building No.3, Western Express Highway, Goregaon (East), Mumbai - 400063

**...Respondent 4**

**IDBI Trusteeship Services Ltd.**
Debenture Trustee of Franklin Template Mutual Fund
Asian Bldg., Ground Floor, 17, R.Kamani Marg, Ballard Estate, Mumbai – 400001

**...Respondent 5**

**Mr. Rohit R. Mehra**
**Resolution Professional of Reliance Broadcast Network Limited**
Having his office at: Tower A - 3403, Oberoi Woods, Oberoi Garden City, Goregaon (East), Mumbai - 400063

**... Respondent 6 / Resolution Professional**

**Sapphire Media Ltd., SRA**
having its registered office at,
Mangla Estates,4th Km Stone, Opposite Vrindavan Gardens, Krukshetra Road, Kaithal Haryana - 136027

**...Respondent 7/Resolution Applicant**

**IN THE ORIGINAL MATTER OF**

**IDBI Trusteeship Services Ltd.**

**... Financial Creditor**

Versus

**Reliance Broadcast Network Ltd.**

**... Corporate Debtor**

**Order Pronounced On: 06.11.2025**

**Coram:**

Sh. Mohan Prasad Tiwari, Hon'ble Member (Judicial)

Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

**Appearance through VC/Physical/Hybrid Mode:**

For the Applicant: - Mr. Shivam Bhagwati

For the Respondents: - Adv. Deep Roy (R1-R5),
Adv. Saurabh Bachhawat (R6)

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**ORDER**

**IA (IBC) NO. 3977 OF 2024**

1. This I.A. is filed by **M/s. Authum Investment and Infrastructure Limited** (**'the Applicant/Financial Creditor'**) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'IBC/the Code**') with the following prayers:

    a. *Direct the Respondents to treat RCFL at par with the other assenting secured financial creditors in the Committee of Creditors and as per RCFL's voting share in the CoC (11.03%), including at the time of distribution of proceeds*

*from Respondent No. 7's Resolution Plan (approved by this Hon'ble Tribunal vide order dated 6th May, 2024);*

b. *Pending hearing and final disposal of the present Application, restrain the Respondents from distributing the proceeds from Respondent No. 7's Resolution Plan (approved by this Hon'ble Tribunal vide order dated 6th May, 2024);*
c. *Ad. - interim reliefs in terms of prayer clause (b) above;*
d. *Such orders be passed and reliefs be granted as this Hon'ble Tribunal deems fit and appropriate;*
e. *For costs*

**Brief Facts as per the Application**:

2. The Adjudicating Authority vide order dated 24.02.2023, admitted the Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") filed by IDBI Trusteeship Services Ltd ("**Financial Creditor"**) for initiation of Corporate Insolvency Resolution Process ("**CIRP**") of the Reliance Broadcast Network Ltd ("**Corporate Debtor"**). Pursuant to the said order, Mr. Rohit R. Mehra ("**Respondent 6/ Resolution Professional**") was appointed as the Interim Resolution Professional for conducting CIRP proceedings of the Corporate Debtor.

3. The Resolution Professional issued public announcement on 27.02.2023 informing the initiation of the CIRP of the Corporate Debtor and invited claims from the creditors of the Corporate Debtor. Accordingly, the Reliance Commercial Finance Limited ("**RCFL**"), on 03.04.2023, filed its claim for an amount of Rs. 80,12,91,568/- in Form C of the CIRP Regulations.

4. The RCFL's claim of Rs. 63,78,27,563/- was admitted as secured financial creditor and voting rights was assigned 11.03% in the CIRP Process. Pursuant to the Committee of Creditors ("**CoC**") meetings, it was decided that, RFCL, would be entitled to 3% of its admitted claim. The

resolution plan submitted by M/s. Sapphire Media Ltd ("**Respondent 7/ Resolution Applicant**") was approved by the CoC with 88.97% of voting share in favour, while RCFL, holding 11.03% of voting share, rejected the resolution plan.

5. After the e-voting concluded on 16.11.2023, vide email dated 21.11.2023 to Respondent 6, RCFL approved the resolution plan and stated that the vote was casted erroneously and be treated as assent to the Resolution Plan. Vide order dated 06.05.2024, the application seeking approval of Resolution plan approved with 88.97% majority was allowed by this Tribunal.

6. The Applicant is a resulting company pursuant to order dated 10.05.2024, whereby the NCLT Mumbai approved the proposed scheme of Arrangement, under which the lending business of Reliance Commercial Finance Limited ("**RFCL**") was demerged and transferred to Applicant herein.

7. The present IA, dated 20.06.2024 has been filed under Section 60(5) of the Code by M/s. Authum Investment and Infrastructure Limited ("**the Applicant**"), seeking that RCFL be treated on par with other assenting secured creditors and entitled to its claim according to its voting share in the CoC (11.03%), including at the time of distribution of proceeds.

**Submissions of the Applicant, in brief:**

8. The Reliance Commercial Finance Limited ("**RCFL**") in April 2019 sanctioned Rs. 33,50,00,000/- under a Sanction Letter dated 05.04.2019 and a Facility-cum-Hypothecation Agreement ("**Loan Agreement**") dated 05.04.2019, executed between the Original Lender and the Corporate Debtor.

9. Pursuant to the order dated 24.02.2023, the NCLT Mumbai admitted the Company Petition filed by IDBI Trusteeship Services Limited against the Corporate Debtor, thereby commencing the CIRP against the Corporate Debtor under the provisions of the Code. RCFL submitted its proof of claim in Form C on 03.04.2023, for an aggregate claim amount of Rs. 80,12,91,568/- inclusive of the normal interest at 13.5% p.a. and overdue interest at 26% p.a., compounded monthly on the principal outstanding amount of Rs. 15,00,00,000/-.

10. Consequent thereto, on 01.06.2023, the Respondent 6 published a list of creditors on the Corporate Debtor's website, admitting RCFL's claim only to the extent of Rs. 63,78,27,563/- against the claim sum of Rs. 80,12,91,568/-. Therefore, the voting rights of RCFL was assigned 11.03% in the CIRP process and categorised as secured financial creditor.

11. In the 12th CoC meeting on 06.11.2023, it was decided that RCFL, holding a subservient charge, would receive only 3–5% of its admitted debt. RCFL objected, insisting it should receive its due share like other secured creditors based on its voting rights and the distribution under the Resolution Plan.

12. During 13th CoC Meeting held on 08.11.2023, the CoC members discussed the distribution of Resolution Plan Proceeds. It is at this meeting, that Respondents 1–5 proposed that RCFL’s share be 3% of its admitted claim, which was put to vote. Each member maintained that RCFL, as a subservient charge holder, could not be treated on par with other CoC members. On 10.11.2023, the 14th CoC meeting considered RCFL’s entitlement based on its residual/subservient charge, with two distribution scenarios put to vote;

    i. Pari-passu distribution among all assenting secured financial creditors, irrespective of the value and priority of their security, in proportion to their respective admitted claims; and

ii. Payout of 3% of the admitted claim to the assenting financial creditor holding a subservient charge on the current assets (RCFL), with pari-passu distribution of the balance among assenting secured creditors holding a first pari-passu charge, in proportion to their respective admitted claims.

13. Pursuant to the 13th and 14th CoC meeting, 12 Agenda Items were circulated for securing votes, and it was held that RCFL would be entitled to only 3% of its admitted claim, as it held a subservient charge on the current assets of the Corporate Debtor.

14. The Applicant submitted that the e-voting concluded on 16.11.2023 and the resolution plan by M/s. Sapphire Media Ltd was approved by the CoC. Vide email dated 21.11.2023, the Applicant assented to the plan but objected to the distribution of proceeds. The Applicant contends that under Regulation 26 of Insolvency and Bankruptcy Board of India ("**CIRP"**) Regulations, 2016 as amended vide Notification No. IBBI/2018-19/GN/RG 03l dated 3rd July 2018, w.e.f. 4th July 2018, a vote can be changed up to the approval of the plan by the Adjudicating Authority, after which it becomes binding on all stakeholders.

15. The Applicant submits that the written submission filed by Respondent 6 on 02.02.2024, regarding RCFL's email confirming it as an assenting financial creditor to the resolution plan, was placed before this Tribunal. Further, on 06.05.2024, the NCLT Mumbai allowed the IA filed by Respondent 6 seeking approval of the Resolution Plan submitted by Respondent 7 with 88.97% voting in favor, but remained silent on the distribution inter se among the financial creditors.

16. In view of the above unequal, unfair, discriminatory and arbitrary treatment of RCFL by other similarly placed secured financial creditors forming part of the same class, the Applicant file the present Application on the following grounds –

i. RCFL is a secured Financial Creditor under the CIRP process and is required to be treated at par with the other secured financial creditors. Under the Commercial wisdom, the Committee of Creditors cannot be permitted to arbitrarily discriminate against one creditor.

ii. There cannot be a class within a class, thus leading to a dichotomy, thereby misbalancing the interest of similarly placed stake holders, who have all throughout been considered as a one class of creditors. RCFL ought to have been treated proportionately amongst other secured financial creditors.

iii. During the CIRP process and at the stage of revival of a Corporate Debtor, the value of security interest of a particular creditor has no bearing on its classification as secured or unsecured.

iv. Restrain the Respondents from distributing any amounts received pursuant to implementation of the Respondent 7's resolution plan.

17. The Applicant relied on various judgements of Hon'ble Supreme Court in written submission filed on 06.10.2025. Relying on the judgement of Hon'ble Supreme Court in the matter of **Ashwini Kumar Upadhyay v. Union of India** *[(2019) 11 SCC 683 #16],* the applicant submits that the legislative intent in omitting Regulation 26(2) must be given full effect, meaning thereby that change of vote is not barred, but rather legally permissible. Further placing reliance on the judgement of Hon'ble Supreme Court in case of **Brilliant Alloys Pvt. Ltd. vis. S. Rajagopal & Ors**. *[(2022) 2 SCC 544]*, the Applicant submits that the provisions of the CIRP Regulations cannot go beyond the provisions of the statute.

**Reply on behalf of Respondents (Respondent 1-6), in brief:**

Respondent 1 to 5 filed the replies together and the Respondent 6 has filed separate reply. However, all such replies are similar. In the interest

of brevity and to avoid unnecessary repetition, the individual replies are not reproduced herein. Instead, the collective submissions made by the Respondents in brief, are extracted herein as below:

18. Narrating the factual background of the case, it is submitted that pursuant to the order dated 24.02.2023 passed by this Tribunal, CIRP was initiated against the Corporate Debtor and Respondent 6 was appointed as RP of the Corporate Debtor. In furtherance, the CoC was constituted by Resolution Professional, in accordance with Section 18(c) read with Section 21 of the Code.

19. It is submitted that, the Respondents hold first pari-passu on the entire movable and fixed, currents and non-current assets of the Corporate Debtor and the Applicant holds residual charge by way of hypothecation on purchased assets, book debts, movable assets including machinery and equipment and subservient charge on all current assets.

20. The Respondent 6 submits that, in the 12th and 13th CoC meeting held on 06.11.2023 and 08.11.2023, respectively, the CoC members considered on the manner of distribution of the resolution plan proceeds amongst the financial creditors.

21. The Respondents submit that in 14th CoC meeting, the resolution plan was put to vote. Following the conclusion of voting on 16.11.2023, the Resolution Plan submitted by Respondent 7 was approved by the CoC with 88.97% of the voting share in favor. The Respondents voted in favor, while only RCFL, holding 11.03% of the voting share, rejected the plan. Two scenarios were put to vote regarding the distribution among financial creditors:
    - **Scenario 1:** Pari passu distribution among all secured financial creditors, irrespective of the value or priority of their security, in proportion to their admitted claims.

- **Scenario 2:** Payout of 3% of the admitted claim to the assenting financial creditor holding a subservient charge (RCFL), with pari passu distribution of the balance among assenting secured creditors holding first pari-passu charge, in proportion to their admitted claims.

Scenario 1 was unanimously rejected, including by RCFL, while Scenario 2 was approved with 88.97% of the CoC's voting share.

22. The Respondents submit that on 21.11.2023, Respondent 6 filed I.A. No. 5391 of 2023 seeking this Tribunal's approval of the Resolution Plan. Respondents 1–5 further submit that the Resolution Plan submitted by Respondent 7 allocated Rs. 255 Crores to financial creditors and clearly stipulates that the distribution among various categories, sub-categories, and types of secured financial creditors is to be determined by the CoC.

23. It is stated that, five days after the E-voting concluded and following the filing of the Approval Application by Respondent 6, the Applicant, vide email dated 21.11.2023, informed the Resolution Professional that RCFL had erroneously cast its votes and wished to modify them to approve the Resolution Plan submitted by Respondent 7. A copy of the email along with the written submission was also filed before the Tribunal by the Respondent 6.

24. The Respondents submit that, vide order dated 06.05.2024, the Approval Application was allowed by this Tribunal. The CoC approved the Resolution Plan after duly considering all pleadings on record, including the written submission filed by the Resolution Professional, and this Tribunal also took cognizance of the Applicant's dissenting vote on the Resolution Plan.

25. In respect of the Applicant's contention that it should be treated as an Assenting Financial Creditor, the Respondents submits that, that the

Code and applicable regulations do not entitle a CoC member to revise its vote after the conclusion of the E-voting timeline or after the plan has been approved by the CoC. Further, the Respondents 1–5 state that the Applicant, realizing that due to its subservient charge its minimum entitlement under Section 30(2) of the Code would be NIL, as clarified by the Resolution Professional in the 12th CoC meeting, *"…if the first charge holders were to enforce their security in liquidation, the liquidation value would not suffice to percolate down to any other category of creditors*" approached the Resolution Professional with the intention to change its vote on the Resolution Plan to ensure maximum recovery.

26. Further, in response to the Applicant's contention that arbitrary and discriminatory treatment by other CoC members, the Respondents submits that, as per the Resolution Plan, the CoC may decide the manner of distribution of proceeds among financial creditors in its commercial wisdom under Section 30(4) of the Code. The Respondents further state that, during the 14th CoC meeting, a payout of 3% of the admitted claim was allocated to the Applicant, with pari passu distribution among the assenting secured financial creditors. The plan was approved with 88.97% of the CoC votes, and as a stakeholder in the CIRP, the Applicant is bound by all decisions approved by the CoC with the requisite majority.

27. In response to the Applicant's contention that there cannot be a class within a class of Creditors, the Respondent 1 -5 submits that there were two distinct sub classes of secured financial creditors, forming a part of the CoC. The Respondent 1-5 placed reliance on the decision of Hon'ble Supreme Court in the case of **Essar Steel India Limited v. Satish Kumar Gupta** *Civil Appeal No 8766 of 2019,* wherein it is held that creditors may be differentiated into sub-classes and sub-categories for the purpose of distribution, which lies within the CoC's domain, and the CoC is free to decide on the distribution. Further, the reliance has been placed on decision of NCLT, Hyderabad Bench in case of **Canara Bank v. Shri Nitin Vishwanath Panchal & Ors** *[IA No. 520/2021],* which

upheld the CoC's decision to provide differential payouts based on the priority and value of security.

28. The Respondent 1 to 5 submits that the NCLT cannot challenge the commercial wisdom of the CoC. The reliance was placed on the decision of Hon'ble Supreme Court in the case of **K. Sashidhar v. Indian Overseas Bank** *[CA. No. 10673 of 2018]* and **India Resurgence Arc Private Limited v. Amit Metaliks Limited and Ors,** which held that the approval of a resolution plan falls within the CoC's commercial discretion, and judicial review is limited if Section 30(2) of the Code is complied with.

29. The Respondents submits that the resolution Plan and the distribution method is as per the provision of applicable law and this application is not maintainable and to be dismissed.

**Analysis and Findings**

30. We have heard the Ld. Counsels of the parties and perused the documents available on record. We have given our thoughtful consideration to the matter before us.

31. Vide order dated 24.02.2023, the Company petition filed by the Financial Creditor for initiation of CIRP of Corporate Debtor was admitted. Thereafter, the Resolution Professional invited the claims of the creditor against the Corporate Debtor. The claims so received were collated after due verification and the CoC was constituted.

32. The Applicant, being part of CoC, seeks to be treated at par with other assenting secured creditors in the CoC, as it assented to the Resolution Plan vide email dated 21.11.2023 and contends that it should receive distribution of proceeds based on its 11.03% voting share. In this regard,

the Applicant relied on Regulation 26 of the CIRP Regulation, 2016 and contends that the voting can be changed even after the resolution plan was approved by the CoC and placed reliance on the judgement of Hon'ble Supreme Court in the matter of **Ashwini Kumar Upadhyay v. Union of India** *[(2019) 11 SCC 683 #16].*

33. It is also the contention of the Applicant that, Regulation 26 as it currently stands, permit it to change its vote without any restriction. In this regard, reliance is placed on the judgement of Hon'ble Supreme Court in case of **Brilliant Alloys Pvt. Ltd. vis. S. Rajagopal & Ors**. *[(2022) 2 SCC 544]*, wherein, it is held that, the provisions of the CIRP Regulations cannot go beyond the provisions of the statute.

34. Per contra, the Respondents submits that, pursuant to the CoC meetings, it was decided by the majority of 88.97% that the Applicant/ RFCL, would be entitled to 3% of its admitted claim, as it is holds subservient charge on the current assets of the Corporate Debtor. Further, the resolution plan submitted by Respondent 7 was approved by the CoC with 88.97% of voting share in favour, while RCFL, holding11.03% of voting share, had rejected the resolution plan and that after the approval of resolution plan, the Applicant changed its vote in favour of the Resolution plan, which is in consequential.

35. The facts of the case and the rival contentions of the parties throw up following issues for our determination:

    i. *In the facts and circumstances of the case, whether the Applicant's change of vote is valid and permissible?*
    ii. *In the facts and circumstances of the case, whether the Resolution passed by the CoC proposing to pay 3% of the admitted claim to the assenting Financial Creditor holding*

*a subservient charge is discriminatory and therefore legally invalid?*

**Determination as to Issue (i)**

36. In order to address the issue on hand, following relevant and undisputed facts are noted:

i. The Respondent 6 issued a Public Announcement on 27.02.2023, and the Applicant submitted its claim on 03.04.2023.
ii. The admitted claim of the Applicant was Rs. 63,78,27,563/- as secured financial creditor and voting rights assigned to it is at 11.03%.
iii. During the 13th CoC meeting held on 08.11.2023, a payout of 3% of the admitted claim was allocated to the Applicant, with 88.97% majority vote from other CoC members.
iv. The Resolution plans submitted were considered by CoC in 14th CoC Meeting on 10.11.2023 and were put to vote.
v. The voting window remained open from 8:00 PM IST on 11.11.2023 to 5:00 PM IST on 16.11.2023.
vi. The Resolution Plan of Respondent No. 7 was approved with 88.97% voting by the CoC.
vii. The Resolution Professional filed an application bearing I.A. No. 5391 of 2023 before the Adjudicating Authority on 21.11.2023 at 5:26 PM IST, seeking approval of the Resolution Plan.
viii. Subsequently, the Applicant, vide email dated 21.11.2023 on 7:14 PM IST, informed the Respondent 6 of its intent to modify/rectify its vote in favour of the resolution plan's approval.
ix. The Resolution Professional placed the Applicant's email along with its written submission before the Adjudicating Authority on 02.02.2024 and informed the Authority about the Applicant's change of vote on Voting Item No. 2, i.e., the Resolution Plan submitted by Respondent No. 7.

x. The Adjudicating Authority passed an order dated 06.05.2024 in I.A. No. 5391, thereby approving the Resolution Plan of Respondent No. 7.

37. The Applicant has relied on Regulation 26 of the CIRP Regulation 2016, and according to the Applicant, it can change its vote on a resolution plan at any time before the approval of the plan by the Tribunal. In this regard, it is pertinent to refer to Regulation 26 of CIRP Regulations, 2016, which for ease of reference is reproduced here in under:

*"**Regulation 26: Voting through electronic means***

*26. (1) The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this Regulation.*

*(2) ****

*(3) At the end of the voting period, the voting portal shall forthwith be blocked.*

*(4) At the conclusion of a vote held under this Regulation, the resolution professional shall announce and make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the committee who voted for or against the decision, or abstained from voting.*

*(5) The resolution professional shall circulate a copy of the record made under sub-regulation (4) to all participants by electronic means within twenty-four hours of the conclusion of the voting.*

**** Omitted IBBI (CIRP) (Third Amendment) Regulations, 2018 vide Notification No. IBBI/2018-19/GN/REG031 dated 3rd July, 2018*

There was a sub-regulation (2) under Regulation 26 of the CIRP Regulations, 2016, which has been omitted with effect from 04.07.2018. Prior to its omission, the said provision stated that "*once a vote on a resolution is cast by a member of the Committee, such member shall not be allowed to change it subsequently*."

38. The plain reading of the aforesaid regulation makes it clear that, pursuant to the omission of sub-regulation (2) of Regulation 26 of the CIRP Regulation 2016, any member of the CoC may change its vote on a resolution. However, as per sub-regulation (3) of Regulation 26, the voting portal is required to be blocked forthwith upon the conclusion of the voting period. The very intent of this sub-regulation is to bar any changes in the voting after the period or the window of voting is closed.

39. On perusal of the records placed before us, it is observed that, the e-voting timeline for the resolution plan commenced at 8:00 PM IST on 11.11.2023 and concluded at 5:00 PM IST on 16.11.2023 and thereafter, voting portal was blocked as per the said provision. Thereafter, on 21.11.2023, the Applicant, via email, intimated Resolution Professional of its intention to revise its vote in favour of the resolution plan. In such facts and after the conclusion of the voting timeline as the voting portal was blocked in accordance with sub-regulation (3) of Regulation 26 of the CIRP Regulations, 2016, the Applicant's change of mind and vote in favour of the Resolution Plan is not only not in accordance with sub-regulation (1) of Regulation 26 but also is belated and inconsequential. Furthermore, as the voting process is conducted through an electronic voting window or portal, any vote sought to be cast, altered, or modified through email cannot be treated as valid.

40. Further, as per sub-regulation (4) of Regulation 26 of the CIRP Regulation 2016, after the conclusion of voting, the Resolution Professional is required to prepare a summary report of the decision taken on each agenda item, along with the names of the members of the

Committee who voted for, against, or abstained from voting. Also, as per sub-regulation 5 of Regulation 26, such record has to be circulated to all participants within 24 hours of the conclusion of the voting. The very intent of sub-regulations (4) and (5) of Regulation 26 is to ensure the finality of the CoC's voting decisions and the timely communication of voting outcomes to all participants.

41. In the present case, it is observed that the 13th and 14th meetings of the CoC were held on 08.11.2023 (adjourned to 09.11.2023) and 10.11.2023, respectively. During the 13th meeting, various agenda items relating to the Resolution Plan were discussed. The agenda items of the meeting included consideration of the Resolution Plans submitted by M/s Sapphire Media Limited and other Resolution Applicants along with the proposed distribution mechanism among the financial creditors forming part of the CoC including the proposed payout of 3% to assenting financial creditors holding a subservient charge on current assets, i.e., RCFL. During the 14th CoC meeting the timeline of voting window was finalised and the agenda items discussed in their 13th CoC meeting were decided to be put to vote.

42. The e-voting window remained open from 11.11.2023 (8:00 PM IST) to 16.11.2023 (5:00 PM IST). The plan submitted by M/s Sapphire Media Limited was approved with an 88.97% majority vote, and the 3% payout to assenting financial creditors holding a subservient charge on current assets, i.e., RCFL, was also approved with the same 88.97% voting share.

43. It is not the case of the Applicant and based on the records of the 13th CoC meeting and the agenda items discussed therein, and after the conclusion of voting on each agenda item of the Resolution Plan by 16.11.2023, the summary report of the decisions taken on each agenda item was not prepared by Resolution Professional and, in accordance

with sub-regulation (5) of Regulation 26, the same was not circulated to all participants within 24 hours of conclusion of voting.

44. Further, in the 13th CoC Meeting, it was also decided to proceed with filing the Interlocutory Application for approval of the Resolution Plan on 21.11.2023 as a period of 270 days of the CIRP was ending on this date. Accordingly, the Interlocutory Application No. 5391 of 2023 seeking approval of the Resolution Plan by the Adjudicating Authority was filed on 21.11.2023 at 5:26 PM IST.

45. From the aforesaid facts and chronology, it is clear that the steps prescribed under sub-regulations (4) and (5) of Regulation 26 completed prior to filing of the IA seeking approval of Resolution Plan by the Adjudicating Authority.

46. Therefore, once the process under Regulation 26 stands concluded, there remains no provision that allows any member of the CoC to alter or modify its vote thereafter. Any change in the voting beyond the voting window would compromise the integrity of the voting process and sanctity of the prescribed timeline for voting. Consequently, the same way affect the confidentiality and overall timeline of the CIRP proceedings.

47. Further, it is clear that the Applicant intimated Resolution Professional of its intention to revise its vote in favour of the resolution plan vide email on 21.11.2023 at 7:14 PM IST, after the resolution plan had already been approved by a majority of 88.97%, and interlocutory application seeking approval of the Resolution Plan by the Adjudicating Authority was filed on 21.11.2023 at 5:26 PM IST, which cannot be considered valid or of any consequence. In order dated 06.05.2024 in IA No. 5391 of 2023 through which the Resolution Plan of Respondent No. 7 has been approved, the Tribunal has also noted the fact that the Resolution Plan has been approved with 88.97% voting and therefore by implication it

could be inferred that the applicants change of mind intimated through email has not found favour with the Adjudicating Authority in the said order, despite the fact that the same was brought to the knowledge of Adjudicating Authority by Resolution Professional.

48. In regard to our observation that member of the CoC cannot change its vote after the voting window is closed and Resolution Plan is approved by the CoC, it is pertinent to refer to the Judgement of the Hon'ble NCLAT in case of ***Hem Singh Bharana v. M/s Pawan Doot Estate Pvt. Ltd.,*** *Company Appeal (AT) (Insolvency) No.1481 of 2022,* wherein the Hon'ble NCLAT have made the relevant observation which is extracted below:

> *"22. …Approval by the CoC of a Resolution Plan has to be in accordance with its commercial wisdom and* ***when CoC approves a Plan and the Resolution Applicant is prohibited to modify or withdraw from the Plan, same embargo has to be accepted on CoC also from changing its stand****.*
>
> *… The judgment of the Hon'ble Supreme Court in Ebix Singapore lays down that* ***after approval by the CoC of a Resolution Plan, CoC itself is bound by its decision and cannot be allowed to go back from its decision and pass any other resolution****. This has to be accepted to give finality on different steps of the IBC and* ***for timely conclusion of the resolution process****."*

Although the judgment cited above does not specifically deal with Regulation 26 of the CIRP Regulations 2016, but it is relevant to note that the Hon'ble NCLAT delivered the said judgment on 05.01.2023, which is subsequent to the omission of the Sub-Regulation (2) of Regulation 26 by Notification dated 03.07.2018. Despite not directly dealing with Regulation 26, the decision clearly lays down that once a Resolution Plan has been approved by the CoC, its members are bound by such decision and cannot subsequently alter or change their stand.

49. In view of the facts of the case and discussion hereinabove, the issue (i) is answered in negative.

**Determination as to Issue (ii)**

50. The Applicant also contended that it was subjected to arbitrary and discriminatory treatment by other CoC members in the distribution of proceeds. The contention raised by the Applicant that the distribution is not fair and equitable merely because the Applicant is entitled to 3% of its debt does not, in any manner, indicate that the distribution is unfair. In the present case, the Resolution Plan submitted by M/s. Sapphire Media Ltd. was examined for compliance under Section 30(2) of the Code by the Resolution Professional and subsequently placed before the CoC. The distribution of proceeds being not violative of any provisions of law, and the Plan being approved by the CoC in its 14th meeting (e-voting concluded on 16.11.2023) with an 88.97% voting share in their commercial wisdom is not open for interference of the Adjudicating Authority. The internal distribution of proceeds is within the commercial decision of the CoC.

51. It is pertinent to note that the Adjudicating Authority may reject a Resolution Plan within the provisions of section 31(2) in case where the Plan does not conform to provisions of Section 31(1) of the Code. In the facts of the case the Applicant is a dissenting financial creditor. In accordance with the Section 30(2) of the Code, the payment to a dissenting financial creditor shall not be less than the amount payable in the event of liquidation of the corporate debtor under waterfall mechanism. Therefore, the Applicant, being a dissenting financial creditor, is entitled to an amount not less than the liquidation value of its claim, whereas under the approved Resolution Plan, the Applicant is receiving 3% of its admitted debt. It is not the case of the Applicant that such provision of 3% of the Applicants admitted claim is less than the liquidation value of its claim. Accordingly, the contention of the applicant

regarding it being given 3% of its admitted claim being violative of section 30(2) of the Code is not found to be acceptable.

52. The Applicant further contends that the concept of a subclass within a class of creditors is not permissible. In regard to the same, we observe that there can be sub classes/ categories/classes/ types of secured creditor for the distribution proceeds. In the present case, the distribution proceeds approved by the CoC does not distinguish between the same class of creditors or similarly placed creditors. In this regard, reliance is placed on the judgement of Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors** *[CA No. 8766-67 of 2019],* wherein, it has been held that;

> "80. …*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****."*

53. Therefore, distribution providing differential payment to each sub-class on the basis of the security held by such sub-class of creditors done by the CoC in its Commercial wisdom is valid. Further, the decision regarding the distribution of proceeds among the creditors, as well as the approval of the Resolution Plan, done by the CoC in the exercise of its commercial wisdom is non-justiciable and cannot be interfered with by the Adjudicating Authority. In this regard, we are supported by the judgements of the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors** *[CA No. 8766-67 of 2019],* and **K. Sashidhar v. Indian Overseas Bank** *[CA No. 10673 of 2018],* wherein it has been held

that the Adjudicating authority does not have jurisdiction or authority to evaluate the commercial decision of CoC. Accordingly, we find no merit in the Applicant's this contention also.

54. For purpose of completeness, we are also inclined to consider the judgments cited by the Applicant. For the contention related to Regulation 26 of the Regulation 2016, the Applicant has relied on the judgments of Hon'ble Supreme Court passed in **Ashwini Kumar Upadhyay v. Union of India** *[(2019) 11 SCC 683 #16].* However, this case pertains to Section 49 of the Advocates Act, 1961 read with Rule 49 of the Bar Council of India Rules, 1975, which is not relevant to the present matter and has no relation to the issue of revising or changing the vote on a resolution at any stage of the CIRP process.

55. In view of the facts of the case and discussion hereinabove, the issue (ii) is answered in negative.

56. In view of the above discussion and after considering the parties' contentions, relevant judicial precedents and statutory provisions, we are of the opinion that the present IA filed by the Applicant lacks merit. Accordingly, IA No. 3977 of 2024 is **dismissed** and **disposed of.** No orders as to costs.

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| **Sd/-** | **Sd/-** |
| **Charanjeet Singh Gulati** | **Mohan Prasad Tiwari,** |
| **Member (Technical)** | **Member (Judicial)** |

/Saumya – LRA/