

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI- HON'BLE MEMBER (J)
CORAM: SHRI. CHARAN SINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 10.08.2023, At 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/156/2023 Intervention Petition/4/2023 in CP (IB) No.184/7/HDB/2019
NAME OF THE COMPANY	Meenakshi Energy Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Meenakshi Energy Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/156/2023

This application is allowed, vide separate orders.

Intervention Petition/4/2023

This application is dismissed, vide separate orders.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No. 156/2023
in

CP(IB) No. 184/7/HDB/2019

**(u/s. 30(6) and section 31 of the IBC read with regulations
39(4) of the IBBI (Insolvency Resolution process for Corporate Persons)
Regulations,2016 read with rule 11 of the NCLT Rules, 2016)**

Vs.

1. Mr. Ravi Sankar Devarakonda
(Reg. No. IBBI/IPA-001/IP-P00095/2017-18/10195
Resolution Professional of Meenakshi Energy Ltd.
and on behalf of the Committee of Creditors of
Meenakshi Energy Limited
41/1, 2nd Floor, 8th Main, 11th Cross,
Jayanagar, 2nd Block, Bengaluru,
Karnataka – 560 011

...Applicant

In the matter of
State Bank of India
Stressed Assets Management Branch – II,
D.No. 3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda, Hyderabad – 500 027

... Financial Creditor

Vs.

Meenakshi Energy Limited
D/No. 8-2-248/1/7/9 & 10/6,
Third Floor – 1B, Uma Chambers,
Punjagutta, Hyderabad – 500 082

...Corporate Debtor

Date of order: 10/08/2023

CORAM:

Justice Mrs. Telaprolu Rajani, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical).

Counsels present:

For the Applicants : Mr. T.G. Rajesh Kumar, Advocate

For the Respondent : Ms. Deepika Thakur

[PER: BENCH]

ORDER

1. The present application is being filed by the Applicant under sections 30(6) and 31 of the IB Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

a. To approve the Resolution Plan submitted by the Vedanta Limited i.e. Resolution Applicant, as approved by the CoC of the Corporate Debtor with a majority of 94.96% by way of e-voting;

b. To declare that Vedanta's Resolution Plan, upon its approval shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Vedanta's Resolution Plan;

c. To consider and grant such reliefs, waivers, concessions as sought by Vedanta Limited under the Vedanta's Resolution Plan, as set out under Para 7.6.b above;

d. To pass such other order or orders as this Hon'ble Tribunal may deem fit and thus render justice.

2. The facts in brief as mentioned in this Application are as under:

i) By an order dated November 7, 2019 in Company Petition (IB) No. 184 of 2019 filed by the State Bank of India under Section 7 of the Code, this Tribunal admitted the Corporate Debtor Corporate Insolvency Resolution Process ("CIRP") and appointed the Applicant as the interim resolution professional for the Corporate Debtor ("Admission Order") (Annexure-1, Page No. 69-97 of the Application). Subsequently, during the first meeting of the CoC held on December 5, 2020 ("First CoC Meeting"), the Applicant was confirmed as the Resolution Professional of the Corporate Debtor (Annexure-3, Page No. 100-110 of the Application).

ii) The Application is filed within the timelines prescribed under the Code and the CIRP Regulations. The CIRP period of the Corporate Debtor extended from time to time vide orders of this Tribunal and the NCLAT. As per the said Orders, the CIRP of the Corporate Debtor was to end on January 23, 2023. The present Application was e-filed on January 22, 2023 and physically filed on January 23, 2023 and hence the same is filed within limitation.

iii) Vedanta Limited ("**Vedanta**") on August 29, 2022 submitted its resolution plan which was amended on October 28, 2022. Thereafter, Vedanta also submitted a letter dated December 26, 2022, wherein Vedanta submitted an improved offer by way of an addendum which was to be read as an addendum to the resolution plan submitted on October 28, 2022 significantly improving its financial bid from Rs. 650 Crores to Rs. 1440 Crores. However, the same was not considered by the CoC since all the applicants have to be given equal opportunity for improvement.

iv) In the same letter dated December 26, 2022, Vedanta stated that if it is declared as successful resolution applicant, it would submit a consolidated plan which shall be filed before this Tribunal for its approval

v) On December 29, 2022, the Applicant convened the forty-third meeting of the CoC ("Forty-Third CoC Meeting"). The CoC, by a majority of 99.18%, resolved to undertake the inter-se Challenge Process ("Challenge Process") for value maximization of the Corporate Debtor. Accordingly, the Applicant was directed to run the Challenge Process on January 3, 2023 (Annexure-53, Page No. 728-733 of the Application).

vi) Vedanta submitted a compendium of the Resolution Plan dated January 05, 2023 incorporating its addendums and financial offer dated January 4, 2023

to its resolution plan dated October 28, 2022 (“Vedanta’s Resolution Plan”) (Annexure-56, Page No. 756-868 of the Application). The first page of the consolidated version of Vedanta’s resolution plan (at Page No. 34, Annexure-1 of the Application), Vedanta mentioned that *“compendium prepared pursuant to Resolution Plan submitted on October 28, 2022 along with all amendments/letters/email clarifications till January 5, 2023 including the outcome of inter-se Challenge Process held on January 4, 2023. This is for the ease of reference”*.

vii) From January 6, 2023 to January 17, 2023 the resolution plans submitted by Vedanta, Jindal Power Ltd. (“**Jindal**”) and Consortium of Prudent ARC Limited & Vizag Minerals and Logistics Private Limited (“**PAL-VMLL**”) were voted upon by the CoC.

viii) After the closing of voting lines on January 17, 2023, Vedanta’s Resolution Plan was approved by the CoC with a majority of 92.61%. At the time of voting, Bank of India was unable to vote on the resolution plans due to lack of requisite approval from its approval committee which was scheduled to meet after the voting lines closed. On January 20, 2023, Bank of India also gave its approval for Vedanta’s resolution plan dated October 28, 2022 read with its addendums and the revised financial offer of January 4, 2023. Accordingly, Vedanta’s Resolution Plan stands approved by a majority of 94.96% of the CoC (Annexure-58 (“Colly”), Page No. 876-878 of the Application).

ix) The salient features of Vedanta’s Resolution Plan are stated as under:

- a. Summary of Claims to be addressed under Vedanta’s Resolution Plan: (Refer to Clause 2 of the Vedanta’s Resolution Plan) (Annexure-56, Page No. 773 of the Application)

Sr. No.	Claimant	Claim Admitted (in Rs. crores)

1.	Financial Creditors of the Company ("Financial Creditors")	3778
2.	Financial Creditors of the Company ("Financial Creditors")- Related Party	166
3.	Operational Creditors of the Company ("Operational Creditors")-	665
4.	Employee and Workmen (" Admitted Employee and Workmen Dues ")	15
5.	Other Creditors (" Other Creditors ")	0.14
Total		4625

- i. **Admitted Debt:** Rs. 4,625 Crores
 - ii. **Total claims filed:** Rs. 12,944 Crores
 - iii. **Admitted Financial Debt:** Rs. 3,945 Crores
 - iv. **Total Financial Package:** Rs. 1,440 Crores
 - v. **Upfront Payment:** Rs. 312 Crores as provided under Clause 3.4.6 (a) and (b) of Vedanta's Resolution Plan. (**Annexure-56, Page Nos. 777 to 778 of the Application**)
 - vi. **Admitted Dues of Other Creditors:** Rs. 14 Lakhs
 - vii. **Average Liquidation Value:** Rs. 1,100 Crores (**Page No. 26, Para No. 5.77 of the Application**)
 - viii. **Average Fair Value:** Rs. 2,150 Crores (**Page No. 26, Para No. 5.77 of the Application**)
- b. Appendix 13 as provided with Vedanta's Resolution Plan provides the check list showing that the same is compliant with the Code and the CIRP Regulations. (**Annexure-56, Page Nos. 758 to 759 of the Application**)
- c. The relevant clauses of Vedanta's Resolution Plan which show that Vedanta's Resolution Plan complies with the Code and the CIRP Regulations are stated as under:
- i. **Payment of CIRP Cost:** Clause 3.2.1 and 3.2.2 of the Vedanta's Resolution Plan (**Annexure-56, Page No. 774 of the Application**)
 - ii. **Payment for workmen and employees:** Clause 3.3 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 774 to 775 of the Application**)

- iii. **Payment to Financial Creditors:** Clause 3.4 and 3.4.6 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 775 to 782 of the Application**).
 - iv. **Payment to dissenting Financial Creditors:** Clause 3.5. of the Vedanta's Resolution Plan: (**Annexure-56, Page Nos. 782 to 783 of the Application**)
 - v. **Proposal for Operational Creditors (including Other Creditors) and Statutory Creditors:** Clause 3.6 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 783 to 786 of the Application**)
 - vi. **Outstanding Govt. Dues, Taxes, etc.:** Clause 3.7 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 786 to 788 of the Application**)
 - vii. **Treatment of amounts claimed under ongoing litigations:** Clause 3.8 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 789 to 790 of the Application**)
 - viii. **Claim from related parties:** Clause 3.9 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 790 to 791 of the Application**)
 - ix. **Means for implementation and supervision of the Resolution Plan:** Clause 3.10 of the Vedanta's Resolution Plan (**Annexure-56, Page No. 791 of the Application**)
 - x. **Key steps of the plan:** Clause 9 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 801 to 803 of the Application**)
- d. Vedanta's Resolution Plan provides for the effect of its implementation. The relevant clauses which reflect the same provided below:
- i. **Binding further assurance:** Clause 10.1 of the Vedanta's Resolution Plan (**Annexure-56, Page No. 803 of the Application**)
 - ii. **Capital reduction:** Annexure 2, Clause 2 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 817 to 818 of the Application**)
 - iii. **Settlement Of Dues and Infusion of Funds into Company:** Annexure 2, Clause 3 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 818 to 819 of the Application**)

- iv. **Extinguishment of the Admitted Financial Debt of the Financial Creditors:** Clause 9.3 of the Resolution Plan and Annexure 2, Clause 4 of the Vedanta's Resolution Plan (**Annexure-56, Page Nos. 801 to 802 and 818 to 819 of the Application**)
 - v. **Conversion of the Balance Debt into NCDs:** Annexure 2, Clause 5 of the Vedanta's **Resolution** Plan (**Annexure-56, Page Nos. 820 to 822 of the Application**)
 - vi. **Composition of steering committee** – As per clause 7.1 of the Vedanta's Resolution plan after approval of the same by this Hon'ble Tribunal the Corporate Debtor will be managed and controlled by an independent firm or such other person ("**Interim Manager**") as may be appointed by a Steering Committee ("**Steering Committee**"). The Steering Committee would comprise of two representatives of Vedanta, two representatives of the consenting financial creditors and the Applicant/Resolution Professional (if the Steering Committee decides that the Applicant is to be retained) (Annexure-56, Page Nos. 798 to 799 of the Application).
 - e. **Relief and Concession in the Resolution Plan sought by the Resolution Applicant: Clause 3.14 and Annexure 4 of the Vedanta's Resolution Plan: (Annexure-56, Page Nos. 792 and 835 to 838 of the Application):** The grant or non-grant of the reliefs under the Vedanta's Resolution Plan will not affect the implementation of the Vedanta's Resolution Plan and the same should not be viewed as conditionalities to the implementation of the Vedanta's Resolution Plan or any timelines for such implementation (Annexure-56, Page No. 792, Clause 3.14.2, of the Application).
 - f. Vedanta has provided a Performance Bank Guarantee dated January 18, 2023 of Rs. 25,00,00,000/- (Rupees Twenty-Five Crores Only) (**Annexure-62, Page No. 891-895 of the Application**).
 - g. Form H – Compliance Certificate (**Annexure-63, Page No. 896, of the Application**).
- x) While the Resolution Plan does not provide for the Applicant to be a part of the Steering Committee, however should this Tribunal come to a conclusion that the Applicant is required to be a part of the Steering Committee then this

Tribunal may issue appropriate directions in its order while deciding the present Application and the Applicant undertakes to abide by such directions.

xi) It is to be noted that neither the liquidation value nor the aggregate payment proposed to be made under the Vedanta's resolution plan is sufficient to cover debt of the Financial Creditors of the Corporate Debtor in full. Accordingly, the liquidation value or amount payable under the Code, to the operational creditors and the statutory creditors is NIL. Payment is as per the waterfall mechanism under Section 53 of the Code. Hence, the same is not in violation of the Code. (Clause 3.6.2 of the Vedanta's resolution plan, Annexure-1, Page No. 62, Application)

xii) It is submitted that Clause 3.5.2 of the Vedanta's resolution plan proposed cash payments to the dissenting Financial Creditors. The amount paid to the dissenting Financial Creditors shall be equivalent to the amount payable in accordance with Section 53(1) of the Code during the liquidation of the Corporate Debtor. As per Clause 3.5.5 of the Vedanta's resolution plan, it is stated that the CoC would decide the manner in which the total financial package is to be distributed. (Clause 3.5 of the Vedanta's resolution plan, Annexure-1, Page Nos. 60-61, Application)

xiii) It is also to be noted that the CoC in its commercial wisdom has decided to distribute the amounts received under the Vedanta's resolution plan as per Section 53 of the Code and this is the prerogative of the CoC. Hence, the CoC has neither acted with any *mala-fide* intent nor violated the provisions of the Code (Clause 1.4 of the Vedanta's resolution plan, Annexure-1, Page No. 50, Application).

xiv) Devi Trading & Holding Pvt. Ltd. ("Respondent No. 1") argued that the resolution plan of Vedanta placed before the CoC for voting was different compared to the one submitted with the Plan Approval Application. Hence, the

same is invalid as the CoC has not deliberated upon the alleged changes in Vedanta Resolution Plan submitted before this Tribunal along with the Plan Approval Application. Respondent No. 1 during the course of arguments relied on the judgment of **“M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder & Anr [2023 SCC OnLine SC 574]”** to contend that, a modified resolution plan cannot be placed before this Tribunal without being approved by the committee of creditors. It is to be noted that the judgment of M.K. **Rajagopalan (Supra)** was in the context wherein the resolution plan was amended after the committee of creditors had finished voting on the resolution plan. It is to be noted that Vedanta’s Resolution Plan is a mere consolidation of the resolution plan dated October 28, 2022 along with its addendums and it did not result in any significant changes in the overall structure of the resolution plan. The CoC voted upon Vedanta’s Resolution Plan and there is no alteration of the same post approval of the CoC. Hence, it is evident that the judgment of **M.K. Rajagopalan (Supra)** is not applicable in the present case.

xv) It is trite law that distribution mechanism adopted by the CoC is entirely within its domain as per Section 30(4) of the Code. The CoC, therefore, opted to distribute proceeds as per the waterfall mechanism provided under Section 53 of the Code and has done so in its commercial wisdom.

xvi) Further, the Hon’ble Supreme Court in its judgments of **“Maharashtra Seamless Limited v. Padmanabhan Venkatesh [(2020) 11 SCC 467 – Para No. 77.2]”** and **“India Resurgence ARC Private Limited vs. M/S. Amit Metaliks Limited & Anr. [2021 SCC OnLine SC 409 – Para No. 12]”** it is evident that the scope of judicial intervention is only allowed on the following grounds:

- a. If the resolution plan is in contravention of the provisions of any law for the time being in force; or

- b. There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or
 - c. The debts owed to the operational creditors have not been provided for; or
 - d. The insolvency resolution process costs have not been provided for repayment in priority, or
 - e. The CoC has not taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process and that it needs to maximize the value of its assets.
- xvii) A copy of the judgment passed by the Hon'ble Supreme Court in ***"Maharashtra Seamless Limited v. Padmanabhan Venkatesh [(2020) 11 SCC 467]"*** is marked hereto and annexed as **Annexure-"1"**. A copy of the judgment passed by the Hon'ble Supreme Court in ***"India Resurgence ARC Private Limited vs. M/S. Amit Metaliks Limited & Anr. [2021 SCC OnLine SC 409]"*** is marked hereto and annexed as **Annexure-"2"**.
- xviii) The Hon'ble Supreme Court in its judgments of ***"India Resurgence ARC Private Limited vs. M/S. Amit Metaliks Limited & Anr. [2021 SCC OnLine SC 409 – Para No. 13]"*** has held that that, 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 the Code, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of challenge.
- xix) It is to be noted that Vedanta's resolution plan was approved by a whopping majority of the CoC in its commercial wisdom and the same complies with Section 30(2) of the Code as it provides for all the mandatory requirements:
- a. payment of insolvency resolution process costs in priority;

- b. payment of debts of operational creditors as per Section 53 of the Code;
 - c. payment of debts of dissenting financial creditors as per Section 53 of the Code;
 - d. management of affairs of corporate debtor after approval of the resolution plan;
 - e. implementation and supervision of the Vedanta's resolution plan.
3. In light of the contentions raised and submissions made, the applicant prays this Tribunal to allow the present Application.
4. Respondent No. 1 has filed Counter, the contents in which are as under:
- i) During the interregnum, Respondent No.2 / M/s. Devi Trading and Holding ("Devi Trading"), a minority COC member, filed an intervention application bearing No.4 of 2023 ("LA No.4/2023") before this Tribunal, levelling various allegation against the Resolution Plan submitted by this Respondent and seeking to reject the Resolution Plan so submitted. As such, this Respondent was constrained to file Intervention Petition No.12 of 2023 (IA No.12/2023) seeking to be impleaded in the instant application and submit its stand herein. The said IA No. 12/2023 was allowed by this Tribunal vide orders dated 19/04/2023, thereby permitting this Respondent to be impleaded in the present application. That Devi Trading filed IA No.775/2023 seeking impleadment in present application as they failed to seek impleadment in IA No.4/2023. The said impleadment was allowed on 22-05-2023 by this Tribunal without going into the merits of the case, and thus Devi Trading was made a party as Respondent No.2 herein.
 - ii) In so far as the contents of paragraph 1 to 5 of the instant application are concerned, the same are factually correct.
 - iii) In response to paragraph 7 of the instant application it is submitted that the pending litigations are a matter of record and hence does not warrant a reply.

iv) In response to paragraph No. 88 of the instant application, the contents there are factually correct. The Resolution Plan submitted by this Respondent and approved by the COC considers the interests of all the stake holders in accordance with Section 3 of the LBC. As per clause 3.5.5 of the Resolution Plan submitted by this Respondent, the COC will be the authority to decide the manner of distribution of the consideration being proposed by the Resolution Applicant for the Financial Creditors. It is pertinent to mention that the Resolution Plan of Vedanta Ltd. approved by the COC was chosen as the best plan among a total of 3 Resolution Plans submitted by Jindal Power Ltd, and by Consortium of Prudent ARC Ltd.). The COC in its commercial wisdom, thought it fit to approve the plan submitted by Vedanta Ltd. for value maximization of the Corporate Debtor and as it balanced the interest of all stakeholders concerned. So long as the Resolution Plan approved by the COC is in conformity with the mandatory requirements of Section 30(2) and meets the minimum threshold under Section 53, to party can challenge the same in equity

v) The allegation of the Respondent No.2 that Resolution Plan submitted by Vedanta Ltd. is not feasible and viable and did not adequately balance the interest of all stake holders is baseless and false and thus denied. The Resolution Plan submitted and approved by the COC considers the interests of all the stake holders in accordance with Section 53 of the IBC. As per clause 3.3.5 of the Resolution Plan submitted by Vedanta Limited/Respondent No.1, the COC will be the authority to decide the manner of distribution of the consideration being proposed by the Resolution Applicant for the Financial Creditors. As such, this Respondent herein does not control the distribution of proceeds, but is rather concerned with the payment of Total Financial Package to the COC or the Resolution Professional. Thus, Vedanta Limited/ Respondent No. 1 herein is not responsible for deciding or controlling the affairs of distribution under Section 53 of the Code, and as such, the Respondent No.2 cannot allege that the Resolution Plan submitted by Vedanta Ltd. is not feasible and viable and does not adequately balance the interest of all stakeholders. Without prejudice to the above, in

accordance with sub-section (1) of section 53 of the IBC, the Respondent No.2 being an Unsecured Financial Creditor, shall not be entitled for receipt of any amount. The Resolution Plan of Vedanta Ltd. approved by the COC was chosen as the best plan among a total of 3 Resolution Plans (submitted by Jindal Power Ltd, and by Consortium of Prudent ARC Ltd.). The COC in its commercial wisdom thought it fit to approve the plan submitted by Vedanta Ltd. for value maximization of the Corporate Debtor and as it balanced the interest of all stakeholders concerned,

vi) Reliance placed by Respondent No.2 on the decision of Padmanabhan Venkatesh v Shri V. Venkatachalam & Others CAATHINS) 128/2019 NCLAT Delhi, is grossly misplaced. The said decision of the NCLAT was in lieu of a Resolution Plan that did not meet the mandatory requirement of Section 30(2)(b) of the Code, i.e. minimum payment to Operational Creditors. Also, the said decision is also distinguishable from the facts of the present case in as much as in the NCLAT case, the Resolution Applicant proposed the bid amount lesser than the liquidation value of the Corporate Debtor, which is not the case in the instant CIRP. As such, the Respondent No.2 cannot gain any assistance from the said decision of the NCLAT. It is pertinent to note that unlike the statutory preference given to the operational creditor in Section 30(2) of the Code, no statutory preference is given to an unsecured financial creditor. There is no provision in the IBC which mandates a Resolution Applicant to propose any consideration for an Unsecured Financial Creditors in preference to other class of creditors.

vii) The averment of Respondent No.2 that the Resolution Professional failed to circulate the plan annexed as a part of its IA No.156 of 2023 for voting purposes is incorrect and denied. Business Plan of a Resolution Plan is formulated with certain assumptions based on economic, financial and commodity factors. These assumptions change with time especially with change in commodity prices and the actual executed plan may be different from the one mentioned in a Resolution Plan. Therefore, a business plan is reviewed more from a lens of execution

capability rather than pure numbers. With regards to Vedanta Limited/ Respondent No.1's Resolution Plan, the business plan may have changed with changes in these assumptions. Due to changes in these assumptions, EBITDA mentioned in Vedanta's business plan significantly improved which also gave us some room to submit an increased bid. Accordingly, on the said basis, Vedanta Limited submitted a substantially improved financial offer via its Addendum letter dated 26-12-2022. In the said letter, it was submitted that in case Vedanta Ltd. is declared as Successful Resolution Applicant, then it shall submit consolidated plan having the proposed addendum incorporated, which shall be filed before NCLT. The Resolution Professional subsequently conducted a Challenge Mechanism under which all the applicants were invited to submit any revised bids but the Resolution Professional failed to receive any higher bid than the Vedanta/ Respondent No.1. Post Challenge mechanism, Vedanta Ltd., accordingly, submitted Consolidated Resolution plan incorporating amendments/letters/ email clarifications till 05-01-2023. As such, the averment of the Respondent No.2 that there is a difference between the EBITDA figures does not hold water.

viii) The plan dated 05-01-2023 submitted by Applicant/ RP for approval with NCLT is only a consolidation of all the original plan submitted by Vedanta Ltd, dated 28-10-2022 and all the amendments/letters/email clarifications as submitted by Respondent No.1 till 05-01-2023. Thereby, Plan dated 05-01-2023 and Plan dated 28-10-2022 including all the amendments/letters/email clarifications as submitted till 05-01-2023 has the same proposals. However, for ease of practicality and as mentioned in the letter dated 26-12-2022, this Respondent had requested Resolution Professional to submit consolidated plan for NCLT approval.

ix) Respondent No.2 relies upon various decisions of Hon'ble Supreme Court and NCLAT to portray that a resolution plan must balance the interest of all stake holders. None of the decisions cited come to the aide of Respondent No.2 as they

are not applicable to the facts of the present case. The extracts of the decision of the Hon'ble Supreme Court in *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*, cited by the Respondent No.2 is only in relation to non-consideration of the Operational creditors with specific reference to Regulation 38, 38(1-A) of the CIRP Regulations and Section 30(2)(e) of the Code. Regulation 38(1-A) of the CIRP Regulations mandates that a Resolution Plan shall include a statement as to how it has dealt with the interest of all stakeholders. The Resolution Plan submitted by Vedanta Limited/ Respondent No.1 meticulously covers how various creditors are proposed to be paid. Clause 3.2 of the Resolution Plan covers payment of CIRP costs, Clause 3.3 deals with proposal for workmen/employees of the Corporate Debtor. Clause 3.4 covers in detail, the proposal for settling the claims of financial creditors, Clause 3.5 deals with proposal for the dissenting members of the COC and whereas clause 3.6 covers the proposal for Operational creditors (including other creditors) and statutory creditors. Clause 3.7 addresses the outstanding government dues, taxes, etc., and whereas clause 3.8 deals with treatment of amounts claimed under ongoing litigations. Lastly, clause 3.9 deals with claims from related parties. Thus, as is evident, the Resolution Plan submitted by Vedanta Limited/ Respondent No.1 herein addresses all stakeholders and does not fall short under any touchstone, thereby balancing the interest of all stakeholders. As such, the decisions of *Essar Steel (supra)* as well as *Sashidhar Indian Overseas Bank* relied upon by the Respondent No.2 find no applicability to their case.

x) Respondent No.2 further contends that the COC ought not to have adhered to the waterfall mechanism envisaged under Section 53 of the Code, and seeks rejection of the Resolution Plan on the basis that Section 30(4) of the Code provides flexibility to the COC to adopt any order of priority. In this regard, it is submitted that the Respondent No.2 indirectly seeks to arm-twist the COC into disregarding its commercial wisdom and to merely resonate the views of the Respondent No.2. As held in a catena of decisions of the Hon'ble Supreme Court and Hon'ble NCLAT, the only scope of judicial review open the Tribunal is to see

whether the mandatory provision of Section 30(2) of the Code complied with in the Resolution Plan. Section 30(2) is extracted hereinbelow:

Section 30:

(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 33 in the event of a liquidation of the corporate debtor

xi) It has been held by the Hon'ble Supreme Court in *Pratap Technocrats (P) Ltd. v. Reliance Infratel Lid (Monitoring Committee)*, (2021) 10 SCC 623 : 2021 SCC OnLine SC 569 at page 648, that,

34. The nature of the jurisdiction which is exercised by the adjudicating authority, while on proving a resolution plan under Section 31, has been interpreted in the Judgment of a two judge Bench in K. Sashidhar & Indian Overseas Bank (K Sashidhar") The decision emphasises that the adjudicating authority. Is circumscribed by Section 31 to scrutinising the resolution plan "as approved" by the CoC under Section 30(4) Moreover, even within the scope of that enquiry. the grounds on which the adjudicating authority can reject the plan is with reference to the matters specified in sub-section (2) of Section 30, Similarly, the Court notes that the jurisdiction of the appellate authority to entertain an appeal against an approved resolution plan is defined by sub-section (3) of Section 61 Now, it is in this context, that the consistent principle of law which has been laid down is that neither the adjudicating authority nor the appellate authority can enter into the commercial wisdom underlying the approval granted by the CoC to the

resolution plan. The commercial wisdom of the CoC in its collegial capacity is, hence, not justiciable.

43. Certain foreign jurisdictions allow resolution/reorganisation plans to be challenged on grounds of fairness and equity. One of the grounds under which a company voluntary arrangement can be challenged under the United Kingdom's Insolvency Act, 1986 is that it unfairly prejudices the interests of a creditor of the company. The United States' Bankruptcy Code provides that if a restructuring plan has to clamp down on a dissenting class of creditors, one of the conditions that it should satisfy is that it does not unfairly discriminate, and is fair and equitable. However, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature to not confer an independent equity based jurisdiction on the adjudicating authority other than the statutory requirements laid down under sub-section (2) of Section 30 IBC.

Copy of the said decision is filed herewith as Annexure-3 17.

xii) Respondent No.2 cannot seek to compel the COC to bend-over-backwards and make decisions that the Code does not mandate it to make so long as the Resolution Plan approved by the COC is in conformity with the mandatory | requirements of Section 30(2) and meets the minimum threshold under Section 53, the Respondent No.2 cannot challenge the same in equity. It is abundantly clear from the decision of Pratap Technocrats (supra) that the jurisdiction under IBC is not based in equity other than the statutory requirements laid down in Section 30(2)

xiii) As can be seen from present application, every attempt is being made by the Respondent No.2 to assail the Resolution Plan on baseless allegations. The applications filed by Respondent No.2 are with malafide intentions to stall the CIRP and assail the Resolution Plan of this Respondent. Much prejudice would be caused to this Respondent No. 1, if the stand of the Respondent No.2 is considered. Therefore, the allegations and averments of the Respondent No.2 ought to be set aside and rejected and the present application deserves to be allowed.

xiv) Therefore, in the light of the foregoing, Respondent No. 1 prays this Tribunal to allow the application.

5. Both the counsel filed written submissions, wherein, they were reiterated the contents made in their pleadings

6. We have heard both the Counsel, perused the record and written submissions filed by both the Counsel.

The counsel for the petitioner submits that the Resolution Plan meets the requirement of Section 30(2) of the Code, as under:-

(a) Provides for payment towards CIRP Cost as per clause 3.2.1 And 3.2.2 of the Vedanta's Resolution Plan, which is enclosed As Annexure 56 at page No. 774 of the Application, within 30 days of the NCLT Approval Date.

(b) The Plan provides for payment of the amount provided under the Resolution Plan of the operational creditor on priority, in terms of Section 30 (2)(b).

(c) There are no dissenting creditors, as such the plan does not provide for payment to the dissenting Operational Creditors.

4. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

(a) The Plan provides for payment of claim amount restricted only to the extent specified in the resolution plan to the operational creditor on priority

(b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A) is placed on record.

7. In *K. Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court held that, when the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating

Authority (NCLT) is required to satisfy itself that the resolution plan, as approved by CoC, meets the requirements specified in Section 30(2). No more and no less”.

8. The Hon’ble Supreme Court has further held at para 35 of the above judgement that the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31, limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of Operational creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.

9. The Hon’ble Supreme Court in Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors, held that “the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

10. The Hon’ble Supreme Court of India, in the recent ruling in re Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors, has held as under:-

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that Operational creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer

to the recent observation of this Court made in the case of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another: “95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

11. As per the Resolution Plan “The Insolvency Resolution Plan considers Insolvency Resolution Process Costs which have been as per Clause 3.2.1 & 3.2.2 of the Vedanta Resolution Plan, which includes payment to the Resolution Professional and all amount of expenses incurred by RP, to the extent duly ratified or approved by the COC and shall be paid in priority to all other debts by the Resolution Applicants. The source for the amount can be identified as a commitment by the resolution applicants. Any higher amount over and above this (as approved by the COC) shall be borne and paid by the Resolution Applicants on a priority basis in addition to the proposed amount as above”.

10. In so far as the CIRP expenses are concerned, the same may be payable in priority to all other debts payable by the Resolution Applicants.

11. Therefore, by testing the resolution plan, on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also find that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.

12. We therefore, hereby approve the Resolution Plan submitted by Mr. Ravi Sankar Devarakonda along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:

- (i) The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- (ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- (iii) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.
- (iv) That amount deposited in lieu of Performance Bank Guarantee shall remain as performance guarantee till the amount proposed to be paid to the creditors under this plan is fully paid and the plan is fully implemented.
- (v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.

(vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.

(viii). The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.

(ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.

(x). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

(xi) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI. (xii).

xii) Accordingly, I.A. No. 156 of 2023 in CP(IB) No. 184/7/Hyd/2019 is allowed and stands disposed of.

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)